



OMBUDSMAN/DISPUTE RESOLUTION CONCLUSION REPORT – PAPUA NEW GUINEA SPECIAL ECONOMIC ZONE (SEZ)

This report summarizes the dispute resolution process of the Compliance Advisor Ombudsman (CAO) related to the complaint filed regarding the IFC Special Economic Zones (SEZ) Advisory Services Project (#564427) In Papua New Guinea.

BACKGROUND

IFC Project

The Government of Papua New Guinea incorporated the concept of Special Economic Zones (SEZs) into its overall economic development strategy and, in 2008, asked IFC for assistance in developing the legislative framework that would allow SEZs to be established in the country. As part of its Advisory Services, IFC approved the project in April 2009. In the earlier stages of the project, IFC's plans included assisting with the site selection of the Pacific Marine Industrial Zone (PMIZ) in Madang Province and looking at implementing guidelines for SEZs. However, the government took the lead in selecting the site and IFC's involvement was no longer required. Since then IFC has drafted a legal model that provides a general framework for the development and operation of SEZs and has submitted the model legislation to the Department of Commerce and Industry for consideration.

The Complaint

In July 2011, the CAO received a complaint from a local NGO and elected representatives on behalf of several villages in Madang Province. The complaint raises concerns about the impact of the PMIZ—meant to be the first SEZ to be established by the Government of Papua New Guinea—on local populations and the environment. The complainants are particularly concerned about the lack of local consultation with landowners in the area, the lack of environmental planning, and the implications of the SEZ for fish populations, reefs and lagoons, as well as wider environmental and social impacts of an industrial zone in that area.



Fence demarcating the PMIZ

CAO ASSESSMENT

The CAO found the complaint eligible for further assessment and a CAO team travelled to the field in September and October 2011 and February 2012 to discuss the issues with the parties and other key stakeholders. As a result, the government and the complainants agreed to undertake a collaborative dispute resolution process to address the issues in the complaint with the assistance of the CAO. A CAO Assessment Report was publicly released in February 2012.

DISPUTE RESOLUTION PROCESS

Between February and September 2012, CAO held multiple separate meetings with stakeholder groups to determine the best way forward. In October 2012 CAO convened a multi-stakeholder meeting, bringing over 100 participants together to discuss options for addressing issues raised in the complaint.

OUTCOMES

Agreement (MoU) and Action Plan

The result of the aforementioned meetings was a Memorandum of Understanding (MoU) signed by key parties, including affected communities, RD Tuna¹, provincial government and national government representatives. An action plan was also agreed upon as part of the MoU. The signed MoU and the joint government communiqué that resulted from these meetings are both available on CAO's website.

During CAO's monitoring of the agreement implementation, community members and Madang Provincial Government expressed concern that the Ministry of Commerce and Industry was not following through on the agreed actions. Despite multiple inquiries and requests for meetings, CAO was unable to obtain a response from the Ministry of Commerce and Industry. Therefore, CAO was unable to continue with the dispute resolution process and its monitoring role. One agreed item that was implemented was the establishment of the Environmental Office in Madang which will act as a monitoring agent on environmental concerns.

As the agreements were not fully implemented, the dispute resolution process did not resolve the complaint issues. Therefore, the complaint will be transferred to CAO Compliance in line with CAO's Operational Guidelines.

Philippines Study Tour

In May 2013 The Department of Commerce and Industry (DCI) agreed to sponsor a study tour for the two plaintiffs in the community court action taken to halt the PMIZ project. The visit was to a similar industrial zone in the Philippines.. The trip took place in May/June 2013 and participants were able to view and learn first-hand how the zone is managed and its development impacts.

Settlement of Court Case

Court action taken against the Government to halt the PMIZ project cited community concerns

¹ RD Tuna is an integrated tuna fishing and canning operation and major employer based in Madang, owned by the Philippines-based RD Group of Companies. A stated goal of the PMIZ is to promote the development of tuna fishing and processing and RD Tuna is a key local stakeholder.

around environmental damage and social impacts². The action was filed by a counselor from Kar Kar Island located northwest of the PMIZ site and a community leader from Rempipi village, which is directly adjacent to the PMIZ site. In mid-2013, the plaintiffs advised CAO that they withdrew the case and that they accepted Government assurances that their concerns would be addressed during PMIZ implementation, but reserving the right to refile if this did not happen.



Members of the Kananam community in traditional dress

LESSONS AND INSIGHTS

Turnover within Stakeholder Groups

In complex dispute resolution cases, it is not uncommon to have some turnover in leadership within one or more stakeholder groups during the process – it may be change in company management or ownership, community representatives, NGO leaders, or government officials. The involvement of new decision-makers who have not been involved from the beginning of the process can be disruptive. One

² PMIZ: WS No. 440 of 2011: Bagar Wamm –v- NFA & 2 Ors

strategy for dealing with such challenges is for the parties to discuss IN ADVANCE how they might want to handle such challenges should they arise.

In hindsight, this is an additional topic that parties could have discussed back in October 2012; i.e. how to manage potential changes in representation among the MoU signatories. It is impossible to know what the result might have been, but it may have set up some mutually acceptable mechanism or process that could have helped the parties through the later

government transitions that actually took place. There were national elections in mid 2012, followed by the initial Minister and DCI Secretary being replaced by acting officials, and then replaced once again with a new Minister and then Secretary in 2013.

As it happened, the turnover of key decision-makers became problematic for the implementation of the October 2012 agreement and, as stated above, CAO was ultimately unable to get any response from the Ministry after the turnover.

The signed agreements and other documentation relevant to the case are available on the CAO website – www.cao-ombudsman.org