



Ombudsman Conclusion Report

This report summarizes the CAO's complaint handling process of the complaint filed by a coalition of local and national NGOs, and affected communities regarding the bypass program of the IFC/MIGA supported Mozal project in Mozambique.

Summary of the Complaint and CAO Ombudsman Process

In 1997, the IFC committed to its first investment in Mozal – an aluminum smelter with a production capacity of 250,000 tons per year located approximately 20 kilometres west of Mozambique's capital, Maputo. The participation of IFC in this initial project constituted \$110 million in quasi-equity and loans for the construction and operation of the smelter. In 1998, MIGA also issued a \$40 million guarantee to the Industrial Development Corporation of South Africa Ltd for its investment in Mozal against the risks of expropriation, war, and civil disturbance. In 2001, IFC financed a second project with a \$25 million loan for doubling the production capacity to produce an additional 250,000 tons per annum of aluminum metal. The primary sponsor on both projects was BHP Billiton, a publicly traded international mining and metal group and the total cost of the investment in the two projects was around US\$ 2 billion.

In October 2010, a coalition of local and national NGOs, representing themselves and other locally affected people, submitted a complaint to the CAO raising several social and environmental concerns related to the Mozal project. The complainants were concerned that Mozal's bypass program – a 6-month program which released air emissions without passing through the fume treatment centers (FTC) while they were being rehabilitated – would violate a number of IFC's policies and procedures. The complainants were also concerned that the bypass program would

subject them, other communities residing in the area, and the environment at large, to harmful pollutant exposure. Finally, the complaint raised questions about the environmental and social due diligence undertaken by Mozal to approve the bypass program, and the accessibility to relevant information by the NGOs coalition and their constituency.

With the legal authorization from the Mozambican Government, work on the first FTC started on November 17, 2010 and ended on March 17, 2011. Work on the second FTC started on December 2, 2010 and ended on March 29, 2011.



During CAO's Ombudsman involvement, the team shared process information with the European Investment Bank's Complaint Mechanism (EIBCM) and the UK National Contact Point for the Organization for Economic Cooperation and Development (OECD), as both institutions also received

the same complaint from the coalition of NGOs. After determining eligibility, CAO began its assessment process. The purpose of this process, which does not make any judgments on the merits of the complaint, is to listen to the different stakeholders' views and perspectives on the issues raised by the different stakeholders, explain to parties CAO's processes, both dispute resolution and compliance, and help them understand whether parties would be able to attempt to resolve the issues identified by complainants through a collaborative process.

Stakeholders' opted for trying to resolve the complaint through a process convened by the CAO Ombudsman. As part of the dispute resolution process, parties met on several occasions from February to June 2011, and reached a series of agreements on different topics. The agreements and outcomes are summarized below.



Summary of the Agreements

1. January 2011: The ground rules for the complainants and the company were established outlining the suggested topics for discussion in the joint meetings between the complainants and the company. These topics included discussions on bypass emissions, independent report by a public health specialist, emergency contingency plans, an independent environmental audit, and a mechanism for the community to access future information on Mozal's

environmental and social performance and risk.

Both the coalition and Mozal agreed to attempt to address topics in a process that would be limited to an initial period of 6 weeks, starting from the date the Ground Rules were signed. The parties then agreed that this period could be extended in the event that more time was required in attempting to reach settlement.

2. February 2011: Following the acceptance of the ground rules, the stakeholders had a detailed discussion facilitated by the CAO regarding the Terms of Reference (ToR). It was agreed that the following issues would be canvassed through a mediation process:

- Establishment of an information baseline (monitoring and evaluation data, Mozal annual reports and the Ministry of Coordination of Environmental Affairs (MICOA) special authorization for the bypass).
- Validation of environmental monitoring and evaluation procedures (access to an independent environmental audit reports, the generation of an independent health risk assessment, and clarification on emissions monitoring and environmental procedures).
- Build an institutional relationship between the parties (common understanding of data, access to information and potential on-site meetings).

In terms of the framework established by these two agreements, a number of mediation sessions were conducted in terms of which the following agreements were reached:

Establishment of Baseline Information:

- Mozal agreed to provide a copy of MICOA's special authorization, emissions monitoring data, and consider what environmental reporting may be disclosed to the coalition. They also

agreed to prepare data on their water usage and ongoing access to information through bi-annual meetings. While they were not in a position to disclose Annual Monitoring Reports (AMRs) in their entirety, Mozal agreed to seek consent from its lenders and shareholders to disclose those portions that pertained to social and environmental monitoring.

- Mozal also agreed that they would inform both the coalition and the communities in the event of certain future bypass events, and provided an explanation of their redundancy measures as well as their reasons for the bypass.

Validation of environmental monitoring

- Mozal outlined their audit process which included the ISO 14001, KPMG, BHP Billiton, AMR Reporting and MICOA and considered what environmental reporting could be disclosed. Both parties agreed this would be an item for further discussion
- Mozal agreed to generate an independent report by a public health specialist on the impacts of the bypass event, and it was agreed that the report would be discussed at a further meeting in March 2011. A public health risk assessment was conducted by the Council for Scientific and Industrial Research (CSIR) and presented to the coalition by the CSIR.
- Mozal provided the coalition with their Environmental Management System (EMS)

Build an institutional relationship between the parties

- Both parties agreed that some form of ongoing interaction would be welcomed, and that for the following 12 month period it should be organized in the form of quarterly meetings.
- Both parties agreed to discussing the building of a system for holding urgent meetings.

On issues where no agreement was reached, a process was created to allow the parties further time to consider documentation that had been provided and any other aspects that were considered relevant. The coalition was given until March 9, 2011 to prepare questions for submission to Mozal and they were invited to a site meeting on March 16, 2011, which was attended by representatives of the coalition.

At the end of this agreement, both parties agreed to further mediate and meetings continued during the months of April and May. Although the parties worked toward a final agreement on all the issues, an agreement was not reached in the end and the coalition requested that the complaint be referred to CAO Compliance. CAO Ombudsman therefore transferred the complaint to CAO's Compliance team in December 2011.

Outcomes of the Dialogue Process

- **Ground Rules and Initial Agreements.** As a result of the mediation process facilitated by the CAO's Ombudsman team, the parties were able to reach interim agreements. This required not only a willingness to meet and discuss concerns held by the stakeholders, but also that the topics of concern were acceptable to all of the parties.

The acceptance of the ground rules paved the way for an initially successful negotiation that resulted in the drafting of proposals. This process did bring the parties closer to an understanding of one another's concerns and potential solutions.

- **Company Information Sharing.** As a result of the mediation process, Mozal agreed to disclose information with the coalition about the bypass program.

- **Learning about different ways of addressing conflict situations:** Both parties learned about new ways of approaching and communicating with one another as a result of, *inter alia*, their interaction and attempting to address concerns.

Lessons and Insights

Meetings with the key stakeholders highlighted various lessons learned from the process.

- **Decision Making Processes**

The discussions with Mozal and the coalition of NGOs highlighted the importance of companies sharing their decision making processes more *broadly* with civil society representatives. When project operations generate environmental and social (E&S) impacts that could directly affect local communities, it may be helpful if the affected communities are aware of the rationale behind company's actions. Furthermore, in sharing the process used to arrive at the chosen E&S management program, the company creates a line of communication and a relationship with local stakeholders that informs and includes them in relevant operations.

Another angle of representation that should be highlighted from the intervention of the CAO Ombudsman is the capacity of those attending mediation or negotiation processes to reach agreements on behalf of those whom they represent. Both parties participating in a mediation process must have the possibility to agree or disagree with what is being discussed, and where one or more parties need further clarification or discussion about agreements already reached, it should be clearly brought to the attention of all parties involved during their discussions. It is critical that the *key stakeholder decision makers* are the ones involved in the process so that when agreements are reached, they have the credibility and mandate to speak and act on

behalf of their respective institutions and/or constituents. Without these critical elements, both the stakeholders and the CAO run the risk of investing time in a process that may not reach a successful outcome.

- **CAO Capacity Building**

It will be important that the CAO continues to invest in stakeholders' capacity building and information sessions on both the process of mediation as well as the imperative role that stakeholders play in this kind of processes. This upfront cost would help to build a firm foundation for negotiations that have an increased potential for mutually agreeable resolutions.



Opportunities for the Future

- **Continued Dialogue and Information Sharing**

Despite the fact that the initial dialogue process did not end in a final agreement, the bridges built between Mozal and the Coalition open the potential for future dialogue between them. Furthermore, the fact that Mozal was willing to share information on many of their internal processes indicates that should future disputes arise, there is potential for communities and civil society representatives to engage with them in a meaningful way about discussing the potential impacts of programmatic activities. While from the CAO's perspective this complaint has been transferred to a

compliance appraisal, from the stakeholder's perspective there may still be room for continued relational growth and dialogue.