



CAO ASSESSMENT REPORT

**First complaint regarding IFC's Investment in Myanmar Awba Group Company Ltd.
(IFC Project #35880)**

Myanmar

June 2018

Office of the Compliance Advisor Ombudsman
for the
International Finance Corporation and
Multilateral Investment Guarantee Agency,
Members of the World Bank Group
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 projects in a manner that is fair, objective, and constructive, and to enhance the environmental and social 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
HAIC	Hmawbi Agricultural Inputs Complex
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

In October 2017, CAO received a complaint from a local individual, on behalf of himself and a local [REDACTED] group (the Complainants), regarding the development of a new agro-chemical plant near [REDACTED], Myanmar. The plant is being developed by Myanma Awba Group Company Limited (the Company), an IFC client focused on agricultural sector development in Myanmar. The complaint raises concerns about the impacts of the project on local communities, including: i) water contamination, ii) smell/odor pollution, iii) limited and/or lack of community consultation, and iv) health impacts. The complaint also cites concerns about compliance with World Bank Policies and Guidelines. A complaint addendum, submitted on February 22, 2018 also raises concerns about the obstruction of community access roads resulting from factory construction, labor rights violations, and impacts to local ecology. The CAO determined the complaint eligible in November 2017. During the assessment period, the Complainants and the Company expressed their desire to address the issues raised in the complaint through a CAO facilitated dialogue process.

2. BACKGROUND

2.1 The Project

IFC has an active category B project with Myanma Awba Group Company Limited (#35880) in Myanmar. According to IFC, its investment supports the expansion the Company's core business, including the construction of a new agro-chemical formulation plant in an industrial zone next to the existing government-built crop-protection factory (Myanmar Pesticide Industry, MPI). This includes investments in additional warehouse storage facilities and fertilizer distribution stations, equipment (bottling and packaging machinery), and working capital. The complete project is estimated to cost approximately US\$40.0 million, with the current IFC investment being a USD\$10 million convertible C-Loan.

According to IFC, the Company's new facility (the Hmawbi Agricultural Inputs Complex, or HAIC) will be constructed in three phases through 2020. The first phase (now completed) of the HAIC is the development of a state-of-the-art formulation plant for crop protection products, located near Hmawbi Township, 30 km north of Yangon.

2.2 The Complaint

The complaint was submitted to CAO by a local individual on behalf of himself and a local [REDACTED] group in the vicinity of Myanma Awba's new agro-chemical plant. The complaint raises concerns about i) water contamination and the impact of the project on the quality of local water sources, including creeks, artisanal wells, underground water sources, and the nearby Phoo Gyi reservoir, which supplies potable water to surrounding areas. The complaint also raises concerns about ii) smell/odor pollution, iii) limited and/or lack of consultation with local communities prior to and during the construction of the factory, and iv) health impacts. The complaint cites concerns regarding the project's permitting process and compliance with World Bank Policies and Guidelines.

On February 22, 2018, CAO received a complaint addendum from the Complainants, including 230 signatories. The addendum expands on issues/impacts of concern listed in the original complaint including the obstruction of community access roads resulting from factory construction, which complainants claim has impeded movement between villages and limited the transportation of agricultural equipment and produce to/from local farms, labor rights violations, and impacts to local ecology. The addendum notes that the Complainants are from a total of [REDACTED] villages and 3,651 households, comprising a population of 17,238 persons, [REDACTED].

3. ASSESSMENT SUMMARY

3.1. Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainant, by gathering information and views from different stakeholders without making a judgment on the merits of the complaint. The assessment also seeks to determine whether the Complainant and the Company would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation, as well as documentation submitted in support of the complaint by the Complainants;
- calls and meetings with Complainants, IFC's project team, and the Company; and
- site visits to a total of [REDACTED] villages.

3.2. Summary of Issues

This section of the report provides a summary of all the issues relevant to the complaint that were reported to CAO during the assessment phase, without judgment by CAO on the merits of the issues raised.

Complainants perspective

During the assessment phase, CAO gathered information regarding the issues raised in the complaint by reviewing documentation provided by the Complainants and conducting field visits to the project-affected area. This included a total of [REDACTED] villages: [REDACTED]

[REDACTED]. According to the Complainants, these villages comprise 3,651 households, totaling 17,238 inhabitants, [REDACTED]. The complainants alleged that these villages are within the [REDACTED] radius of the new factory.

The Complainants understood that the pesticide factory in their area was originally a state-owned facility. They said it was built in 1982, and believed it was originally operated by the government. They allege that factory stopped operating in 1988 because of political uprising, but operations commenced again in 1992 and continued until 2005, when they ceased due to stock shortage. They understood that the factory was privatized in 2007, when Awba Group became involved. Awba Group then decided to expand the factory's operations by building a larger factory in close proximity to the old government-run facility. The development of the new factory is being financed by IFC. The Complainants allege that the new factory does not have an operating license, but that the Company has denied this fact.

The concerns raised by the Complainants during the assessment phase fall into six broad categories:

a) Actual and potential water contamination

The Complainants explained that their understanding of the Environmental and Social Impact Assessment (ESIA) conducted by Environmental Resource Management (ERM)¹ was that it found, after running tests on several water sources including streams within a one-mile radius of the factory, that the water was at red level and unfit for drinking. They explained that the ESIA report stated that, with proper mitigation measures in place, this could be mitigated. The community pointed out that they conducted their own tests on the water a week after ERM conducted its tests, and that these results showed that surface water had an acidic Ph balance and the deeper the samples were drawn from, the more chemical contamination was found.

The Complainants pointed out that they do not have running water in their villages and rely on local streams as a main source of water for household consumption. They claim that these streams (on which all villages rely) have been contaminated by discharge water, which they believe to be flowing from the new factory, and that this is exacerbated in the rainy season because the factory is located on higher ground. The Complainants noted that the water from the community wells now has an oily yellow layer on top and has become very hard, with more sediments than before. The water color has also changed, from clear to a green and/or red color. The Complainants further explained that the Company has built a lake which is intended to catch discharge water from the factory operations, but allege that this lake is not properly sealed. As a result, they believe the factory discharge water from the lake still seeps into the streams and other local water systems. Prior to the building of this lake, all the discharge water from the factory was flowing straight into the neighboring farms, resulting in crop damage and lower crop yields. The community has also started using bottled water, because the local wells are contaminated.

The Complainants explained that illnesses have become a common occurrence in the village, and that they suspect it is linked to the contamination of water. Medical expenses have increased, and the community cannot afford them. People can no longer use the water for drinking and cooking.

b) Intolerable odor and dust

The Complainants stated that there is a strong, repulsive chemical, pesticide, and burning odor which they believe to be coming from the factory. They notice this mostly at night, but also at various times during the day. They noted that the intensity of the smell depended on which direction the wind was blowing, but that the odor causes nausea, dizziness, breathlessness, and headaches, and is particularly bad for small children. This also has an impact on agricultural productivity, because the side effects of the odor make it difficult to work, particularly at night in the rubber plantations. They indicated that community members who can afford to relocate have already moved, however, most community members are poor and cannot afford to relocate or to buy masks to protect themselves from the smell. Their only option is to leave their homes during the period when the odor is strong. The Complainants allege that, besides the factory operations, which they believe create a strong odor, the Company is burning waste brought in by trucks from other sites. As a result, there are also many trucks on the road going to and from the factory. This has increased the amount of dust in the nearby villages, which is bad for the lungs.

The Complainants expressed concern about the size of the new factory. They stated that, in the past, the smells caused by the old factory were so debilitating that even schools had to shut down when the company burned chemicals, which was a daily occurrence. They further stated that, although the Company claims the new factory is not yet in operation, there is still a frequent occurrence of bad odors, though not as bad as before. They fear that the situation will worsen when the Company begins full-scale operations.

¹ ERM is a Hong Kong-based environmental consultancy company commissioned by the Awba Group (the Company) to carry out the ESIA.

The Complainants further noted a loss of investment opportunities in the area due to the strong odor. They believe that a potential investor interested in buying a neighboring tile factory has been deterred by the strong smells.

c) Limitation of road access

The Complainants allege that the Company has fenced off half of a registered road, which connects two local villages. According to the Complainants, the Company claims that half of the road forms part of the land concession given to them by the government. The fence has reduced the road to a single lane, negatively impacting farm productivity. Tractors required for working the land and cars used to transport the goods to the market, can no longer use this road as it is too narrow.

d) Labor-related violations

The Complainants allege that some members of the community were employed by the Company through a third-party HR management company (PPC) as security guards on a six-month contract. They were employed starting February 14, 2018, but after two weeks, 18 workers were dismissed (on March 1, 2018). The Complainants claim that the reason given for their dismissal was that they are locals. However, they believe that the real reason they were employed, was because the IFC was due to conduct an inspection of the plant on February 27, 2018, and that the Company wanted to show the IFC that local community members were being employed at the factory. Once the inspection was complete, the workers were dismissed. The Complainants also expressed concerns about the potential health impact of the new factory on workers. They noted that, in the old factory, workers had no protective equipment to use for handling chemicals. They believe that this has led to serious health problems, such as tumors and kidney disease, which in some instances resulted in the death of some workers. They anticipate that this situation will continue with the new factory.

e) Limited and/or lack of consultation with the community

The Complainants expressed dissatisfaction with the level of consultation by the Company on the construction of the new factory. They stated that, where consultation was done, the Company was only giving information to the community about the factory, the new technology which has been installed, and the modern processes that will be utilized. There was no opportunity afforded to the community to ask questions, or to express their concerns about the factory. Furthermore, the Complainants claim that they do not have access to the Company if they want to raise concerns. They claim that they have requested meetings with the Company to understand the potential harm to the community, but that the Company has not responded to these requests. The only consultation done with the community was with regard to corporate social investment (CSI).

Furthermore, the ESIA report is being disputed by the Complainants, who claim that they were not consulted during the process. They claim that water tests were only conducted on some, (but not all) of the potentially affected villages within the required two-mile radius. No explanation was given as to why some villages were part of the ESIA while others were not. This, in turn, has created tension between villages, some of whom believe they were discriminated against. The Complainants state that ERM did not address any of the questions raised by the community in relation to the ESIA.

The Complainants stated that the IFC came to the project site in February 2018, when a press conference was held to discuss the ESIA. They noted that the Company sent an invitation to the community to attend the event, but that the community declined the invitation, because they had not been involved in the ESIA process and they had already filed a complaint with the CAO. They explained that, because community members are not well-educated and

obtaining information in the village is a challenge, they preferred to go through a CAO-facilitated process, rather than engaging the Company and IFC on their own.

f) Negative impacts to local ecology

The Complainants stated that the area used to have lots of indigenous animal species and bees, but that this has changed. The Complainants believe that this is a result of factory operations, particularly the bad smell and the water contamination. The Complainants indicated that they would like the factory to relocate to a different location.

They explained that they have no fundamental objections to development, because they believe it has the potential to uplift the community and create jobs. They would welcome other types of manufacturing factories to the area, but not pesticide factories. They further stated that the Awba factory demonstrates little regard for the neighboring community or the potential health damage caused by the factory to the community.

Company's perspective

The Company provided a brief background on the development of the factory, stating that the old factory was built in the 1990s and was operated by the government until 2007 (old factory). They explained that there were two factories in the area during that time, the agro-chemical factory (MPI) and another factory that manufactured asbestos. They explained that the old factory had many problems and may have created many of the challenges identified by the local communities today.

The company explained that in June 2008, on the invitation of the Government of Myanmar, the Company entered into a joint venture with another private company, to operate the old factory for a term of 10 years, as approved by the Government of Myanmar. The Company stated that they realized that the standards of the old factory were not up to Good International Industry Practices (GIIPs) and tried to modernize the factory to improve its performance, however, investments of any nature required specific approval of the President of Myanmar, which was not provided, and hence did not happen. However, in 2011, the Company decided to build its own modern facility to expand the Company's operation and adhere to international standards. The government allocated a plot for the Company's new factory 100 meters from the old factory. The Company then considered relevant government approvals, including Myanmar Investment Commission (MIC), and approached IFC for investment. The Company explained that while construction of phase 1 has been completed, the new factory was not yet operational, but that they are currently conducting test runs. The Company's Board has approved to relinquish the old factory (MPI) in June 2018.

The company emphasized upfront that most of the concerns expressed in the complaint about environmental impacts, water contamination and effects on health could only be related to the old factory (MPI), simply because the newly constructed plant has not commenced operations yet and Awba is awaiting the relevant licenses for the same.

In response to the particular issues raised by the Complainants, the Company responded as follows:

a) Actual and potential water contamination

The Company explained that the operating license for the project has not yet been granted by the government, and therefore the factory is not yet in its operational phase. The factory is designed to operate as an agro-formulation facility only, and does not produce active ingredients or highly dangerous byproducts, on the contrary the Company uses imported active ingredients. The company believes that, because of the nature of the facility, it is highly unlikely

that the facility will produce substances that will impact the environment, including water contamination.

The Company further explained that, in 2015, the ESIA requirements in Myanmar were very vague, and when IFC got involved in the project they found that the ESIA (under the 2015 laws) was insufficient. IFC recommended that the Company conduct an ESIA in accordance with IFC Performance Standards and WBG EHS Guidelines for pesticide manufacturing, formulation and packaging. This corrective action has been included in the agreed upon E&S Action Plan (ESAP). The Company therefore conducted the additional ESIA study using a third party consultancy (ERM), and the results of that study became available for public distribution in February 2018. The Company indicated that it has implemented some of the recommendations put forward in the ESIA, and will continue to do so as the factory prepares for operation and further expansion (with ongoing support from ERM). This includes creating a drainage system to catch all the discharge water, making any possible contamination into local streams impossible.

The Company also explained the limited use of water during factory operations, noting that the existence of chemicals during the cleaning process of the processing units is very minimal.

b) Intolerable smell/odor

The Company clarified that an operating license has not yet been issued, and that the factory is therefore not yet operational. However, they state that the factory is in the commissioning phase (test run phase), in preparation for full-scale operation. The company explained that during the commissioning phase, the majority of the test runs occur during the day. They therefore believe that the smell complained of in the night is not related to the factory's operations. Furthermore, the Company stated that, because of the state-of-the-art air purifying systems installed at the new factory, they do not think it is possible for strong odors to be emanating from the factory.

The Company further explained that, similar to a diesel car, which sometimes produces black smoke while trying to get the perfect air ratio for maximum efficiency, the factory operating team is trying to get the incinerator to the best ratio of cleaner/environmentally friendly exhaust gas. This is done through visual checks, awareness, and cautious planning, as has been recommended in the IFC ESMP.

c) Limitation of road access

The Company explained that the land on which the factory is built was leased to the Company by the Ministry of Agriculture, and they stated that the fencing of the site has been done in accordance with the Ministry of Land & Housing Development's registered map. The company claims that, according to the map, there is no access road between the monastery and the neighboring villages on the southern side of the factory. The Company further noted that, should there be an access road needed anywhere between the two fences, they understand that both land owners (on either side of the road) would be required to contribute equally 6.5ft from their land to create a 13ft road, as per the regulations. The Company stated that they have already built the fence 6.5ft away from the original boundary to grant road access. Therefore, they believe the remaining 6.5ft needed to make the road bigger, has to be contributed by the neighbor, and explained that this requirement was communicated to the neighbor by the authorities.

d) Labor-related violations

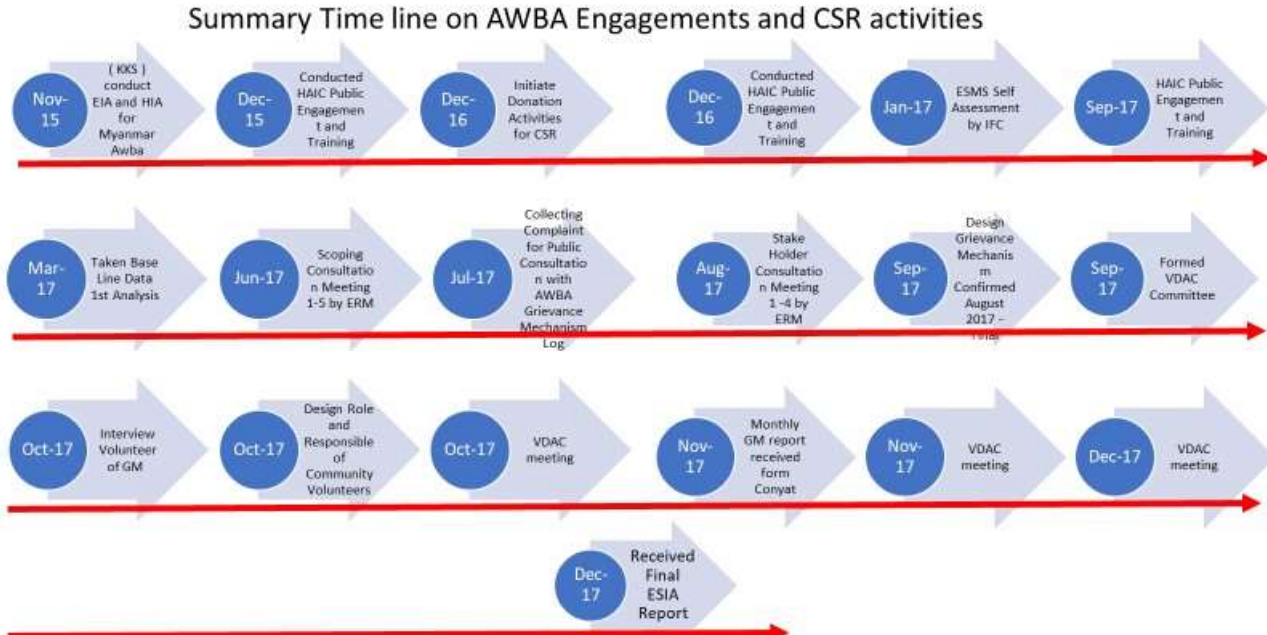
The Company explained that they engaged a third-party company to manage the appointment of security personnel and, therefore, are not able to comment on the reasons for termination of the 18 workers. However, they indicated that, once operational, factory vacancies will be posted in a transparent manner, and all qualified persons will be welcome to apply. They estimate that the factory will require 500 skilled workers over the next five years.

e) Limited and/or lack of consultation with the community

The Company explained that a company grievance mechanism (GRM) was rolled out in July 2017. During this time, information sessions and campaigns on the grievance mechanism were conducted in seven villages to create better awareness about the grievance mechanism processes. Under this new mechanism, the villages visited and number of participants who attended are indicated in the table below.

Date	Village	Number of participants	Duration of meeting (in hours)
December 1, 2017	[REDACTED]	27	3
January 17, 2018	[REDACTED]	14	2
January 18, 2018	[REDACTED]	28	2
February 6, 2018	[REDACTED]	39	1.5
February 7, 2018	[REDACTED]	26	1.5
February 7, 2018	[REDACTED]	16	1.5
March 20, 2018	[REDACTED]	45	2

The Company also expressed its intention to expand the GRM workshops to all villages by July 2018, and to conduct monthly stakeholder meetings to further discuss the outcomes of the ESIA report and promote the GRM. The Company also explained that two disclosure workshops to discuss the ESIA report were held for the community and civil society on February 27 and 28, 2018, respectively, and that more consultation initiatives have been planned.



f) Negative impacts to local ecology

The Company referred to the ESIA report released by ERM, and noted that the ESIA found no impact to ecology including Air, Noise, Soil, Water and Biological Environment (Fauna and Flora). They also stated that ERM's ESIA did not identify impacts on livelihoods and economy, and pointed out that, as noted in the ESIA, the location of the factory operations was decided by the government. They explained, however, that there is a monitoring system in place which they believe will ensure that there is minimal ecological impact once the plant becomes operational.

4. NEXT STEPS

During CAO's assessment process, the Complainants and the Company indicated their interest in addressing the issues raised in the complaint through a voluntary dialogue process convened by CAO's Dispute Resolution function. CAO will facilitate the process, including assisting the parties to prepare for dialogue, agreeing on ground rules, and working together in a collaborative way to try and reach resolution of the issues raised in the complaint and summarized in this assessment report.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an 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.

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**: Assessing the issues and providing 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 process is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or 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 goals. 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 affected.³

OR

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**

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.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.