Assessment Report

Complaint filed to the CAO regarding the Zambia Konkola Copper Mine (KCM) Project

November 2003

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

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GLOSSARY

APDF	African Project Development Facility
BOP	Balance of Payment
CAO	Compliance Advisor / Ombudsman
CEP	Copperbelt Environment Project
EA	Environmental Assessment
FEMP/FSMP	Final Environmental & Social Management Plan
GRZ	Government of the Republic of Zambia
IDA	International Development Association
IEMP/ISMP	Interim Environmental & Social Management Plan
IFC	International Finance Corporation
I-PCDP	Interim Public Consultation and Disclosure Plan
KCM	Konkola Copper Mines plc
KDMP	Konkola Deep Mining Project
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PCDP	Public Consultation and Disclosure Plan
PSREP	Public Sector Reform and Export Promotion
RAP	Resettlement Action Plan
RAP-MER	Resettlement Action Plan Monitoring and Evaluation Reports
RDC	Residents Development Committee
SDP	Social Development Plan
SME	Small and Medium Sized Enterprises
WB	World Bank
ZCCM	Zambia Consolidated Copper Mines Limited
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holdings plc
ZCI	Zambia Copper Investments Limited
ZK	Zambian Kwacha

1. INTRODUCTION

This assessment is in response to a complaint lodged by a Zambian NGO, Citizens for a Better Environment, on behalf of residents of the new resettlements located in the Konkola mine area of the Zambian Copperbelt. The complaint concerns an IFC investment in the Konkola Copper Mine (KCM) involving a consortium led by Anglo American plc. The case raises issues relating to IFC's responsibilities for an on-going resettlement action plan during and after its exit from the project.

The assessment report addresses the issues raised in the complaint and concludes with suggestions to the complainants and the IFC on how these issues may be addressed. The CAO may assist the complainant further in resolving the issues of concern if the complainant so wishes.

The assessment was carried out in accordance with the operational guidelines of the CAO. The assessment report is the conclusion of the assessment phase of the complaint process. In accordance with the operational guidelines, the assessment report is prepared for the complainant and shared with the other parties to the complaint (here KCM and IFC). If the complainant chooses to make the report public, the CAO will then publish the report on its website.

The assessment report follows the complaint in itemizing its responses to issues raised. The complaint is annexed to the assessment report.

2. BACKGROUND[1]

Konkola Copper Mines plc (KCM) is the largest copper producer in Zambia, exporting copper and cobalt cathodes. The company was established to acquire assets as part of the privatization of Zambia Consolidated Copper Mines Ltd (ZCCM). IFC's investment in KCM was to secure the purchase and rehabilitation of the copper mines and processing assets of the Konkola and Nchanga Divisions as well as the Nampundwe pyrite mine (KNN) from ZCCM.

In March 1999 the copper parastatal ZCCM was converted into an investment holding company (ZCCM-IH) according to a reorganization plan approved by its Board. On 26 October 1999, Zambia Consolidated Investments (ZCI) signed a Heads of Agreement (HoA) with ZCCM and Government of Zambia (GRZ) outlining the terms and conditions for the privatization of the bulk of ZCCM's assets. IFC's investment in KCM was approved by the IFC Board of Directors on 22 February 2000. Project documents were signed on 31 March 2000 and KCM took over management on the same day.

Anglo American plc (Anglo) was IFC's project sponsor through its 50.9% stake in ZCI held 65% of KCM. ZCCM retained a 20% interest and IFC and CDC Group plc (formerly Commonwealth Development Corporation) each held 7.5%. GRZ maintained an interest in KCM through ZCCM's 5% free carried interest and a 15% repayable carried interest.

[1] See detailed timeline in annex 2.

IFC subscribed for 7.5% equity interest in KCM at a total (capped) cost of US$30 million.[2] The investment comprised equity and shareholder loans

IFC had provided two previous loans to ZCCM in 1990, for the construction of the Nchanga Cobalt Plant (US$20 million), and in 1992 for the construction of a Tailings Leach Plant (US$30 million). Both loans were fully repaid.

A two-phase development program was envisaged. The three-year Phase 1 focused on the rehabilitation of the existing KCM assets at a cost of US$ 345 million. Almost all aspects of the existing mining, milling, smelting and refining facilities at each of the mines were to be refurbished and/or upgraded. Production was expected to increase from the existing level of 180,000 tpa copper in concentrate to 220,000 tpa. About 2,500 tpa of cobalt was to be produced. Phase 2 concerned the six-year development of the Konkola Deep Mining Project (KDMP), a deep and complex underground mine. KDMP was scheduled to be authorized in about two years following approval of KCM project. KDMP would have allowed copper production to be maintained at 220,000 tpa for some 25 years. The development of KDMP was essential for KCM's continued profitability.

KCM's assets represented the bulk of ZCCM's production facilities. They had suffered from many years of under-investment, low productivity and high operating costs. The privatization of ZCCM was a key component of the World Bank Group strategy for Zambia. The expectation was that it would allow Donor Balance of Payments (BOP) funding to be released, mitigate the threat of Zambian debt default, and radically improve the country's overall economic prospects. IFC involvement was deemed important to complete the transaction in order to attract future financing from the international community. The tight and ambitious privatization timetable was described as critical for the survival of the KNN assets which produced about 65% of Zambia's copper, with copper exports representing some 80% of Zambia's total exports. The plan was driven by ZCCM's difficult financial situation, a moratorium on Donor BOP support for Zambia until the assets were transferred[3], and Zambia's precarious financial position.

Owing to serious environmental and public health impacts, the new KCM consortium was unwilling to accept any legal responsibility for historical liabilities, most notably downstream impacts on populations and ecosystem functions. As a consequence, GRZ and ZCCM-IH agreed to retain the historical liabilities associated with the assets purchased by KCM and to implement adequate mitigation measures. Hence, ZCCM-IH retained liability for a wide range of environmental and social concerns, which were not passed on to the private investment consortium, including resettlement. The proposed development of Konkola Deep required the raising of the Lubengele Tailings Dam. This in turn meant that the neighboring communities of Kawama and Ming'omba would need to be resettled.

As a category A project, IFC required KCM to conduct a comprehensive Environmental Assessment of the KDMP facilities that would address key environmental, health and safety and social issues associated with the project's implementation and operation.

[2] See chart showing the investment structure in annex 3.

3 The completion of ZCCM's privatization would trigger the resumption of BOP support, which would allow the continuation of economic reform and the possibility of assistance under the HIPC initiative.

However, the complex nature of existing facilities in the privatization process and the limited time available between finalization of the assets package and the actual transfer resulted in compressing certain aspects of the project appraisal timeline, including consultation and disclosure of a complete EA and Resettlement Action Plan (RAP). Thus, the EA, which included Baseline Studies, Interim Environmental & Social Management Plan (IEMP/ISMP) and an Environmental Impact Assessment for KDMP, was completed and disclosed on 24 November, 1999, ahead of IFC Board of Directors approval on 22 February, 2000. The IEMP/ISMP, which covered the first two years of the project, identified extensive environmental and social mitigation measures. As some of these mitigations measures required further studies, it was agreed that a Final EMP/SMP (FEMP/FSMP) would be completed two years after the initial investment (31 December, 2001) with all outstanding mitigation measures to be undertaken within one year, i.e. three years after initial investment.

In terms of the vesting agreements it was not possible to seek approval for implementation of KDMP from certain of the KCM shareholders or from potential financiers until the FEMP/FSMP had been completed. To avoid delay, KCM decided to complete the FEMP/FSMP sooner than the contractual requirement. IFC, to protect against the risk agreement with KCM on the final form of the FEMP/FSMP would not be possible, insisted on an environmental put option. The put option could be exercised for various events of non-compliance with IFC requirements, including most importantly the non-completion of the FEMP/FSMP within the agreed timeframe. The FEMP/FSMP was actually finalized in April 2001 and disclosed locally in July 2001.

A critical component of the FEMP/FSMP was a Resettlement Action Plan (RAP). In this context, IFC agreed that a delayed RAP (completed subsequent to Board approval) was acceptable given the critical timing. Although IFC had stressed the need for the timely preparation of a RAP for any affected communities (particularly with regard to Ming'omba and Kawama), it did acknowledge that since the resettlement associated with the raising of the Lubengele tailings dam was part of Phase 2, the RAP did not need to form part of the initially disclosed documents, i.e. IEMP/ISMP. IFC did underline however that preparation of the RAP should commence as soon as possible in order to allow adequate consultation with project-affected communities.

Preparation of the RAP only began once the Heads of Agreement was signed with GRZ in October 1999. Initial fieldwork for the preparation of the RAP started in November 1999 leading to the release in December 1999 of a brief Concept Resettlement Action Plan, as an addendum to the Environmental Assessment. The final RAP, completed and disclosed in February 2000, was therefore not released for 60 days prior to IFC's Board meeting as required under IFC's policies and procedures[4]. KCM undertook public consultation on the final RAP.

Implementation of the RAP started in April 2000 with the appointment of a KCM Resettlement Coordinator who became the *de facto* implementation agent. However, KCM experienced delays in implementation. These were due to ZCCM-IH's lack of available funds to kick-start the process. Funds were eventually secured in November

[4] Operational Policy on Environmental Assessment (O.P. 4.01); Operational Directive on Involuntary Resettlement (O.D. 4.30); IFC's Statement on Public Disclosure (September 1998); IFC's 1998 Procedure for Environmental and Social Review of Projects.

2000 through savings from an IDA Subsidiary Loan Agreement with GRZ to finance ZCCM's Labor Reduction Program, part of the Public Sector Reform and Export Promotion Adjustment Credit (PSREP), a structural adjustment in support of privatization of ZCCM.

The affected people were resettled to the new Ming'omba (67 households) on 14 January 2002. In Kawama (74 households) were moved on 19 February 2002. The one month delay in Kawama was due to a problem with water supply on the construction site at the new settlement. Transfer of service responsibilities to the local municipal council became effective in December 2001. The official transition from the RAP to the Social Development Plan (SDP) took place in December 2001 although this was originally envisioned in the FEMP/FSMP for July 2001).

On 23 January 2002, Anglo announced it was pulling out of KCM. The withdrawal of Anglo also resulted in IFC's exit from the project on 25 January 2002.

IFC reported that it had exited the project with many FEMP/FSMP commitments uncompleted,[5] but indicated that there was evidence of considerable improvements in environmental and social conditions as compared with the pre-takeover situation. At the time of IFC's exit, according to independent auditors, KCM was found in compliance with IFC policies, Zambian legislation and FEMP/FSMP commitments, and it was on track to complete most FEMP/FSMP commitments by March 2003. The one-third of FSMP commitments that were not completed was related mostly to the on-going implementation of the Disclosure and Consultation Plan.

3. ASSESSMENT PROCESS AND COMPLAINT

Summary of the process:

The CAO received the complaint regarding IFC's investment in KCM on 2 July 2003. On 3 July 2003, the letter of complaint was officially acknowledged by the CAO and the CAO accepted the complaint for assessment. A timeline for the assessment process and field mission was agreed with the complainant on 9 July 2003. Significant documentary research into the project timelines around decisions concerning issues raised in the complaint, in particular on resettlement, and interviews with project teams took place from mid-July 2003 to mid-September 2003. Background information from IFC and IDA staff was also obtained. A field mission was completed in early October 2003. In the course of this mission the CAO team interviewed the complainant as well as representatives of KCM and ZCCM-IH. Visits to the new resettlements at Ming'omba and Kawama allowed the CAO direct and unfettered access to communities on issues raised in the complaint and the long-term prospects of the resettlement. The CAO also sought the views of concerned NGOs in the area as well as civic and local community leaders. The CAO team also met with the Minister of Mines and the Acting Director of the Environmental Council of Zambia.

[5] Annual Monitoring Report April 2001 – March 2002

The CAO wishes to thank the local authorities at Chililabombwe for their cooperation and understanding of CAO's own procedural requirements regarding direct consultation with affected communities.

Summary of the Complaint:

The text of the full complaint is attached in Annex 3. The complainant has argued that:

i. IFC prematurely abandoned the project before the full implementation of the Resettlement Action Plan and that, at exit from KCM, IFC failed to adequately monitor the implementation of the RAP in accordance with IFC's terms and conditions and in line with its Safeguard Policies.

ii. IFC never consulted on or publicly disclosed to the affected communities its decision to exit the project and mitigation plan, in contradiction with its policy on public consultations and disclosure. This, the complainant argues, has led to uncertainty and desperation in the minds of the affected people in respect of specific promised project post-relocation economic and social services benefits, namely: Full valuation and compensation for the lost assets, acceptable alternative income earning strategies to protect livelihood of those people, land tenure, access to training, employment and credit, water supply, feeder roads, environmental protection, access to education and health care at their new site.

The complaint also raises the question of IFC's compliance with the OECD Guidelines for Multinational Enterprises, as IFC's business headquarters are located in the USA, a member of the OECD.[6]

4. ISSUES RAISED

The complaint states that IFC exited the project before full implementation of RAP and failed to put in place measures, including monitoring, evaluation and review, to ensure full implementation of RAP over the post-exit period.

The resettlement process was developed in the form of a partnership among the shareholders. Anglo funded the preparation of the RAP; ZCCM/GRZ provided funding for the RAP's implementation with funds from the World Bank; KCM implemented the RAP, while IFC monitored its implementation. IFC was to ensure through its own monitoring that the design and implementation of the RAP met its own requirements. The RAP's vision was that the resettled communities would develop the capacity to manage their infrastructure and that government service providers would engage in the process and provide continued service provision.

[6] The complaint currently considered by the UK National Point of Contact regarding the same KCM project covers issues relating to privatization and Anglo's approach to the KCM deal. It does not address the question of resettlement and only deals with aspects of disclosure and consultation regarding the IEMP, FEMP and Anglo's exit decision.

The CAO understands that IFC, following its decision to exit KCM, sent two staff officers for two three-week periods to discuss with KCM how to continue the resettlement program. IFC was instrumental in securing funding for the RAP's implementation from the WB loan to GRZ / ZCCM at the outset of the RAP and at exit. KCM approved the continuation of the RAP.

Following Anglo's pullout, GRZ and the World Bank agreed that the uncertainty regarding the future operations of KCM did not change the importance or timing of the Copperbelt Environment Project (CEP), in particular with regard to future investors. The CEP is to assist the GRZ in addressing environmental liabilities and obligations associated with the privatization of mining assets that are incumbent on GRZ, in particular the liabilities related to public health and safety.

A World Bank Task Team visit to Konkola in early October 2000, which was joined by an IFC social specialist, confirmed that the RAP was in compliance with WB guidelines, subject to minor revisions and updates. Subsequently, World Bank staff informally monitored the implementation of the RAP in conjunction with CEP. At the outset of the KCM project, the WB understood that lack of fulfillment of certain historical liabilities retained by ZCCM, such as resettlement of villagers at Konkola as specified in the IEMP, might affect the capacity of KCM to mobilize the funds required to develop the Konkola Deep Mining project. ZCCM-IH had before privatization agreed to resettle affected populations in anticipation of the Konkola Deep Mine Project. IFC's involvement created the obligation to KCM to meet IFC's environmental and social Safeguard Policies, including World Bank Operational Directive on Involuntary Resettlement (O.D. 4.30).

The implementation of the RAP was identified as a priority social activity given that expectations had been raised and agreements were reached with those who had been resettled. GRZ's commitment was secured during the World Bank preparation mission for the CEP in October 2000. Part of the funds initially earmarked for labor reduction compensation at ZCCM would instead be used for managing ZCCM's environmental risks. The Labor Retrenchment Program was part of the Public Sector Reform and Export Promotion Adjustment Credit (PSREP), a structural adjustment in support of privatization of ZCCM in the SDR amount of 122.7 million (US$ 170 million equivalent).

At the time of IFC's exit, ZCCM reconfirmed its intention to complete the RAP as construction of new houses at the resettlement areas was half completed. This willingness to secure the full implementation of the RAP was motivated by concern for the development of Konkola Deep on which much of the future economic welfare of the Chingola/Chililabombwe communities depended.

The RAP was part of a contractual (Development Agreement) and statutory (national legislation) relationship between KCM and GRZ, which did not cease after Anglo's pullout. ZCCM indicated to the CAO that it had secured funding for the RAP with World Bank funds and that it had, on one occasion, provided a cash advance for the RAP as a result of an oversight by GRZ in the transfer of funds. At the time of the CAO's mission to Zambia the current spending level for the RAP was within budget (US$1.6 for a total budget of US$ 2 Million). Part of any savings are as a result of some activities foreseen in the RAP now taking place through other channels, such as partnerships with NGOs.

IFC's business decision to exit the KCM deal was not contingent upon the completion of the RAP. At exit, IFC did however ensure that the resettlement program receives continued funding and that implementation continues. Although IFC's policies did not require it to monitor and ensure full implementation of the RAP after exit, IFC was aware of the reputational risks that could be incurred by the non-completion of social development aspects of the RAP. In the final Annual Monitoring Report Review (March 2002), based on independent monitoring reports, IFC identified the lack of progress in the preparation of new agricultural land and the restoration of livelihoods for Ming'omba villagers. IFC also noted that the non-implementation of some provisions of the Social Management Plan could be easily corrected. Here the CAO notes that in hindsight, a greater level of communication between IFC and IDA staff may have ensured that some quality control could have taken place on the ongoing implementation of the RAP given that IDA had already taken an informal interest in the resettled communities. RAP Monitoring and Evaluation Reports issued after IFC's exit would have provided IFC and IDA staff with more accurate insight into the status of the RAP implementation. Although there were no obligations on the part of IFC to request and study these reports, the frequent presence in the field of IDA missions in conjunction with preparations for CEP could have been an opportunity for IFC to keep track of the implementation of aspects of the RAP it had considered of reputational risk if not completed successfully. These reports were requested by IFC of KCM once the complaint to the CAO had been filed.

The complaint asserts that IFC failed to consult or disclose its exit decision or exit mitigation to the project affected communities.

A Public Consultation and Disclosure Plan (PCDP)[7] were included in the IEMP/ISMP and were released locally and in Washington (InfoShop) on 24 November 1999. A non-technical summary was also released and distributed in KCM affected areas. Public meetings were held in the last week of November 1999 at Konkola. An Interim Report on the outcomes of this public consultation and disclosure together with an updated PCDP was released as an addendum to the EA in the InfoShop and locally in December 1999.

The PCDP of the IEMP/ISMP requires communication of any change in the project. In particular, the PCDP states that the decision to proceed with, or abandon, the KCM project was to be publicly announced through similar channels as those used for advertising access to the report information. Accordingly, IFC's exit was communicated through a press release issued on 25 January, 2002, as well as through IFC's website, while public consultations on restructuring and ownership of KCM took place in August and October 2002 in KCM's neighboring towns. At these meetings, KCM explained the Anglo/IFC exit decision and assured communities that the resettlement program would continue in accordance with KCM's Board decision. There are differing accounts of whether resettlement staff held similar meetings at Ming'omba and Kawama new resettlement areas.

IFC was under no obligation to consult on its exit decision. In this case the CAO notes that while IFC had no obligation to consult with affected communities on a business

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[7] Based on IFC document "Guidance for Preparation of a Public Consultation and Disclosure Plan (PCDP)" July 1998.

decision, some consultation on the manner of assuring and continuing provision of agreements made under IFC's social and environmental agreements, that formed promises to local people, may have been appropriate. On the issue of disclosure, while the exit decision was discussed locally, there was inevitable discomfort and confusion among affected communities around the future implementation of the RAP.

The complaint alleges that there is uncertainty and despair among the affected people regarding post-relocation economic and social promises, including full evaluation and compensation for the lost assets; *acceptable alternative income earning strategies to protect livelihoods of affected people / Access to training, employment and credit; Access to education and health care at new site; water supply; land tenure; feeder roads; environment protection; and the role of the OECD Guidelines for Multinational Enterprises and their application to IFC.*

Full evaluation and compensation for the lost assets

The RAP provides for land to be allocated to each household at new Ming'omba as well as those resettled at Kawama when their land would be flooded. In addition, for Kawama, the RAP indicates that intensification of agriculture will be carried out by means of irrigated community gardens, and, for Ming'omba, that intensification of agriculture will be carried out by means of irrigated community gardens as well as provision of material and other assistance to individual households. The RAP Monitoring Reports do not mention intensification of agriculture through community gardens for Kawama and there is confusion about what people in Kawama can expect through the RAP. The RAP envisaged that the new land allocated was initially to be cleared by the end of July 2001, before planting in November/December, in a process that would employ local and affected households. Subsequent RAP Monitoring and Evaluation Reports indicated that in Ming'omba if all material losses were compensated for at their market value, the cash equivalent generally would fall far short of the amount needed to start productive activities and provide equal or improved income. The people in Ming'omba had had high expectations regarding cash compensation, hoping that the sums obtained would help them subsist between this period to the first full cropping season. In the March 2002 RAP Monitoring and Evaluation Report, at the time of IFC's exit, it was noted as a matter of urgency, that the preparation of the new agricultural land and secondment of agricultural extension staff should be accelerated. KCM had earmarked ZK66 million to assist Ming'omba residents with the preparation of 66 new agricultural fields, including the provision of seeds. The full payment of these allowances to residents was expected at the completion of the actual preparation work.

According to CAO's interviews with affected peoples at Ming'omba during its assessment visit (October 2003), cash compensation to allow villagers sufficient subsistence until the next cropping season ('disturbance allowance') was promised in three yearly installments. Instead, one single cash payment – corresponding to one installment – was provided.

The RAP allowed for an allocation of 1 ha per household. In 2002, KCM cleared and prepared ½ ha per household. However, due to the late allocation by the central government of agricultural inputs essential for cultivation, including lime and fertilizer, the inputs arrived late in Ming'omba and Kawama resulting in lower yields. KCM supplied only 3 bags of fertilizer per household (as opposed the 10 stated in the RAP, (presumably as only part of the land had been cleared for cultivation). Agricultural extension workers indicated that the standard procedure is 8 bags of fertilizer per hectare, and that with a Ph 4.5 the soil requires significant liming). The community did not receive implements. At the time of the CAO mission in October 2003, KCM had not yet provided the inputs for 2003/4 harvests and the community was unclear if they were coming. The RAP also provided for the land of the elderly and blind (vulnerables) to be cultivated with support from KCM until they had enough cash earned from crops to pay others to cultivate for them. The communities indicated to the CAO that this had not happened and the elderly have not been able to develop their land. At a public meeting convened by the CAO, KCM indicated that inputs could only be provided in late October 2003 because they were only being made available then by the government.

From KCM's records communities were told by KCM, on several occasions, that seeds, inputs and implement would be provided but no clear time-line was communicated. This resulted in growing uncertainty about KCM's commitment to implementing the RAP. In Ming'omba, KCM's decision to provide the community with cash for land clearance proved retrospectively misguided. While KCM paid people to clear their own land, in some instances the people of Ming'omba hired others to do this, thus diverting the cash injection away from the community and prolonging a culture of dependency. The issues raised here had been discussed repeatedly by KCM with community leaders; plans had been clarified but implementation has been lagging behind.

The CAO notes that the breakdown in communication and the uncertainties surrounding the actions of KCM in Monig'omba could have been rectified or prevented with a more constant presence of trained resettlement officers in the communities, as was envisaged by the RAP. Changes in staffing led to gaps in staff presence, and enhanced support and training were not available. Although KCM has indicated that it works in partnership with local NGOs and other partners who may have skills in these areas, at the time of CAO's mission few of these partnerships were concrete.

At Kawama, affected peoples indicated that some promises made in the RAP had not been delivered, including two boreholes and the clearing of land for vegetable gardens.

Acceptable alternative income earning strategies to protect livelihood of affected people / Access to training, employment and credit.

The RAP provides for post-relocation development support, intended to promote socio-economic recovery from relocation and enhance development opportunities. It also includes post-relocation monitoring and communication, planning of and commitment to investing in local governance and monitoring the post resettlement socio-economic environment, with particular focus on vulnerable groups. The selected projects to meet this goal were to be aimed at improving all areas of peoples' livelihoods, including physical infrastructure, health and welfare, education and training, social networks and community-based management, employment income and local economic development, as well as natural resources utilization and management.

The RAP identifies a number of development initiatives for Kawama, including the intensification of agriculture through irrigation of community gardens as well as skills development in SME and other agricultural based enterprises. For Ming'omba, the focus was on intensification of agriculture through irrigated community gardens, infrastructure and skill development.

Subsequent RAP Monitoring and Evaluation Reports note that the restoration of people's livelihoods could only be achieved by implementing the social development plan (SDP) and that social and environmental mitigation measures have lagged far behind. In particular, they stressed that activities identified in the SDP to complement farming and other livelihood activities were yet to be implemented. It was recommended that communities should be mobilized to embrace these activities as means of broadening their livelihood base.

Regrettably, none of these activities aimed at the diversification of livelihood, such as infrastructure and skills development in SME, have yet been completed. Affected peoples at Ming'omba complained that the market, shop, restaurant and school have not yet been built, though their location has been marked out and KCM remains committed to their implementation. The community is now planning to carry out poultry, hammermills and beekeeping activities through small credits provided by GRZ. Brick making activity for the building of the shop, restaurant, school extension and clinic has stopped as people await KCM to help completing the building process.

There are indications that at the outset of the implementation of RAP inadequate consultation and communication on sustainable livelihoods resulted in delays of implementation of the SDP and a successful transition. This is particularly relevant for Ming'omba, which has no history of community structure and leadership. Ming'omba only recently has upgraded its rather weak Community Liaison Committee to a more active Residents Development Committee (RDC) to undertake the implementation of the resettlement process. (Kawama at the time of the development of the RAP already had a functioning RDC.) While undoubtedly better housed, there is therefore a danger that the Ming'omba community may end up more vulnerable in its new border location than before resettlement. KCM's under-staffing and lack of adequate social development skills, especially after IFC's exit, added to this vacuum and could account for delays in sustainable livelihood measures provided for in the SDP. While these delays are a legitimate source of concern for the communities and the sustainability of the resettlement project, the CAO did not detect evidence of desperation around the RAP.

Access to education and health care at new site

The RAP identifies a number of development initiatives for Kawama, including the provision of basic infrastructure such as access roads, water supply, and health facility. For Ming'omba it identifies infrastructure development including a clinic and construction of additional classrooms at Kasumbalesa primary school. The second RAP monitoring and evaluation report indicated that there was an urgent need to resolve issues related to social infrastructure such as education and health facilities for the two communities. It also noted that the school at Kasumbalesa could accommodate children from the new Ming'omba settlement.

At the time of the CAO mission, in Ming'omba, the proposed clinic building was marked out, but not yet built. In the meantime, the community uses a mobile clinic, which comes to the nearby border post three times a week. Some 150 children from Ming'omba attend the nearby Kasumbalesa school. The school's role is far beyond its capacity and classroom congestion poses problems for teaching quality and pupil safety with the school's location at the border crossing mixing students with border traders and truckers. Another 75-100 children were turned down by the school while an unspecified number go to the Kasapa School located 10 km away (a makeshift building). Extension of the buildings at Kasumbalesa School was marked out but no building had yet started. Additional houses for teachers were also needed.

In Kawama, the RAP provides for the community hall to be converted into a health center. The conversion of the hall to a basic health post was established and paid by the community itself with the help of an NGO (DAPP-Zambia, Development Aid from People to People) in an agreement with KCM. It is to be upgraded to a clinic by the Zambian Ministry of Health's District Health Management Team by September 2004. The Ministry has approached KCM for the use of two newly built houses in the resettlement area for nurses and KCM has agreed. KCM has indicated to the communities and the CAO that it would ensure that the building of a clinic and school extension for Ming'omba would be completed shortly. The CAO urged KCM to come up with a clear timeline for the construction of these buildings, which are essential for the sustainable welfare and economic livelihood of the community.

Water supply

The RAP identified water supply as part of development initiatives for Kawama, including the intensification of agriculture through irrigation of community gardens. In Kawama, the resettles complained that their future vegetable gardens lack access to pipeline water. For Ming'omba, the RAP provides for the intensification of agriculture through irrigated community gardens. In Ming'omba, a windmill was to be installed to pump water to supply the vegetable/communal plots but subsequent studies revealed that a windmill would not be viable. KCM therefore installed a hand pump. Also in Ming'omba, the community complained that two boreholes were promised but not delivered. Thus, the issue of access to water supply should be dealt with as part of KCM's current commitment to finalizing the intensification of agricultural lands.

Land tenure

The RAP provides for households to own the land for 99 years. Upon completion of the RAP title is to be transferred to households. The land tenure issue was not conveyed to CAO as an urgent matter, except for confusion about what would be transferred to whom, when. However, land tenure issues arise in considering the sustainability of the resettled communities. There is a strong possibility that in a not so distant future some heads of households may be tempted to sell their property without either an accurate market-based price estimate or a chance for a sustainable livelihood after the sale of the house. Various schemes are being considered that would give the community as a whole a greater say in allowing individual sale of houses or maintaining community ownership until such time community members reach a better grasp of market pricing and sustainable economic livelihood.

Feeder roads

RAP includes access roads as part of development initiatives for Kawama. The issue was not raised with CAO by the resettled residents at Kawama. In Ming'omba, the need for roads to access distant agricultural fields was conveyed to the CAO but did not appear as priority issue.

Environmental protection

RAP monitoring and evaluation reports warned that, in the absence of alternative sources of livelihood, Ming'omba's charcoal burning, in the worst case scenario, might cut down all the trees for charcoal and then descend into the forest reserves. It was therefore felt that measures to help them in the transition to agriculture should be put in place to provide them with environmentally and economically sustainable livelihood. Although environmental issues were never brought to the fore by affected communities, prolonged deforestation around Ming'omba could emerge as an environmental concern. Such concern can only be alleviated if the communities are provided with diversified sustainable livelihoods through the completion of social development activities contained in the RAP, in particular the extension of agricultural land.

The role of the OECD Guidelines for Multinational Enterprises and their application to IFC

The OECD Guidelines for Multination Enterprises are recommendations for responsible business conduct for multinational enterprises operating in or from the 33 adhering countries, which include the 29 OECD member countries and four non-members.[8] They provide voluntary principles and standards in a variety of areas. They rely on the support of the business community, labor representatives and NGOs to be effectively implemented. When issues regarding implementation of the Guidelines in relation to specific instances of business conduct arise, the National Contact Point in the relevant country is expected to help resolve them. The 2000 Review of the Guidelines recommends the observance of the Guidelines wherever a multinational company operates, within or outside the OECD area. Thus, the Guidelines are only an instrument between adhering governments and multinational enterprises. In this regard, the Guidelines do not bind IFC. They are only relevant to IFC insofar as IFC may choose to expect that sponsors comply with the Guidelines.

5. CONCLUSIONS AND RECOMMENDATIONS

The resettlement program is based on a complex partnership among shareholders in which IFC, in addition to its role as investor, had a monitoring role and IDA a lending function. Though not chiefly responsible for the RAP implementation, IFC did submit the RAP to the Board as a condition of lending and felt bound by its successful implementation. IFC's exit from the project begged the question of what would happen to the social and environmental standards IFC had insisted upon as condition of its involvement. While KCM's commitment to continue to meet these standards was not in doubt, its capacity was developing.

IFC was under no obligation under its own operational procedures, nor in the investment and subscription agreements for KCM, to remain engaged in the environmental and social performance of KCM after it has exited as an investor and shareholder. However,

[8] http://www.oecd.org/dataoecd/56/36/1922428.pdf

at the time of exit IFC did engage with KCM to help them continue as they had begun, and to ensure the completion of the RAP. While the CAO has no mandate to review Bank's activities, there is a need for greater clarity on the part of the IDA regarding the applicability of its operational policies when funds initially allocated to loans are re-directed to project specific tasks, even without the Bank's formal approval.

Overall, the physical relocation process was successful as the newly built structures were considerably better than those they replaced. However, the major tasks relating to economic and social aspects of resettlement, in particular for Ming'omba, remained incomplete at IFC's exit. IFC itself identified these as posing reputational risk for IFC.
If IFC's moral and reputational interest meant ensuring the medium and long-term success of the RAP what could IFC have done?

The delays in fulfilling these key socio-economic aspects of the RAP appear to be the result of several factors: weak monitoring and absence of pressure by former international institutional investors; poor communication; lack of trained staff within KCM; the impact of weak social infrastructure and community leadership (in particular in Ming'omba); and bureaucratic delays in government agencies/ministries.

The preparation of the World Bank's Copperbelt Environment Project meant that IDA staff were in the area on a regular basis in the months following IFC's exit and informally these staff did look at the progress being made in the resettled communities. However, following exit, IFC did not ask for, nor receive, nor pass on to IDA staff the monitoring and evaluation reports undertaken as part of the RAP.

In hindsight, these reports could have provided critical information to IFC and IDA. IDA left the resettled communities out of the CEP because it felt that resettlement was complete. IFC has worked with KCM to bring African Project Development Facility funds to the area. As part of IFC's African Project Development Facility (APDF) for SME -- a multi-donor managed facility set up to promote sustainable growth of SME in sub-Saharan Africa launched in April 2003 -- the KCM Supplier Development Program (KSSDP) involves training and technical assistance to some 20-30 selected local suppliers over 18 months. The resettled communities have not been a focus of the project and are not yet at a point where they could benefit from this type of assistance, but it is linking them to these possibilities for future wealth creation that will root the resettlement in success for the long term.

The RAP for Konkola serves, in many respects as an example not only for the Copperbelt, but for the private sector in Zambia and other similar parts of sub-Saharan Africa. The challenges that the private sector faces, the constraints on local and central governments and the lack of road maps in how to form the public-private partnerships that ensure that people and their livelihoods do not fall through the cracks, are enormous. Bearing that in mind IFC may want to consider, in the future, how its proactive stands can have greater effect. In this case KCM's lack of institutional capacity, though not of will, without the benefit of international support, advice and supervision, has seen timelines slip and communications fail.

How can IFC provide for or find other sources of support for its local sponsors for them to continue to build the specialized capacity in an area such as resettlement? Local NGOs and international NGOs with local presence have many of the skills that are needed, but the reality is that in many parts of the world partnership on the ground in delivering technical services, between NGOs and the private sector, is still more of an exception than a rule.

Much in this resettlement depends on the partnership between local government, central government represented locally and the company. IFC was aware that the role of the Ministry of Agriculture and their cooperation with KCM would be essential for securing the capacity building and support to the communities in developing their agricultural production, the cornerstone of the economic development and sustainable livelihoods of the resettled communities. The delays in the signing of a Memorandum between the Ministry and KCM have had a negative effect on the ability of the Ministries extension workers to fulfill their role. The Ministry's resource constraints also potentially undermine the positive role it wishes to play.

Again here the World Bank's role in support of the public sector in the area is critically important. However, the Bank's program of support was delayed going to the Board and the smooth and seamless approach was lost.

This case reveals the complexity of the development process where the private sector is the driver. The role of the private sector as partner is welcomed and its ability to deliver on its promise accepted. KCM weathered the storm of its principal international investor's retreat in no small part because of the way in which IFC supported them throughout. IFC's role is appreciated throughout Zambia and the state of ZCM compared positively to other post-privatization entities across the region.

Resettlement itself is a difficult and dangerous part of development. It is undertaken only when other alternatives do not exist and it poses stresses and strains for the resettled often for generations. In this case the private sector, with international support, has delivered a physical resettlement that has set new standards in Zambia. The long term economic and social well-being of the communities depends on the quality of delivery of the agreements made in the RAP, but more on the ability of the communities with help to develop the internal community dynamics and leadership skills that will see them manage effectively their new individual and collective assets and wealth. This is difficult to do under any circumstances, but especially in a community with no history or tradition of such decision making, as is the case in Ming'omba.

Ming'omba's long term security and sustainable development lies in their hands with the support of local authorities, KCM and NGOs. How IFC can continue to ensure effective implementation of social and environmental goals it has set for its investments once it has exited as a financial partner is a question that IFC must answer on a case by case basis, reflecting as it does on IFC's unique status as investment bank and development organization.

The CAO therefore recommends that there be no further action by its office in relation to the complaint file by CBE on behalf of resettled people in Ming'omba and Kawama. The resettlement which remains underway, if delayed, requires coordination, partnership, patience and creativity. Sources for technical support should be found for KCM by IFC to increase its capacity on its social agenda.

ANNEX 1

COMPLAINT LETTER TO THE COMPLIANCE ADVISOR/OMBUDSMAN (CAO)

From: Citizens for a Better Environment (CBE)

TO: The Compliance Adviser/Ombudsman
2121 Pennsylvania Ave, NW
Room F5k-292
Washington, DC 20433
USA
Fax 202-522-74400
E-mail: cao-compliance@ifc.org

We, CBE, lodge a complaint concerning the Ming'omba-Kawama Resettlement Project. This complaint is made on behalf of our members who live in the area known as Ming'omba and Kawama, situated on the Copperbelt province of the Republic of Zambia shown on the attached map. We can be contacted through the following address, telephone/ fax numbers and e-mail:

Citizens for a Better Environment (CBE)
67 AFCOM House
Obote Avenue,
P.O Box 23202
KITWE
ZAMBIA

Tel: (260)-97-797514
Fax: (260)-2-223221
E-mail:cbezambia@hotmail.com
ATT: Peter Sinkamba

The basis of the complaint is as follows:

1. Ming'omba –Kawama Resettlement Project was mooted/initiated and executed by Konkola Copper Mines (KCM), which was a originally a joint project of IFC, Anglo American Corporation (AAC), Commonwealth Development Corporation (CDC) and Government of the Republic of Zambia (GRZ). The joint venture was embarked on in the year 2000 and involved resettlement of about 750 persons from two villages, namely Ming'omba and Kawama. About 350 households were affected.

   The resettlement was a condition set by IFC and it's other partners AAC and CDC to invest in KCM in which company IFC owned 7.5% shares, AAC and CDC 65% and 7.5% shares respectively. GRZ owned 20% shares.

   In 2002, ACC, IFC and CDC pulled out of KCM .The pullout was done before the relocation was fully executed.

2. IFC was involved in the project as follows:

    i. It owned shares (7.5%) in KCM. This is the company that through its shareholders demanded, initiated (or caused to happen), and executed the same involuntary resettlement project.
    ii. IFC demanded and actually did apply its Safeguard Policies as a standard for organising, planning, implementation, monitoring, evaluation and review of the project.
    iii. IFC used its criteria for the selection and engagement of the Consultants that participated in or executed the project.
    iv. With its other partners AAC and CDC, IFC used its influence to compel GRZ to borrow the resettlement funds (in excess of U$2million)
    v. KCM had a management contract to execute the resettlement project.

3. Project sponsor is GRZ. Funds for the project were borrowed by GRZ from the World Bank

4. Our members have been and will likely continue to be affected by the social and or environmental impacts of the project in the following ways:

    iii. IFC prematurely abandoned the project before the full implementation of the Resettlement Action Plan. At exit from KCM, IFC did not put in place measures to ensure the implementation plan was followed as scheduled. Neither did IFC put in place a monitoring, evaluation and review regime to cater for post-exit period to ensure compliance to the Guidelines, yet the resettlement project was done at IFC and its other partners' instance, and was designed to be implemented, monitored, evaluated and reviewed on IFC's terms and conditions in line with its Safeguard Policies.

    iv. IFC never consulted on or publicly disclose to the affected communities of its abandoning of the project or its exit mitigation plan, yet IFC was the major project proponent. There is now uncertainty and desperation in the minds of the affected people in respect of the promised project post-relocation economic and social services benefits namely: Full valuation and compensation for the lost assets, acceptable alternative income earning strategies to protect livelihood of those people, land tenure, access to training, employment and credit, water supply, feeder roads, environmental protection, access to education and health care at their new site.

5. The following action has been taken by us to try and resolve these issues:

    i. We called for suspension of the London exit negotiations between GRZ/AAC/IFC and CDC to facilitate our engagement in the negotiations so as to discuss and agree on historical liability issues including the resettlement. This call was not heeded. Documentation to that effect is herewith enclosed.

ii. We have separately filed a complaint against Anglo with the UK National Contact Point for breach of OECD Guidelines for Multinational Enterprises. The matter is currently under investigation at the Department of Trade and Industry (DTI) in London.

6. The names of contact persons at IFC and the World Bank are:
    1. Yves Andres Prevost- WB
    2. Rachel Kyte-IFC
    3. Jacques Roussellier-IFC
    4. John N. Middleton-IFC

7. We have had contact with the following persons at AAC and DTI in attempting to resolve these issues:

    1. Mr. Edward Bickham-AAC
    2. Mr. Simon Thompson-AAC
    3. Mr. Tim Wadeson-AAC/KCM
    4. Mr. Robin Mills-ACC/KCM
    5. Dr. Sixtus Mulenga –KCM
    6. Mr. Ramil Burden-DTI
    7. Mr. Duncan Lawson-DTI
    8. Mr. Mpishi-GRZ, P.S. Ministry of Mines
    9. Mr. Kashimu-Former P.S. Ministry of Mines
    10. Mr. Valentine Chitalu- CDC

Copies of correspondence are attached here with.

8. The following are details of policies, guidelines or procedures that have not been complied with:
    i. Abandoning an involuntary resettlement project before full implementation of the RAP, which IFC initiated and caused to be executed on its terms and conditions. Policy guidelines on involuntary resettlement have triggered
    ii. Failure to disclose its exit or its abandoning the resettlement project it initiated. Policy on public consultations and disclosure has been triggered
    iii. Further, since IFC is domiciled in the USA and USA is an OECD adhering country, OECD Guidelines for Multinational Enterprises have been triggered.

9. We would like to see this compliant opening dialogue between with IFC and ourselves so as to agree on post exit terms and conditions in respect of the resettlement project. This may be done with or without its former partners (CDC and AAC) in the project. We want to ensure that the interest of communities it caused to be resettled are protected and the RAP is executed per original plan and promises made honoured.

DATED: 1st July 2003

SIGNED: Peter Sinkamba

ANNEX 2

TIMELINE

26 October 1999 - ZCI (an Anglo subsidiary) signed a Heads of Agreement (HoA) with ZCCM and Government of Zambia (GRZ) outlining the terms and conditions for the privatization of the bulk of ZCCM's assets.

24 November 1999 - Environmental Audit (EA) -- including Baseline Studies, IEMP/ISMP and an Environmental Impact Assessment for KDMP -- disclosed locally and at Infoshop.

13 December 1999 - EA Addendum – Concept RAP and I-PCDP disclosed in Info Shop & Zambia.

15 December, 1999 - Sale Agreement between ZCCM and KCM

22 February 2000 - Project approved by IFC Board of Directors.

28 February 2000 - PCDP disclosed in Infoshop & Zambia.

February 2000 - RAP disclosed in Infoshop & Zambia.

31 March 2000 - Project documents signed by IFC. New company took over management. Privatization concluded, including KCM (Anglo, IFC, CDC). Assets vested.

3 April 2000 - Project invested.

3 April 2000 - Second tranche of US$65 million released by WB to GRZ for the PSREP adjustment credit. An amount of US$68.5 million was on lent by Government to the copper parastatal, ZCCM, to finance retrenchment packages and worker retraining programs.

April 2000 - Start of implementation of RAP.

17 November 2000 - IFC Board Briefing.

4 July 2000 - IFC mission to Konkola and new Ming'omba resettlement.

November 2000 - Funds for RAP implementation secured.

April 2001 - FEMP completed (Approved by Zambian authorities in August 2001), including 'expanded' Social Development Plan (SDP).

May, 2001 - First RAP Monitoring and Evaluation Report.

July 2001 - Hand-over of RAP to SDP.

27 July 2001 - FEMP disclosed locally.

6 August 2001 - Review of KCM Annual Monitoring Report (Apr. 2000-March 2001).

August 7, 2001 - EA (FEMP) released in Infoshop & Zambia.

22 January, 2002 - Anglo advised IFC it was withdrawing from project

ANNEX 3

OLD OWNERSHIP STRUCTURE