

**Dispute Resolution Conclusion Report  
Regarding Complaint Received in Relation to IFC’s Investment in Delonex Energy and  
Africa Oil (#33557 and #36699) in Kenya**

**March 2023**

**OVERVIEW**

This Conclusion Report documents the assessment and dispute resolution processes in relation to a complaint regarding an IFC oil & gas project in Kenya, and offers some reflections and lessons learned.

In August 2019, CAO received a complaint from a local civil society organization called the Kerio Valley Community Organization (KVCO) on behalf of 140 community members living in the Baringo, Elgeyo Marakwet, and West Pokot counties in the Kerio Valley region of Kenya (the “complainants”). In addition to KVCO, the complainants were supported by a legal clinic based in Canada called Justice and Corporate Accountability Project (JCAP). The complaint raised concerns about the environmental and social impacts of oil & gas exploration activities conducted in specific areas of the Block 12A counties.<sup>1</sup> At the time the complaint was filed, IFC had two projects related to Block 12A: one with Delonex Kenya (One) Limited (Delonex), and the other with Africa Oil Corp (AOC).

CAO found the complaint eligible for assessment in September 2019.<sup>2</sup> During the assessment, Delonex and the complainants (the “parties”) chose to address the issues raised through CAO’s Dispute Resolution function. AOC indicated that they would not participate in this process because they had exited Block 12A before CAO received the complaint and had never been involved as an operator in the block. At the recommendation of the parties, CAO established contact with the former operator of the Block, Tullow Kenya B.V. (Tullow), who was not an IFC client for this project. When CAO contacted Tullow, they expressed an interest to participate in the CAO-facilitated dialogue, possibly as an observer, should the parties find an agreement on confidentiality and rules of engagement. In October 2020, the assessment process was finalized, and the case was moved to the CAO Dispute Resolution phase.

The complainants, Delonex and Tullow (in its capacity as observer) participated in capacity building sessions and bilateral meetings between November 2020 and April 2021, and in an initial joint session facilitated by CAO in May 2021. Tullow withdrew from the process in November 2021. The process continued between Delonex and the complainants until August 2022, for the most part through bilateral meetings.

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<sup>1</sup> Block 12A is a 15,000-square kilometer piece of land that spans parts of the counties of Baringo, Elgeyo Marakwet, and West Pokot in the Kerio Valley region of Kenya.

<sup>2</sup> CAO eligibility criteria can be found at <https://www.cao-ombudsman.org/how-we-work/intake-assessment>.

In August 2022, the complainants asked CAO to end the dispute resolution process and transfer the case to CAO's Compliance function. The complaint is being transferred to CAO's Compliance function for appraisal, in accordance with CAO's Policy.<sup>3</sup>

## **BACKGROUND**

### **The Projects**

At the time the complaint was filed in 2019, IFC had two active projects related to Block 12A: one with Delonex (which was involved in Block 12A from 2015 to 2021); and the other with AOC (which was involved in Block 12A from 2010 to 2017). According to IFC disclosures, IFC agreed to make an investment of up to US\$60 million equity investment in Delonex in 2013 to support the acquisition, exploration, and development of Delonex's assets in their East and Central Africa portfolio, targeting opportunities driven by oil & gas exploration. In 2015, IFC made a \$50 million equity investment in AOC primarily to support its appraisal activities in the South Lokichar oil & gas exploration in different blocks (Blocks 10BB and 13T), as well as AOC's general working capital requirements.<sup>4</sup> IFC categorized both projects as having potentially significant adverse environmental and/or social risks (Category A).

During the assessment process, AOC indicated to CAO that, while they owned an interest in Block 12A from 2010 to 2017, they had never operated it, and that the operator during that period was Tullow, pursuant to a Joint Operating Agreement concluded by Tullow and AOC in 2011. AOC affirmed that they had exited Block 12A in 2017, that is, before CAO received the complaint.

Delonex indicated that they first farmed into Block 12A in September 2015 and were assigned operatorship by Tullow in January 2018. They added that no drilling for oil or gas production activity had been undertaken by Delonex during its operations.

IFC stated that while they were supervising Delonex, Tullow was not an IFC client, Block 12A was a non-operated asset for AOC and IFC's support for AOC was focused on the operating assets under Africa Oil.

### **The Complaint**

In August 2019, CAO received a complaint filed by KVCO on behalf of 140 community members from Baringo, Elgeyo Marakwet, and West Pokot counties. In addition to KVCO, the complainants were also being supported by JCAP, a legal clinic based in Canada. The complaint raised concerns about lack of information and stakeholders' consultation related to the oil & gas activities on Block 12A; failure to address relevant project risks; inadequate

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<sup>3</sup> The CAO Policy is available at <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>.

<sup>4</sup> These are the amounts reported in IFC's disclosures. When considering a proposed investment, IFC discloses relevant project information, environmental and social implications, and expected development impact of the investment on its website. See [www.ifc.org/disclosure](http://www.ifc.org/disclosure).

working conditions; gender-based violence; impacts on land,<sup>5</sup> water, general livelihood, and the environment; and non-compliance with IFC Sustainability Framework. In their complaint, and during the assessment and the dispute resolution processes, the complainants also alleged that some of their fellow community members had been intimidated and threatened because of the grievances they put forward in relation to Block 12A.

## **CAO Assessment**

In September 2019, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. The purpose of a CAO assessment is to clarify the issues raised in the complaint, gather information on the views of different stakeholders, and determine whether the parties would like to pursue a dispute resolution process or prefer that the complaint be handled by CAO's Compliance function.

In January 2020, CAO conducted a field visit to Kenya to better understand the situation and discuss options for addressing the complaint with the relevant parties. CAO met with KVCO as well as some members of the communities (some of whom were later appointed as representatives for the purpose of the DR process) in Kerio Valley, Eldoret and Marakwet; representatives of AOC, Delonex and members of the Baringo County Assembly (MCA).

During CAO's assessment, Delonex and the complainants decided to address the issues through CAO's Dispute Resolution function. AOC declined to participate in the process. This assessment process took longer than the standard 120 working days applicable at the time under CAO's Operational Guidelines. Extra time was needed to deal with restrictions put in place as the COVID-19 pandemic intensified, and to establish contact with Tullow, once it was identified that they were a necessary stakeholder.<sup>6</sup> Tullow shared their perspective about the complaint with CAO and asked for their perspective to be reflected in the assessment report. Tullow also indicated that they may participate in the CAO-facilitated dialogue with Delonex and the complainants, possibly as an observer. In October 2020, CAO published its assessment report, which summarizes each party's perspective and the outcomes of the assessment.<sup>7</sup>

## **Dispute Resolution Process**

### Preparation for dialogue and capacity building

CAO convened virtual capacity-building sessions with Delonex and Tullow in December 2020 and with the complainants in March 2021. Between November 2020 and January 2021, KVCO stated they organized multiple community meetings to garner consensus on suitable community representatives to participate in the dispute resolution process. As a result, 16 representatives were appointed to participate in the process on the complainants' behalf (those

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<sup>5</sup> Some community members claimed that exploration activities caused erosion and that their land was not properly restored after the exploration activities were completed. Others claimed that they were not properly compensated for the damage done to their land, houses, and/or fences by the exploration activities.

<sup>6</sup> Tullow was the operator on Block 12A before Delonex took over and several complaint issues related to the time when Tullow was acting as operator. Hence, at the parties' suggestion, CAO reached out to Tullow during the assessment to understand their perspective regarding the issues in the complaint.

<sup>7</sup> The October 2020 assessment report can be found at [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReportDelonex\\_AfricaOil\\_01.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReportDelonex_AfricaOil_01.pdf).

included 11 men and 5 women).<sup>8</sup> In January and February 2021, CAO and the complainants worked on finding a suitable venue to conduct virtual sessions. A hotel with internet and conference facilities was found in the town of Eldoret. The complainants traveled there and connected virtually with CAO.

Both capacity-building sessions included training on conflict resolution, communication, and the CAO process.

### Dialogue process

CAO convened the first virtual joint meeting in May 2021, which was attended by representatives from Delonex and Tullow, as well as the complainants, represented by members of KVCO and selected community representatives.

Before the joint session, CAO conducted bilateral meetings with each party to review their positions and interests and prepare them for the joint session. During the bilateral session with CAO, Delonex stressed that it had been well over two years since they had demobilized from their field operations and claimed that there had been no indication or information from communities of any outstanding grievances requiring attention and consideration.

During the first joint meeting, the discussion focused on parties' expectations for the process and the possible content of the ground rules agreement for dialogue.<sup>9</sup> The parties also discussed the scope for the dialogue, that is, the substantive issues to be addressed by them in the process.

The complainants expressed their expectations that the dialogue would serve to create a relationship of trust between themselves, Delonex and Tullow, and a framework for future collaboration with Delonex, the appointed operator on the project going forward. They highlighted their wish for information sharing relating to Delonex's future operations in Block 12A. They also expressed their willingness to discuss their past grievances and ways to address them with Delonex and Tullow, once the parties would have agreed on the content of the ground rules for the process.

On their end, Delonex stressed that the first step should be for the complainants to share some further detail on the grievances for a meaningful consideration of any redress (such as when and where the matters occurred). Delonex indicated that 140 people with past grievances was a very high number and that some of these grievances were very serious in nature and wondered why they had not been raised with Delonex during its operations. Delonex stated that they had conducted many formal and informal community engagements throughout their operations using a highly experienced, stakeholder engagement team that was well known to the communities and constantly available during operations. Delonex's view was that they enjoyed a warm and constructive relationship with all impacted communities. They added that

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<sup>8</sup> 8 of these representatives were also members of KVCO. The representatives at the beginning of the process were from the counties of Baringo, Elgeyo Marakwet and Pokot. During the process, some representatives changed.

<sup>9</sup> As part of the conversation on the content of the ground rules for dialogue, the parties discussed their views on how to apply the principle of confidentiality to this process, what role the proposed advisors and observers would have in the process and how to deal with issues of threats and reprisals.

they would like to better understand from the complainants if the mentioned grievances had occurred during the recent Delonex operations.

Parties agreed during the meeting that the first substantive issue to be discussed in the dialogue would be unresolved past grievances.

After the joint session, CAO worked on a draft ground rules agreement based on what was discussed during the meeting, which was shared with the parties for review. The parties disagreed with one another about the content of the ground rules, including the provisions related to information-sharing as well as the scope for dialogue. At that point, each party requested information from the other party. However, none of the requested information was shared. Both parties expressed their frustration towards each other for the inability to share the requested information, which each party felt was critical to move the process forward.

In an attempt to reconcile positions on ground rules,<sup>10</sup> CAO conducted shuttle diplomacy (that is, separate meetings and exchange of emails between the CAO and each party) between May 2021 and May 2022. However, there were provisions the parties could not agree on. Eventually, they decided to sign a confidentiality agreement in order to move forward with the process and hold a second joint meeting.

Tullow was initially observing the dialogue regarding the ground rules, however, in November 2021, they decided to withdraw from the process. They cited that the value of their involvement in the CAO's dispute resolution process was limited as they were no longer an operator or partner in Block 12A and were never an IFC client for this project. They added that they remained supportive of the process, albeit not as an active participant.

In May 2022, at the request of the complainants, the IFC conducted an information-sharing session regarding the IFC Performance Standards related to stakeholder engagement and grievance mechanism.

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<sup>10</sup> Parties could not agree on whether ground rules are necessary and how much detail should be included in the ground rules.



*Extract of IFC's power point presentation during the virtual information-sharing session between IFC and the complainants, May 2022*

The second virtual joint meeting was convened in June 2022. During that meeting, Delonex disclosed that they had exited Kenya (in February 2022) and no longer held a license to operate in Block 12A. Delonex highlighted that while they had exited the Block, they were still willing to discuss the matter of past grievances. They reemphasized their request for details of past grievances, the nature, timing, location and scope, so they could consider these grievances further.

In the ensuing discussions, the complainants shared their disappointment at the exit of Delonex from Block 12A which the Complainants felt put an end to any prospects for discussions on the future of the block with Delonex. They also indicated that they were unaware of the existence of any grievance mechanism at the time Delonex was operating in Block 12A and that they had never received any documentation on such mechanism despite their requests in the DR process. Their proposal was to discuss and agree with Delonex on an IFC's performance standards-compliant grievance mechanism (GRM) process to address their past grievances, before providing further details about those grievances.

Delonex stated that they had a functioning IFC-compliant grievance mechanism throughout their presence and operations in Kenya, which had been introduced at community meetings, and had been actively used by communities to register grievances during operations. Delonex voiced its frustration that despite the complainants agreeing the main agenda item to be "past grievances" and Delonex signing a confidentiality agreement, the complainants were not prepared to disclose information and details on the past grievances.

On their end, the complainants expressed that they needed to understand and agree on the process that would be followed to address their grievances before they could feel comfortable sharing more details about such grievances, hence the request to discuss the GRM.

At the end of the session, the parties agreed to exchange information and documents and to meet again after the exchange of documents.

### The decision from the complainants to end the DR process

Shortly after the second joint meeting, the complainants asked CAO to end the dispute resolution process. They indicated that Delonex in their view should have disclosed their exit from Block 12A earlier in the dialogue process. They expressed concerns that the process was imbalanced, and that they felt that Delonex refused to share documents with them, while at the same time pressing them to share detailed information about the past grievances. They were disappointed at what they perceived as a lack of clarity regarding the company's actual willingness to address the past grievances, especially given their exit from Kenya.

On their end, Delonex expressed their frustration at the reluctance of the complainants to disclose information on the past grievances, despite agreeing to do so at the initial meeting. Citing lack of progress on this key request or on Delonex's suggestion, for these to at least be shared with the CAO, Delonex added that it was the complainants' decision to engage in the CAO process for the purpose of addressing such grievances. They also shared their frustration that similarly, no information relating to the alleged issue of threats and intimidation or gender-based violence had been shared with them.

## **CHALLENGES, REFLECTIONS AND LESSONS LEARNED**

The case presented several challenges, reflections and learning opportunities, including the following:

### **Limitations of online dispute resolution when trust levels are low**

To negotiate and reconcile positions when trust levels are low (or consistently dropping) is extremely challenging in a virtual space. Although CAO made efforts to forge agreements on the draft ground rules through bilateral discussions and some progress was made, managing the process virtually was challenging and not always efficient. Also, throughout the process, the trust deficit remained high and both parties repeatedly questioned the good faith of the other. The opportunities of interaction during in-person mediation may have helped to close gaps related to fears and suspicion and also on specific contentious clauses such as the scope for dialogue and the value of building trust for a mutually acceptable mediation outcome.

### **Ground rules: a necessity or an obstacle?**

In CAO's experience, setting up some ground rules for the DR process at the beginning is an important part of building trust and common understanding. While not all dispute resolution processes require ground rules before they start, it can be helpful for the parties to agree to a set of principles that guide them throughout the process and that the mediator can hold them to.<sup>11</sup> At the beginning of this process, as part of the capacity building, CAO provided an overview of a typical dispute resolution process, including the establishment of ground rules.

In this case, the CAO team experienced a common challenge which was that parties' interest and patience for upfront preparations and discussion on procedural matters were at opposite

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<sup>11</sup> See CAO DR Reflections from Practice "Getting Started", 2018: <https://www.cao-ombudsman.org/resources/reflections-practice-series-1-getting-started-dispute-resolution>

ends of the spectrum. While one party was keen to establish solid and detailed ground rules for the process to conform to best practices, the other party requested to start the discussions on the substantive issues as soon as possible, albeit on the basis of a confidentiality agreement which was later agreed to. Attempts by the mediator to reconcile positions were not always perceived by the parties as such and this led to frustrations on both sides. One party felt that the process was being rushed and that their expectations to have ground rules were disregarded, while the other party continuously expressed that they failed to understand why their counterpart was not ready to share details on substantive issues.

Establishing ground rules is a good practice but not an absolute necessity for every case. In CAO's experience, some DR processes have led to positive outcomes despite the parties not agreeing on ground rules. Parties ultimately determine the basis for the mediation and the mediator's role is to have clarity on the agreed nature of engagement. In this case, the parties overcame the impasse on agreeing to detailed ground rules by signing the confidentiality agreement which allowed for the process to continue. However, even in the absence of a comprehensive set of ground rules, it is CAO's view that the process could have led to positive outcomes.

#### **Limitations of separate bilateral negotiations within a mediation**

Between May 2021 and May 2022, the parties did not engage directly with each other, except through CAO. This led to some misunderstandings, and a perception by both parties that CAO was only encouraging one party to move closer to the other, but not vice versa. In addition, CAO is obliged to keep the confidentiality of information shared by a party, unless such party authorizes its disclosure. Separate bilateral negotiations coupled with such confidentiality obligations may be a double-edged sword. While they are useful for the parties and to move the process forward, in this case, they may have created mistrust between the parties and CAO. This is likely because, due to the nature of bilateral meetings, the parties were not able to appreciate the extent to which the mediation team worked with each one in seeking to achieve common ground.

#### **CONCLUSION AND NEXT STEPS**

Despite the parties' efforts to resolve the issues raised in the complaint, the parties could not reach agreement. Accordingly, the case will be transferred to CAO's Compliance function at the request of the complainants and in accordance with CAO's Policy. CAO will conduct a compliance appraisal to determine whether an investigation of IFC's environmental and social performance is merited in relation to the issues raised in the complaint, or whether to close the case.

All documentation relevant to this case is available on CAO's website at [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

See Annex A for more information about the CAO process.



## **ANNEX A. CAO COMPLAINT-HANDLING PROCESS**

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of a CAO assessment is to: (1) clarify the issues and concerns raised by the complainants; (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 the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,<sup>12</sup> the following steps are typically followed in response to a complaint that is received:

- Step 1:       **Acknowledgment** of receipt of the complaint.
- Step 2:       **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).
- Step 3:       **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 90 business days, with possibility of extension for a maximum of 30 additional business days if after the 90-business day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree.
- Step 4:       **Facilitating settlement:** If the Parties choose to pursue a collaborative process, CAO's Dispute Resolution function 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.<sup>13</sup>

OR

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<sup>12</sup> For more details on the role and work of CAO, please refer to the full IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>

<sup>13</sup> 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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

**Compliance Appraisal/Investigation:** If the Parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one complainant must provide explicit consent for the transfer unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**