



## **CAO ASSESSMENT REPORT**

**Regarding Concerns in Relation To  
IFC's Investment in Delonex Energy and Africa Oil (#33557 and #36699) in Kenya**

October 2020

Office of the Compliance Advisor Ombudsman  
*for*  
the International Finance Corporation and the  
Multilateral Investment Guarantee Agency  
[www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## **About 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-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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## LIST OF ACRONYMS

AOC	Africa Oil Corp.
CAO	Office of the Compliance Advisor Ombudsman
CLO	Community Liaison Officer
Delonex	Delonex Energy UK Limited
ESIA	Environmental and Social Impact Assessment report
IFC	International Finance Corporation
JCAP	Justice and Corporate Accountability Project (JCAP)
KVCO	Kerio Valley Community Organization
MIGA	Multilateral Investment Guarantee Agency
NEMA	National Environmental Management Authority
Tullow	Tullow Kenya B.V.

## 1. OVERVIEW

In August 2019 CAO received a complaint from community members living in the Baringo, Elgeyo Marakwet, and West Pokot counties in Kenya supported by a local civil society organization and a Canadian-based legal clinic. The complaint raises concerns about the impact of oil and gas exploration activities conducted in Block 12A (the Project), which covers over 15,000 square kilometers and encompasses the counties of Elgeyo Marakwet, Baringo, West Pokot, Turkana, and Samburu in Kenya. IFC has two projects related to Block 12A: one with Delonex Kenya (One) Limited, which has been involved in Block 12A since 2015 and the other with Africa Oil Corp., which was involved in Block 12A from 2010 to 2017. While Africa Oil Corp. has now exited Block 12A, IFC's investment in Africa Oil Corp. as a group is still active.

In September 2019, CAO determined that the complaint met its three eligibility criteria. During CAO's assessment of the complaint, Delonex and the Complainants elected to address the issues raised through CAO's Dispute Resolution function. Africa Oil indicated that they would not participate in this process.

This assessment process took longer than the standard 120 working days, due to the need to establish contact with the former operator of Block 12A, Tullow Kenya B.V., which was identified during the course of the assessment process. Tullow Kenya B.V. shared their perspective about the complaint with CAO and asked for it to be reflected in this report. They also expressed that they may participate in the CAO-facilitated dialogue with the complainants and Delonex, possibly as an observer, should the parties find an agreement on the rules of engagement.

## 2. BACKGROUND

### 2.1 The IFC projects

IFC's two projects related to Block 12A are with Delonex Kenya (One) Limited (Delonex) and Africa Oil Corp. (AOC). Both projects are still active.

According to IFC disclosures, IFC would make a 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 oil and gas exploration led opportunities.<sup>1</sup> Additionally, in 2015, IFC made a \$50 million equity investment in AOC to primarily support its appraisal activities in the South Lokichar oil and gas exploration blocks 10BB and 13T, and general working capital requirements. IFC is still an equity investor in AOC. Both projects are designated Environmental Category A by IFC.<sup>2</sup>

During the assessment process, AOC indicated that, while they owned an interest in the Project from 2010 to 2017, they never operated Block 12A, and that the operator during that period was a company called Tullow Kenya B.V. (Tullow), pursuant to a Joint Operating Agreement Tullow and AOC entered into in 2011. AOC also indicated that they have now exited Block 12A.

Delonex indicated that they first acquired shares in Block 12A in September 2015 and was assigned operatorship of the project by Tullow in January 2018. IFC noted that they did not provide support to Tullow for the purpose of their activities in Block 12A. For ease of reference,

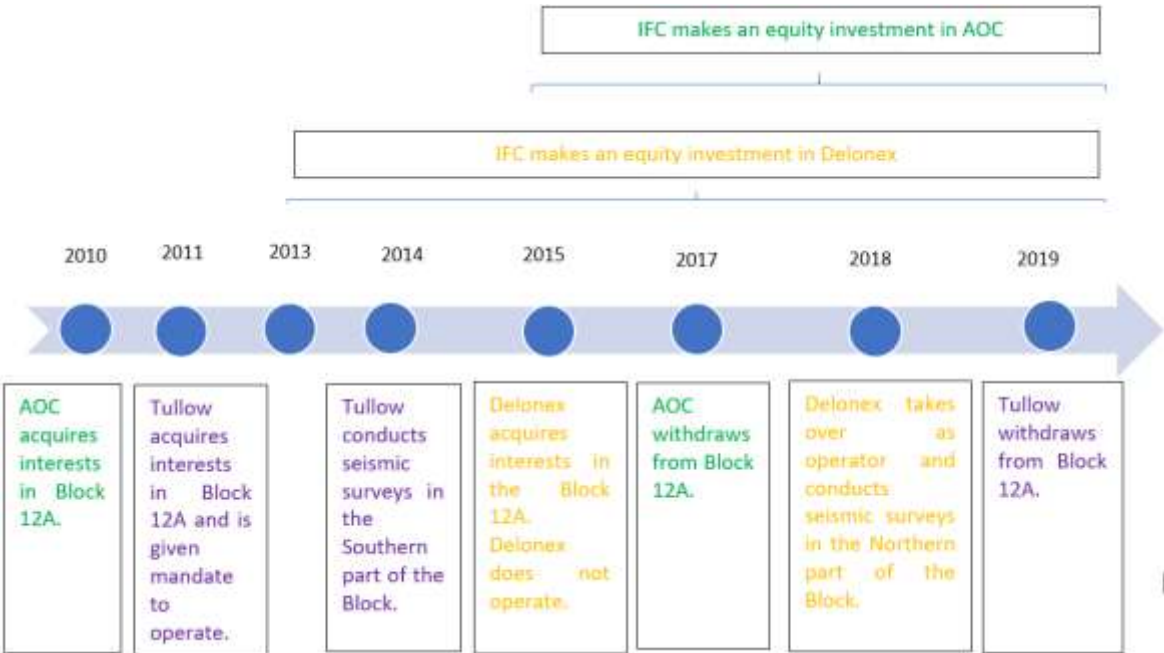
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<sup>1</sup> See IFC Disclosure Website, Project Description, at <https://disclosures.ifc.org/#/projectDetail/SII/33557>

<sup>2</sup> See IFC Disclosure Website, Project Description, at <https://disclosures.ifc.org/#/projectDetail/SII/36699>

Diagram 1 below provides a graphic illustration of the Project and the different Project operators.

**Diagram 1**



**2.2 The Complaint**

In August 2019, CAO received a complaint filed by approximately 140 community members from the Baringo, Elgeyo Marakwet, and West Pokot counties (the “Complainants”) The complaint was supported by the Kerio Valley Community Organization (KVCO), a Kenyan civil society organization and Justice and Corporate Accountability Project (JCAP), a Canadian-based legal clinic. The complaint raises concerns about lack of information and stakeholder consultation related to the Project, failure to address relevant Project risks, breach of IFC’s Sustainability Framework, and impacts on land, livelihoods and on the environment.

The issues raised during the assessment are described in more detail below.

**3. ASSESSMENT SUMMARY**

**3.1 Methodology**

The aim of CAO’s assessment is to obtain a better understanding of the issues and concerns raised by the Complainants by gathering information from different stakeholders, without making a judgement on the merits of the complaint. The assessment also seeks to establish which CAO process the Complainants and the IFC Client(s) would like to pursue—a Dispute Resolution process or a Compliance process (see Annex B for CAO’s complaint handling process).

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

- a desk review of documentation concerning IFC's investments in both Delonex and AOC;
- in-person meetings with a total of 40 Complainants in Eldoret and Cheptebo (some representing themselves, others claiming to represent their community);
- site visits to the house of a Complainant raising concerns about the cracks on the façade of his house; the farm of a Complainant raising concerns regarding the gullies that had formed on his land; and the outside of the fenced area where an exploration well was drilled in 2016;
- conference calls and in-person meetings with members of KVCO and JCAP;
- an in-person meeting with two Members of the Baringo County Assembly (MCA), at the Complainants' recommendation;
- a conference call and an in-person meeting with AOC's representatives in Nairobi;
- conference calls and in-person meetings with the IFC teams for AOC and Delonex; and
- conference calls and an in-person meeting with Delonex's representatives in Iten, Kenya.

Given that some of the Complainants' concerns relate to the seismic surveys and drilling activities conducted by Tullow between 2014 and 2016, the CAO team reached out to Tullow during the assessment to afford Tullow an opportunity to comment. As stated earlier, Tullow is not an IFC or MIGA client for the purposes of the Project. Tullow shared their perspective during conference calls with the CAO team, and asked that their views be reflected in the assessment report (See Annex A).

This Assessment Report summarizes the views heard by the CAO team from the different stakeholders and describes the next steps, based on the decisions taken by the Complainants, Delonex and Africa Oil.

## **3.2 Summary of Views**

### **3.2.1 Complainants' Perspective**

According to the complaint, the Complainants are 140 community members originating from the counties of Baringo, West Pokot, and Elgeyo Marakwet. In the complaint, they raise issues related to the stakeholder engagement process, the lack of information they received regarding the Project, the lack of consultation with the affected communities, and the absence of a functioning grievance mechanism for the Project.

During the assessment trip, the CAO team met with a total of 40 Complainants from the following communities, who represented themselves and/or had a mandate to represent their communities: Salawa, Muchukwo, Barwessa, Arror, Tiaty, Kapluk, Kuikui, Kinyach, Katibel, Marigut, Kabutiei, Keturwo and Kaptilomo.

One group of Complainants (those originating from the Northern part of Block 12A) raised issues related to exploration activities that occurred in 2018 in the Northern part of the Block, while another group (those originating from the Southern part of Block 12A) shared concerns related to exploration activities that occurred between 2014 and 2016 on the Southern part of the Block.

#### ***a. Concerns related to exploration activities conducted in 2018 in the Northern part of the Block***

The following issues are concerns that relate to the exploration activities conducted in 2018, once Delonex took over as project operator. The Complainants explained that the exploration activities in question consisted of seismic surveys.

- **Stakeholder engagement process:** Some Complainants shared that, in their village, Delonex only engaged with the Chief and not directly with the community members. In that particular village, the Complainants explained that Delonex installed cables on the land the Chief had indicated to them, despite the community's disapproval of the use of that land. According to the Complainants, this created tension and conflict within the community. Other Complainants stated that the Community Liaison Officers (CLOs) for Delonex did not speak their local language and were not able to have direct conversations with community members.
- **Compensation for temporary access to land:** Some Complainants expressed their dissatisfaction with the compensation rates offered by Delonex, which they felt were not adequate. They added that when landowners raised concerns with the compensation rates, Delonex chose to by-pass their land instead of negotiating with them. Other Complainants stated that when CLOs for Delonex came to their village, they indicated they would pay compensation to landowners through the Chief, but nobody had since received any compensation. They added that those most affected by the Project were widows, whose land was grabbed by speculators looking to hold land of potential high value due to the possibility of underground oil.
- **Restoration works and impact of the seismic survey on the land:** Some Complainants claimed that Delonex did not keep their promise to restore their land and that their land was misused beyond repair. They said that major gulleys resulting from the exploration activities are still apparent.
- **Security and use of water:** According to the Complainants, the explosions that occurred during the seismic surveys created a lot of dust and frightened people. They added that explosives were occasionally forgotten at the site and that the wires were accessible by children, which put them at risk. The Complainants also shared concerns related to Delonex's use of the community's scarce water to wash their trucks and machines.
- **Local employment:** The Complainants expressed the view that Delonex did not keep their promise to give priority to local community members for employment. Some Complainants shared their frustration at not being hired despite their qualifications (some had worked for Tullow in the past and others were qualified electrical engineers), and that most of the employees did not originate from the affected communities. Others indicated that information regarding the employment opportunities was only shared with the Chiefs, not the community at large, which resulted in the Chiefs deciding who would be employed. They claim that these opportunities were almost exclusively granted to the Chief's relatives. Additionally, the Complainants stated that there were very few women employed for the Project and that some men working on the Project engaged in relationships that failed to respect community values, which in turn led to incidences of marital tensions and conflict in communities.
- **Working conditions:** The Complainants expressed the view that the few locals who ended up being hired, and only after community members protested, were underpaid and overworked. They added that when employees were injured at work, Delonex would fail to provide medical assistance. They said that the chemicals used by Delonex negatively affected the employees' health, some of whom developed respiratory infections. Many Complainants expressed a fear about long-term health impacts.



b. Concerns related to exploration activities conducted between 2014 and 2016 in the Southern part of the Block

The Complainants explained that exploration activities, in the form of seismic surveys and well drilling, occurred on their land between 2014 and 2016, at a time when Tullow was the operator of the Project.

- **Stakeholder engagement process:** The Complainants stated that the project owners and operator (Tullow at the time) only engaged with government representatives, especially the Chiefs (who are national government employees) and did not reach out to the community members or their leaders. The Complainants believe that they have a right to be informed in order to understand the positive and negative impacts of projects on their land, and that the government should have consulted with them before letting anyone operate Block 12A. They shared that the Environmental and Social Impact Assessment (ESIA) was finalized and published without the communities being consulted (they allegedly complained to the National Environmental Management Authority (NEMA) about this, to no avail). The Complainants further stated that they struggled to receive a copy of the 2015 ESIA and claim there was no opportunity for them to respond to the statements included in the ESIA or to provide comments. They regretted seeing trucks coming to their land without understanding what was happening and stated that they wished never to be in such a position again. Some Complainants said that the project operator came to their communities and tried to bribe them with gifts. They explained that when they refused the gifts and mobilized the community to find out more information about the project, they were told the project would simply go through another part of the county. The Complainants said that those who expressed concerns or simply asked questions about the project were labelled “anti-development” and would consequently be discriminated against.

KVCO indicated to CAO that after multiple correspondence, Tullow agreed in writing to improve communication with community members and to allow for complaints to be raised with a promise to respond quickly. KVCO claimed, however, that they did not make good that promise. The Complainants shared that there was no functioning grievance mechanism for the project on Block 12A. They further stated that during the community meeting that occurred in September-October 2014, the community members requested that information be shared directly with them and not through Government officials, but their request was disregarded. KVCO also shared that the community members were engaged through a civil society organization forum from which KVCO was excluded.

Additionally, the Complainants shared their impression that the project operator was close to government, as government employees were often seen wearing shirts with the company’s logo. For example, when there was a need for local workers on the project, the Complainants said the Chiefs were contacted and they would choose who to hire - typically the Chief’s relatives. The Complainants also claimed that the project operator had an influence on government officials, who in turn always sided with them. The Complainants also alleged that some Chiefs accepted bribes, and that one Chief leased a community school without the community’s authorization.

- **Access to land:** Some Complainants claimed that during 2014-2016 exploration activities, their land was accessed without their consent and land access and compensation was negotiated with the village Chief instead of directly with each land holder. They also explained that whenever Tullow came to their land, it was always in the company of the Chief. If the land holders resisted, the Chief would try to intimidate them by saying that it was “government work”, and that they had to let them do their job. Some indicated they were even threatened with jail and police intervention if they did not allow Tullow access to their land.

- **Compensation for temporary access to land:** The Complainants indicated that they did not understand why different compensation rates for temporary access to land were used in different counties. They claimed that the compensation rates were both inadequate and too low. The Complainants also indicated that land holders were asked not to disclose to others when disbursements for compensation were received.
- **Restoration works and impact of seismic surveys on land, building and sacred sites:** Some Complainants expressed the view that exploration activities caused erosion and that their land was not properly restored. They said that big gulleys had appeared on their land after the exploration took place, making it difficult to cultivate crops, graze animals, or even go through the land. The Complainants believe the gulleys were a result of the seismic survey activities and use of explosives. Some Complainants also raised the concern that their land, which used to be fertile, was now unusable after the exploration activities due to the fact that holes dug were either not filled or were filled with stones and logs instead of soil. The Complainants added that they never received compensation for such damage to their land. Some Complainants said that explosives were left behind, which was dangerous, especially to children in the area. They also expressed their frustration at the absence of compensation, or very minimal compensation, for the destruction of their fences, especially natural hedges and vegetation, including small trees or bushes, used to demarcate land. They said that the fences were not restored either.

In addition, the Complainants explained and, in some instances, showed cracks on their houses that they said had developed after the seismic surveys were conducted. Some thought that the surveys were conducted too close to their houses, which they believe is the reason for the cracks. Some stated that when they insisted on receiving compensation for the damage to their houses, they instead received threats and were told not to take the matter further because the project operator was a big and powerful company.

The Complainants added that the exploration activities caused the destruction of many sacred sites, including sacred trees and community shrines.

- **Impacts on water and health:** The Complainants alleged that the use of chemicals for the exploration contaminated the water. According to the Complainants, after the exploration activities occurred, the water started making people sick, to the point that community members had to stop using it. They added that even their cattle incurred skin diseases from the water. The Complainants also stated that the exploration activities caused the wetland to disappear. Additionally, they indicated that the bees they kept to make honey migrated away due to the exploration activities. Other Complainants stated that during the exploration activities, and especially when the well was drilled, a surprising high number of animals miscarried and/or died.
- **Local employment and working conditions:** The Complainants indicated that only a few local people were hired to work on Block 12A and only for the jobs that did not require training, such as drivers or housekeepers. According to the Complainants, the latter were overworked and underpaid.
- **Allegations of gender-based violence:** Some Complainants described to the CAO team situations which suggest the occurrence of sexual assault, sexual harassment and other forms of gender-based violence by employees carrying exploration activities in Block 12A. These situations, according to the Complainants, involved women and girls, and in some

of the communities, led to social disruptions. No individual complaint or situation has been formally identified or referred to in the context of this CAO assessment.

- **Corporate Social Responsibility programs:** The Complainants said that they heard that Tullow gave scholarships, but that they and their fellow community members did not benefit from them. They believe that those who received the scholarships were not the ones who were directly affected by the exploration activities.
- **Right to natural resources and benefit sharing:** The Complainants raised concerns on the future and had questions about what will happen if oil is found, who would it belong to, and what would happen to their land. They wondered whether the communities would benefit from the discovery of oil. Some Complainants shared their belief that a percentage of the share of the Project should belong to the communities.
- **Risk to land titles:** The Complainants also highlighted the risk that the Project posed to land tenure. They noted that few people in the region have titles to land and that exploration activities, which increase the potential value of the land, augment the risk of land grabbing.

### **3.2.2 Delonex's perspective**

Delonex indicated that while they acquired interests in Block 12A in September 2015, Tullow was the operator and main interest holder of Block 12A until January 2018. They added that they were not aware of any exploration activity on site between 2016 and 2018. In January 2018, Delonex took over as operator. At that time, Delonex determined there was a need to acquire more data and hence decided to conduct seismic surveys in Block 12A, in an area which spans three counties: Baringo (specifically Baringo North and Tiati), Elgeyo-Marakwet (specifically Marakwet West and East) and West Pokot (specifically Sigor). Delonex added that their project did not go through the Barwesa and Muchukwo communities, which are mentioned in the complaint. Delonex only covered three areas in Barwesa namely Marigut, Ayatia and Kuikui areas. Delonex shared with CAO that the area where they did the seismic surveys is different from that where Tullow did theirs in 2013-2014. Tullow's surveys and drilling activities occurred in the southern part of Block 12A within Kerio Valley.

According to Delonex, a seismic survey is a means to conduct a subsurface scanning in order to gather insights of the subterranean structure and to determine where hydrocarbons may be present. It involves sending vibrations and recording the reflections back to the surface. The vibrations are produced by vibrator trucks, or by explosives deposited into a 12-meter hole in the ground. Delonex added that during seismic surveys, cables with geophones are laid on the ground surface to record the vibrations caused by the trucks or the explosives. In order to lay down the lines and conduct the survey, the vegetation needs to be cleared to create a strip on the land to lay cables and create access for the crew working on the line. The data collected is then sent to specialists for processing and analysis.

In this instance, Delonex explained that they conducted seismic surveys in the northern part of Block 12A from April to October 2018. For the purpose of the seismic surveys, Delonex worked with a highly experienced specialist sub-contractor called BGP. Delonex stated there has been no further exploration conducted on site since October 2018. They indicated they were still analysing the data collected in 2018 and that their continued exploration presence in Block 12A would depend on the results of that analysis.

Delonex also stated that when they started operating, they engaged with Tullow in order to learn lessons from their experience as operator in Block 12A and enhance their process on

the basis of their feedback. For instance, Delonex stated that they asked a professional valuer to review the compensation rates used for Baringo, Elgeyo Marakwet and West Pokot counties. Delonex stated that they made sure to also engage substantively with the community elders on the understanding that they are trusted persons within their communities. Delonex explained that their engagement with the Chiefs was also critical, because they represent the government and are mandated to mobilise/organise community meetings on the ground.

- **Stakeholder engagement process:** Delonex indicated that they hired three Community liaison officers (CLOs), a Field Stakeholder Manager and a Stakeholder/Community Administrator, who constantly engaged directly with communities as well as with the village chiefs and the elders in relation to Delonex's activities.

Delonex stated they organized three formal pre-mobilization county-level engagement meetings in March 2018: one in Baringo, one in Elgeyo-Marakwet, and one in West Pokot. They said that after those meetings, their team held public meetings with the communities through which the program activity would directly pass, to brief and share information and respond to questions (a total of 144 engagements were conducted). They indicated that they also had several informal engagements as their team was on the ground 24 hours a day, 7 days a week between March and October 2018. According to the company, engagements occurred where appropriate, in the local language of the community.

Delonex added that when they conducted the scouting to decide where to lay the cables, they engaged with the elders and the community members, and gave them the opportunity to provide inputs on the location for the cables. For example, Delonex said they took note of the location of the sites of cultural significance and importance in order to avoid interfering with them. Additionally, they noted that when land holders refused to have lines on their land, Delonex would find alternative routes.

- **Access to land:** Delonex explained that before going through a particular land parcel, they would seek permission to be granted temporary access by the land holder/user. In areas where there was no title to the land (which was a common case in the vast areas the seismic lines covered), the company would seek such access from the respective land user. The village elders of the community were instrumental in land holder/user identifications along the seismic lines and the identified land user was as respected as if that land user were a title owner. According to Delonex, permission for temporary land access was confirmed through signature from land holder/user on the Permit for Temporary Access (PTA) form indicating formal consent. No land acquisition took place and any access to land was only on a temporary basis. No resettlement was required during the program.
- **Compensation for temporary access to land:** Delonex stated that they compensated the land holders/users for both the loss of their crops and the disturbance, with 15% of the value of the crops being included as a disturbance allowance. Delonex added that their crop compensation rates were reviewed, and were higher than those previously used by Tullow. They also elected to apply the same harmonized rates across all three counties. Delonex indicated they also included rates for cultivated grass crops and aloe vera which were excluded for compensation previously. According to Delonex, the county governments and communities were pleased that harmonized rates were above the compensation rates previously used.
- **Restoration works and impact of seismic surveys on the land:** Delonex explained that after the surveys were completed and the cables removed, they restored each land parcel according to the extent of restoration works required, to the satisfaction of each land holder/user, which were involved during the restoration work. After restoration, each land

holder/user signed a document indicating that they were satisfied with the state in which the land was returned (called a decommissioning form). Delonex added that the region was prone to natural land erosion and that the clearing of trees for charcoal burning conducted regularly by the communities aggravated the situation.

Delonex noted that the explosives they used were soluble and would dissolve if not exploded. According to Delonex, the use of explosives is heavily regulated in Kenya and their work was monitored by the Ministry of Mining. They also stated that the technicality of the exercise was shared with community members during the stakeholder engagement process.

Delonex claimed to have received no complaint from the national government or the regulatory body in charge of oil and gas exploration projects or even NEMA, the National Environment Management Authority, a Kenyan government agency responsible for the management of the environment, and environmental policy. They added that during or post the project, no complaint was received from KVCO. Delonex also stated that they received seven grievances registered through their grievance mechanism process, and that only one grievance could not be resolved to the complainant's satisfaction. According to Delonex, this is because the complainant was asking for crop compensation when, in fact, the crops were non-existent and therefore compensation was not due.

Delonex also stated that their principle is trees with trunk diameter greater than 20 centimetres (cm) in diameter should not be cut and, to the best of their knowledge, they did not damage any trees wider than this during the seismic surveys. According to Delonex, seismic lines were diverted when it directly went through sacred places, trees more than 20cm in diameter, buildings and graves.

- **Local employment:** Delonex indicated that 182 people from the local community were employed during the seismic surveys, as well as numerous local temporary workers. They did not record any labor dispute. Delonex indicated that priority for employment was given to those communities most impacted directly by project activity and that their sub-contractor, BGP, put up posters in various locations within the impacted areas in order to make sure everybody was informed of the hiring process. According to Delonex, project workers sought accommodation and meals locally, which boosted business and incomes for the local communities within the impacted areas.
- **Corporate Social Responsibility (CSR) programs:** Delonex said that the government had asked them to provide support to a critical peace initiative they were running to strengthen relationships between the various ethnic groups within the region, where high levels of conflict and violence were occurring prior to and during the project. They indicated that, for example, their hiring of people from all three counties, who are from different ethnic groups, to work together in harmony, was one of the components of this program. Delonex complied with this request and no issues of such ethnic tension within the work force was recorded.

In addition, Delonex expressed that they gave education bursaries to 509 local students and provided capacity building on a residential training program for agricultural skills for 80 people from the impacted communities.

Overall, the company explained they were open to a two-way constructive engagement with community members.

### **3.2.3 AOC's Perspective**

AOC indicated that while they previously owned shares in the Block 12A from 2010 to 2017, they never operated the Project and that Tullow was the operator at that time. AOC added that they exited the Project in 2017 (but are still an IFC client). For these reasons, AOC stated that they were not in a position to comment on the concerns raised in the complaint. They added that they believed Tullow and Delonex (the latter started operating after AOC exited the project) followed the IFC Performance Standards.

## **4. NEXT STEPS**

During CAO's assessment, the Complainants and Delonex indicated an 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 in preparing for dialogue, agreeing on ground rules and on the scope of the dialogue, and working together in a collaborative way to try and reach a resolution of the issues raised in the complaint and summarized in this assessment report. AOC will not participate in the process, as previously explained. Tullow expressed to CAO that they may participate in the dialogue, possibly as an observer, should the parties find an agreement on the rules of engagement.

## ANNEX A. TULLOW'S PERSPECTIVE

Tullow is not an IFC client for this project and is not a party to the CAO process. However, as part of the assessment process, CAO typically engages with stakeholders recommended by the parties that can help CAO better understand the situation. In that context, CAO had a conversation with Tullow, which indicated that they undertook to operate Block 12A in 2011 pursuant to a Joint Operating Agreement with Africa Oil. Tullow added that between 2011 and 2018 (when they stopped operating), they conducted actual exploration works in Block 12A for a period of two years, between 2014 and 2016. Tullow was willing to share their perspective on the issues raised in the complaint relating to the impact of those 2014-2016 exploration activities, which they said consisted in seismic surveys, which are done by laying down cables on the ground to record vibrations caused by trucks or minor explosives.

- **Stakeholder engagement process:** Tullow indicated that before starting with their seismic activities, they undertook an ESIA and conducted a thorough stakeholder engagement process, during which they engaged with the Government, some local NGOs, the community Chiefs and community members who could be impacted by the planned seismic activities. Tullow explained they recruited people who spoke local languages for the purpose of the community engagement process. They also printed and distributed brochures, however, those were in English and Swahili, which are the national languages in Kenya.

Tullow said they started with the stakeholder mapping, during which they met with the County Governors of Baringo and Elgeyo-Marakwet. They also met with the Chiefs and with the wider community to explain the purpose of the project. Tullow stated that the community meetings were open and that anybody could attend. The meetings were held either in the Chief's building, or in a central open space, or sometimes at a local school.

With regard to access to information, Tullow indicated that their ESIA was publicly disclosed on their website at the start of their project. Tullow added they also provided physical copies of the ESIA to the Offices of the County Governor and NEMA in the Baringo and Elgeyo-Marakwet Counties so that people who did not have access to the internet could read the document. In addition, Tullow indicated that they provided the necessary information orally to the community members during their various meetings with them.

Tullow explained that their community liaison officers were on site for a period which started before the commencement of seismic surveys and ended two years after the completion of the surveys. During that period, the community liaison officers were always available to respond to questions. In addition, community liaison officers would proactively engage with community members and go to meet them, for example at water points where they typically gather. The Community liaison officers would also attend community meetings. Overall, Tullow explained that the liaison officers had a regular presence in the community.

- **Access to land:** During the stakeholder mapping, Tullow realized that a lot of land users did not have title deeds. In order to identify land ownership, Tullow stated that they conducted a scouting, along where they envisaged putting the seismic lines. They were accompanied by elders who would let them know who the land users were, and introduce them to the land users. The elders would also explain where the schools, rivers and sacred sites were located. Tullow further stated they changed the envisaged location for many lines based on that information and where land users objected to seismic occurring on their land. Tullow explained that they then organized meetings with all landowners and land users to double-check the information provided by the elders. According to Tullow, they then met with each landowner and land user to ask if they would agree to Tullow putting down temporary lines on their land. Tullow would explain to them the objective and the

functioning of the seismic surveys, as well as the fact that use of land for seismic surveys would be for a temporary period. Tullow stated that each land user had the choice to allow or to refuse Tullow the use of or passage through their land. Those who accepted signed a land access form.

- **Compensation for temporary access to land:** Tullow indicated that they hired consultants in order to help them determine adequate compensation amounts for temporary land access and loss of crops. Given that at the time, there was no regulatory framework in Kenya, Tullow explained that they negotiated the compensation based on the going rate used in the County for leasing land. In addition, Tullow indicated they compensated for the loss of crops based on what crop was on the land. Tullow highlighted that they only compensated those landowners and land users whose land was used for the seismic surveys.
- **Restoration works and impact of seismic survey on the land:** Tullow indicated that after the surveys were completed, Tullow took off their lines and had independent evaluators assess the potential damage to the land and plan the restoration work. According to Tullow, the land in Block 12A is very dry and prone to erosion, given the amount of grazing and charcoal burning activities. Tullow believes that those two elements are the major causes of erosion and not the exploration activities. However, irrespective of what caused the erosion, Tullow expressed that their approach was always to try and help community members find sustainable solutions. In that vein, they said they had conversations with the land holders to discuss what sustainable restoration would look like. For example, they suggested planting deeply rooted trees. Some land holders accepted, however, others preferred less sustainable options. According to Tullow, a few people were disappointed when Tullow refused to provide them with cash compensation for the impact of the surveys on their land.

Tullow explained to CAO that they signed an MOU with the County Government according to which the latter would conduct the restoration works while Tullow would pay for it. Tullow indicated they did verify that all landowners and land users were satisfied with the restoration works.

- **Local employment:** Tullow explained that they contracted the seismic surveys to a company called BGP. While Tullow was the project operator, BGP was the actual company conducting the seismic surveys and employer of community members during the seismic surveys. Tullow indicated they met with the community Chiefs to let them know about the employment opportunities. The job advertisements were also posted at the Chiefs' office and on notice boards in open spots in villages. The first employment opportunity was the construction of the two seismic camps for a period of two months. Tullow indicated BGP was very clear when they employed community members for the construction of the site that the work was temporary and restricted to camp construction. However, a lot of employees were disappointed that BGP could not employ them further. Later, BGP employed community members for the installation of the lines. Priority was given to community members living close to the lines.

Regarding the allegations related to gender-based violence, Tullow stated that they never received any complaints in that respect and if they had, they would have taken appropriate measures. Tullow added that before hiring BGP, they had conducted due diligence and were satisfied. Tullow explained that the contract between Tullow and BGP obliged both BGP and their employees to comply with Tullow's Business Code of Ethics.



- **Corporate Social Responsibility programs:** Tullow indicated that they funded water projects and provided bursaries to community members in Block 12A. Community members would gather and collectively decide who would receive the bursaries. Tullow added that they also offered scholarships to people who were affected by their projects in Kenya. However, given the size and breadth of Tullow's project in Turkana compared to the Block 12A project, more scholarships were granted to community members in Turkana.

Tullow expressed to CAO that they may participate in the CAO-facilitated dialogue with the complainants and Delonex, possibly as an observer, should the parties find an agreement on the rules of engagement.

## ANNEX B. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. 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,<sup>3</sup> 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 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 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>4</sup>

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**

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<sup>3</sup> 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](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf)

<sup>4</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 closed the complaint and transferred it to CAO Compliance for appraisal.