



OMBUDSMAN ASSESSMENT REPORT

**Regarding Community and Civil Society concerns in relation to
activities of IFC Project Orion, Uruguay**

December, 2009

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

CAO	Office of Compliance Advisor/Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
SPI	Summary of Project Information
ICJ	International Court of Justice

1. Introduction

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are responded to by the CAO's Ombudsman function.

This assessment report is a public document that summarizes the complaint and activities undertaken under the Ombudsman process of the CAO to seek resolution to issues raised by it.

2. The Complaint

This complaint was submitted by the Environmental Civic Assembly of Gualeguaychú, an Argentine civic association/non-governmental organization that represents the interest of residents of Gualeguaychú in August 2009. It raises concerns about the environmental monitoring of the project and its credibility regarding odors and air emissions emanating from the plants, water pollution, impacts to community health, and trans-border issues. Furthermore, complainants argue that what they feared as potential impacts are currently being manifested and experienced across the international boundary.

This is the second complaint CAO received regarding this project. The first was filed in September 2005 by the Centre for Human Rights and Environment, an Argentine non-governmental organization¹.

3. The Project

The Orion project is a greenfield eucalyptus kraft pulp mill in Uruguay, adjacent to the international boundary between Uruguay and Argentina.

IFC disclosed its Summary of Project Information (SPI) in relation to IFC project No. 23817 on 20 April, 2005. According to this information, the proposed IFC investment consists of an A loan for IFC's own account of up to \$100 million and a syndicated B loan for the account of participants of up to \$100 million. The project environmental categorization was A, and it received Board approval on November 14, 2006.

The project company is Botnia S.A., 100% owned by entities controlled by the same company sponsor (with an option for the local partner to purchase up to 9% of the shareholding). The local partner, the Otegui Group, has been in the agribusiness sector since the beginning of the last century and employs approximately 600 people. Grupo Otegui started its forest products' activities at the end of 1980s and currently owns eucalyptus plantations (FSC certified since 2001) and sawmills.

¹ For further information see CAO's website: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=117. Preliminary Assessment Report. Complaint Regarding IFC's Proposed Investment in Celulosa de M'Bopicuá and Orion Projects, Uruguay. November, 2005.

According to IFC's SPI, Botnia is Europe's second largest pulp producer and owns five pulp mills in Finland with total production capacity of 2.7 million tons per annum. Approximately 80% of Botnia's pulp is sold to its shareholders and the rest is sold as market pulp, mainly to Europe. Botnia's audited turnover as of end of 2004 amounted to \$1.5 billion and net profit to \$142 million equivalent (compared to \$69 million as of end of 2003).

Botnia is owned by three Finnish companies: M-Real Corporation (39%), UPM-Kymmene (47%) and Metsaliitto Cooperative (14%).

The pulp mill is located in Fray Bentos, the capital of the Rio Negro Department, Uruguay. The city is located some 200 miles North-West from Montevideo and has an estimated population of 23,000. Fray Bentos is an important trade conduit as it is located on the Uruguay River and next to an international bridge that connects Uruguay to Argentina.

4. CAO Ombudsman Assessment

On August 18, 2009, CAO received a complaint signed by the Environmental Civic Assembly of Gualeguaychú in Argentina regarding IFC's project, Orion, No. 23817. On August 31, 2009 the complaint was found eligible on the basis that:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

According to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of the opportunities for resolving the complaint on August 31, 2009. The assessment period is limited to a maximum of 120 working days, but may be completed more quickly depending on whether the issues are amenable to resolution.

4.1 Background and History

The CAO received a first complaint regarding this project in September 2005. That complaint was appraised by the CAO Ombudsman role first. Afterwards, an audit process was conducted by CAO Compliance role.

The complaint in 2005 related to two paper pulp projects, the Grupo Empresarial ENCE (a Spanish firm) and Botnia (a Finish firm), that IFC was considering investing in. At the time of filing the complaint both projects had not yet been submitted to Board approval.

The issues the complaint raised at that time related to the lack of adequate consultation with affected communities, inadequate completion of Environmental and Social impacts of projects on both Uruguay and Argentina, the need of informing the IFC of the extreme public concern over the social and environmental impacts, as well as the need to evaluate compliance with IFC safeguard and disclosure policies, international

waterways, Pollution Prevention and Abatement Handbook and international and bilateral agreements between Argentina and Uruguay.

In November 2005 the CAO Ombudsman intervention ended by recommending among other things that specific efforts needed to be implemented in order to ensure that people who believed that they will be impacted could have trust in the process as well as outcome of any additional studies².

Complainants believed that they had a strong legal case against the permitting of these projects. Some parties within Argentina were arguing strongly for the case to be considered by the International Court of Justice (ICJ) and the Inter-American System of Human Rights Protection. On May 4, 2006 the Government of Argentina filed an Application at the ICJ instituting proceedings against Uruguay and requests the Court to indicate provisional measures concerning alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by the two States on 26 February 1975, with a view to establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constitutes their joint boundary³. Furthermore, on November 29, 2006 Uruguay submitted a request to the ICJ for the indication of provisional measures in the case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay) as Uruguay stated that groups of Argentine citizens have blockaded a vital international bridge over the Uruguay River, shutting off commercial and tourist travel from Argentina to Uruguay⁴. The International Court of Justice finalized on October 2, 2009 public hearings concerning the case, and started its deliberation, which will be made available to the public in due course⁵.

4.2 Key Issues Raised in the Complaint

The complaint raises concerns regarding application of IFC's operational policies at the project level, particularly IFC OP 7.50 related to international fluvial channels. Moreover, the complaint alleges that since Botnia started its operations there have been an occurrence of episodes that have impacted community health on Argentine territory due to air emissions from Botnia's plant. Lastly, the complaint raises concerns regarding the independence of the organization hired to conduct the environmental monitoring of air emissions.

4.3 Rationale of Assessment

The CAO has conducted interviews with both the complainants and the Sponsor, as well as having further discussion with IFC staff. In addition, the CAO has reviewed the current status of this case in other international fora. The complainants on the one hand feel that the issues raised are not amenable for dialogue, and the sponsor feels that a final judgment on this matter is about to be released by the International Court of Justice.

Based on the information provided by both parties, the CAO Ombudsman understands that the current situation is not amenable to joint fact finding, mediation or alternative dispute resolution approaches.

² See CAO's Preliminary Assessment Report. Complaint Regarding IFC's Proposed Investment in Celulosa de M'Bopicuá and Orion Projects, Uruguay. November, 2005.

³ International Court of Justice, Press Release 2006/17 – May 4, 2006. See <http://www.icj-cij.org>

⁴ *Ibidem*. Press Release 2006/40 – November 29, 2006.

⁵ *Ibidem*. Press Release 2009/28 – October 2, 2009.

5. Conclusion

Based on what the CAO Ombudsman heard from the principal parties, it is our understanding that this complaint is not amenable to resolution through an agreed settlement at this time.

In January 2010 in accordance with the CAO's Operational Guidelines, this complaint will be transferred to the Compliance office for an appraisal of whether an audit of IFC may be necessary to assure the President and public of IFC's compliance with relevant policies.