

INDEPENDENT OBSERVERS REPORT 1

This is our first Report as the Independent Observers of the first round of Regional, Village and Working Group Meetings of the Review of the Community Mine Continuation Agreements (CMCA's).

BACKGROUND

In 2001 Ok Tedi Mining Limited (OTML) entered into compensation agreements known as Community Mine Continuation Agreements (CMCA's) with 14 communities whose environments were adversely impacted by the mining operations. In exchange for the compensation the affected communities agreed not to pursue any legal action or claims against OTML or its previous shareholders and to allow the mine to continue its operations until end of mine life which is presently indicated to be 2012.

Following the execution of the CMCA's the National Parliament passed the *Mining (Ok Tedi Mine Continuation) (Ninth Supplemental Agreement) Act 2001* to give the agreements the force of law.

The 14 CMCA communities cover 152 villages and an estimated 50,000 people from the Mine Area, North Ok Tedi, Lower Ok Tedi, and the Highway Region from Tabubil to Kiunga, the Middle Fly and the South Fly Areas.

The CMCA's established Trusts for each region through which compensation payments are made. The Trusts administer these funds on behalf of the affected regions. Under the CMCA's the communities consented to the continuation of the mine based upon the then predicted environmental impacts. These environmental predictions are comprehensively set out in the Schedule to the CMCA's. OTML has an obligation under the CMCA's to continually monitor the environmental impacts and to ensure that the communities are kept informed of the results progressively. If the environmental impacts exceed the levels predicted, then the River and Highway CMCA's require OTML to meet with the communities to discuss revision of compensation payments.

Continuous environmental monitoring by OTML since 2001 has now revealed that the environmental predictions have changed and sediment depositions, flooding, die back and acid rock drainage (ARD) impacts are now greater than initially predicted in some CMCA regions.

The CMCA's provide for a review of the 'operation of the Agreement' after the expiration of five (5) years from the termination date which is 31st of December 2001. The review therefore is aimed at being completed by the 31st December 2006 or early 2007.

STRUCTURE AND PROCESS OF THE CMCA REVIEW (Village, Regional and Working Group Meetings)

The structure and processes of the review was designed differently to the separate regional negotiations and agreements entered into in 2001.

It was agreed, as in 2001, that each of the CMCA communities' village would select a representative to a Regional Meeting. At each of the regional meetings the village representatives would select three members to represent their region at the Working Group. The working group would be the main review and negotiation forum.

Following each working group the three regional representatives are expected to meet with their respective regional groups to brief them on the progress and outcomes of the working

group meetings. After the regional meetings, the village representatives, together with the working group representatives are expected to conduct village meetings to inform the villagers of the progress of working group review of the CMCA's.

COMPOSITION OF WORKING GROUP

It was agreed that as the Working Group would be the premier review and negotiation forum all the following stake-holders should be invited to attend, apart from the regional representatives and OTML; the National Government represented by the following Department: Mines, Environment and Conservation, Justice and Attorney General and Treasury and Finance, the Western Provincial Government by the Provincial Administration, representatives of women, church and non-government organization interested in environment and sustainable development issues.

INDEPENDENT FACILITATORS

To ensure that the CMCA Review is undertaken independently and impartially OTML engaged an American Non-Governmental Organization, The Keystone Centre, who specializes in multi-party negotiation and problem solving through mediation, consensus and dialogue and the PNG based Consultants, Tanorama to be the lead Independent Facilitators.

INDEPENDENT OBSERVERS

To further strengthen the credibility and integrity of the review process OTML engaged as Independent Observers, Sir Arnold Amet, the former Chief Justice of Papua New Guinea and Mr John Kawi, the former Solicitor General to observe, monitor and independently report on the conduct of the CMCA Review process against the following Principles outlined in the *“Principles Guiding Ok Tedi Ltd’s Discussions with Communities”*: integrity, transparency, equity, participation, fairness, respect, responsiveness, adequacy of information and timeliness. Additionally, the Independent Observers are to conduct desk reviews of village meeting reports and also report on them publicly.

INDEPENDENT FUNDS ADMINISTRATORS

OTML also appointed the Chartered Accounting Firm of Deloitte Touche Tohmatsu as an Independent Funds Manager to manage and administer all the financial transactions, including contracts and payments for the services of independent consultants and allowances and other benefits for participants in the review processes, independently of OTML management. This has, in our opinion, further reinforced the principles of transparency and fairness in the impartial and arms length participation of OTML in the review process.

FIRST REGIONAL MEETINGS

The first round of Regional Meetings were divided into two groups, with a combined team of The Keystone Centre and Tanorama facilitators leading each group, whilst the independent observers Sir Arnold and Mr Kawi observed each group. One group conducted meetings in South Fly covering Manawete, Kiwaba, Dudi and Suki-FI Gogo regions. Mr John Kawi observed these regional meetings as well as the Mine Area Village. Sir Arnold observed the regional meetings of the Middle Fly, Lower Ok Tedi, North Ok Tedi and Highway Communities. These meetings took between one to two weeks.

At these first meetings the following six (6) main issues were discussed and recorded. These discussions were designed to inform the facilitators of the main issues to be included in the agenda for the working group review meeting. The main areas discussed were:

- a) CMCA Review Structure and Process
- b) Environmental Damage and Predictions
- c) Compensation Concerns
- d) Communication

- e) Post Mine Closure – Future Problem solving
- f) Selection of three representatives to the Working Group

The record of these discussions were presented to the meetings to be verified as accurate and signed by the three elected representatives to the working group and the independent observer.

FIRST VILLAGE MEETINGS

Following the first regional meetings, the village representatives with the independent facilitators conducted village meetings in each of the regions to inform the villages of the process and to receive further feedbacks from the villages. The discussions of these meetings were also recorded by the facilitators and signed by the village representatives. It was not necessary for the independent observers to be present at the village meetings. These village meetings were comprehensive and took many weeks to complete. We have been provided the notes and minutes of the village meetings.

FIRST WORKING GROUP MEETING: 18 - 20 APRIL 2006

At the first working group meeting the following communities and organizations attended and participated:

- . Three representatives from each of the 14 communities;
- . Representatives of OTML;
- . A representative of the National Government Department of Mines;
- . A representative of the Fly Provincial Administration;
- . Representatives from the PNG Sustainable Development Programme Company;
- . A representative of the Catholic Church; and
- . A representative of women;

A representative of an NGO interested in environment and sustainable development attended as an observer.

The Keystone Centre was lead facilitator supported by Tanorama observed by the two Independent Observers.

OTML PRESENTATION

OTML made full formal presentations of the following areas of its operations: the historical development, the current agreements' regime, the future scope of the CMCA review, an overview of the business of the mine and how it works and a summary of the income and the economic benefits to the share-holders, the country, the province and the affected communities.

A comprehensive and detailed environmental impact and mitigation briefing was presented on what is known about the mine's impacts, what the company does not yet know and what is being studied.

We believe these presentations were full and frank, acknowledging serious environmental impacts and raising issues that require common response by all parties.

FACILITATORS' REPORT OF KEY ISSUES FROM REGIONAL AND VILLAGE MEETINGS.

The Principal Facilitators, The Keystone Centre and Tanorama presented a good summary of the key issues raised and discussed at the first regional and village meetings. This was helpful for the interested representatives who were not present at those meetings.

INITIAL PRIORITIES FROM REGIONS AND OTHER REPRESENTATIVES

An initial opportunity was given the regional and the other interest group representatives to discuss and present to the working group a number of priorities for initial listing for discussion progressively in the working group. This was not intended to be exhaustive, but simply an initial opportunity to discuss and indicate a consensus of priorities in a group setting.

REVIEW OF THE TERMS OF REFERENCE

A reasonable amount of time was devoted to discussing the following draft terms of reference of the working group:

- . The specific roles of the working group;
- . What interest agencies and groups are to be represented on the working group?
- . The roles and responsibilities of the representatives;
- . The schedule of the working group meetings and the agenda for each meeting:
 - . Meeting 1: Agree on How to Talk and Get Organized (April 2006)
 - . Meeting 2: Gather and Evaluate Critical Information (June 2006)
 - . Meeting 3: Create Possible Packages of Compensation and Benefits
 - . Meeting 4: Negotiate Final Agreement on Packages of Compensation and Benefits
 - . Meeting 5: Finalize and Ratify the Agreements
- . To review the information on the impact on the environment;
- . To review and negotiate future CMCA compensation and benefits; and
- . To discuss ways to work together in the future;
- . How the working group will make decisions, for instance:
 - If villages or regions choose not to participate in the working group, or if any delegation chooses to leave the working group at any time, they are still able to receive benefits under the CMCA's, but will forfeit their role in making decisions about the future distribution of benefits and compensation.

Villages and individuals that are within the CMCA area who have not yet signed the CMCA and wish to, there is a process whereby they can be included in CMCA's. Any communities or villages which join the working group later in the process should not delay the progress of the working group and its deliberations.

- . What would happen if the working group cannot reach agreement?
- . What the Independent Facilitators will do;
- . What the Independent Observers will do;
- . Ground Rules for Discussions; and
- . What is Success?

As final decisions on the compensation benefits and environmental mitigation would be made by the Board of OTML, it was generally felt that the principals of OTML and other interest groups such as PNGSDPL and the respective governments give some progressive responses on important matters of principle being proposed.

FLY RIVER PROVINCIAL GOVERNMENT

The Deputy Provincial Administrator presented an overview of the Fly River Province Development Plan for 2006 – 2010. This was very useful and informative for all the interested parties to learn how much economic benefits flow from the mines operation to the province and how the Provincial Government planned to use it.

INDEPENDENT EXPERT ADVICE

There was general consensus on the benefit of independent technical expert advice to the regional representatives and other working group representatives on a range of issues before the working group, including environmental, legal, economic, health and future livelihood of affected communities.

It was agreed that a small working group of three representatives from the regions plus The Keystone Centre and Tanorama with the oversight of the Independent Observers would go through a short list to make recommendations to the working group.

We believe that provision of these independent advisors will enhance the equity, fairness and transparency and integrity of the process, outcomes and agreements.

PRINCIPLES FOR COMPENSATION AND BENEFITS

A further opportunity was given in respective regional and interest groups to brainstorm to generate a list of possible principles to serve as criteria for evaluating future compensation packages. Reports of principles and priorities presented would form the basis of the second working group meeting agenda.

OUTCOMES FOR COMMUNICATION

A summary of outcomes reached at the working group was finalised and documented for use by the representatives in their briefing of their village representatives at the regional and village meetings.

GUIDING PRINCIPLES FOR THE REVIEW DISCUSSIONS

LANGUAGE

The regional and the working group meetings were generally conducted in English as most of the representatives spoke good English. The village meetings were also in English, Motu and local languages.

We make the following observations and recommendations on basic compliance with the guiding principles for the discussions.

ADEQUACY OF INFORMATION

We observed that though there was general communication with communities over an extended period of time preparatory for the review, many of the communities and their representatives expressed concern that they were not provided with all the relevant information to allow them to be prepared to make informed judgements on the issues to be discussed.

We recommend that more effort should be made to make available copies of primary documents to participants and representatives earlier and in much more simplified form to ensure that the information is better understood.

EQUITY

All the regional representatives were predominantly male with one exception from the Dudi Region, where the Parama village was represented by a woman, the Reverend Anna Bisai. There was a noticeable absence of youth representation.

We recommend that regional representatives make a more meaningful effort to involve more women and youth in discussion at appropriated levels.

PARTICIPATION

In our observations of the first round of regional meetings and the first working group meeting, and from reports of the village meetings, we are satisfied that all representatives who wished to speak were given every opportunity to speak. There were differences of opinion as can be expected, but those who had differing views did have opportunity to express themselves.

RESPONSIVENESS

We are satisfied that the concerns and issues raised by village and regional representatives at the regional, village and working group meetings were responded to promptly based on information available at that point in time. Representatives were advised that concerns or issues raised which could not be responded to immediately would be taken up and discussed in the first working group meeting.

TRANSPARENCY

We are satisfied that the first regional, village and working group meetings were all conducted in acceptably transparent manner. The processes of the CMCA review were explained to the representatives and the villages in simple and understandable English and local language.

The desire for the village and regional representatives to have the services of independent professionals such as medical doctors, accountants, environmental scientists and lawyers has been embraced to be followed up for the future.

We believe the structure and processes gives transparency and credibility to the review process. We are satisfied that the engagement of independent facilitators, The Keystone Centre and Tanorama plus the independent observers, and funds administrator have added considerably to the transparency of the review process.

INTEGRITY

We are pleased to report that the structure and processes generally and in principle satisfy the values of integrity. In our observation they have been morally sound, honest, and free from corrupting influence. We are satisfied that all the representatives have been sincere and honest in their communications.

In particular we believe the engagement of independent facilitators, independent observers and funds administrator and other wider interest groups and provincial and national government representatives have added to the integrity of the process.

The development and publication of a set of principles to guide the independent facilitators in guiding the conduct of the review and the independent observers in their monitoring, observation and reporting against them, as we now do, lend integrity to the process and the commitment of OTML in undertaking this review process.

FAIRNESS

Generally, for the foregoing reasons, we believe the processes of the meetings to date have been fair. We do make observations about some aspects of the structure and processes that representatives raised some concerns about, but on the whole as we report above the process has been fair.

RESPECT

Given the historical circumstances of the operation of OTML and the environmental impact upon the communities, we believe sincere efforts are being made by all parties to be respectful. The courtesy to respect each other and to allow others to express themselves has

been agreed upon as good practice. All participants have been continually encouraged by the facilitators to be respectful to each other and each others opinions.

We are satisfied that discussions are conducted at a pace and in a manner that allows parties to understand the information and, where necessary, consult with those that they represent before continuing. Everyone was given an opportunity to speak and actively participate in all the discussion of the issues being discussed.

TIMELINESS

Though the time frames for the processes of consultation and meetings may seem long, we are satisfied that they are reasonable given the complexity of the issues and the important need to inform and consult all the affected communities and interested parties. Given the physical spread of communities and the logistics of transport, we are satisfied that the length of time between meetings and briefing of representatives and villages is reasonable and sufficient.

OBSERVATIONS AND RECOMMENDATIONS

STRUCTURE AND PROCESS OF THE REVIEW

Some village representatives at the regional meetings expressed strong emotions that they had been selected by their villages as leaders to come and negotiate the review of the CMCA's. They had come fully prepared and expecting to do that and were disappointed.

Many expressed concern that they were not fully aware that all that they were expected to do at the regional meeting was to select 3 members to represent their region at the working group meeting and make some general comments for the working group.

Some representatives were concerned that to select three representatives only from each region to the working group may not sufficiently represent fully their villages and regions interests. Some were also concerned that the three representatives may not be fully briefed on the regions views at the regional meetings to take to the working group. Some were concerned that they were delegating their village authority to three representatives only to sign the agreement on behalf of their village.

And there was concern also on the proposal that only one of the three representatives would sit at the table to participate on behalf of the region. Some felt this would not allow sufficient representation of the regions views at the working group meeting.

OWNERSHIP OF REVIEW STRUCTURE AND PROCESS

We believe the concerns that were raised about the structure and the review process are indications of a desire for greater involvement in and thus ownership of the structure and process of the review.

We would caution the representatives of OTML management and the facilitators to be cautious about rebutting concerns of village representatives forcefully so that they do not get the impression that the process and the structure was already decided and were merely being imposed upon them instead of genuinely seeking their contribution and acceptance of the structures and processes proposed.

Intervention by facilitators to impress and persuade the village representatives that the structure and process is the only way unfortunately led to village representatives in some regional meetings disagreeing and arguing amongst themselves.

A strong view expressed in relation to this was that it is not important to follow this structure only; but what was more important was that the review of the CMCA took place with greater participation by the leaders of the affected communities.

COMMUNICATIONS AND BRIEFING MEETINGS

There was consensus therefore that there needed to be a much more structured process and opportunity for fuller consultation and communication between the three representatives and the regional meetings of village representatives.

And so there was a need for regular regional meetings following the working group meeting for feed back from the three regional representatives to inform the village representatives what was discussed and decided upon at the working group, and for the village representatives to advise their three representatives the views of their villages and the region.

AWARENESS OF CURRENT CMCA'S

A strong consensus view was expressed in all the regional meetings that many were not fully aware of the contents of the current CMCA's for their respective regions. And they expressed the strong desire that the current agreements' contents should be translated into simple English and fully explained to them in order that they could more meaningfully participate in the review process and to be able to consider whether any changes needed to be made.

PARTICIPATION IN AGREED OUTCOME (SIGNING)

We feel consideration should be given to the concern and desire that all village representatives to the regional meeting sign the CMCA on behalf of their villages. This would give the villagers a greater sense of informed consent and ownership of the final agreement.

PARTICIPATION BY LAND OWNERS NOT PARTY TO THE CMCA'S

There was consensus of concern that other land owner's who supported the court action against OTML that have not joined the CMCA's should be involved in the review process and benefit from the agreements. Leaders agreed that the opportunity should be left open for these village communities to agree to participate in the review and thus benefit from the benefits of the agreements.

We believe that there needs to be much more positive encouragement and engagement of the leaders and villages who have remained outside of the CMCA process and thus benefits.

Sir Arnold Amet

John Kawi

16 May 2006
Port Moresby