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Exiting the Disaster, Evading the Responsibility?

Wadi al-Qamar - The Moon Valley

Suzan Nada¹

This essay explores a case that delivered no results for the complainants, where harm was not prevented, and where stakeholders who filed the complaint were not compensated. Investigated by the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC), the Wadi al-Qamar case illustrates some of the limitations of accountability mechanisms in limiting the harms caused directly or indirectly by projects in which the International Financial Institutions (IFIs) invest.

Overview

Wadi al-Qamar in Alexandria, Egypt is a residential area developed in the 1940s, according to the maps registered and issued by the Egyptian Survey Authority (ESA). It was designed to overlook the sea, and is currently home to over 60,000 people. They say that it was named for the beautiful sight of the moonlight hitting the malt fields that used to cover the area.

In 1948, the Egyptian Government established the Alexandria Portland Cement Company. It was privatized in 2000 by Lafarge Egypt Company, which sold 50 percent of the stocks to TITAN Cement Egypt in 2002. The TITAN Group is a multinational company manufacturing cement and construction materials. Lafarge Egypt was responsible for the management until May 2008, when, with the support of the IFC, TITAN Cement Egypt bought Lafarge's share to own the Company outright.

The factory is only 60 meters away from the Wadi al-Qamar residential area. Until 1996, the factory was operating four furnaces using wet processes to manufacture cement. In that year, the management requested the construction of a fifth furnace to operate on dry processing; the operation fifth furnace started in 2002.

The Complaining Parties

Irregular or Temporary Workers. The first group of complainants comprised *irregular or temporary workers*, who had worked for a long time at the factory. Some of them had regular contracts and tenure; however, the management reduced their numbers, making many of them irregular workers through a specialized recruiting company. Due to high rates of unemployment in Egypt, workers had to agree to sign fixed-term contracts, renewable annually. Because this step

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removed the rights of these workers to medical and social insurance and pensions, they attempted to resist this act of dispossession by organizing several peaceful strikes.

With the January 25 Revolution of 2011, workers came together in an independent union and joined the Egyptian Trade Union Federation (ETUF). This union was never officially recognized under the laws later introduced by the State. In 2012, workers organized a picket line, calling for their medical and social insurance to be reintroduced, and equal pay and bonuses with regular workers. However, the police stormed the picket line inside the company's grounds using batons, weapons, and dangerous police dogs. Several workers were injured, and 22 workers were arrested because the company claimed that they detained the manager of the recruiting company TITAN that was under contract to recruit workers.

The 22 workers were detained for two months before being released. The lawsuit, which received international exposure, resulted in their acquittal, but the Company laid them off anyway.

Early Retirement Workers. The second group comprised *early retirement workers*, who were employed when the Egyptian State owned the company from its establishment in 1948 until its privatization in 2002. These workers were subject to the Egyptian Labor Law of the Public Sector, which stipulates the establishment of a pension fund for workers that pays workers their receivables when they retire. It also specifies that workers may —when the company is privatized—get a percentage of stocks at a price lower than the trading price that may be paid in installments and/or deducted from the worker's annual profits.

Many of these workers were retired early by the management in return for low bonuses that varied from one worker to another, with no standards. In addition, the company neither disbursed their sums from the pension fund nor compensated them for the stocks, the value of which had been deducted from their salaries throughout their time with the company. These workers filed a lawsuit before the Alexandria Administrative Judiciary Court of the State Council on January 3, 2016 hoping for a court order in their favor. The outcome of the 2016 suit is still pending. In the meantime, the Administrative Judiciary Court of the State Council issued a court order stipulating the plaintiff workers' eligibility to resume working and receive their sums; the order notes that the company had violated Article 45 of Law 203 of 1991.

Residents of Wadi al-Qamar. The third group of stakeholders was the *People's Movement to Support Residents of Wadi al-Qamar*. Since its establishment, the cement factory has caused resentment in the residential area of Wadi al-Qamar for blocking the residents' access to the sea and polluting the area. This situation was aggravated with the privatization of the factory in 2002, and the construction of the fifth furnace, which exacerbated the pollution because of its low chimneys and proximity to the residents. And increased production capacity meant increased pollutants. Residents complained that both children and adults suffered from respiratory diseases and other ailments because of the smoke and dust.

Residents negotiated unsuccessfully with the management of the Company, and residents became convinced that the Company was procrastinating. Accordingly, the residents established the Coordinating Committee to Support Wadi al-Qamar in 2014, during an unofficial meeting among representatives of the well-known families in the area. By its Articles of Association, the Committee's mission is to communicate with the residents and advocate their cause. The Committee helped the residents file its complaint to the CAO.

The cement factory harmed not only the complaining parties, but also Egyptian citizens in general and Alexandrian residents in particular. It led to environmental pollution in an area that once was truly the "Wadi al-Qamar", a hub for therapeutic tourism, transforming it into one of the world's most polluted areas. The factory also impacted the fish population, which is a source of income for residents of the area and a source of food for residents of Alexandria. Furthermore, the enlarged factory caused greater pollution to the Middle East's top supplier of table salt, the El-Mex Salines Company, which was located close to TITAN's buildings and extensions.

In short, the cement factory impacted everyone in the region, and news of its environmental violations circulated widely among citizens and in newspapers and other mass media. The Egyptian Parliament held several hearings on the pollution from the factory. In the aftermath of the January 25 Revolution, efforts were consolidated to face this multi-pronged threat to health, the environment, and livelihoods. The People's Movement to Support Residents of Wadi al-Qamar was established as an umbrella for several groupings and advocates, including:

- *The People's Movement to Support Residents of Wadi al-Qamar - Front of Defending Rights and Freedoms*: This body included several civil society organizations (CSOs): the Egyptian Center for Economic and Social Rights (ECESR), the Egyptian Initiative for Personal Rights (EIPR), the Egyptian Commission for Rights and Freedoms (ECRF), and several human rights lawyers.
- *The Permanent Conference for Workers of Alexandria*: This is an umbrella trade union representing a large number of independent trade unions and many working advocates.
- *The Independent Association of TITAN Cement Workers*: The Association is tasked with defending Wadi al-Qamar and confronting TITAN Cement Egypt Company.

Several public conferences were held, and various statements were issued and released on a wide scale. In addition, signatures were collected and submitted to state agencies, and legal bodies were formed to deal with lawsuits related to workers of TITAN Cement Egypt Company. A lawsuit claiming the invalidity of the company's contract was filed. In 2014, I was invited to speak at a symposium as part of the IMF/World Bank Spring Meetings in Washington DC. The symposium was supported by the Bank Information Center (BIC), a US civil society organization (CSO). Several other CSOs, World Bank officials, and officials of the Office of the Compliance Advisor Ombudsman (CAO) attended the meetings.

During the symposium, I highlighted the negative impacts and repercussions of TITAN's cement factory, including the environmental damage and abdication of the residents' right to a healthy life

according to human and labor rights. It was during this visit that we became aware that we could file a complaint to the Office of the CAO. The complaint was formulated and submitted later in 2014.

Subject Matter of the Complaint

In 2010, the International Finance Corporation (IFC) had approved a €80 million capital investment in a subsidiary of TITAN Group. The investment was allocated to promote the expansion of the Egyptian commercial processes of TITAN and included Alexandria Development Ltd. IFC's investment was aimed at improving the environmental performance of TITAN's cement factory by raising the efficiency of the pollution rate and increasing energy efficiency.

The complaint made the case that IFC's decision to fund this project was entirely misguided. IFC's publications state that the Corporation's framework revolves around sustainability and affirm a strategic commitment to sustainable development as part and parcel of IFC's approach to risk management. Such an approach highlights preventative policies and performance indicators related to the environment and social impacts. However, IFC complied with neither with environmental nor workers' rights standards. The violations included the following:

- **The factory operated illegally and with no license to operate.**

The factory did not receive the license to operate required according to Egyptian Law, as stated in the State Commissioners Authority's report in Lawsuit No. 11632 of 1964 by the Alexandria Administrative Judiciary Court. The Blue Circle Company acquired a *temporary* six-month license to operate the fifth furnace on February 5, 2001 until it met certain legal requirements; the Company has never fulfilled these requirements. On February 28, 2004, the license was nonetheless renewed for 5 years to end on January 31, 2010. After Blue Circle was merged with Alexandria Portland Cement Company, they submitted a request to the El-Agamy District Office to renew the license and issue a new license under the name of the Alexandria Portland Cement Company. This license was issued on May 28, 2009, requiring that the factory commence operations only after acquiring the final license from the Industrial Development Authority (IDA). However, the factory continued to operate at full capacity, and the El-Agamy District Office renewed the temporary license in July 2011 for another 5 years.

In its report, the Egyptian State Lawsuits Authority mentioned that renewing a temporary license removes the quality of being temporary altogether and is an illicit attempt to make a temporary license permanent. Thus, the report recommended issuing a court order to shut the *company* down, as it was being operated without a license. The Company's behavior violates several Egyptian laws - such as Law No. 453 of 1954 and the Environment Law No. 4 of 1994 - which address dangerous and hazardous places and those harming health and the environment. The Company's failure to acquire the license is related to a precondition that it receive approval by the Ministry of Environment. Egyptian law stipulates conducting a comprehensive study of the environmental impact by the relevant bodies. This requirement was not fulfilled. The failure to comply with the

environmental assessment requirement is also a violation of IFC standards, notably ESS1 Assessment and Management of Environmental and Social Risks and Impacts.

- **The company seized public lands by force in violation of the law.**

The company seized 60 meters of the public road in front of the factory by force and built an iron fence in front of the company's main gate on the public road. In response to the residents' complaint, an order was issued by the State Commissioners Authority to remove the fence; however, it has not been removed to date.

- **The local community and impacted groups objected to the company.**

The company did not involve stakeholders and those harmed by the project's environmental and social impacts, contradicting the IFC's Performance Standard 1, which stipulates the necessity of involving stakeholders impacted by the project. Residents of Wadi al-Qamar continue to object to the existence of the factory and its fifth furnace in their area, because it jeopardizes their health and safety and encroaches on their livelihoods by polluting seawater and destroying fish wealth.

- **Elected parliamentary bodies objected to the company's behavior.**

The first objection in Parliament was in 2007. The Chairman of the then-People's Assembly forwarded the matter to the Environmental Protection Committee of the Local Popular Council (LPC). A committee was formed, including health and environment experts and executive members, to study the issue. The committee issued its report in July 2008, describing the company's violations as "severe"; it also stated that the emissions resulting from the company caused grave harm to the population and neighboring companies and machinery. In addition, the report noted a significant hazard to citizens' health. Despite these findings, the company did not implement any of the committee's recommendations or those of LPC. What is more, the company did not periodically change the filters or end the use of diesel fuel and mazut. It even started using coal. Nor did it relocate away from inhabited areas as the committee recommended in its report.

- **Owners of neighboring factories objected to and were impacted by the company.**

Objection to the pollution caused by the factory expanded to include other industrial facilities in the area established before TITAN's cement factory, notably the El-Mex Salines Company site. El-Mex Salines Company is the Middle East's oldest and largest salt-producing company established in 1805 to extract salt from the sea using evaporation pans covering almost 38 million square meters, which could be exposed to emissions from the factory's main outdoor chimney, depositing cement dust on the salt. El-Mex Salines Company filed a lawsuit against TITAN Cement Egypt Company, so the court assigned an expert to discover the direct impact on the salt pans and warehouses. The expert's report proved that the salt in the pans and warehouses exposed to the chimney's gas is coated with an obvious grey cement layer.

- **The factory causes environmental pollution.**

Article 34 of Egypt's Environment Law stipulates that a project's site should be suitable to ensure that the limits of air pollutants in an area are not exceeded. The World Bank's Performance

Standard 3 for sustainability seeks to prevent or reduce negative impacts on humans' health and environmental safety, and Performance Standard 1 stipulates that businesses should respect human rights. The factory violates all of these standards. Moreover, public health continues to deteriorate, with residents—both children and adults—still suffering from respiratory and other illnesses.

Dust Emissions and Particulates: The report by the Ministry of Justice, filed in the context of Lawsuit No. 238 of 2010 (Urgent) Alexandria Court, indicated that the factory produces nearly 4,750 tons of cement per hour, with an average gas flow rate from the chimney of about 890,617 cubic meters. Since the average gas emissions were around 120 milligrams per cubic meter after filtration, experts estimated that the average amount of dust coming out of the chimney was equal to about 40 kilograms per hour, 1700 kilograms per day, or 570 tons per year. Residents of the area breathe dust, and it accumulates in their food, houses, and bedrooms.

The IFC's Performance Standard 1 says that in case of a variation between local standards and those accredited by financial institutions, the stricter of both standards should be applied. In this instance there was a failure to apply even the less-strict standards.

The Use of Coal: According to Article 42 Clause 2, Egyptian law prohibits the use of coal in urban areas and near residential areas. Furthermore, Performance Standard 3 is aimed at limiting greenhouse gas emissions; in its strategy for achieving sustainable development and combating climate change, the World Bank had previously announced new restrictions on projects using coal as an energy source in order to limit greenhouse gas emissions.

Nonetheless, TITAN Cement Egypt Company began using coal as a fuel to operate the factory in 2015, increasing particulate emissions, adding carbon pollution to nitrogen and sulfur, and generating emissions of heavy metals such as mercury, lead, dioxin, and furan.

Interestingly, some workers mentioned that the management threatened to fire them if they disclosed the use of coal. This statement was recorded and documented during an interview with one of the workers while filming a movie on the use of coal directed by Shereen Talaat and titled *Van Gogh: An Incomplete Portrait*.

Sound Pollution and Noise: Only a few meters separate the factory and the residential area. Thus, sounds resulting from operating machinery, vehicles, and mills cause severe noise pollution and discomfort to the residents due to the factory being too close.

Impact on the Safety and Security of Residents: Residents affirm that the oscillations resulting from operating machinery, equipment, and mills were so severe that they caused cracks in some neighboring buildings and led to some of their external parts falling repeatedly. These incidents are major threats to safety, security, and real estate.

- **The management of the company called for displacing local residents (Performance Standard 5).**

Performance Standard 5 is related to land acquisition and involuntary resettlement. In an interview published in *Al-Ahram Weekly* on November 5, 2011, the Deputy CEO of TITAN Cement Egypt

Company—who is also the Head of the Cement Division of the Construction Materials Chamber at the Federation of Egyptian Industries (FEI)— called for forcibly displacing the residents and attacked calls for environmental protection and sustainability as “destructive”. He also mentioned that the cement industry faced violent attacks, such as the one calling for relocating the factory to the desert side under - he said - the pretext of polluting the environment. These calls, he claimed, threaten and hinder the industry.

Progress and Outcome of the Investigations

The Coordinating Committee lodged its complaint with the IFC’s Office of the Compliance Advisor Ombudsman (CAO) in April 2015. The CAO issued its report on July 22, 2021, six years and three months after the complaint had been filed.

According to the report, the CAO’s investigation team—including officials from the Office and two external committee members (one an expert in labor and the other in air quality)— reviewed the files of IFC's projects and conducted interviews with the financing officials with direct knowledge of the matter. In January 2017, the team made a field visit to Cairo and Alexandria to meet with representatives of the complaining parties, residents of Wadi al-Qamar, current and ex-workers of Alexandria Portland Cement Company (TITAN), management officials at the company, and other stakeholders and relevant parties.

The report noted that after the field visit, representatives of the company—with the assistance of some policemen— threatened the stakeholders and representatives of CSOs who attended the interview.

To quote the executive summary of the report:

In this report, CAO identifies instances of IFC's non-compliance with the E&S policies and procedures during the period of IFC's review and supervision of the project. CAO also makes findings in relation to adverse environmental and/or social outcomes, including the extent to which these are verifiable.

At the pre-investment review stage, CAO finds that IFC did not meet the required standard of review. Specifically, the CAO finds that IFC's review was not appropriate given the nature and scale of the project or commensurate with the level of E&S risks and impacts, as required by the Sustainability Policy.

IFC's pre-investment review noted that the plant's airborne emissions were higher than WBG standards and that the plant was located in close proximity to communities in a mixed use industrial-residential area. However, IFC’s E&S review did not adequately assess or address the impacts of air pollution or noise from the plant on local residents and did not analyze potential cumulative impacts in the project area, particularly in relation to air quality, noise and human health.

Key E&S assessment documents were not disclosed to the affected community, and IFC did not adequately assess the client's community disclosure and engagement practices in accordance with relevant requirements.

Further, CAO finds that IFC erred in its decision that the project did not trigger the requirement for "broad community support". Given the proximity to residential areas and the impacts of pollution on community health, these impacts should have been considered "significant" and IFC should have ensured that the company carried out a process of free, prior and informed consultation before making the investment.

IFC's appraisal did not adequately assess risks and impacts to the client's workers. IFC did not identify legacy issues relating to post-privatization early retirement programs carried out at APCC under the joint venture in 2002 and 2003 as required by the Sustainability Policy. Although PS2 requires that core labor protections relating to working conditions, freedom of association and health and safety be extended to indirectly employed workers, IFC did not assess the client's approach to the engagement of contract workers against requirements of PS2 or national law. This was a significant oversight in context where the client employed over 700 contract workers.

A Questionable Transaction

While the report found in favor of the complaining parties, it was a merely theoretical document. Again, it was issued six years and three months after the complaint had been filed. And before it was issued, IFC had sold its stocks in the project back to the parent company

Apparently, IFC was aware—before the report was issued—of the mistakes, violations, and harms the project and its extensions caused. In 2019, the IFC sold its stocks in the project to TITAN Cement Egypt Company, before the publication of the report. The sale agreement included the financial liabilities, policies, and reports until the price is fully paid. However, it did not tackle broader environmental and social standards and IFC's own standards. As a result of this sale, TITAN Cement Egypt Company's commitment to IFC was terminated, and with it the company's obligation to comply with the IFC's Performance Standards.

IFC had the right to sell its stocks, and the parent company had the right to purchase them. But the transaction raises several questions. For example, does the sale necessarily mean surrendering the rights of all workers, residents, neighboring companies and factories, and the local and global environment?

IFC helped enlarge and expand a project whose harm and violations to its own standards were proven - is it acceptable for IFC to exit when a legitimate, valid complaint is pending? Does IFC's exit and sale of stocks exempt it from the liability of harming others? Further, IFC sold the stocks to the party that has a record of ignoring both complaints and standards and calling in police and other forces to respond to peaceful protesters.

Given the way the sale was made, it appears likely that IFC will keep ignoring environmental and social standards. It appears have been a deliberate strategy for IFC to avoid all commitments and liabilities by exiting the project, before it was implicated by the findings in the report.

While the sale agreement included the financial liabilities, policies, and reports until the price was fully paid, it did not include commitments relating to meeting IFC or national environmental and social standards. As a result of this sale, TITAN Cement's commitment to IFC was terminated, with little point left in discussing compliance with IFC's Performance Standards.

Hope Persists

The delay in the CAO release of its investigation's findings undermined the ability to provide any effective redress to the complainants, despite the broad validation of their concerns. For the system to provide hope in this case and cases like it, we call for institutions and IAMs to:

- Review the standards that were ignored or bent in this project —as clarified by the report— to avoid such damage in the future.
- Determine realistic, suitable, and binding dates for the investigation of complaints, and the presentation of the final reports
- Allow investigative bodies to issue urgent reports on violations before the completion of the final report and to call for interim measures, to prevent the recurrence of similar cases where companies or institutions evade responsibility..
- Adopt clear standards for international financial institutions to responsibly exit projects and ensure that they comply with these standards. If necessary, they should be applied retrospectively to remedy the damage to which they may have contributed.