

CAO Update

Issue 15 / April 2019



Did you know? The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO addresses grievances from people impacted by IFC and MIGA projects with the goal of improving environmental and social outcomes on the ground. For more information, see www.cao-ombudsman.org.

Sharing Knowledge from CAO's Dispute Resolution Practice

This quarter, CAO was invited to share its dispute resolution experience and expertise with several key stakeholders. In January 2019, Rio Tinto, one of the world's largest metals and mining companies, invited CAO to lead a session at the company's headquarters in London during their 'Leading Practice Session on Communities and Social Performance' for senior managers. CAO shared lessons from its **mediation process** in Mongolia related to the Oyu Tolgoi copper and gold mine, which is managed by Rio Tinto and financed by IFC and MIGA. The mediation addressed grievances from nomadic herders concerning the mine's use of land and water resources and its impacts on their traditional livelihoods, and resulted in landmark agreements between the communities, company, and Mongolian government. Representatives of the parties and NGO Accountability Counsel, which supported the herders, participated in the session via a video recording and teleconferencing. While in London, CAO was also invited by the Project Complaint Mechanism of the European Bank for Reconstruction and Development (EBRD) to share learning from its work in Mongolia with management and staff at the EBRD, as EBRD is also an investor in the Oyu Tolgoi project.

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Herder, mining company, and local government representatives meet as part of the monitoring of agreements related to the Oyu Tolgoi dispute resolution process in Mongolia (CAO).

CAO Spring Meetings Event: Maximizing the Benefits of Independent Dispute Resolution

During the **World Bank Group/IMF Spring Meetings** in April, CAO is co-hosting a panel discussion with **Accountability Counsel** on "**Maximizing the Benefits of Independent Dispute Resolution to Address Community Grievances**". The session, which takes place on April 10th, will bring together perspectives from civil society, independent accountability mechanisms, private sector, and IFC to consider actual cases and discuss dispute resolution principles and methodologies that can facilitate solutions. CAO is also participating in the orientation session for civil society organizations on April 9th that kicks off the **Civil Society Policy Forum**.



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Sharing Knowledge from CAO's Dispute Resolution Practice *(continued)*

In February 2019, CAO participated in the 25th annual African Mining Indaba in South Africa and shared lessons learned from CAO's casework in the region during a multi-stakeholder session facilitated by IFC. The session focused on how the private sector and communities can identify areas for enhanced development impact within investment projects in complex environments. CAO also participated in a 'Roundtable on Environment, Health, and Safety in Agribusiness' hosted by IFC for its clients in Ukraine in February 2019. CAO presented tools, principles, and experience from its dispute resolution work, and facilitated a discussion with IFC staff and clients about strategies for preventing and managing potential conflicts with local communities.

COMPLIANCE CASE UPDATE

CAO Releases Compliance Investigation of IFC's Investment in Bidco Food Company in Kenya

CAO published a compliance **investigation report** in March 2019, which responds to complaints from Bidco Africa workers in Thika, Kenya. Bidco is a consumer goods company which received a US\$36.5 million loan from IFC in 2016 to expand its production capacity. CAO received the complaints in **2016** and **2017**, respectively, citing concerns related to labor and working conditions.

The investigation report documents shortcomings with IFC's pre-investment due diligence and supervision of the project. In particular, CAO found that IFC lacked assurance that payments to former casual workers upon termination were consistent with Kenyan legal requirements as provided by the Employment Act. While noting

Occupational Health and Safety (OHS) practices above the standard likely to be encountered in many other factories in Kenya, CAO found that IFC lacked assurance that the client's OHS performance met IFC's requirement for good international industry practice. CAO also found that further supervision was required to verify compliance with IFC's non-retaliation and anti-discrimination requirements. In its **response** to the investigation report, IFC acknowledged CAO's findings and committed to undertake project-specific and systemic actions to address them. CAO will now monitor the implementation of these corrective actions. More information on these cases is available on CAO's website, www.cao-ombudsman.org.

COMPLIANCE CASE UPDATE

CAO Publishes Monitoring Report Related to IFC/MIGA Bujagali Energy Project in Uganda

In March 2019, CAO published a **compliance monitoring report** in relation to four complaints concerning the Bujagali Energy Project, the World Bank Group's first private hydropower project in Africa. The project involves development of a run-of-the-river power plant with a capacity of up to 250 Megawatts (MW) on the Nile River in Uganda. The complaints to CAO, received between 2011 and 2017, raise issues of compensation by the plant's sub-contractor for injuries suffered in the course of construction (**Bujagali 04**), unpaid wages (**Bujagali 06**), compensation for lost assets (**Bujagali 07**), and workplace injury (**Bujagali 08**).

CAO's monitoring report considers actions taken by IFC in response to CAO's **2017** and **2018** compliance investigations concerning the Bujagali complaints. While acknowledging initial steps taken by IFC to respond to CAO's compliance findings, the report notes significant delays in implementation.



The Bujagali hydropower plant in Uganda (CAO).

Regarding the issues raised in the Bujagali-04 and 08 complaints (injured workers), ongoing CAO monitoring will review the outcomes of IFC's scoping process, once available, to ensure that IFC's response addresses the adequacy of the compensation provided to workers seriously injured and the families of those killed during the construction of the project. In relation to the Bujagali-06 complaint (subcontractor working conditions and unpaid wages), CAO awaits an IFC commissioned assessment

of whether the complainants' claims for lost wages can be validated. Finally, regarding the Bujagali-07 complaint (land acquisition), CAO awaits completion of an IFC-commissioned gap analysis and resettlement completion report, which should address both livelihood restoration and compensation for impacted assets, including crops. More information on these cases is available on CAO's website, www.cao-ombudsman.org.

Compliance Monitoring Report of IFC's Investment in Assam Tea Estates, India

CAO released a **compliance monitoring report** in January 2019 regarding IFC's investment in Amalgamated Plantations Private Limited (APPL) in India. The report assesses actions taken by IFC in response to CAO's 2016 **compliance findings**.

In 2009, IFC made an equity investment in APPL for the purposes of implementing a worker-shareholder model. In 2012, CAO triggered a **compliance review** of the investment following reports of labor incidents on two APPL plantations and, in 2013, received a **complaint** from workers. CAO's subsequent investigation report identified non-compliances related to IFC's assessment and management of environmental and social (E&S) risk associated with the investment. Given the vulnerable status of workers and APPL's responsibility to provide a range of basic services to workers, CAO's investigation also made a number of specific non-compliance findings in relation to IFC's assessment and supervision of living and working conditions on the plantations, reported use of banned pesticides, information disclosure, consultation and response to security incidents.

In response to the investigation report, IFC noted that APPL was implementing an Action Plan to address shortcomings and legacy issues in key areas as human health, worker health and safety, housing, and sanitation infrastructure. Since the release of CAO's investigation report, APPL has reported progress in implementing some of the Action Plan commitments. However, the complainants assert that workers were not consulted on the Action Plan and raise concerns with the progress and quality of its implementation.



Workers on an APPL tea plantation in northeast India (CAO).

CAO's monitoring report concluded that IFC has completed limited E&S supervision of the investment and has not satisfactorily addressed CAO's non-compliance findings. IFC has now agreed to organize and fund a neutral, independent facilitator to facilitate a stakeholder consultation to help build trust and find common ground on various aspects going forward. IFC also proposes to facilitate an approach to engage stakeholders on a sector-wide study.

CAO's **monitoring report** and **IFC's response** to the monitoring report are available on CAO's website.

DISPUTE RESOLUTION CASE UPDATE

CAO Facilitates Resolution of a Labor Dispute in Egypt through Online Mediation

In January 2019, CAO concluded a dispute resolution process in Egypt after monitoring implementation of an agreement reached between an IFC client, the Egyptian Indian Polyester Company, and a former worker. The worker had filed a **complaint** to CAO in 2017 raising concerns about unpaid wages and the company's failure to fulfill the terms of his consultancy contract, particularly with regard to due notice and termination.

Since the complainant and the company representatives were in two separate locations, India and Egypt, CAO designed an online dispute resolution approach. This involved CAO

mediating with the parties by teleconference and other digital platforms, including Skype, Zoom, and Webex. Using online dispute resolution for the first time allowed CAO to explore an innovative approach to long distance mediation. The parties reached an agreement in May 2018, which has been kept confidential at the parties' request. CAO received confirmation in December 2018 that the agreement had been fully implemented to each party's satisfaction, and thus concluded its monitoring of the case. CAO's conclusion report and more information about the case are available on CAO's website, www.cao-ombudsman.org.

Fertilizer Company and Affected Community in Myanmar Agree on Ground Rules for Dispute Resolution

CAO is working in Myanmar to facilitate **dialogue** between a fertilizer company, Myanma Awba Group Company Ltd., a client of IFC, and representatives of a local community regarding impacts of the company’s new agro-chemical plant. In February, the parties met to negotiate and finalize a Ground Rules Agreement for the dispute resolution process. The process responds to a **complaint** received by CAO in October 2017 from residents living near Awba’s new plant raising concerns about its impact on local water sources, including creeks and artisanal wells, and health impacts on local community members. The complaint also raised

concerns about lack of information and consultation prior to, and during, the construction of the plant, and that the company was not complying with IFC’s performance standards.

During the February meeting, the parties, which include representatives from the company’s plant, and the local community (which is supported by six NGOs), began discussions about water pollution concerns and how to prioritize their dialogue moving forward. More information about the case is available on CAO’s website, www.cao-ombudsman.org.

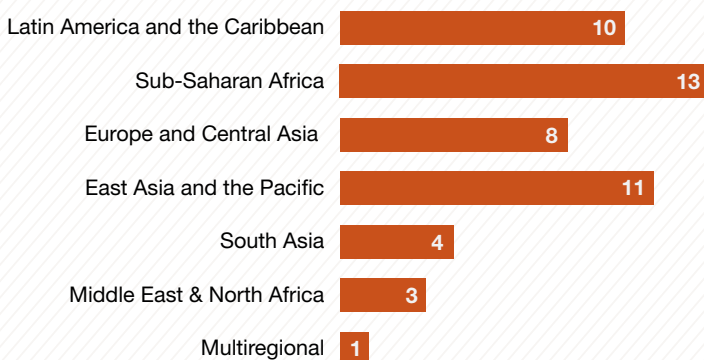


CAO meets with community members near Hmawbi to build capacity ahead of the dispute resolution process in Myanmar (CAO).

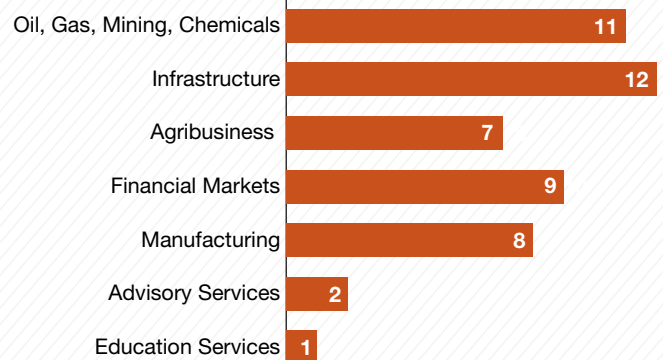
CAO CASE TRACKER FY19

Status as of March 31, 2019. For more information about CAO cases, see www.cao-ombudsman.org/cases

During this quarter (January 1, 2019 – March 31, 2019), CAO accepted 2 new complaints in the Sub-Saharan Africa and East Asia Regions, and closed 2 cases. CAO handled 13 assessments this quarter, of which 1 case moved to dispute resolution, and 2 cases were referred to compliance. At the end of the quarter (March 31, 2019), 10 assessments were ongoing, 15 cases were in dispute resolution, and 25 cases were in compliance.



CASES BY REGION



CASES BY SECTOR

FOR MORE INFORMATION

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