



CAO ASSESSMENT REPORT

**Complaint Regarding
IFC's Bidco Bev. & Det. Project (#33385), Kenya**

November 2016

Office of the Compliance Advisor Ombudsman
for the
International Finance Corporation and
Multilateral Investment Guarantee Agency,
Members of the World Bank Group
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), members 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 projects in a manner that is fair, objective, and constructive and to enhance the environmental and social outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
FMCG	Fast moving consumer goods
HR	Human Resources
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OHS	Occupational Health and Safety
OHSAS	Occupational Health and Safety Assessment Series
PPE	Personal Protective Equipment

1. OVERVIEW

In June 2016, CAO received a complaint related to Bidco Africa Limited (Bidco), a client of IFC. The complaint was filed on behalf of a group of current and former workers (“Complainants”) of Bidco’s plant in Thika, Kenya. The complaint raises concerns related to labor and working conditions, including terms of employment, occupational health and safety, and freedom of association. CAO found the complaint eligible in June 2016 and conducted an assessment of the issues raised in the complaint. Subsequent to its field visit, CAO was unable to receive a clear indication from the Complainants about how they wish to move forward. As such CAO was unable to conclude the assessment process and determined that the only way forward was to refer the complaint to Compliance as per its Operational Guidelines.

2. BACKGROUND

2.1 The Project

IFC has an active project with Bidco, a Kenyan private limited liability company, which generates revenues from the sale of edible oils, cooking fats, soaps, detergents, animal feeds, and baking powder. According to IFC, the project consists of the expansion of Bidco’s production capacity in fast moving consumer goods (FMCG) in Kenya and, more specifically, the construction and operation of an extension of Bidco’s detergent facility in Thika and a new beverage facility in Tatu City.¹

2.2 The Complaint

In June 2016, CAO received a complaint regarding Bidco’s operations in Thika. The complaint was filed on behalf of a group of current and former workers of the Thika plant. The Complainants have requested that their names remain confidential. The letter of complaint raised concerns about worker safety, working conditions, terms of labor, status of casual workers, process for grievance redress, and freedom of association. A more detailed description of the issues raised during the assessment are found in Section 3.1 below.

3. ASSESSMENT SUMMARY

The purpose of CAO’s assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how Bidco and other stakeholders see the situation, and to determine whether the Complainants and Bidco would like to pursue a dispute resolution process facilitated by CAO or if the complaint should be referred to CAO Compliance for appraisal of IFC’s performance (see Annex A for CAO’s complaint handling process). CAO does not gather information during its assessment to make a judgment on the merits of the complaint.

¹<http://ifcextapps.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/1f290b0f7e3ef14f85257ccd004eb8ce?opendocument>

CAO's assessment of the complaint consisted of:

- a desk review of project documentation;
- meetings with the Complainants;
- meetings with Bidco representatives and a visit of the Thika plant; and
- meetings with the IFC project team.

3.1. Summary of Issues

This section gives a broad overview of the issues and the perspectives of the parties as expressed by the Complainants and Bidco respectively. It does not comprise a judgment by CAO about the merits of the complaint.

Complainants' perspective

Based on discussions held during CAO's field visit and assessment phase, listed below are the concerns as raised by the Complainants:

ISSUE	SUB ISSUE
Worker Safety	<ul style="list-style-type: none"> • Personal Protective Equipment (PPE): low quality of PPE; workers bearing the cost of replacing degraded equipment; and inconsistency in provision and usage of PPE across the plant. • Working conditions that may increase risk of accidents; and incidents of workers being asked to take on dangerous tasks. • Response to workplace accidents: questions about the quality of first aid attention at the plant site, which is not administered by medical professionals; referrals to hospital being under the sole discretion of the supervisors; and instances where workers have been unsatisfied with the coverage or length of care at the hospital. • Lack of compensation for injuries.
Terms of labor	<ul style="list-style-type: none"> • Long working hours, with a recognition by workers that shifts have been reduced to eight hours since September 2015. • Workers are expected to work overtime on days off; and cases of overtime not being registered or paid. • Cases of sick leave or annual leave not being recognized or paid appropriately. • Current wages not in line with cost of living. • Contracts lengths are too short, and there is inconsistency in the length of the contract from worker to worker, and contract terms seem to be determined arbitrarily. • Social Security contributions not being properly registered. • Timing and length of maternity leave.
Casual workers	<ul style="list-style-type: none"> • Lack of job security; benefits and services for those who had worked as casual laborers, in some cases over the span of many years; recognition by workers that, since September 2015, Bidco no longer employs casual workers, and workers are employed on a contract basis. • Cases of work terminated for casual workers without notice despite having worked for the company for years. • Difficulties applying for a contract after September 2015.
Process for grievance redress	<ul style="list-style-type: none"> • Lack of understanding of the process for presenting a grievance. • Fear of retaliation from managers if a complaint is presented.

	<ul style="list-style-type: none"> • Lack of response from HR or other people tasked with taking up complaints. • Lack of follow up where complaints have been presented.
Freedom of association	<ul style="list-style-type: none"> • Fear of reprisals for joining the union, and incidents where reprisals were felt. • Decrease in union membership linked to fears of reprisals. • Lack of understanding of rights, benefits and process within the union. • Union leadership is perceived as being too close to management. • Worker lockouts after participating in worker protests and demanding benefits.
Other	<ul style="list-style-type: none"> • Reprisals from management for voicing concerns or complaints over labor conditions or issues, including cases of loss of employment.

Subsequent to its field visit in August 2016, CAO made several attempts to ascertain how the Complainants wanted to move forward in addressing their complaint. CAO was unable to receive a clear indication from the Complainants and therefore was unable to complete the assessment.

Bidco's perspective

Bidco considers that it has put in place comprehensive systems to manage labor issues, including but not limited to, occupational health and safety (OHS). In many cases, the company claims it goes beyond what is required by Kenyan labor laws. Bidco highlighted their use of the Kaizen management system which emphasizes continual improvement of their processes and shared responsibility and ownership throughout the company, and their processes for collecting and tracking data, identifying gaps, and putting in corrective measures in close coordination with the workforce. According to Bidco, these measures are guided by best human resources and business practices. The table below summarizes Bidco's perspective on each issue.

Worker safety	<ul style="list-style-type: none"> • The Thika plant is OHSAS² 18000 certified and has comprehensive OHS management system procedures in place with stringent and continuous monitoring. • Bidco conducts 14 different annual health and safety audits to safeguard the health of its employees. See Annex B for the list of health and safety audits as provided by Bidco. • Workers are provided with the necessary PPE for use at work. • All workplace accidents are recorded and attended to, first aid is provided and supervisors refer cases that need medical attention to nearby hospitals. • All injuries are reported to management and the Kenyan Department of Labor, and the reports are followed up by management so corrective measures are put in place. • Supervisors and other employees that display aptitude for first aid receive first aid training. • Cost of medical attention for workplace accidents is covered by the company, and compensation is paid by degree of
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² Occupational Health and Safety Assessment Series (OHSAS) 18000 is an international occupational health and safety management system specification.

	<p>disability.</p> <ul style="list-style-type: none"> • Despite an increase in the number of employees and additional production activities (detergent plant) there have been no fatal accidents and a decline in incidents and accidents reported in 2016 compared with 2015. • Bidco has maintained Non-Fatal accident site status since 2009.
Terms of labor	<ul style="list-style-type: none"> • From September 2015 Bidco reduced the length of work shifts from 10 or 14 hours to eight hours. • Overtime has always been recognized and paid. • Annual leave is equally recognized and any leave that is not used by the end of the contract is paid to the employee. • Wages paid are all substantially above the minimum wage and often above the market wage for each field. • Bidco has in place a biometric clocking system that allows them to determine the number of hours and days a given employee has worked, and overtime and leave are automatically recorded in the system.
Casual workers	<ul style="list-style-type: none"> • Kenyan law allows for the use of casual labor and the company employed casual laborers in compliance with the law and strictly as needed. • In September 2015 the company made a change to employ workers on a contractual basis. All workers are currently on contract and all benefits (sick, medical, pension, annual leave, maternity leave, paternity leave) are extended to them through the duration of their employment, which Bidco highlighted constituted a considerable cost to them.
Process for grievance redress	<ul style="list-style-type: none"> • There is an established grievance resolution mechanism within the plant which allows workers to raise issues of concern, first with the relevant supervisor, then with a Human Resource (HR) representative, and if needed escalation to a team lead to be heard in committee. • The HR team leader and management maintain an open door policy for all issues experienced by the work force. • The HR department reviews cases from workers about issues such as pay, PPE, or leave, and these are often resolved at the HR representative level, with a decline in the number of cases that reach the management level, which according to Bidco indicates that the process is working well. • If an employee is a union member, he or she is able to take the issue of concern to the shop steward who would then assist in the discussion with HR. • The procedure is well communicated and is posted on notice boards, discussed in department meetings, and illustrated in the collective bargaining agreement.
Freedom of association	<ul style="list-style-type: none"> • All employees are free to join a union and management does not interfere with this right. • The Chemical and Allied Workers Union of Kenya is active at the Thika plant and has a stable number of members. • A collective bargaining agreement was negotiated with the union and became effective in July 2014.
Additional benefits	<ul style="list-style-type: none"> • By converting all employment contracts to term contracts, Bidco pays Social Security Contribution for every employee.

	<ul style="list-style-type: none"> • Bidco contributes 5% of the basic salary of the employee in pension funds for them (upon successful completion of probation and confirmation of the employee). • Meals are provided for all employees. • Transportation to and from the worksite is provided to all employees. • A resource center is available on the premises for employees and partners with learning and training material on various topics like engineering, manufacturing, organizational development, Kaizen, and Lean Management. • Various sports activities are available for the benefit of the employees such as a football club and teams for pedal cart, volleyball, and hockey.
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Bidco believes they have been responsive to worker wellbeing and concerns, but expressed interest in learning where and how they can make improvements. With regard to the complaint presented to CAO, Bidco has some misgivings about what they suspect is the main motivation and intent of the complaint, however they expressed willingness to explore options for dialogue.

4. NEXT STEPS

As described previously, given that CAO was unable to complete the assessment process, the complaint will be referred to Compliance for appraisal.

ANNEX A. CAO COMPLAINTS HANDLING PROCESS

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), members 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 environmental and social outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. 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.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,³ 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 the CAO (no more than 15 working days)
- Step 3: **CAO assessment:** "Assessment of the issues and provide 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 or initiated by a Memorandum of Understanding and/or a 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 goal. 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 affected⁴.

OR

³ 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

⁴ 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.

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**

ANNEX B. Health and safety audits conducted by Bidco per their report

S.NO	AUDIT TYPE	CATEGORY	BODY	FREQUENCY	REGULATOR
1	Occupational Safety and Health audit	External	Approved safety and health advisers	Annually	DOSHS
2	Fire Safety Audit	External	Approved fire safety advisers	Annually	DOSHS
3	Air Quality Measurements	External	Approved air quality monitors by DOSHS	Annually	DOSHS
4	Boilers/Lifting equipment	External	Plant examiners	Annually	DOSHS
5	EA audits	External	Approved lead experts/associate experts/firm of experts	Annually	NEMA
6	Refrigeration plant	External	Plant examiners as per the OSH ACT, 2007	Annually	DOSHS
7	Passenger Lifts	External	Approved lift examiners	Biannually	DOSHS
8	ISO 22000:2005 surveillance audits	External	BVQI	Annually	Mandatory
9	ISO 9001:2008 QMS	External	BVQI	Biannually	Mandatory
10	ISO 14001:2004	External	KEBS	Annually	Mandatory
11	BS OHSAS 18001:2007	External	KEBS	Annually	Mandatory
12	Fire Clearance Certificate	External	Kiambu County Government Thika Sub-County	Annually	Fire Brigade
13	Food Hygiene	External	Kiambu County Government Thika Sub-County	Annually	Public Health Office
14	Noise Measurements	External	Approved auditors by NEMA/DOSHS	Annually	NEMA/DOSHS