

## **Dispute Resolution Conclusion Report Regarding a Complaint Related to IFC’s Investment in CODEVI (#34687) in Haiti**

**October 2023**

### **OVERVIEW**

This Conclusion Report documents CAO’s assessment and dispute resolution processes in relation to a complaint regarding an IFC project in Haiti, and offers some reflections and lessons learned.

In March 2020, 174 families of farmers in Ouanaminthe, Haiti (“the Complainants”) filed a complaint to CAO, with the support of their legal advisor. The complaint outlines the Complainants’ concerns about their economic displacement caused by the construction of the Compagnie Développement Industriel (CODEVI) Free Zone industrial park in Ouanaminthe, Haiti in 2002. CODEVI (the “Company”) is wholly owned by the Dominican group, Grupo M, which is a former IFC client. In April 2020, CAO determined that the complaint met its three eligibility criteria.

During CAO’s assessment of the complaint, both the Complainants and the Company (the “Parties”) expressed interest in engaging in a dispute resolution process convened by CAO and requested the IFC and the Haitian Government to have an observer role in the mediation. Both IFC and the Haitian Government agreed and participated as observers.

Despite efforts made by the Parties, the dispute resolution process ended in May 2023 due to their continued disagreement on the ground rules and scope of the dialogue. At the Complainants’ request, the complaint is being transferred to CAO’s Compliance function for appraisal, in accordance with CAO’s Policy.<sup>1</sup>

### **BACKGROUND**

#### **The Project**

According to [IFC Disclosures](#), at the time the complaint was filed with CAO, IFC had an active project in Haiti with Grupo M and its wholly-owned subsidiary, CODEVI (IFC project number 34687). IFC supported Grupo M in 2004 with a \$20 million A-loan for the development of the CODEVI Free Zone industrial park and to establish its first apparel manufacturing plant in the park. In 2010, IFC committed a further \$6 million A and B loan financing package to further support the expansion of Grupo M’s manufacturing operations in Haiti. The project also comprised a US\$10 million A-loan committed in 2014 to support CODEVI’s expansion

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<sup>1</sup> The CAO Policy is available at <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>.

program, consisting of the construction of a new facility for the assembly of woven garments and the acquisition of specialized machinery for dry garment assembly and processing operations. The project was implemented through the development of two new buildings built on a plot inside of the Free Zone industrial park. The 2004 loan was fully repaid on September 29, 2006, the 2010 loan was repaid on August 8, 2017, and the 2014 loan was fully repaid on July 6, 2021.

According to IFC, the land area occupied by CODEVI is approximately 45 hectares and was obtained by CODEVI through a 25-year lease agreement with the Haitian government (represented by the Ministry of Economics and Finance). IFC indicated that prior to signing this lease with CODEVI in 2003, the Haitian State expropriated the 45 hectares from local Haitian landowners and occupants.

Prior to signing the 2004 loan agreement with CODEVI, IFC requested their client to develop a Social Compensation Plan (SCP) consistent with the World Bank's Involuntary Resettlement Policy, OD 4.30, which was the applicable standard at the time. IFC expressed the main objective of the SCP was to compensate the affected farmers and that the measures were focused on the restoration of the affected economic activity and improving their quality of life. IFC indicated that they supported the preparation of this SCP, including providing input on the Terms of Reference for qualified consultants, and that over the following six years, they supported the implementation of the plan through technical guidance and numerous supervision visits.

### **The Complaint**

In March 2020, 174 families of farmers in Ouanaminthe, Haiti, with the support of their legal advisor, filed a complaint to CAO. The complaint raises concerns about economic displacement of the Complainants from land they used for farming due to CODEVI's construction activities in Ouanaminthe starting 2002. According to the Complainants, their livelihoods were severely impacted by the loss of land, and compensation they received 18 years earlier from the Haitian government and from CODEVI failed to cover their losses. Further, at the time of filing the complaint to CAO, the Complainants claimed that they had not received the replacement land that was promised under the SCP. The Complainants also stated that the planned programs under the SCP have not been implemented by CODEVI and that their rights and protections were violated, in breach of IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

### **CAO Assessment**

In April 2020, CAO found the complaint eligible and began an assessment to clarify the issues and concerns raised by the Complainants and gather information on the views of different stakeholders. The assessment also sought to determine whether the Parties wished to pursue a dispute resolution process or initiate a compliance appraisal of IFC's environmental and social performance (see Appendix A).

Due to COVID-19 related restrictions on travel and social gatherings in 2020, CAO's staff and consultants could not arrange a field visit and in-person meetings with the stakeholders

involved in the case. However, with the consent of both Parties, CAO decided to conduct the assessment via virtual platforms to avoid delaying the process.

CAO's assessment included a desk review of project documentation, virtual meetings and email exchanges with IFC's project team, phone calls and email exchanges with several complainants and their legal advisor, and virtual meetings and email exchanges with CODEVI, officials with the Ministry of the Economy and Finance (MEF), and the Directorate of Free Zones (DZF) of the Government of Haiti.

In August 2020, the Government of Haiti and the Complainants' legal adviser informed CAO that they had undergone direct negotiations for the distribution of replacement land in a location known as "Morne Casse". This culminated in a Memorandum of Understanding on July 28, 2020, recognizing the Complainants' right to this land as state farmers. The Complainants confirmed that they had access to this land which was surveyed at 174 hectares for the beneficiaries of the SCP, or one hectare per family, 38 hectares for a community agricultural project, and 20 hectares for the Complainants' legal adviser.

During the assessment phase, CODEVI and the Complainants decided to address the outstanding issues raised in the complaint through a dispute resolution process. The parties also agreed to request IFC and the Haitian government's presence as observers in the process. Both IFC and the Haitian Government agreed to participate as observers.

In January 2021, CAO published its assessment report, which summarized each party's perspective and the assessment outcomes.<sup>2</sup>

## **Dispute Resolution Process**

### Preparation for dialogue and capacity building

At the beginning of the dispute resolution process, the Complainants mentioned that they considered the Social Compensation Plan (SCP) to be an important basis for the dialogue and indicated that they did not have a copy of it and would like to receive one. The CAO team relayed their request to the Company and IFC, who shared an English version of the plan in March 2021. CAO had this version translated into Haitian Creole and shared it with the Complainants in April 2021. Once that document was shared, the CAO team explored how to start the dialogue, given that travel for the CAO staff was still not permitted. Eventually, after internally checking the legal and security implications of doing so, CAO was able to secure the purchase of mobile devices (tablets) for the Complainant representatives in July 2021 and hired the services of a consultant who provided training to the representatives on how to use the technology (July – November 2021).

To prepare the parties for the dialogue process, CAO convened 3 virtual capacity-building sessions with the 12 Complainant representatives in December 2021. These sessions included training on conflict resolution, communication, the role of parties, advisors and observers in a dialogue process, and the steps taken during a typical CAO dispute resolution process. A similar capacity-building session took place with the Company in February 2022. Additionally,

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<sup>2</sup> CAO [Assessment Report](#), January 2021.

CAO organized sessions to prepare the IFC team and Haitian government representatives to participate in the dialogue as observers.

### Dialogue process

Following the initial capacity building sessions, CAO began working virtually with the parties early in 2022 on the ground rules document, which would serve as a framework to govern the mediation process. The draft ground rules document detailed the objectives and scope of the mediation process (i.e., the substantive issues to be addressed); the roles of the CAO mediator, and of the observers, representatives, and legal advisors; and the principles of mediation, in particular around issues of confidentiality.

Once COVID-19 travel restrictions and security measures were lifted, CAO met with the parties in-person in May 2022 to continue working on the ground rules document, to facilitate bilateral preparatory meetings, and to convene the first joint meeting of the Parties. During that meeting, the discussion focused on the Parties' expectations for the mediation process and the content of the ground rules document. However, the Parties were unable to agree on the ground rules during the meeting, with a specific point of contention being the role and participation of legal advisors during the mediation process.<sup>3</sup>

CAO continued to work with the parties virtually conducting bilateral sessions to discuss the areas of disagreement. CAO conducted shuttle diplomacy via bilateral meetings and email exchanges with each party between June 2022 and April 2023 in an attempt to reconcile the Parties' positions on these issues. In anticipation of a conversation on substantive issues, CAO also used this time to collect more details on the perspectives of the Parties and observers regarding the provisions of the SCP and its implementation to date.

During this time, CODEVI indicated that they continued to value the opportunity to have an information sharing session with the Complainants on the actions implemented as per the SCP. However, they reiterated that they had fulfilled all of their obligations toward the Complainants and hence were not open to discussing any support to be provided to the Complainants beyond what had already been provided. Specifically, CODEVI mentioned that they had paid compensation to the Complainants and granted a loan to the Government of Haiti so that the latter could pay compensation owed to the Complainants as per the SCP. They added that because there was no land given by the Government to the Complainants to implement the activities to be carried out by the Company as per the SCP, they instead implemented a number of programs to benefit the entire community, not only the 174 families. According to CODEVI, their social initiatives include health programs for elderly community members and youth, a private school for children, a health clinic for CODEVI workers and non-CODEVI workers, a cooperative that provides loans, a technical training center, and other corporate social responsibility activities that benefit the entire Ouanaminthe community. CODEVI added that they would continue to implement their Corporate Social Responsibility initiatives to benefit the entire Ouanaminthe community in the future.

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<sup>3</sup> Specifically, CODEVI expressed their wish to engage directly with the Complainants' representatives during joint meetings, without the presence of the Complainants' legal advisor. On several occasions during the process, CODEVI manifested their frustration with the Complainants' legal advisor's approach and actions, which they felt were not conducive to a constructive dialogue.

### Closure of the dispute resolution process

CAO informed the Complainants about the possibility of holding a session with CODEVI which would be limited to exchanging information and perspectives on what was implemented as per the SCP. On May 3, 2023, the Complainants submitted a letter to CAO indicating that, after consultation with all members, they had decided that they were not interested in participating in a dialogue limited to discussing what had happened in the past and which would not provide the opportunity to discuss possible support for them. They alleged that CODEVI did not fulfill their obligations under the SCP and were displeased with CODEVI's contrary statement during the first joint meeting. They added they had understood CODEVI to have indicated previously that they were unable to put in place the social and technical programs outlined in the SCP because the Government had not provided SCP beneficiaries with the replacement land. However, now that they had access to replacement land in Morne Casse, they expected CODEVI to put in place those programs. While they understood the company implemented programs to benefit the entire Ouanaminthe community, they felt that were in a very different position than the rest of the community, having been resettled, and were thus entitled to specific and additional support. They also expressed their frustration with the lack of agreement on the role and participation of their legal advisor in the process.

Given the voluntary nature of the process, and the lack of agreement between the parties regarding the scope of dialogue and the ground rules, CAO concluded the dispute resolution process in May 2023.

### **CHALLENGES, REFLECTIONS AND LESSONS LEARNED**

The case presented several challenges, reflections and learning opportunities, which are outlined below.

#### **Delays Due to COVID-19 Related Restrictions and Fragile Security Situation in Haiti**

Due to the COVID-19 lockdown coupled with the political instability, increasing violence, and unprecedented level of insecurity and fragility in Haiti, the CAO team (composed of DC-based and Haiti-based professionals) was only able to travel once to the project location to meet in-person with the Parties. During the mission, which occurred in May 2022, CAO was not able to go to Ouanaminthe to meet with the Complainants and instead had to ask them to travel to Cap Haitian to meet. Additionally, the security situation did not allow for the Company to participate in the joint meeting in Cap Haitian in person, and they only joined virtually.

CAO's inability to conduct in-person meetings (with one exception) severely weakened the dispute resolution process as trust between the parties and with CAO was not built and maintained to adequate levels from the start. This made it harder to agree on ground rules, generate solutions to the issues raised in the complaint, and plan for effective and continuous engagement. The interaction during in-person meetings may have helped to close gaps caused by distrust and suspicion and enabled more progress on specific contentious clauses such as the scope of dialogue. Overall, face-to-face interactions between the Parties would have helped build interpersonal relationships, which is crucial during a negotiation process.

## **Importance of the Parties' Commitment to the Process**

Building and sustaining a constructive dialogue between a group of complainants and a company involved in an entrenched and long-lasting conflict is a serious undertaking, which can only be achieved if the parties are fully committed to the process. Additionally, creating an environment of trust is critical for the success of the process. The parties have a role in helping to create a more favorable environment for dialogue, for example, by refraining from activities and behaviors that may concern the other party.

In this case, there were instances where Parties' actions outside of meetings, or words used during meetings created more tension and further antagonized the Parties. The CAO team held conversations with the Parties to explore the possibility of making early good faith concessions, as well as to help the Parties consider possible consequences of certain actions and behaviors on the process. Despite these conversations and efforts, trust levels remained very low throughout the process and an environment conducive for dialogue was not sustained.

## **CONCLUSION AND NEXT STEPS**

Despite their efforts to resolve the issues raised in the complaint through a dispute resolution process, the Parties could not reach agreement. At the request of the Complainants and in accordance with CAO's Policy, the case will be transferred to CAO's Compliance function. CAO will conduct a compliance appraisal to determine whether an investigation of IFC's environmental and social performance is merited in relation to the issues raised in the complaint, or whether to close the case.

All documentation relevant to this case is available on CAO's website at [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

See Annex A for more information about the CAO process.

## **ANNEX A. CAO COMPLAINT-HANDLING PROCESS**

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of a CAO assessment is to: (1) clarify the issues and concerns raised by the complainants; (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.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,<sup>4</sup> the following steps are typically followed in response to a complaint that is received:

- Step 1:       **Acknowledgment** of receipt of the complaint.
- Step 2:       **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).
- Step 3:       **Assessment:** Assessing the issues and providing 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 90 business days, with possibility of extension for a maximum of 30 additional business days if after the 90-business day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree.
- 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 on or initiated by a Memorandum of Understanding and/or 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 goals. 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 affected.<sup>5</sup>

OR

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<sup>4</sup> For more details on the role and work of CAO, please refer to the full IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>

<sup>5</sup> 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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

**Compliance Appraisal/Investigation:** If the Parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one complainant must provide explicit consent for the transfer unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**