



CAO ASSESSMENT REPORT

**Regarding concerns in relation to
IFC's investment in Bidco Bev. & Det. Project (#33385) in Thika, Kenya**

February 2018

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the 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), the private sector arms 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 social and environmental 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
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

In May 2017, a complaint was lodged with CAO by a former employee of Bidco Africa Limited (Bidco) (the Company), claiming to represent more than 480 other former employees (the Complainants). The Complainants alleged that the Company had unfairly dismissed them and failed to pay for their employment benefits accrued for years worked. The complaint was found eligible in July 2017. During CAO's assessment, the Company expressed willingness to engage the Complainants in a dialogue facilitated by CAO.

However, the complainants could not agree among themselves on which CAO process they want to proceed with. Therefore, in accordance with the CAO's Operational Guidelines, the complaint will now be handled by CAO's Compliance function.

2. BACKGROUND

2.1 The Project

IFC has an active project with Bidco Africa Limited (#33385), a Kenyan private company that generates revenues from the sale of edible oils, cooking fats, personal care and beauty products, detergents and laundry soaps, animal feeds, and baking products. IFC's investment in Bidco Africa Limited consisted of an A-loan of up to US\$23 million and a syndicated B-loan of up to US\$13.5 million, to support the construction and operation of an extension of Bidco Africa Limited's detergent facility in Thika and a new beverage facility in Tatu City, Kenya.

2.2 The Complaint

In May 2017, CAO received a complaint from a former employee of Bidco, claiming to represent a larger group of former Bidco employees (480 in total). This is the fourth complaint received by CAO in relation to this IFC Project (#33385). For fear of reprisal, the Complainants requested that CAO keep their identities confidential.

The Complainants alleged that they were unfairly dismissed by the Company after being employed as casual workers at Bidco's Thika plant. They assert that the Company terminated their contracts in response to the workers' demand to receive their overdue benefits, including leave allowance, which they had accrued during their employment with the company. The Complainants reported that they filed a petition to the Government of Kenya to complain about their situation, but never received a response. They also pursued legal action against the Company and the judgement is pending.

The issues raised during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, and determine whether the Complainants and the IFC Project Sponsor would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and in-person meetings with the Complainants in Nairobi, Kenya; and
- telephone conversations and an in-person meeting with the Project Sponsor in Nairobi, Kenya.

This assessment report documents the views heard by CAO and explains what step will follow the assessment process. This report does not make any judgment on the merits of the complaint.

3.2 Summary of views

Complainants' perspective

The Complainants allege that they were casual workers whose employment period with the Company varied from one year to 25 years. During their employment, they were not given any benefits, such as leave or payment in lieu of leave. When they raised the issue of benefits with the Company, the Company suggested that, to remedy the situation, it would create permanent positions and employ the casual workers on a full-time basis. The Complainants were therefore requested to apply for the jobs they had previously held. The terms and conditions of the new job positions were less favorable than before, and thus many casual workers did not apply. Many who did apply were unsuccessful. Decisions about who would be hired were at the discretion of the supervisor. Both those who were unsuccessful and those who did not apply were subsequently unfairly dismissed, without payment of any benefits due.

The Complainants also allege that, during their employment with the Company, they were subjected to poor working conditions and prevented from joining a trade union. They worked very long hours in contravention of the labor laws. Although they were called “casual workers”, they worked every day, just like permanent workers, but without employment contracts and benefits.

The Complainants raised the issue of unfair termination and poor working conditions with the Labour Officer in Thika and received no response. They then proceeded to file a case in the Kenyan courts. The matter was heard in the court and judgment was due on October 6, 2017. However, the handing down of the judgment was postponed, and no new date was given.

The Complainants also reached out to other organizations, including the Kenya Law Society, the Ombudsman's office, and the Labour Committee of the Kenyan Parliament, to seek assistance with this matter. None of these attempts yielded any results. The Complainants believe that, because the Company is very influential in political circles, it is able to intimidate officials in its favor. They also informed the CAO that Bidco's products, are among a list of products from various companies, which are currently subject to a national boycott, because of the relationship that Bidco and other companies, have with government officials, which allows them to take advantage of citizens.

The Complainants also explained that they had previously filed a complaint with CAO, which was referred to the Compliance function, because there had been no consensus among themselves on which CAO process to follow to resolve their issues. Some among the Complainants wanted a dispute-resolution process, while others wanted a compliance assessment. Because of the lack of consensus, that complaint went to Compliance, per CAO's Operational Guidelines. They then filed another complaint, with the hope of taking this matter to CAO's Dispute Resolution function. As noted above, the Complainants are still not in agreement regarding whether to pursue a dispute resolution process and as such the case will be referred to CAO Compliance.

Company's perspective

The Company explained that the Complainants were casual workers. They would come to the factory gate on a regular basis and, based on the Company's needs for that day, the Company would select the number of workers to work that day. The workers approached the Company and requested the Company to create permanent positions, so they could have some job security. It was agreed that, because the Company could not offer everyone a job, the Company would create some permanent positions, and the workers would have to apply for the available positions. The jobs were advertised, and most workers applied. Most of those who applied were successful. Those who were unsuccessful, were paid everything due to them. Some workers did not apply because they felt the take-home salary was lower than what they were receiving as casual workers. Yet, the total cost to the Company for permanent workers was much higher than it was for casual workers.

The Company explained that the Complainants have approached various organizations about this matter, including the parliament and the courts. The Company appeared in all these processes to put forward their side of the story. They stated their willingness to make all information on the various processes available for scrutiny. They further indicated their openness to dialogue with the Complainants, to try to resolve this matter amicably. But were concerned about the involvement of an external third party which is influencing and fueling this complaint.

4. NEXT STEPS

The Company expressed an interest in engaging with the Complainants through a dispute-resolution process facilitated by the CAO. However, the Complainants could again not agree on which CAO process to follow, despite being afforded three months for internal consultation after the assessment field visit. The Complainants advised CAO to refer the case to Compliance. Because the dispute-resolution process is voluntary for both sides, and mutual agreement must be present before proceeding with such a process, the complaint will now be referred to CAO Compliance.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an 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.

As per CAO's Operational Guidelines,¹ 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**: 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 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 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.²

OR

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**

¹ 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

² 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.