

February 21, 2017

Mr. Osvaldo L. Gratacós
Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington DC 20433

IFC Management's Response to the CAO Investigation Report on Vizhinjam International Seaport Limited, India

Dear Mr. Gratacós:

We appreciate the opportunity to review and respond to CAO's investigation report regarding IFC's performance in relation to our advisory services engagement, Vizhinjam International Seaport Limited, which occurred from 2009 to 2013. The Vizhinjam complaints (01-03) raised concerns about the potential environmental and social (E&S) impacts of the port on fishing, farming, and tourism.

It is important to point out the distinct nature of IFC's investment and advisory roles regarding assessment and monitoring with the Performance Standards (PSs). Vizhinjam was a public-private partnership (C3P) advisory services engagement. The nature of IFC's role, as an advisor in such projects, differs from IFC's investment role typically reviewed by CAO. In C3P engagements, IFC supports development of a tendering process that is attractive to reputable bidders, and is commercially sustainable. In such engagements, IFC functions as an advisor to a procurement process, rather than as a financial investor to the private sector activity procured. This distinction is also true for the E&S aspects, whereby IFC's role is to provide advice consistent with the PSs, and to assess project alignment with the PSs during IFC's advisory engagement. In general, once a private partner is selected, the mandate is completed, along with IFC's formal relationship with the client. Once its advisory role has ended, IFC is not in a position to monitor continued project design.

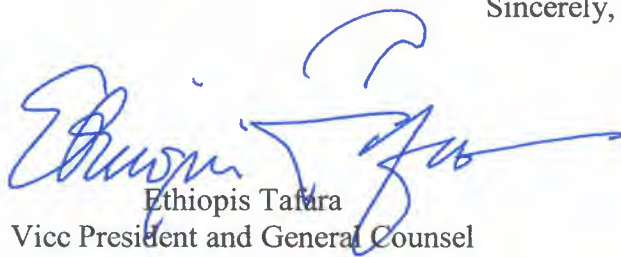
CAO's retroactive application of the 2012 version of the PSs as the basis for compliance review is incorrect. IFC's engagement in this project started in 2009, when the 2006 version of the PSs were the authoritative standard.

IFC's approach to managing E&S risk in its advisory business evolved significantly between 2006 and 2013, in large part influenced by lessons learned from the Vizhinjam port project. Many of CAO's findings also focus on the scope of application of IFC's E&S advice. From the outset, IFC's mandate was limited to the port facilities (and necessarily excluded access infrastructure and

ancillary facilities, given that at the time they were not yet fully planned by the government and, as a result, not ready for tendering or associated E&S risk mitigation). Nonetheless, IFC advised, and the client accepted, exceptionally, to include the PSs as the reference standard for the overall, comprehensive project ESIA. IFC's advisory engagement, and consequently its review for alignment with the PSs, ceased before the overall comprehensive project ESIA was finalized by the client.


In the attached annex, IFC has detailed key procedural changes implemented since 2010, and provided its response to each of the CAO's specific findings, generally focused on the draft ESIA for the marine side, as well as related consultation and disclosure. We welcome the opportunity to continue a broader dialogue with CAO on IFC's approach to E&S issues in advisory engagements.

Sincerely,



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Ethiopis Tafara
Vice President and General Counsel



Handwritten signature of Stephanie von Friedeburg in blue ink.

Stephanie von Friedeburg
Vice President and Chief Operating Officer

Annex: IFC Tabulated Management Response: Vizhinjam 01-03

	CAO Finding	IFC's Response	Actions Taken or Proposed
	Preparation and scope of the Advisory Services Project		
1	<p>IFC's commitment to oversee the preparation of an environmental and social impact assessment (ESIA) and environmental management plan (EMP) for the project in accordance with IFC's Performance Standards was consistent with the requirements of IFC's policies and procedures for AS projects at the time.</p>	<p>IFC recognized from the start the need for the project to have an ESIA that reflected good international industry practice (GIIP). In accordance with our agreement with the client, IFC was responsible for overseeing the E&S aspects for the marine side of the port. We also discussed with the client and its consultants the requirements for undertaking a PS-compliant ESIA for land-side developments, as well as a PS-compliant comprehensive project ESIA, both of which were undertaken by the client.</p> <p>On the marine side, IFC's oversight role included overseeing preparation of the draft ESIA for the marine side only. As described in greater detail in response #7 below, IFC was not in a position to finalize the EMP, given the timing of completion of IFC's involvement (prior to the port design and master plan being finalized).</p> <p>We acknowledge that challenges arose not only from overseeing just one component of the future comprehensive project ESIA, but also from the fact that the port master plan was not finalized during our involvement, and we did not have ownership of the project or the process. Many key aspects remained undefined, complicating definitive assessment at the outset. Building on learning specifically from this project,</p>	<p>As described in this response, IFC learned valuable lessons from involvement with this project. In 2010, one year after IFC's advisory engagement in Vizhinjam commenced, IFC began establishing a more formalized approach to E&S issues in advisory projects. IFC further clarified the application of the Performance Standards to advisory services engagements in the 2012 PS update. In 2013, the E&S department issued additional internal guidelines on the scope and extent of IFC E&S due diligence. This clarifies that IFC's E&S work can be preparatory to, but should not substitute for, an ESIA. It also stipulates that IFC cannot consult and disclose on behalf of clients. Such activities involve responsibility and accountability from the project owner.</p> <p>In 2015, additional detailed guidance was issued on the content of the E&S section of mandate agreements. This further describes what IFC's services should cover.</p> <p>The E&S and C3P departments also rolled out a series of training to disseminate the above and other guidance issued since 2010 among staff and consultants.</p>

		<p>current advisory practice focuses more heavily on undertaking early scoping (as opposed to ESIA) to help identify risks. The project owner then follows up to manage the impact assessment process and development of mitigation measures.</p> <p>Experience on this project also helped refine IFC's approach to its advisory services work more generally. Rather than overseeing the draft ESIA for the marine side, IFC's current practice is to contribute to the project preparation by scoping out key risks and possible mitigations to guide the full impact assessment (which is then undertaken by either the public or private party of the public-private partnership) and to make our client and potential bidders aware of the level of effort needed to manage E&S risks. The client or the selected bidder retain ownership of the project, including implementation of binding mitigation measures and disclosure/consultation processes (that continue through project development, after IFC's advisory role has ended).</p>	
2	<p>IFC did not advise the client to suspend its land acquisition activities until the ESIA and other required plans had been completed, as required by IFC Performance Standard 5 (PS5). IFC did not take adequate steps to address the potential for the Vizhinjam port project to contravene the IFC Performance Standards as they relate to land acquisition. CAO finds that IFC's advice to the client was not consistent with the Performance Standards in this respect.</p>	<p>While we acknowledge that we could have maintained better formal records and formalized our advice, IFC did in fact advise the client regarding the social impact assessment (SIA). In December 2009, IFC advised that, per GIIP, an SIA was needed before commencing land acquisition, even if such land acquisition was linked to the land-side infrastructure, which remained under responsibility of the client. We understood that further action in this regard would be</p>	<p>Based on experience in this and other projects, IFC's advisory services teams have increased attention to formally recording advice provided to clients. IFC has also implemented improved governance with respect to two internal milestones: before the mandate is signed and before the transaction structure is presented to the client. At these important junctures, the team presents E&S risks and proposed</p>

		<p>taken in accordance with our advice. The Resettlement and Rehabilitation (R&R) framework approved by the Government of Kerala (GoK) in May 2010 was broadly consistent with PS5 principles in terms of the entitlement matrix, negotiation and compensation process, and provision of resettlement site.</p>	<p>mitigations to management for consideration.</p> <p>An Environmental and Social Review Procedure (ESRP) is under preparation to describe the improvement of the current approach and procedures to E&S risk management in IFC's advisory services.</p>
Division of mandate for the ESIA work			
3	<p>IFC did not ensure that component parts of the port were assessed in accordance with the Performance Standards. For this reason, IFC's approach to the preparation of the ESIA was not consistent with the PS1 requirement that environmental and social risks and impacts be identified in the context of the project's area of influence.</p>	<p>From the outset, IFC's scope of responsibility was limited to the marine-side port. Nevertheless, even though according to the FASA, IFC was not responsible for supervising the land-side ESIA, during several official meetings IFC delivered advice to the client and its consultants regarding requirements for undertaking a PS-compliant ESIA for land-side developments. Upon receiving IFC's advice, the client required its consultant to undertake a land-side ESIA compliant with the PSs.</p> <p>It was envisaged that the client would integrate the marine-side and land-side ESIAs into a PS-compliant comprehensive ESIA. IFC would have reviewed the comprehensive ESIA for the project and associated facilities against the PSs, but IFC's engagement (as defined by the FASA) was completed in December 2012, prior to the client finalizing the overall, comprehensive project ESIA.</p>	

4	<p>IFC did not have assurance that the ESIA and EMP for the port project were PS compliant.</p>	<p>As described in greater detail in response #3 above, the overall comprehensive project ESIA was intended to be comprised of the marine-side ESIA (carried out under IFC's supervision) and the land-side ESIA (carried out under the client's supervision, with PS-compliant advice from IFC). IFC's engagement concluded prior to finalization of the comprehensive ESIA. Therefore, we were not able to review this final ESIA against the PSs.</p> <p>The EMP necessarily remained in draft as it relied on future decisions by the concessionaire. While it was not possible for IFC to review the EMP, we provided PS-compliance guidance for the EMP within the ESIA, as further explained below in response #7.</p> <p>IFC's role in C3P projects is by definition an advisory one. While IFC ensures today that its advice is consistent with the PSs, IFC is not in a position to ensure full compliance with the PSs post cessation of its involvement.</p>	
<p>Preparation of the Port ESIA – Consultant Supervision</p>			
5	<p>IFC delivered an ESIA that was in some respects consistent with the Performance Standards. In particular, it set out useful environmental baseline data and socio-economic baseline data in relation to fisheries and identified key impacts in relation to fisheries-based livelihoods.</p>	<p>We appreciate CAO's recognition of the useful environmental and socio-economic information in the marine-side draft ESIA.</p>	

6	<p>However, the Port ESIA which IFC delivered to the client lacked essential components of an ESIA as it did not:</p> <ul style="list-style-type: none"> • incorporate a detailed socio-economic baseline for tourism-based livelihoods; or • incorporate framework-level resettlement action or livelihood restoration plans. 	<p>Within its scope on marine-side E&S aspects, IFC did consider potential impacts on tourism. Our reasoning and efforts in this regard are described in greater detail below in responses #16-17 regarding “Tourism Impacts.”</p> <p>With respect to resettlement and livelihood restoration, IFC did identify land-related risks and the applicability of PS5 to the land-side aspects of the project. Accordingly, and in line with IFC’s role as an advisor, we discussed with the client the key risks and impacts from land-side developments, associated facilities, and cumulative impacts. We provided the client with principles and a framework for further impact assessment, mitigation, and livelihood restoration in line with PS5, for incorporation by them into the land-side ESIA and the comprehensive project ESIA.</p>	
7	<p>IFC did not oversee the preparation of an EMP as contemplated at the time of project approval.</p>	<p>IFC’s involvement focused on supervising preparation of the marine-side draft ESIA. At that point, the overall port master plan remained in draft. The EMP was dependent on the concessionaire’s future decisions related to construction and operation, and EMP finalization needed to consider cumulative impacts and impacts from associated land-based facilities. Given the project status and the fact that IFC was drafting only the marine component of the comprehensive ESIA, IFC was not in a position to provide a full EMP. Therefore, we incorporated guidance, in the ESIA, on key principles for the EMP.</p>	

8	<p>The approach of limiting the scope of the IFC's inputs to one part of the ESIA gave rise to a situation where IFC was supporting the preparation of a project that was not in compliance with the Performance Standards.</p>	<p>As discussed above, IFC was responsible for the marine-side draft ESIA, and provided advice to the client regarding the land-side ESIA to ensure consistency with the PSs for the entire development. The intention was for the client to integrate the two ESIA's into an overall, comprehensive ESIA. IFC would have reviewed this comprehensive ESIA against the PSs, had our engagement not ended before the client finalized the comprehensive ESIA.</p> <p>Since the 2012 PS update, IFC has committed to provide advice to its clients consistent with the PSs. However, IFC's role in providing advisory services differs from its investment role, as IFC recognizes that it can work with advisory clients to achieve improvement in environmental and social performance and help clients move towards greater consistency with PSs, even if clients are not able to meet their full intent during the life of the advisory activity.¹ In its role as advisor, IFC is not in a position to ensure full compliance with the PSs beyond the conclusion of our involvement.</p>	
Consultation and Disclosure			
9	<p>IFC recognized the importance of stakeholder engagement to the project and gave early advice to its client on consultation and disclosure that was consistent with the Performance Standards.</p>	<p>We appreciate CAO's recognition of our emphasis on the importance of stakeholder engagement, and our advice consistent with the PSs.</p>	

¹ IFC Policy on Environmental and Social Sustainability, para 39.

10	<p>Consultation activities envisaged by IFC when it embarked on preparation of the ESIA were not completed during IFC's involvement in the project. IFC did not carry out public consultations in relation to the Port ESIA and did not support the public hearing convened by the Kerala State Pollution Control Board in June 2013.</p>	<p>Under IFC's supervision, the marine-side ESIA consultants carried out initial public consultation. During the preparation phase, this helped to identify project-affected families and to inform development of potential mitigation measures. For example, this interaction helped the team understand fishing activities, and consultation with the fishing community led to identification of an alternate fishing harbor as one of the mitigation measures.</p> <p>The June 2013 consultation was run by the State Pollution Control Board, with the Sponsor and/or their representatives responding to questions. This is not a process conducted by IFC.</p> <p>The FASA expired in December 2012 and IFC was no longer involved in the project except for the purpose of completion of drafting of the ESIA for the marine part of the project, which was submitted in April 2013. Moreover, as we did not own the project, we were not in a position to disclose the marine-side draft ESIA or undertake any project-related consultations. Instead, during our advisory mandate and in accordance with our role, we advised the client to undertake stakeholder engagement and to disclose project-related information, consistently with PSs requirements, following the Stakeholder Engagement Plan prepared as part of the draft marine-side ESIA supervised by IFC.</p>	<p>In 2013, IFC's E&S department issued internal guidance clarifying IFC's role, and the extent to which we should be involved in stakeholder engagement activities.</p>
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		Experience on this and other projects demonstrated for IFC the importance of ensuring responsibility for consultation and disclosure remain with the client. As the project owner, the client is ultimately responsible and accountable across the full life of the project. We have incorporated these lessons into our advisory work, as indicated in the next column.	
11	As a result, the Port ESIA that IFC delivered to its client in April 2013 did not reflect a process of informed consultation and participation, or a process of disclosure as required by PS1.	In an advisory role, IFC provided guidance and information to the client regarding consultation and disclosure consistent with the PSs. During our involvement with the marine-side draft ESIA, we oversaw consultation efforts as part of the draft ESIA, as described above. In our advisory services projects, we are not in a position to ensure full compliance with the PSs after our involvement has concluded. Once our involvement in this project was completed, we were not in a position to undertake further consultation or disclosure activities.	
Fisheries Impacts			
12	During the scoping phase, and through primary data collection, IFC and its consultants worked consistently within the framework of PS1 to establish a socio-economic baseline to identify the social impacts of the port on fishing communities and to recognize the vulnerability of this population.	IFC appreciates CAO's recognition of our efforts with respect to identifying social impacts on fishing communities.	
13	The Port ESIA recognizes that PS5 provisions on economic displacement are	We agree with CAO on the applicability of PS5 provisions, as related to economic	

	triggered by the project in relation to fisheries-based livelihoods.	displacement, in the case of the affected fishing communities.	
14	<p>However, the ESIA presents only high-level principles for livelihood restoration, together with guidelines for preparing a draft Livelihood Restoration Framework (LRF). Given the stage of development of the project at the time IFC conducted the ESIA and the significance of the expected impacts, CAO finds that the lack of detailed mitigation and livelihood restoration planning in relation to fisheries-related impacts was not consistent with the requirements of PS1 or PS5.</p>	<p>We disagree that the marine-side draft ESIA presents only high-level principles and guidance. The Livelihood Restoration Framework (LRF) that was included in the marine-side draft ESIA identified impacts, eligible project-affected fishermen, and compensation and mitigation measures during construction and operational phase. The LRF remained a draft in that it had to be discussed and agreed with the affected fishing community before finalization, in addition to being refined based on the final masterplan and by taking into account cumulative impacts; but we believe it provided a comprehensive framework, sufficient for a draft marine-side ESIA.</p> <p>The livelihood restoration plan (LRP) is, by definition, a more detailed document. Typically, the LRP provides family-level entitlements (based on the LRF), as well as agreements on entitlements and a detailed implementation timeline for each affected family. Considering the level of detail required in an LRP, it generally falls outside the marine-side draft ESIA scope and is undertaken as a standalone exercise by a team with expertise in social impact assessment and livelihood development.</p> <p>Given the timing of the project, and information available at the stage of IFC's involvement, we provided advice consistent with PS requirements. The LRF could have been formally finalized only after</p>	<p>As indicated above, IFC has revised its approach to engaging with clients on ESIA's, and is more cognizant of the scope of our involvement early in the project process.</p>

		<p>finalization of the master plan, project design, and land-side development, as all of these would potentially have impacts on fisheries and fishing communities. Given the available information and remaining uncertainties in final technical designs and transaction structure, the LRF and guidance were consistent with IFC's established approach in such situations.</p>	
Tourism Impacts			
15	<p>IFC did not ensure that the ESIA considered risks and impacts on tourism based on “recent social baseline data at an appropriate level of detail” as required by PS1.</p>	<p>Early in our engagement with the client, we identified potential impacts on tourism arising from the port development. Prior to finalization of the draft ESIA and to understand the impacts on tourism from marine-side development, IFC’s consultants undertook 15 focus group discussions with tourism and related activities. They also sent a detailed questionnaire to resort owners. Of the 31 resorts, only 9 responded. However, we used the information gathered from the questionnaires and the focus group discussions to identify potential impacts, which are described in the marine-side draft ESIA.</p>	
16	<p>IFC incorrectly concluded that project impacts on tourism-related livelihoods fell outside the scope of PS5. IFC’s rationale for this decision is not supported by the language of PS5 or by IFC’s own guidance material. As a result, the ESIA did not include an adequate assessment of potential economic displacement of people with tourism dependent livelihoods.</p>	<p>The impacts on tourism arose due to the expected change in character of the area following construction of the port. Loss of land and property came from land acquisition for port back-up facilities, which did not fall within the scope of IFC’s supervision. Given that the draft ESIA was for marine-side developments only, it focused on tourism impacts emanating from</p>	

		<p>marine-side development. The marine-side development was proposed entirely on reclaimed land, meaning that direct impacts (e.g., acquisition of the tourism operators' land or facility, etc.) were not expected. Accordingly, IFC concluded that tourism-related economic displacement from marine-side development fell under PS1. This is consistent with PS5 and its accompanying guidance note.</p>	
17	<p>Although IFC recommended that the client complete a Tourism Impact Assessment, CAO finds that this occurred too late in the ESIA process. CAO also finds that a direction included in the ESIA to assess entitlements on the basis of the "legality" of resorts gave rise to potential inconsistencies with PS5 requirements that provide for compensation of economically displaced persons who are without legally-recognizable claims to land.</p>	<p>IFC identified potential impacts on tourism early in our engagement with the client. In response, we oversaw consultant work to gather additional information via questionnaires to resort owners and through focus group discussions specifically related to tourism activities, as described in response #15 above. Together these efforts provided information about potential impacts that were to be incorporated into the client's land-side ESIA and the comprehensive project ESIA. Given this consideration of risks and impacts, we recommended a further tourism impact assessment after finalization of master plan and completion of the land-side ESIA.</p> <p>Although we determined that PS5 did not apply to the marine side, we advised the client that PS5 would apply to land acquisition for port back-up facilities on the land side and that PS5 principles should inform the mitigation measures.</p> <p>Understanding the legal status of resorts is necessary to apply the PS5 principles to resorts impacted from land acquisition for</p>	

		port back up facilities. The 2006 PS5 (para 20, bullet 4) specifies that those without legally recognizable claims to land will be compensated for structures and improvements they make and not for land.	
18	In accordance with PS5, the likely impacts on tourism-based livelihoods required a Livelihood Restoration Plan with express reference to compensation.	As described above, we determined that the tourism-related impacts from marine-side development properly fell under PS1, and not PS5.	
19	IFC did not direct a systemic review to identify priority ecosystem services as required by PS6. In relation to tourism, this meant that impacts on cultural ecosystem services were not identified or addressed in a coherent manner in the draft Port ESIA.	The marine-side ESIA identified ecosystem services such as loss of sea front, loss of beaches, and visual and aesthetic impacts. These and other impacts were to be further assessed in detail as part of the tourism impact study. IFC provided a ToR for this in the marine-side ESIA.	