



CAO ASSESSMENT REPORT

**Complaint regarding IFC's investment in Meridian Port Services Limited (MPSL)
(36706) in Tema, Ghana**

November 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
MPS	Meridian Port Services Limited
GPHA	Ghana Ports and Harbours Authority

1. OVERVIEW

In February 2018, CAO received a complaint from the proprietor of Ave Maria Resort and Wellness Centre (the “Complainant”) in relation to IFC’s investment in Meridian Port Services Limited (“MPS” or the “Company”) in Ghana. The complaint raised issues alleging intimidation and forced removal of Ave Maria from the property without compensation, to make way for the expansion and construction of the Tema Port Expansion Project. The CAO found the complaint eligible in March 2018. During CAO’s assessment of the complaint, the parties requested time to monitor the outcome of an ongoing court case before making a final decision regarding which CAO process they would like to pursue. Once the court decision was made in June 2018, and compensation was ordered, the Complainant informed CAO that the amount of compensation awarded was less than expected, based on the independent court valuers recommendation, and that the order to pay in three installments was disadvantageous to the complainant. The complainant indicated an interest in pursuing a CAO dispute-resolution process to negotiate additional compensation with the Company. However, the Company was not open to engaging in dispute resolution with the Complainant, because they felt the issue of compensation had been properly resolved by the courts. The case has therefore been referred to CAO’s Compliance function, in accordance with CAO’s Operational Guidelines.

2. BACKGROUND

2.1 The Project

The project involves the development and operation of a new container terminal in the Port of Tema, approximately 20 miles east of Accra, Ghana.¹ MPS has been working in Tema for over 10 years. According to IFC,² the project represents investments related to: (i) constructing a 700-meter quay for two container berths; (ii) creating a 70-ha yard; (iii) constructing a 3.5-kilometer breakwater; and (iv) dredging up to 16.9 meters. The project is estimated to cost approximately USD1.4 billion and is financed by MPS, its ultimate shareholders Bolloré Transport & Logistics, APM Terminals, and Ghana Ports and Harbours Authority (GPHA), and the IFC. According to IFC’s project documentation, IFC has committed a USD195-million A-loan and a USD472-million B-loan.

2.2 The Complaint

The Complainant, is the proprietor of the Ave Maria Resort and Wellness Centre, located in Tema, Ghana. She alleges that she and her staff were forced to vacate the premises to make way for the expansion and construction of the Tema Port Project. The Complainant claims that the Ghana Ports and Harbours Authority (GPHA), repeatedly engaged in acts of intimidation including; sending armed security to intimidate her, digging of trenches in front of her property, mishandling staff and customers, and creating negative press attention. This significantly impacted the flow of business to the resort. The Complainant further alleges that she was initially told by GPHA that Ave Maria Resort would not be affected by the expansion project. However, soon after, she was given one month to vacate the premises without compensation and told that compensation would be discussed later. The Complainant expressed concerns that vacating the property without

¹ See: <https://disclosures.ifc.org/#/projectDetail/SII/36706>

² IFC, a member of the World Bank Group, is the largest global development institution focused exclusively on the private sector in developing countries.

See: http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/About+IFC_New/

Last accessed: June 14, 2018.

compensation would present various challenges for her, including: (1) the inability to pay her employees, (2) the premature cancellation of trade agreements with international hotel suppliers and companies, and (3) damage to the business's reputation, which took 14 years to build.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to deepen CAO's understanding of issues and concerns raised by the Complainant, by gathering information and views from different stakeholders without making a judgment on the merits of the complaint. The assessment also seeks to determine whether the Complainant and the Company 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, as well as documentation submitted in support of the complaint by the Complainant;
- telephone conversations with the Complainant, the Company, and the IFC team;
- in-person meetings in Ghana with the Complainant, the Company, and other relevant stakeholders suggested by the parties; and

3.2 Summary of views

Complainant's perspective

The Complainant explained that the site from which the Ave Maria Resort and Wellness Centre operated, was of great historical significance in Ghana. The original premises were developed in the 1950s by Sir Harclow and called the Harclow Beach Club. The Complainant explained that Queen Elizabeth of Great Britain stayed at this club in 1961 when she visited Ghana, and thereafter, the club was used exclusively by former President Kwame Nkrumah. After Nkrumah left power, the club was open to the general public, but soon the standard deteriorated due to lack of maintenance. Another important aspect of the property was its location, as the premises was also located near Meridien Rock, which is thought to mark the center of the globe.

The Complainant explained that, in light of the building's location and historical significance, she approached the Ghana Ports and Harbours Authority (GPHA) in 2002, with the idea of renovating the club facilities. She proposed creating a recreational center with a restaurant and boutique hotel. GPHA agreed to allow the Complainant to run the facility and gave her a 25-year lease, starting in 2002 and renewable for another 25 years. The lease did not make provisions for early termination. The Complainant claims that when she took over the premises, they were in deplorable conditions. However, with confidence in the length of the lease, she made the necessary investments to renovate the premises to be fully functional. She said the Ave Maria Resort consisted of a three-story hotel with 15 rooms and permission to extend by 92 rooms. The hotel also included two presidential suites, and a reception and conference facility. The rest of the facility had a tennis court, a squash court, a swimming pool with changing rooms, a gym, a spa, a bar facility, and a restaurant. Some of her clientele included MTN, Coca-Cola, Unilever, GPHA, and former President J.A Kufuor.

The Complainant claims that, in 2014, she had a meeting with the Director of GPHA, who informed her about the Tema Port Expansion Project, but assured her that Ave Maria would be included in the expansion plan. The Director further informed her that, to fit with the new

look of the port, Ave Maria would need to be renovated to an international standard befitting of a cruise terminal. Based on that advice, she began renovating the facility.

The Complainant alleged that in early 2015, the head of estates at GPHA, informed her that plans had changed, and that Ave Maria was not included in the expansion plan. He advised her to speak to the Director of GPHA. She visited the Director of GPHA with one of Ave Maria's board members. The Director apologized for not having told her earlier but confirmed that plans had changed. He informed her that Meridian Ports Services Limited, who were responsible for the expansion of the port, advised that they did not want a recreational facility in the port. The Complainant stated that the Director of GPHA gave her two months to vacate the premises. She asked him to put the information in writing. She received a letter two months later in March 2015. The letter requested that Ave Maria be vacated by September 2015 and that compensation would be agreed after they left the premises. The Complainant forwarded this letter to her lawyers. The Complainant further explained that the IFC had visited the site for appraisal in 2015 and had assured her that she would not be forced to move without compensation being settled.

The Complainant claims that in April 2015, her lawyers wrote to the GPHA informing them that terminating a valid lease was illegal. However, no response was received. She alleges that GPHA then proceeded to block access to the facility, dug trenches in front of her premises, and hired armed guards to guard the premises so that people would not have access to the facility. The Complainant's lawyers filed for an urgent injunction against GPHA's actions. In December 2015, the court granted the injunction. The Complainant alleges that GPHA did not leave the premises until five days after the injunction and only after Ave Maria's lawyers wrote to all the board members of GPHA. The Court encouraged the Complainant and GPHA to seek an out-of-court settlement. The Complainant explained that their demands, in order of priority, were:

- to remain on the premises;
- to be allocated an alternative property; or
- to receive compensation for the inconvenience.

When the parties embarked on out of court negotiations, GPHA informed the Complainant that remaining on the premises was not an option. The parties started looking for an alternative property to relocate the complainant's business. However, the complainant stated that the alternative sites that were shown, were not suitable for running the business. To resolve the issue, the parties began negotiations on appropriate compensation for relocating the complainant. However, they could not agree on the amount. Both parties conducted separate valuations of the property to determine the appropriate compensation amount. However, the valuations conducted by the two parties were very different. Ave Maria's valuation was for approximately 18 million Ghana Cedis (USD3.8 million) and GPHA's valuation was for approximately 1.8 million Ghana Cedis (USD382,000). The Complainant claims that the formula used by GPHA's valuer was wrong. The valuer stated that he used a formula for sale of business rather than compensation, which did not take into account the IFC performance standards, hence the large discrepancy between the two values. The parties could not agree on how to resolve the matter, despite engaging in negotiation meetings, over a period of more than a year. Therefore, the matter was referred to court in late 2017.

The Complainant stated that the court found that no provision in the lease allowed for early termination of the lease. However, the judge further stated that the expansion of the port was of great national importance and therefore Ave Maria should vacate the premises. The court ordered Ave Maria to vacate the premises within 30-days following the judgment (by 12 October 2017), and stated that the only thing that was left to be determined was the amount of compensation that should be paid to the Complainant. The court went further, ordering a valuation of the property from an independent valuer. The 30-day period given by the court for the complainant to vacate the premises, was extended by GPHA to 26 January 2018. This was

to allow the valuer to complete the valuation. Three valuations were submitted to the court: a) Ave Maria's valuation of approximately 18 million Ghana Cedis (USD3.8 Million), b) GPHA's valuation of approximately 1.8 million Ghana Cedis (USD382,000) and c) the independent valuation from Architectural Engineering Services Limited (AES), the court appointed valuer, of approximately 19 million Ghana Cedis (USD4 million). The Complainant claimed that the court gave each side an opportunity to scrutinize the independent valuer's submission. Because the independent valuation was higher than Ave Maria's valuation, it was not questioned by Ave Maria's lawyers.

The Complainant explained that after the extension given by GPHA to vacate the premises on the 26th January 2018, their lawyers advised them against moving out, without the issue of compensation being finalized. The complainant continued to occupy the premises until armed personnel came to the facility in March 2018, to order them to vacate. The complainant requested the armed personnel to produce documentation, reflecting the order to vacate the property. They did not have any documentation with them. As a result, they did not enforce the eviction. However, the Complainant felt it necessary to move, prior to receiving compensation and was informed by GPHA that compensation would be paid once the court had made a decision on the issue of compensation. The premises were subsequently demolished.

The Complainant indicated that they vacated the premises prior to receiving compensation and were only able to pay their staff for one month's salary as opposed to the required statutory three months. She further explained that Ave Maria had a signed contract with international travel agencies to host guests at the facility. The Complainant expressed concern about the loss of income due to time lapse between vacating the property, the court judgment on compensation and receiving compensation from GPHA, which had no definitive date. She further stated that, at the moment, there is no provision in the valuations for the loss of income during the months that Ave Maria is not operational. The facility has been demolished, and she is concerned that the court may not provide necessary compensation and that whatever compensation she will receive will not be sufficient to set up a new operation of the same standard.

Company's Perspective

The Company explained that GPHA, as the concession grantor, is responsible for providing the concession area to the concessionaire (Meridian Port Services) for the Tema Port expansion project. The concession agreement stated that the property would be handed over free of encumbrance. However, Ave Maria Resort, a company holding a lease with GPHA to run a small hotel (the Complainant), was still on the premises. The Ave Maria Resort was in the middle of the area allocated in the project plans for scanning containers in and out of the Port, close to where the railway line was located, and therefore the hotel could not remain on the premises.

The Company explained that, according to the International Ship and Port Facility Code, the port is a high-security area, which cannot allow a facility open to the general public to operate on its premises, because this poses security risks. It was never under consideration that Ave Maria be part of the port facility. In addition, all plans for the project point to the fact that Ave Maria could not have been left intact. When the Company took over the site, they waived one of the four conditions precedents for the go-ahead on the project, namely the requirement to take ownership free of encumbrance. This was intended to allow GPHA and the Complainant time to find an amicable settlement regarding the Complainant vacating the premises.

The Company stated that, throughout the discussions between the GPHA and the Complainant, it was in constant communication with GPHA to ensure that the IFC performance standards were adhered to when dealing with relocation and/or compensation of the

Complainant. The Company alleged that in March 2015, GPHA terminated the lease with the Complainant and gave them six months' notice to vacate.

The Company also expressed that they were made aware that GPHA had tried to forcibly evict the Complainant by blocking access to the entrance of the Ave Maria Resort and digging trenches at the entrance. The Company dissociated themselves from this action and informed GPHA that this was not something that they could condone.

The Company was aware that when access to Ave Maria Resort was blocked by GPHA, the Complainant applied for an injunction to the court to prevent GPHA from blocking access and evicting them from the premises. The injunction was granted on the issue of access, but was suspended on the matter of lease termination, to allow GPHA and the Complainant an opportunity to find an out-of-court settlement. The Company stated that GPHA was very keen to achieve an amicable settlement and to relocate the Complainant to an alternative site. When the Complainant and GPHA entered negotiations, the Company was closely following the progress.

The Company explained that, during negotiations, the Complainant presented a claim of USD15 million reduced from an initial claim of USD 20 million, while GPHA presented an offer of USD700,000. Due to the large gap in the figures, and GPHA's accountability to a national parliamentary committee, GPHA was unwilling to pay this amount without supporting documentation to justify how the amount requested by the Complainant was derived. The Company understood that between December 2015 and June 2017, Ave Maria was unable to provide documentation necessary for GPHA to adequately assess the figure provided and GPHA was not able to consider any other figure because of the lack of documentation. Subsequently, GPHA conducted a valuation of the property to determine the appropriate compensation. However, the Company explained that on review of the valuation conducted by GPHA, it was noted that the formula used for valuation was not appropriate for the current situation and did not take into account the IFC's performance standards.

The Company noted that GPHA and the Complainant failed to resolve the issue through negotiation and, after 18 months of negotiation, the matter was referred back to court. The court ruled that the Complainant had to vacate the premises because the port expansion project was of national interest. The court further stated that the only matter left for resolution was the compensation that the Complainant was entitled to. The Company explained that an independent valuer was appointed by the court to consider the appropriate compensation for the Complainant. The independent valuer submitted a proposal for compensation of approximately 19 million Ghana Cedis (USD4 million). The Company's understanding is that GPHA, being a public body accountable to parliament, reviewed the valuation to satisfy themselves that the proper formulas had been used. This accounts for GPHA's cross examination in Court of the witness representing the independent valuer to establish the accuracy of the report submitted by the independent valuer. GPHA per its Survey Instructions to the independent valuer, requested that the IFC PS5 be used as a basis for assessment. GPHA also tendered the IFC PS5 in court. GPHA admitted that their initial valuation did not factor PS5 hence their subsequent actions in that regard.

The Company stated that, despite the court ruling that the Complainant needed to vacate the premises within 30 days of the court judgement, it took the complainant six months to vacate. The Complainant appealed the decision of the high court, but the appeal was declined.

The Company further explained that there were many delays in this case. However, the judge was very firm with GPHA and the Complainant to try and ensure that the Complainant is compensated as soon as possible.

The Company stated that they understand that the situation is further complicated by the fact that the Complainant believes that GPHA would give the area to another entity to operate a hospitality facility when they leave. But this is not the case. It is therefore important to expedite

the payment, especially now that the Complainant is not operating and the resort has been demolished. The Company further explained that one of the conditions given by the High Court was that GPHA's Board Chairman should swear to an affidavit undertaking to pay compensation to Ave Maria Resort in a timely fashion, when it is determined by the court to do so. This was done by the Chairman.

The Company also stated that the IFC team monitors this situation on a monthly basis and has visited the site and held meetings with GPHA several times. As indicated by the Company, the regularity of the meetings and the attention that it gives to the situation goes beyond their usual method of monitoring projects. It is the Company's impression that there will be no undue delays in compensating Ave Maria and that all the required steps have been taken to expedite the assessment and payment of compensation due to the Complainant.

4. NEXT STEPS

On June 26, 2018, the court handed down judgment awarding compensation to the Complainant. As per the court order, the compensation awarded by the court was less than the amount of 19 million Cedi suggested by the independent court valuer, which the Complainant was hoping to receive. Furthermore, the court granted GPHA's request to pay the compensation in three installments, with the last installment due at the end of September 2018.

Both the Complainant and the Company agreed that paying compensation in installments would not be in the best interest of the Complainant, as it would further delay her ability to set up a new operation. They both indicated their interest in addressing the issue of paying compensation in installments, through a voluntary dialogue process convened by CAO's Dispute Resolution function. The Complainant also requested the Company to consider discussing additional compensation. However, after internal consultation, the Company was not willing to engage the Complainant on the issue of additional compensation. And the issue of whether or not to pay in instalments was rendered redundant given the passage of time and the fact that, as at the date of publication of the report, the Complainant confirmed that GPHA had paid all three installments.

The complaint was therefore referred to CAO's Compliance function, in accordance with CAO's Operational Guidelines.

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 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,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:** 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.⁴

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**

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.