



December 2, 2015
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

*IFC Advisory Services Project with Vizhinjam International Seaport Limited (IFC Project #28991)
India*

Complaints 01 to 03

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see www.cao-ombudsman.org.

Background to the investment

In 2009, IFC initiated an Advisory Services (AS) project to support the Government of Kerala (GoK), India, in designing and implementing a bidding process for the development of a greenfield international port in Vizhinjam, Kerala (the port).

The port was to be developed using a Public Private Partnership (PPP) model. The GoK acted through a wholly owned company, Vizhinjam International Seaport Limited (VISL or “the client”). VISL was to select, through competitive bidding, a private partner to construct, finance, operate, and manage the port. The objective of the AS project was to assist the client with structuring and implementing the bidding process, and extended to the preparation of E&S impact assessment documentation required for the project to receive clearance from the Indian Ministry of Environment and Forests.

In March 2013, IFC concluded its primary role in the project, and recorded that the GoK had decided not to award the project. Subsequently, however, GoK reopened bidding for the port development and in May 2015 awarded the project to the sole bidder. At the time of writing, IFC had no ongoing involvement in the project, however, any future exposure to the construction of the port, either directly or through a financial intermediary would be of relevance in the context of CAO’s compliance mandate.

The complaints

CAO received three complaints about the project.

The first complaint was filed in August 2012 by representatives of affected communities, and raised concerns about the design of the port project, its socio-economic and environmental impacts on tourism and fishing activities, and about IFC’s due diligence for the project and stakeholder consultation activities.

The second complaint was filed in November 2012 by a local fishing group and raised concerns about the impact of the port on fishing activities, on marine biodiversity, pollution, soil erosion, loss of land, and safety of the fishing community.

The third complaint was filed in April 2013 by 14 residents of the village of Mullor and raised concerns about the impact on farmland and access to water in relation to infrastructure associated with the port development.

All three complaints were found eligible by CAO. As there was no agreement to participate in a dispute resolution process, all three complaints were transferred to CAO’s compliance function.

In June 2015 CAO released a compliance appraisal in relation to the complaints, and decided to conduct a compliance investigation of IFC’s E&S performance in relation to the project.

Scope of the compliance investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its advice, and whether the outcomes of the advice are consistent with the intent of the relevant policy provisions.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's E&S performance in relation to the Vizhinjam project in relation to the issues raised in the complaints.

The compliance investigation will consider whether IFC's advice in relation to the Vizhinjam project was developed, implemented and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's outstanding questions in relation to the project include:

1. Whether IFC's advice in relation to E&S issues addressed or was otherwise consistent with the requirements of the Performance Standards, particularly regarding the:
 - a. assessment of the E&S impacts of land-based infrastructure associated with the project;
 - b. application of Performance Standard 5 to assess and manage potential impacts of the project on tourism operators and fishing communities, specifically economic displacement; and
 - c. application of Performance Standards 1 and 6 as they apply to stakeholder consultation and project impacts on ecosystem services.
2. Whether IFC's policies, procedures, and practices as they were applied to selection and structuring of this AS project provided an adequate level of guidance and protection, in particular regarding:
 - a. when E&S risks, including client commitment and capacity to manage such risks, should preclude IFC from engaging as an advisor to a project; and
 - b. the scope of E&S responsibility that IFC should take on in relation to a high risk AS project.

The scope of the investigation also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by March 2016.

A draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the investigation report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in the assessment and management of E&S risks around large-scale infrastructure projects in South Asia, particularly in relation to port development and associated land-based infrastructure with a focus on issues of economic displacement, marine biodiversity, and other impacts on coastal ecosystem services.
- Expertise in relation to best practices in designing and supervising consultant-prepared E&S impact assessments of infrastructure projects.
- Knowledge of IFC's E&S policies, standards and procedures, in particular Performance Standards 1, 5, and 6.
- Experience and knowledge relevant to the conduct of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.