



CAO ASSESSMENT REPORT

**Second Complaint (Vizhinjam-02) Regarding
the IFC Vizhinjam Port Project (#28991)**

Kerala, India

April 2013

*Office of the Compliance Advisor Ombudsman
International Finance Corporation/
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. The 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.

Table of Contents

Table of Contents.....	3
LIST OF ACRONYMS.....	4
1. Overview.....	5
2. Background.....	5
2.1. The Project.....	5
2.2. The Complaint.....	5
3. Assessment.....	6
3.1. Methodology.....	6
3.2. Findings.....	7
Annex A. CAO Complaints Handling Process.....	8

LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
GoI	Government of India
GoK	Government of Kerala
IFC	International Finance Corporation
KSMTF	Kerala Swathantra Malsya Thozhilali Federation (Kerala Independent Fish Workers Federation)
MIGA	Multilateral Investment Guarantee Agency
MP	Member of Parliament
NMDP	National Maritime Development Project
PPP	Public Private Partnerships
VISL	Vizhinjam International Seaport Limited

1. Overview

In September 2012, a complaint was filed to the CAO by a local fishing group, Kerala Swathantra Malsya Thozhilali Federation (Kerala Independent Fish Workers Federation) (“Complainants”). The complaint raised concerns about potential negative impact of the proposed Vizhinjam Port Project (“Project”) on the fishing communities in or near the Project site. This is the second complaint received by the CAO relating to the Vizhinjam port project. The complaint was deemed eligible as it met the CAO’s three eligibility criteria; hence an assessment of the complaint was conducted. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. Background

2.1. The Project

Based on information provided by IFC, the Government of India (GoI) embarked upon the large scale National Maritime Development Project (NMDP) to increase the country’s port capacity. Through the NMDP, several identified port projects are being developed, primarily via Public Private Partnerships (PPP), including one in which the Government of Kerala (GoK) plans to develop a “state-of-the-art” transshipment facility. The Project involves the development of a multi-purpose port at Vizhinjam, 16 Kilometer (km) south of the state capital, Trivandrum (Thiruvananthapuram), by the GoK through its State Government owned company, Vizhinjam International Seaport Limited (VISL). The GoK engaged IFC’s Advisory Services, whose role was defined in the context of a long running GoK-led process for the development of the Project which had been going on prior to IFC engagement. Within that context, IFC’s Advisory Services was engaged primarily for the structuring of a location-specific public private partnership (PPP) for the port terminal and for supporting the Government of Kerala in running a transparent bidding process to identify a potential private investor/operator for the same terminal. In August 2012 the Government of Kerala decided not to award the construction and operation of the terminal to the identified private investor/operator. At the time of drafting this report, IFC’s primary role in the project had been completed. IFC managed roughly \$1.6 million in trust funds for the structuring and bidding of the port terminal.

2.2. The Complaint

The complainant raises concerns about potential negative impacts of the proposed port project, such as pollution from port operations, loss of marine biodiversity, damage to Wadge Bank, possible displacement of fisherman and their families from the area, obstruction of the movement of fishing vessels, impaired access to beaches and fishing grounds (including mussels or “chippi” fishing), environmental damage (including shoreline impacts such as erosion and damage to existing Vizhinjam Fishing Harbour), and loss of livelihood for fishing communities within the vicinity of the project site. In addition, the complainant is asking for information regarding project benefits for the fishing community members, especially employment.

3. Assessment

3.1. Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how other stakeholders see the situation, and to help the Complainants and VISL determine whether and how they might be able to resolve the issues raised in the complaint. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- Project document review;
- Project site visit;
- Meetings with IFC project team;
- private meetings with the Complainants, fisher folk community representatives and VISL representatives; and
- Meetings with other relevant stakeholders, including:
 - James Varghese, Principal Secretary To Government, Fisheries, Ports & Environment
 - Dr. Sashi Tharoor, Union Minister of State For Human Resource Development and Member Of Parliament From Trivandrum
 - Jameela Prakasam, Elected representative of the people of Kovalam Constituency, Municipal Legislative Assembly
 - Mr. K. Babu, Minister for Fisheries, Ports and Excise
 - Mr. M. Vijayakumar, Former Minister for Ports
 - Trivandrum Management Association
 - Trivandrum Chamber of Commerce and Industries
 - Confederation of Tourism Industry of Kerala
 - Federation of Residents Associations, Trivandrum
 - Local Bharatiya Janata Party representatives
 - Local ward councilors
 - Local NGOs
 - Father Anto Dixon, Adimalathura Parish Priest, and local fishermen

- Father Mathias and local fishermen
- Asian Consulting Engineers
- L & T Rambol

3.2. Findings

In addition to the issues in the original complaint, during CAO's assessment, the complainants, various fisher folk and other community members noted the importance of building more awareness generally among the local fishing community on the likely impacts of the port during both construction and ongoing operations. VISL and other parties reported to CAO during the assessment that some fisher folk concerns were beginning to be addressed, such as integrating new fishing boat landings into the port design. Complainants, IFC, and VISL all noted that a draft environmental and social impact assessment report will eventually be published in the public domain and a public hearing will be held.

After discussions and consultations with the CAO team, VISL declined CAO's offer of facilitating a voluntary collaborative process to resolve the complaint issues under the auspices of CAO's Dispute Resolution function, stating that they were fully aware of the needs of fisher folk and were putting in efforts to address these through their own channels. Therefore, the complaint will be transferred to CAO's Compliance function for appraisal, per CAO Operational Guidelines. The complainants requested CAO to note that they were willing to engage with VISL to address the complaint issues in a collaborative manner through CAO's Dispute Resolution function.

Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The 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.

The CAO 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.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

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:** Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a collaborative solution through a facilitated process by CAO Dispute Resolution, or whether the case should be handled by CAO Compliance to review IFC's/MIGA's social and environmental 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, a dispute resolution process is initiated (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) which could include facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective 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 problem-solving process, in a way that is acceptable to the parties affected².

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

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

OR

Compliance Appraisal/Audit: If the parties opt for a Compliance process, CAO Compliance will initiate an appraisal of IFC/MIGA's social and environmental due diligence of the project in question to determine whether a compliance investigation of IFC/MIGA's intervention in 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/MIGA's intervention. An investigation report with any identified non-compliances will be made public, along with IFC/MIGA's response.

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

Step 6: **Conclusion**/Case closure

of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.