



March 06, 2018
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

Bidco Bev. & Det.-04 (IFC Project #33385) Kenya

In May 2017, a former employee of the client lodged a complaint with CAO, claiming to represent more than 480 other former employees (the complainants). The complainants allege that Bidco Oil Refineries Limited (“client”) unfairly terminated their contracts in response to their demand to receive overdue benefits, including leave allowance accrued during their employment. The workers also claimed working under poor conditions while employed at the client’s facilities. They also claimed the client prevented them from joining a trade union.

In June 2014, IFC approved an investment in the client, which consisted of an A-loan of up to USD23 million and a syndicated B-loan of up to USD13.5 million to support the construction and operation of the new facilities. Total project cost was estimated at USD46 million. Commitment of the A-loan took place in June 2014 and the B-loan commitment was in December 2014. First disbursement of the A and B loans occurred in June 2016. The client is a Kenyan private limited liability company, which generates its revenues from the sale of fast moving consumer goods: cooking fats, edible sunflower, soybean, maize and palm oils, soaps and detergents, baking powder and animal feed.

The complaint alleges violations of IFC Performance Standard 2 (Labor and Working Conditions). These allegations raise concerns regarding: the conditions under which the workers’ employment with the client came to an end; the poor working conditions at the client’s facilities; and, interference preventing workers from joining a trade union.

CAO notes that in June 2016, it received a complaint (Bidco Bev. & Det.-01/Thika) regarding the same client’s operations and raising the same issues as in the complaint subject to this appraisal report. The earlier complaint led to CAO opening an investigation of IFC’s social and environmental performance in relation to its investment in the client.

The ongoing investigation is reviewing: i) IFC’s review of the client’s labor policies and practices, particularly as they relate to the concerns raised by the complainants, and related allegations of non-compliance that were publicly reported at the time of IFC’s pre-investment due diligence; and, ii) IFC’s supervision of the client’s E&S and occupational health and safety performances, in particular after becoming aware of labor related concerns in 2015.

Considering the similarity of the issues and the fact that they are currently under investigation, CAO has decided to merge this complaint with Bidco Bev. & Det.-01/Thika, the ongoing compliance investigation.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) 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 lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social performance of IFC and MIGA. CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

About CAO's Compliance Function

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving environmental and social (E&S) performance of the institutions. The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management. Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.¹

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

¹ CAO Operational Guidelines, 2013, para. 4.4.6.
CAO Compliance Appraisal Report – IFC Investment in Bidco Bev. & Det.-04.

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Acronyms

Acronym	Definition
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
ESRS	Environmental and Social Review Summary
ESAP	Environmental and Social Action Plan
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards
USD	United States Dollar

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. 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.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

Bidco Oil Refineries Limited (“the client”) is a Kenyan private limited liability company, which generates its revenues from the sale of fast moving consumer goods: cooking fats, edible sunflower, soybean, maize and palm oils, soaps and detergents, baking powder and animal feed.²

In June 2013, IFC initiated its due diligence review of the investment and in May 2014 IFC published its Environmental and Social Review Summary and the agreed Environmental and Social Action Plan (ESAP) for the project.³ Among other things, the ESAP required the client to develop and implement human resources policies and procedures appropriate for its workforce and consistent with the requirements of Performance Standard 2 (PS2 - Labor and Working Conditions) and Kenya’s labor laws.⁴ The investment was classified as category B according to IFC’s Policy on Environmental and Social Sustainability, meaning that IFC assessed the investment as having limited potential E&S risks and impacts.⁵

In June 2014, IFC approved the investment, which consisted of an A-loan of up to USD23 million and a syndicated B-loan of up to USD13.5 million to support the construction and operation of the new facilities.⁶ Total project cost was estimated at USD46 million. Commitment of the A-loan took place in June 2014 and the B-loan commitment was in December 2014. First disbursement of the A and B loans occurred in June 2016.

Complaint

In May 2017, a former employee of the client lodged a complaint with CAO, claiming to represent more than 480 other former employees (the complainants). The complainants allege that the client unfairly terminated their contracts in response to their demand to receive overdue benefits, including leave allowance accrued during their employment. The workers also claimed working under poor conditions while employed at the client’s facilities. They also claimed the client prevented them from joining a trade union. The complainants reported that they pursued legal action against the client and the judgement is pending. For fear of reprisal, the complainants requested that CAO keep their identities confidential.

Client perspective

The client stated that the complainants, as casual workers, presented themselves at the factory gate on a regular basis and, based on the client’s needs for that day, the client would select as many workers as needed to work that day. The client also stated that following the workers request for job security, it was agreed that some permanent positions would be created and the workers would have to apply to these positions. According to the client, the jobs were advertised and most workers applied. The client stated that workers who were unsuccessful, were paid all that was due to them.

² In February 2015, Bidco Oil Refineries Limited changed its name to Bidco Africa Limited. However, the Loan Agreement was signed between IFC and Bidco Oil Refineries Ltd. Therefore, this report refers to the client’s name as used in the Loan Agreement.

³ Environmental and Social Review Summary (ESRS), <https://disclosures.ifc.org/#/projectDetailESRS/1064>.

⁴ ESRS, Environmental & Social Action Plan, <https://disclosures.ifc.org/#/projectDetailESRS/1064>.

⁵ ESRS, E&S Project Categorization and Applicable Standard, <https://disclosures.ifc.org/#/projectDetailESRS/1064>.

⁶ An “A-loan” refers to a loan from IFC’s own account. Under a “B-loan”, IFC is the lender on record but commercial banks and other financial institutions participate. One agreement is signed with the Client and covers both A and B loans.

III. Analysis and Decision

The complaint was found eligible in July 2017. CAO then undertook an assessment 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 client would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be transferred to CAO's compliance team.

During this process, the client 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 was transferred to the CAO's compliance function.

CAO's compliance team reviewed the complaint, the assessment report, and the perspectives raised in it. The complaint alleges violations of IFC Performance Standard 2 (Labor and Working Conditions). These allegations raise concerns regarding: the conditions under which the workers' employment with the client came to an end; the poor working conditions at the client's facilities; and, interference preventing workers from joining a trade union.

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The ongoing investigation is reviewing: i) IFC's review of the client's labor policies and practices, particularly as they relate to the concerns raised by the complainants, and related allegations of non-compliance that were publicly reported at the time of IFC's pre-investment due diligence; and, ii) IFC's supervision of the client's E&S and occupational health and safety performances, in particular after becoming aware of labor related concerns in 2015.

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⁷ CAO, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=248.
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