



March 31, 2017
Office of the Compliance Advisor Ombudsman (CAO)

TERMS OF REFERENCE

CAO Compliance Investigation of IFC Financing of Bidco Bev. & Det., Kenya

Project #33385

Complaint 01

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 the CAO compliance mandate is on the performance of 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 or MIGA assured itself 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

Bidco Oil Refineries Limited (“Bidco” or “the Client”) is a Kenyan private limited liability company. Bidco generates its revenues from the sale of cooking fats, edible sunflower, soybean, maize and palm oils, soaps and detergents, baking powder and animal feed¹.

In 2014 IFC approved an investment to Bidco. The investment consisted of an A-loan of up to US\$23 million and a syndicated B-loan of up to US\$13.5 million to support the construction and operation of new facilities, intended to expand Bidco’s capacity in fast moving consumer goods. More specifically this targeted the construction and operation of an extension of Bidco’s detergent facility in Thika and a new beverage facility in Tatu City. Total project cost was estimated at US\$46 million. Commitment of the A-loan took place almost immediately thereafter, while the B-loan was committed in December 2014. First disbursement of the A and B loans occurred in June 2016.

The Complaint

In June 2016, CAO received a complaint regarding Bidco’s operations in Thika. The complaint was filed by Bidco Truth Coalition on behalf of current and former workers.

The complaint alleges violations of IFC Performance Standard 2 (labor and working conditions), including:

- Long hours of work without regular breaks. According to complainants, employees are expected to work overtime on days off, and these hours are neither registered nor paid for by the Client;
- Denial of payment of benefits such as sick and annual leave. Complainants question how maternity leave is awarded and claim that wages are not in line with the cost of living;
- Discrimination in relation to supervisory positions within certain departments;
- Loss of retirement benefits. According to complainants, after the completion of six consecutive months at work, casual workers are deemed permanent workers. Leave days, gratitude payment, and other benefits related to previous years’ employment were not taken into account when casual workers started working on a contract basis. Complainants also allege that as a result from the transition from casual to contract-basis work some workers had their contract terminated without prior notice or payment of benefits;
- Non-distribution of personal protective equipment (PPE). Complainants also allege that quality of PPE is not good enough considering the tasks they pursue. Further, complainants claim that whether PPEs is lost or damaged they are required to bear the cost for replacement. They also allege that there is discrimination on distribution of PPEs based on their tribal background;

¹ 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 TOR refers to the company’s name as used the Loan Agreement.

- Inadequacy of first aid care. They claim that there is no trained medical staff on site and whenever a worker is injured or needs medical attention, referrals to the hospital are made under the sole discretion of supervisors. The complainants also claim that many workers do not get medical coverage or compensation due to job related injuries;
- Lack of a grievance mechanism. Workers also allege they fear to present complaints and have their contracts terminated because workers suffer reprisals from management whenever they present their grievances;
- Lack of freedom of association. Complainants allege that workers would like to be represented by the Kenya Union of Commercial Food and Allied Workers, which is located in Thika and not by the current Union, which is the Chemical and Allied Workers Union of Kenya, located in Nairobi. They also allege that workers fear retaliation and discrimination if they join a union. They claim that there have been instances where reprisals were felt and unionized workers were victimized.

In response to the issues raised in the complaint, the Client's view is that it meets relevant requirements and that in many cases its policies and practices go beyond what is required by Kenya's labor laws.

CAO determined that the complaint was eligible and carried out an assessment. As there was no agreement among the involved parties to proceed with a CAO-facilitated dispute resolution process, the complaint was transferred to the CAO compliance function for appraisal in December, 2016.

In March, 2017 CAO released its compliance appraisal in relation to the complaint, 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 investment at appraisal and during supervision.

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 investment in the client in relation to the issues raised in the complaint.

The compliance investigation will consider whether IFC's investment in the client was appraised, structured 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 (PS) provide an adequate level of protection. The CAO appraisal report identified specific concerns regarding the application of IFC's Sustainability Framework to the investment. Therefore, the investigation will focus on the adequacy of:

- IFC's review of the company'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;
- IFC's supervision of the Client's E&S and OHS performances, in particular after becoming aware of labor related concerns in 2015.

Where relevant, CAO will also consider the underlying causes of any non-compliance found.

Compliance Investigation Process and Preliminary Timeline

CAO aims to have a draft compliance Investigation Report ready by September 2017.

The 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 labor issues, including in relation to the labor context in Kenya;
- Significant expertise in occupational health and safety, particularly in adequacy and quality of PPEs appropriate to protect workers in the fast moving consumer goods sector;
- Significant expertise in workers' rights and labor contracts in the private sector;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Social and Environmental Assessment and Management Systems), Performance Standard 2 (Labor and Working Conditions) and the World Bank Group Environmental, Health and Safety Guidelines;
- Experience and knowledge relevant to the conduct of compliance investigations.