



CAO ASSESSMENT REPORT

**Complaint Regarding the Vizhinjam Port Project (#28991)
Kerala, India**

July 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.

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LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
GoI	Government of India
GoK	Government of Kerala
IFC	International Finance Corporation
KHRA	Kerala Hotels and Restaurants Association
MIGA	Multilateral Investment Guarantee Agency
MP	Member of Parliament
NMDP	National Maritime Development Project
PPP	Public Private Partnerships
PRC	People's Resistance Committee
TA	Transaction Leader
VISL	Vizhinjam International Seaport Limited

1. Overview

In August 2012, a complaint was filed to the CAO by local tourism workers/businesses and other local residents, with the support of the Kerala branch of Exnora International, the Kerala Hotels and Restaurants Association, and the People's Resistance Committee in Vizhinjam ("Complainants"). The complaint raised concerns about impacts of the proposed Vizhinjam Port Project ("Project") on tourism and fishing communities situated along the coast of the Project site. The complaint was deemed eligible as it met the CAO's three eligibility criteria; hence an assessment of the complaint was conducted. After an extended assessment period, the complainants and IFC client did not reach agreement on participating in a voluntary dispute resolution process, and the complaint will therefore proceed to CAO Compliance for appraisal. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and findings.

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 Kilometers (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

In August 2012, a complaint was lodged with the CAO by the Complainants on behalf of local tourism workers/businesses and other local residents in Vizhinjam. The concerns raised in the complaint relate to the detrimental impact of the Project on tourism and fishing communities situated along the coast of the area, including water scarcity, loss of livelihood, loss of land and inadequate compensation. The complainants specifically question IFC's due diligence and contend that IFC failed to undertake a thorough review of documentation on the project's environmental, social and economic impact assessments.

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;
- Public meetings with members of the affected communities and the Complainants;
- Meetings with IFC project team;
- private meetings with the Complainants, affected 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 Minsister 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

On December 5, 2012, at the request of the complainants, IFC held a day-long informational session with four of the complainants' representatives in Delhi. The meeting included a presentation of issues and concerns by the complainants. CAO also attended as an observer.

Furthermore, at the request of the complainants, CAO extended its 120-day assessment period to allow for a more thorough exploration with all parties of whether a collaborative dispute resolution process would be possible and to help ensure all parties were able to make an informed decision in this regard.

3.2. Findings

Ultimately, CAO found no agreement among the key parties (complainants, VISL, and Government of Kerala) to proceed with a dispute resolution process under CAO auspices. VISL felt that the complainants' concerns could and would be addressed through the domestic Indian regulatory framework and procedures. Therefore, the complaint will proceed to CAO's Compliance function for appraisal, per CAO Operational Guidelines.

Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability and recourse 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.

The CAO assessment is conducted by CAO's Ombudsman 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) to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps. *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: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through 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, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has concluded its involvement in the complaint, and that it is being transferred to CAO Compliance for appraisal.

OR

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's involvement in the project is merited.

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

Step 6: **Conclusion**/Case closure