



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding IFC's investment in the India Infrastructure Fund –
IFC India Infrastructure Fund (#26237)**

India

February 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	The Office of the Compliance Advisor Ombudsman
CSO	Civil Society Organization
GKEL	GMR Kamalanga Energy Limited
IDFC	Infrastructure Development and Finance Company Limited
IFC	International Finance Corporation
IIF	India Infrastructure Fund
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization

1. Overview

In April 2011, six signatories, comprising four from Odisha Chas Parivesh Surekhsa Parishad (Odisha Agriculture and Environmental Protection Council), a grassroots organization, and two from the Delhi Forum, a Delhi based advocacy and research organization, filed a complaint with the CAO on behalf of people affected by GMR Kamalanga Energy Limited, a portfolio investment of the India Infrastructure Fund, which in turn is supported by IFC.

The CAO determined that the complaint met its three eligibility criteria and assessed the complaint. Bringing to conclusion the CAO's assessment, the complainants and representatives of the affected community and GMR have agreed to participate in a voluntary dispute resolution process. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

A draft of this Assessment Report was shared with the parties in mid-November 2012, and reflects developments to this date. It was finalized incorporating the parties' factual corrections in February 2013. This report should be read in conjunction with the CAO's dispute resolution Conclusion Report, which is equally available on CAO's website.

2. Background

IFC's investment: India Infrastructure Fund (IIF)

The IFC-supported IIF is managed by the Infrastructure Development and Finance Company Limited (IDFC)'s Project Equity Company, a wholly owned subsidiary of IDFC. The IIF is based in Mumbai and makes equity investments in energy and utilities, transport infrastructure, telecommunications, and other infrastructure in India. The size of the Fund is approx US\$ 927 million and IFC's equity investment is \$50 million.¹

The sub project: GMR Kamalanga Energy Limited (GKEL)

One of IIF's portfolio investments is GMR Kamalanga Energy Limited (GKEL), a part of the GMR Group. Kamalanga Energy is a special purpose vehicle that was set up by GMR Energy Limited to develop and operate a 1400 MW coal based power plant near Kamalanga village in Dhenkanal, a district of Odisha state.

The GMR Kamalanga Energy Ltd. (GKEL) coal-fired power plant under construction is surrounded by nine communities located in Dhenkanal District in Odisha: Kamalanga (a big village with seven hamlets including Kamalanga, Durgapur, Bhagamunda, Maniabeda, Achalkot, Kaliataila, and Barashahi); Mangalpur (a village with the two hamlets Mangalpur and Manpur); Senpathi Berena and Bhaghabatpur. Among these communities, many families are considered land-losers, having sold land to the government authorities for the purpose of the project.

The complaint

The complaint voices a series of concerns about the project's potential impacts on local people and the environment, irregularities in the land acquisition process, a lack of involvement of the local communities in decisions that affect them, and a lack of disclosure of project information

¹ Summary of Project Information available at <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/15378ad7f9e4e3b7852576ba000e2a8d?opendocument>

and transparency about potential environmental and social risks and impacts of Kamalanga Energy in Odisha, and more broadly, IFC's financing role.

The complaint further raises more general concerns about how IFC handles investments in financial intermediaries, what environmental and social policies govern those investments, and a lack of transparency around IFC's investments in the sector. A summary of issues is presented in Section 3, and the complaint is posted on CAO's website.

3. CAO's Assessment

3.1 Assessment approach

The purpose of CAO's assessment is to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation, and to confirm whether the complainants and the company are willing to engage in a dispute resolution process. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment. Annex 1 presents CAO's process steps in response to a complaint.

The CAO assessment of the complaint consisted of:

- Review of documentation;
- Interviews, meetings and group discussions;
- Several trips to India by the CAO team to meet with stakeholders.

Between September 2011 and March 2012, the CAO conducted four trips to meet with the parties, and held numerous telephone conversations with the various stakeholders. During this time, the CAO team met with the complainants, the sponsor, the IFC project team, a relevant government official from the Land & Revenue Department, and additional stakeholders, including local Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs).

September 2011 - First assessment trip: The CAO team met with several hundred community members alongside the complainants, as well as meeting with company management, and a government official, with the objective of learning about the parties' perspectives on the issues, and informing the parties of CAO's process options.

Follow up visits: During follow up visits in November and December 2011, the team visited local villages, and met with complainants and the company both at the project site and at corporate headquarters in Bangalore, where the company's Board expressed their faith in CAO's involvement with the case in a dispute resolution capacity in December 2011.

March 2012 - meetings: In the context of local *Panchayat* elections which took place in January/February 2012, the process was paused until March 2012, when CAO met again with the complainants in Delhi, honouring their request not to meet in the villages shortly after the elections, as well as meeting company management again at company headquarters in Bangalore. Both parties gave their verbal commitment to seek to address the concerns of the complaint through a CAO-facilitated dialogue process, thereby concluding CAO's assessment activities and starting the preparatory phase of the dispute resolution process.

3.2 *Preparing for a collaborative dispute resolution process*

May 2012 - capacity building workshops: CAO carried out two capacity building workshops in May at which the company representatives on one hand, and the complainants and a set of community representatives on the other, were trained in dispute resolution skills. At this point the parties confirmed their commitment to a cooperative problem-solving process and its underlying principles in writing.

July 2012 - process design meetings: A further set of meetings with the parties in July 2012 focused on designing the process and getting started on discussing the parameters and ground rules for the parties' future engagement.

3.3 *Assessment summary*

Issues of concern

In discussions with CAO, many community members shared their concern about project impacts, which they feel pose a threat to the sustainability of their livelihoods. Many expressed a desire to see justice for what they perceive as illegal actions by the company; and for the project to generate more benefits for the communities, particularly jobs, which they expect would help secure their livelihoods and future.

Below is a summary of specific concerns that community members and complainants shared with CAO in the context of its assessment process.

Concerns about the project that would need to be addressed largely between the company and its surrounding communities:

- Employment
- Damage to houses due to blasting
- Access time/distance
- Information sharing
- Access to health and education facilities
- Water quality, quantity and provision
- Public safety/roads
- Benefits for people with special needs (widows, handicapped)
- Impacts from the laying of a water pipeline

Concerns about GKEL which involve the government-led land acquisition process and other role players:

- Individual unresolved cases in the land acquisition process
- Acquisition of village grazing lands
- Legality of land acquisition processes, including acquisition from vulnerable communities such as scheduled castes and tribes
- Additional acquisition of land
- Level of land compensation
- Value placed on canalization system – if unfinished – to be considered as part of land valuation
- Open police cases
- Police misconduct

Concerns affecting people beyond the local communities

- Pollution
- Impacts on the *Brahmani* river
- IFC's lending to financial intermediaries
- Cumulative impact in the region

Company response

The company maintains that the project has been set up after obtaining all the required clearances from the Government of India (GoI) and Government of Orissa (GoO). Company representatives have noted the company's commitment to good relations with its host communities, as exemplified in the GMR Varalakshmi Foundation activities aimed at supporting local livelihoods through a variety of means. The company has confirmed their willingness to engage with representatives of the local communities to address the concerns raised in their complaint to CAO.

3.4 Summary of stakeholder goals and interests

Based on discussions with company management, complainants and community members, the CAO heard and understood the following key goals and interests, shared by the parties:

- Relations based on mutual respect, justice and dignity;
- Timely, open, and trusted channels of communication, through which information is shared and issues of concern can be raised and addressed;
- All parties acting in strict adherence to the law;
- Sustainability of livelihoods of the local village population.

4. Conclusion and Next Steps

Over the course of the CAO Assessment, the complainants, community representatives, and the company affirmed their commitment to engaging in a dispute resolution process convened by CAO to address the issues raised in the complaint. The investor, IIF, has equally agreed to play a supportive role in the process.

The Ombudsman team is engaging with the parties to develop acceptable parameters and ground rules for dialogue that would and carry out capacity building and training exercises to promote a robust and effective collaborative process.

Annex 1: CAO's process

As per CAO's Operational Guidelines,² 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 situation and assisting the parties 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 period can take up to a maximum of 120 working days.
- Step 4: Facilitating settlement: If the parties are willing to engage in a CAO Ombudsman process, 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 affected.
- OR
- Compliance Appraisal/Audit: If the complaint is transferred to CAO Compliance for a compliance review, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether the case merits a compliance audit of IFC's/MIGA's intervention in the project. The Compliance appraisal process can take up to a maximum of 45 working days.
- Step 5: Monitoring and follow-up
- Step 6: Conclusion/Case closure

² 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>