CAO ASSESSMENT REPORT

Regarding a Complaint Received in Relation to IFC's investment in Palma Guinea S.A (IFC 32408) in Republic of Guinea

January 2024

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org

About CAO Assessments

Any person who believes they may be harmed by an IFC or MIGA project can lodge a complaint to CAO. We apply three simple eligibility criteria to accept a complaint. For eligible complaints, we assess the concerns with the complainant(s), project sponsor, and other relevant stakeholders.

Once a complaint is determined to be eligible, we review the concerns raised in it. This assessment is conducted in consultation with the complainant, IFC and MIGA client and project teams, and other relevant stakeholders.

Purpose

The objective of the CAO assessment process is to develop a thorough understanding of the issues the complaint raises, work to understand all perspectives, engage with all key stakeholders to the complaint, consult with them to determine the process they choose to address the complaint, and consider the status of other grievance resolution efforts made to resolve the issues raised.

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ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
E&S	Environment and Social
FHTRC-ONSLG	Fédération de l'Hôtellerie, Touristique, Restauration et Branches Connexes-Organisation Nationale des Syndicats Libres de Guinée
GLJ-ILRF	Global Labor Justice-International Labor Rights Forum
IFC	International Finance Corporation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations
MIGA	Multilateral Investment Guarantee Agency
PGSA	Palma Guinea S.A
SGC	Sheraton Grand Conakry

1. OVERVIEW

On January 19, 2023, a complaint was lodged with CAO by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF) and Global Labor Justice-International Labor Rights Forum (GLJ-ILRF), on behalf of the current and former workers of the Sheraton Grand Conakry hotel (SGC) in Conakry, Guinea. The workers (the "complainants") are represented by the Fédération de l'Hôtellerie, Touristique, Restauration et Branches Connexes-Organisation Nationale des Syndicats Libres de Guinée (FHTRC-ONSLG), a labor union affiliate of the IUF.

The complainants claimed that IFC's client violated IFC's Performance Standards on environmental and social risk management and labor. IFC's client, Guinea-incorporated Palma Guinea S.A (PGSA), prepaid its loan in September 2022 and was no longer IFC's client when the complaint was submitted. In accordance with Paragraph 49 of the CAO policy, further explained below, CAO found the complaint eligible on August 21, 2023, and began its assessment process.

PGSA informed CAO that, as they are no longer IFC's client, they respectfully decline to participate in CAO's processes. The complainants requested a CAO compliance process. Consequently, the case will proceed to a compliance appraisal[1] that will determine whether the complaint merits a compliance investigation or whether CAO can close the case.

2. BACKGROUND

2.1 The Project

The complaint is related to PGSA, which owns the SGC hotel, a 280-room 5-star hotel in Conakry, Guinea (the "Project"). PGSA was incorporated in 2012 specifically to develop and own the hotel, which began its operation in December 2016[2].

According to IFC's disclosure website, PGSA is a Guinea-incorporated company that is fully owned by the Topaz Group.[3] Topaz is an international trading and manufacturing group that has been present in Guinea for more than 25 years. The Group has grown into one of the most important foreign investors in Guinea outside of the mining sector.[4] The Topaz Group owns both PGSA and the SGC hotel, which is operated under contract by Marriott International after its acquisition of Starwood Hotels & Resorts Worldwide, Inc in 2016. Due to this company structure, the management of the hotel includes the owner Topaz Group, its subsidiary PGSA, and the operator Marriott International.

At the time of IFC's investment, IFC's estimation of the development impact of the project was that it would support the development of a high-standard hotel, which would help Guinea's capital city address growing demand for quality hotel accommodation, driven by increasing business travel and the emerging conference activities sector. According to IFC, that would allow creation of local direct and indirect employment in the supply value chain; establish linkages with the local economy, specifically in areas such as supply of food products and procurement of services; and encourage investment activity in Guinea.[5]

The total Project cost was estimated at US$76 million. IFC's investment was a secured senior loan package of up to US$26 million to PGSA, which was approved by the Board in 2013. The

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[1] See Para. 59 of the new CAO Policy, which states that "*If both Parties agree to undertake dispute resolution, CAO will facilitate this process. If there is no agreement, the complaint will proceed to CAO's Compliance function.*"
[2] https://topaz.com.gn/about-us/
[3] See IFC's Disclosure website at https://disclosures.ifc.org/project-detail/SII/32408/palma-guinea
[4] Id
[5] Id

loan package comprised: (i) an A-loan for IFC's own account of up to US$15 million and (ii) a syndicated B-loan of up to US$11 million. The Dutch Entrepreneurial Development Bank (FMO) was the other lender (B lender) involved in this project. PGSA fully prepaid its loan to IFC (and FMO) in September 2022.

The Project was classified as Category B according to IFC's Policy on Environmental and Social Sustainability.

2.2 The Complaint

On January 19, 2023, CAO received a complaint from IUF and GLJ-ILRF on behalf of the current and former workers of SGC, who are represented by the FHTRC-ONSLG, a labor union affiliate of the IUF since 2018.

The complaint raised labor-related concerns and issues, including: (i) unpaid wages, unsafe working conditions, and lack of health benefits; (ii) interference with workers' rights to participate in and be represented by a trade union, such as delaying the election of workers representatives, and discouraging trade union activity through misinformation, intimidation, and retaliation; (iii) unfair termination of 158 workers out of a total 199, with no alternatives to retrenchment or assurances of future employment, which resulted in financial consequences; (iv) failure to properly inform workers of the health impacts of the hotel closure due to mold contamination found in December 2021; and (v) lack of due diligence to ensure that the client was prepared to conduct an operation compliant with the IFC's Performance Standards.

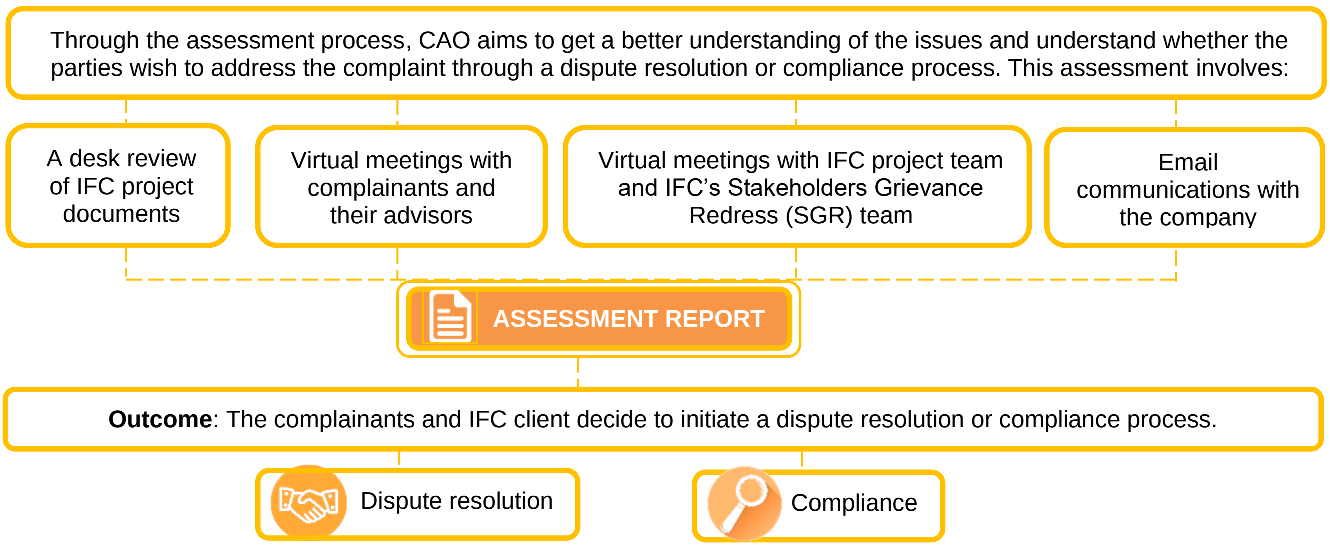
Although the complaint was submitted after PGSA had repaid its loan to IFC in September 2022, CAO found the complaint eligible for assessment on August 18, 2023. According to Paragraph 49 of the CAO Policy, "In exceptional circumstances, CAO may deem eligible a complaint submitted up to 15 months after an IFC/MIGA Exit, where: (a) there are compelling reasons why the complaint could not be made before the IFC/MIGA Exit; (b) all of CAO's other eligibility criteria are met; and (c) after consultation with Management, CAO considers that accepting the complaint would be consistent with CAO's mandate."

3. ASSESSMENT SUMMARY

3.1 Methodology

Figure 2 shows the approach and methodology to be applied in CAO's assessment process.

Figure 2. CAO Assessment Process



The CAO assessment process does not entail a judgment on the merits of the complaint; rather, it seeks to understand the facts and assist those involved to make informed decisions on how to address the issues raised.

The issues raised in the complaint and during assessment by the complainants and the view of the IFC client are described below.

3.2 Summary of Views

Complainants' perspective

The complainants shared with CAO a complaint that raised concerns about several violations of IFC's Performance Standards on environmental and social risk management and labor, and requested a CAO compliance process.

They shared that their representatives had previously submitted a formal complaint through IFC's labor portal regarding this project on October 15, 2019 requesting IFC to work with PGSA in moving forward with the workers' union election. Eventually, with IFC's engagement with its client, the union election was held in February 2020. The complainants then submitted a second complaint through the labor portal on June 23, 2021. These were supplemented with four addenda, dated July 6, 2021; July 20, 2021; October 19, 2021; and January 12, 2022. These complaints and addenda raised issues related to (i) unsafe working conditions, (ii) interference with workers' rights to participate in and be represented by a trade union through harassment and intimidation; (iii) unpaid wages, lack of health benefits and (iv) unfair employment termination of union leaders.

The complainants wrote in their complaint that IFC's efforts to address their previous complaints were limited partially by the fact that while PGSA was the IFC client, employment matters and policies were the contractual responsibility of the hotel operator - Marriott. The complainants further mentioned that in this project IFC had limited influence over Marriott International, who was unwilling to engage with the complainants and unions, and most of the issues raised in the complaints have remained unresolved, prompting them to submit their complaint to CAO.

The details of issues raised in the complaint submitted to CAO are further expanded below.

Unpaid wages, unsafe working conditions, lack of health benefits

The complainants claim that the SGC hotel management withheld workers' wages in a variety of ways during the workers' period of employment. For example, although Guinean law required PGSA to pay higher wages for overtime and night work, complainants claim that it paid the regular rate and unlawfully deducted wages when workers were absent due to illness. The complainants further stated that after the SGC workers held a highly publicized press conference on June 24, 2021, PGSA management announced gifts for the workers (one bag of rice and some fabrics), unspecified seniority raises, and an 8% pay raise beginning at the end of July 2021. PGSA also committed to pay overtime, but according to the complainants this across-the-board raise never materialized.

The complainants explained to CAO that workers were not given the required health benefits mandated by Guinean law and spent a large portion of the Covid-19 pandemic quarantined without health insurance. According to the complainants, when workers were finally given new health insurance, which was not negotiated with the union, it provided no coverage for dependents. The complainants further shared one incident, where a worker died in June 2020 from unknown causes and without financial support from the employer; the contribution offered by the hotel management after her death was less than half of the medical costs incurred and was rejected by the family members of the deceased.

Furthermore, the complainants stated that they were required to share beds and rooms (two per bed, four in a room) with other workers during the peak of Covid-19 pandemic quarantine. They state that workers were forced to stay at the hotel because of transportation, and were required to handle dangerous chemicals without protection. The complainants indicated that they raised these occupational health and safety concerns with PGSA management during their engagement in 2020, including the unsafe conditions in the hotel cafeteria, where workers were often served rotten and expired food, but were unable to resolve the issues.

Obstacles to freedom of association through misinformation, intimidation, and retaliation

According to the complainants, PGSA interfered with the workers' rights to participate in and be represented by a trade union, and therefore violated their right to freedom of association. They claimed that when the trade union was finally formed, SGC's management purposely sought to undermine the activities of the union by intimidating and retaliating against union members, illegally terminating union representatives, and harassing workers who participated in union activities.

The complainants further stated that the union representatives have been retaliated against since 2018. Throughout 2019 and 2022, they claim that SGC hotel management attacked workers who tried to assert their rights, through intimidation and threats to mobilize the government and authorities against them if they considered demonstrating or striking. The complainants also shared one incident from 2019, where a worker was falsely accused of stealing hotel food and was then terminated and imprisoned for three days. Currently, six of a total of eight elected union leaders and representatives have been terminated, one resigned and the one remaining employed representative fears losing his job. Two union members filed a petition with the Labor Tribunal against their termination, and obtained a verdict in their favor in March 2023, while 3 other union member's petition is still pending. PGSA appealed against the Tribunal's decision and, as of the date of this report, the appeal is still pending.

Unfair termination practices with no alternatives to retrenchment

The complainants shared with CAO that the SGC hotel closed due to mold contamination in December 2021[6] and the workers were paid only a fraction of their salary between December 2021 and August 2022. They indicated this eventually led to unlawful termination practices, without alternatives to retrenchment or assurances of future employment, and that Marriott International and SGC management proceeded to retrench[7] their entire workforce of 158 out of 199 employees while retaining only a few necessary personnel to maintain the hotel building.

The complainants communicated to CAO that the retrenched workers were terminated between August and September 2022, with a maximum of two months' salary in severance according to Guinean law, sending workers into poverty with little severance and no job security. During the assessment process, some of the terminated workers shared with CAO that the unfair and sudden termination of their employment had an adverse impact on their welfare and quality of life, as most of them have irregular income. They further stated that, if the terminated workers are not rehired by the SGC hotel, they would like to be treated

[6] The Government of Guinea revoked SGC's license to operate in Guinea in April 2022, and the hotel remains closed as of the date of this report. Ministerial Order A/2022/749/MSTA/SGG/, "Order withdrawing the technical permit to operate an accommodation establishment to Sheraton Grand Conakry"

[7] According to Article 155.6 of the Guinean Labor Law, PGSA is entitled to pay a minimum of 30% of technical unemployment allowance to concerned employees.

appropriately by getting a fair severance package. In addition, they noted that current workers' salaries should be increased, and suitable healthcare benefits should be offered in line with Marriott international's practices, as promised at the beginning of the project.

Failure to properly inform workers of the health impacts of mold contamination

The complainants claim that the SGC hotel management failed to adequately inform the workers about mold exposure and its potential health consequences in December 2021. At the time, they note that SGC workers' union repeatedly requested information about any health consequences that might have resulted from the mold contamination. However, they said that management refused to provide any information, even though workers were presumably exposed to the mold in the course of their work, and refused to provide expert reports about the nature or effects of the mold contamination. According to complainants, information about the health effects of mold contamination on the current workers is still absent.

On July 15, 2022, SGC hotel management, in collaboration with Marriott International, announced their employment reduction plan to workers. According to this plan, workers affected by this workforce reduction plan would be given priority rehiring with a similar professional qualification within two years of their retrenchment, and the employer would give priority to the retrenched workers once the hotel reopens and becomes operational. The complainants further reported that PGSA is not transparent about the reasons for the temporary closure of the hotel. The former workers expressed their skepticism about the hotel's mold issue and feel that management is taking this action in order to replace all existing workers with new ones. They claimed that the hotel is still hiring, but that none of the retrenched workers have been recalled.

Lack of due diligence

The complainants were dissatisfied with the due diligence of IFC to ensure that its client was prepared to implement the project and conduct the hotel operation in compliance with the IFC's Performance Standards. They further stated that understanding of harm with regard to labor issues and risk assessment of harm had not been carried out appropriately. The complainants explained that they have communicated with representatives of Marriot International and felt that Marriott International managed human resource related matters while the SGC hotel was nominally operated by PGSA. It is the complainants' view that IFC's client had little control over Marriott International regarding employment matters and policies, and that IFC engagement was inconsistent and ineffective in this regard.

The complainants also shared with CAO that they are frustrated that the IFC client did not take any remedial efforts prior to its prepayment. Eventually, the complainants requested a CAO compliance investigation to hold the institution accountable for the impacts it caused the complainants, to implement remedial actions in accordance with IFC's Performance Standards, and to ensure the institution recognizes and holds itself accountable for the current situation.

Company's perspective

The CAO assessment team reached out to PGSA to hear their perspectives about the issues raised in the complaint and engage them in the assessment process. PGSA informed the CAO team that, as they are no longer a client of IFC, they respectfully decline to take part in the process.

4. ASSESSMENT CONCLUSION

During the assessment process, the complainants requested a CAO compliance process. PGSA abstained from participating in the CAO processes in light of its exit from IFC. Consequently, the case will proceed to a compliance appraisal[8] that will determine whether the complaint merits a compliance investigation or whether CAO can close the case.

[8] See para. 59 of the new CAO Policy, which states that "*If both Parties agree to undertake dispute resolution, CAO will facilitate this process. If there is no agreement, the complaint will proceed to CAO's Compliance function.*"

5. APPENDIX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. 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; (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.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,[9] the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgment** of receipt of the complaint.

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).

Step 3: **Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 90 business days, with the possibility of extension for a maximum of 30 additional business days if after the 90-business day period (1) the parties confirm that resolution of the complaint is likely; or (2) either party expresses interest in dispute resolution, and there is potential that the other party will agree.

Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types 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 dispute resolution process, in a way that is acceptable to the parties affected.[10]

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one complainant must provide explicit consent for the transfer, unless CAO is aware of concerns about threats and reprisals. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending by 20 business days in exceptional

[9] For more details on the role and work of CAO, please refer to the IFC/MIGA Independent Accountability Mechanism (CAO) Policy: https://documents.worldbank.org/en/publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy

[10] 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 of the World Bank Group, and the public, that CAO Dispute Resolution has concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA’s performance. An investigation report will be made public, along with IFC/MIGA’s response and an action plan to remediate findings of noncompliance and related harm. Third, in cases where noncompliance and related harm are found, CAO will monitor the effective implementation of the action plan.

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

Step 6: **Conclusion/Case Closure**