



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to IFC's Investment in CODEVI (IFC Project #34687) in
Haiti**

December 2020

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

About 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. 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

TABLE OF CONTENTS

LIST OF ACRONYMS IV

1. OVERVIEW 1

2. BACKGROUND 1

 2.1 The Project 1

 2.2 The Complaint 1

3. ASSESSMENT SUMMARY 2

 3.1 Methodology 2

 3.2 Summary of Views 3

4. NEXT STEPS 6

ANNEX A. CAO PROCESS TO ADDRESS COMPLAINTS 7

LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
WB	World Bank
MEF	Ministry of Finance
MCI	Ministry of Commerce and Industry
DZF	Directorate of Free Zones
DGI	General Taxation Directorate

1. OVERVIEW

In March 2020, 174 families of farmers in Ouanaminthe, Haiti (“the Complainants”) filed a complaint with the CAO, with the support of their legal adviser. The complaint outlines concerns about the Complainants’ economic displacement caused by the construction in 2002 of the CODEVI Free Zone industrial park in Ouanaminthe. CODEVI (the “Company”) is wholly owned by the Dominican group Grupo M, an IFC client. In April 2020, CAO determined that the complaint met its three eligibility criteria.

During the CAO assessment, both the Complainants and the Company expressed an interest in engaging in a dispute resolution process convened by CAO (in the presence of IFC, as requested by the Company and agreed by the Complainants). In accordance with CAO’s Operational Guidelines, the complaint will now be handled through CAO’s Dispute Resolution function. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project

As referenced on the IFC Disclosures website, IFC has an active project in Haiti with Grupo M and its 100-percent-owned subsidiary CODEVI which comprises a USD10 million A-loan committed in 2014 (IFC project #34687). The project has supported CODEVI’s expansion program, as it aimed to build a new plant to assemble woven clothes and purchase specialized machinery for dry clothes assembly and processing. The project was implemented through the development of two new buildings built on a plot inside the Free Zone industrial park. IFC also supported Grupo M in 2004 with a USD 20 million A-loan for the development of the CODEVI Free Zone industrial park and to establish its first apparel manufacturing plant in the park. In 2010, IFC committed a further USD 6 million A and B loan financing package to further support the expansion of Grupo M’s manufacturing operations in Haiti.

According to IFC, the land area occupied by CODEVI is of approximately 450,000.00 m² (45 hectares) and was obtained by CODEVI through a lease agreement with the Haitian Government (represented by the Ministry of Economics and Finance). IFC indicates that prior to signing this lease with CODEVI in 2003, the Haitian State expropriated the 45 hectares area from local Haitian owners and occupants.

IFC explained that prior to signing the 2003 loan agreement with CODEVI, they requested their client to develop a Social Compensation Plan (SCP) consistent with the World Bank Group Involuntary Resettlement Policy, OD 4.30 (June 1990). IFC expressed that the main objective of the SCP was to compensate the affected farmers and that the measures were focused on the restoration of the affected economic activity and improving the quality of life. IFC indicated that they supported the preparation of this SCP, including providing input on the Terms of Reference for qualified consultants, and that over the following approximately six years, they supported the implementation of such plan through technical guidance and numerous supervision visits.

2.2 The Complaint

In March 2020, 174 families of farmers in Ouanaminthe, Haiti filed a complaint with the CAO, with the support of their legal adviser.

The complaint raises concerns about the economic displacement of the Complainants from the land they farmed, resulting from CODEVI’s construction in Ouanaminthe in 2002.

According to the Complaint, the Complainants' livelihoods were severely impacted by the loss of land, and compensation they received 18 years ago from the Haitian State and CODEVI failed to cover their losses. Furthermore, as of the time of the filing of the Complaint, the Complainants claim they had not received the replacement land they were promised under the Social Compensation Plan (SCP). The Complainants further state that planned programs and activities under the SCP, which were assigned to CODEVI, have not been implemented either, as they were conditioned on the replacement land being granted by the State. According to the Complainants, their rights and protections were violated, in breach of IFC's Performance Standard 5.

Issues raised in the complaint and during the assessment are further detailed below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The CAO assessment aims 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 Company would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

While CAO, as per its Operational Guidelines, is not a legal enforcement mechanism or a substitute for court systems in host countries, CAO can address the underlying issues and concerns as expressed in the complaint and offer its processes to the affected parties.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- virtual meetings and email exchanges with IFC's project team;
- phone meetings and email exchanges with several representatives of the Complainants and their legal adviser;
- virtual meetings and email exchanges with representatives of CODEVI; and
- a virtual meeting and email exchanges with officials from the Ministry of the Economy and Finance (MEF) and the Directorate of Free Zones (DZF) of the Government of Haiti.

A CAO assessment typically involves a field visit to meet with the complainant(s), project sponsor and other relevant stakeholders as identified by the complainant(s) and project sponsor to gain a better understanding of the situation. Due to COVID-19-related restrictions on travel and social gatherings, CAO's staff and consultants could not arrange in-person meetings with the relevant stakeholders involved in this case. However, CAO decided that it was not necessary to delay the assessment of the complaint and conducted the assessment via virtual platforms, with the consent of both parties.

This document summarizes the views heard by the CAO team, and explanations of next steps based on the parties' decision to proceed with dispute resolution. This report makes no judgement on the perspectives shared by the parties.

3.2 Summary of Views

3.2.1 Complainants' perspective

The Complainants explain that, prior to 2002, they grew bananas, green beans, peanuts, and sugar cane on fertile land located in Pittober, and that this land was their main source of livelihood and income.

They state that in 2002, the Haitian State expropriated this land against their will to ensure that CODEVI's industrial park could be built.

According to the complaint, this expropriation without land replacement severely and negatively impacted their living standards and those of the Complainants' families. Many Complainants could no longer feed themselves and were unable to meet the needs of their families, including in some cases sending their children to school.

The issue of replacement land

The Complainants state that under a Social Compensation Plan (SCP) designed by the IFC, signed by the Haitian State and CODEVI, and meant to benefit the Complainants, the Haitian State had committed to granting them land to replace the Pittober land. The Complainants state that in 2014 the Haitian State surveyed 520 hectares in their favor, at the Delpé housing, in the commune of Ferrier (also called land of Morne Casse). However, as of the day the complaint was filed with CAO, they still did not have access to this replacement land. The Complainants express that they feel they have been cheated and abused.

The Complainants state that they have tried many times since 2014 to go to their designated land, but that they were deterred by law enforcement using tear gas. According to the Complainants, the Haitian government argued that they could not take possession of the land until completion of infrastructure that was supposed to be built for them on these plots. The Complainants believe that a good number of the plots that were allocated to them have been sold to the highest bidders, in breach of their rights. They further state that part of the land has been looted and is used by individuals with no lawful claims to them.

In July 2020, the Government of Haiti and the Complainants' legal adviser indicated to CAO that they had started direct negotiations for the distribution of the Morne Casse land, leading to the signing of a memorandum of understanding dated July 28, 2020 (the Memorandum of Understanding) recognizing the Complainants' rights to this land, as State farmers. The Complainants state that they now have access to the land, which has once again been surveyed in their favor. This new survey confirms the land distribution outlined in the Memorandum of Understanding: 174 hectares for the beneficiaries of the SCP, or one hectare per beneficiary; 38 hectares for a community agricultural project; and 20 hectares to the beneficiaries' legal adviser. The Complainants indicate, however, that they have yet to receive the plot plan, which is required to allocate and distribute the plots to each Complainant family.

Furthermore, the Memorandum of Understanding states that the remaining 288 (out of 520) hectares will be leased by DZF to any natural or legal person presenting the required guarantees under a viable project that can benefit the community. The Complainants add, however, that looters are still trying to grab these 288 hectares of land, and that the Complainants and their lawyers are constantly subjected to threats and retaliation, because even though they do not intend to occupy this land before identifying a viable project for submission to DZF, they do not want looters to grab it in breach of their rights under the Memorandum of Understanding.

Hence, the Complainants indicate that while they are satisfied with the content of their agreement with the Government, the complaint issues related to access to land have yet to be resolved because of the above-mentioned difficulties they are facing in the implementation of such agreement.

Issues related to the role of CODEVI

The Complainants indicate that CODEVI also signed the SCP, under which it made several commitments. On the one hand, CODEVI committed to compensating the Complainants for the loss of their harvests. The Complainants recognize that CODEVI met its obligations and paid the compensation amounts as provided in the SCP. However, they feel that the compensation was inadequate.

Further, the Complainants explain that CODEVI had committed under the SCP to providing technical and financial support to the Complainants to build a village for the Complainants located on the replacement land, and to support the Complainants' farming activities on the new plots (including by creating an agricultural cooperative). According to the Complainants, CODEVI had promised to provide financial and technical support to previous landowners for 10 years and to previous farmers for 7 years. The Complainants indicate that they never received the planned support. They also state that now that they have access to replacement land, they expect CODEVI to provide them with support and accompany them in their projects on the ground, for instance by providing fences, drinking water, forming partnerships for agricultural projects, building houses and/or providing security measures on the ground.

They explain that they are disappointed that CODEVI and the IFC failed to put enough pressure on the Haitian State to honor its commitment to grant them replacement plots, even though the activities to be undertaken by CODEVI under the SCP were conditional on access to these new plots being granted. They state that they have felt abandoned and cheated, because while they were led to believe that their living standards would truly improve with the arrival of CODEVI, they in fact deteriorated.

The Complainants indicate that, under IFC's Performance Standard 5, when they benefit from land given by the State, IFC clients such as CODEVI are required to help the State compensate individuals who may have been displaced from the land and ensure that their new living conditions remain at least equivalent to their situation prior to the displacement.

Furthermore, according to the Complainants, community members around the CODEVI plant are concerned about the impacts from waste discharges from the plant, which allegedly occur without permission from city hall. They consider that CODEVI harms their health by polluting the environment with this foul-smelling waste.

The Complainants indicate that they would like to have the opportunity to dialogue with CODEVI under the auspices of CAO, to share their concerns and find appropriate and satisfactory solutions to the various issues raised.

3.2.2 Company's Perspective

The Company indicates that when it came to Ouanaminthe, the State granted it land in Pittober. According to CODEVI, this land, which belonged to two individuals, had been legally expropriated by the government of Haiti. However, several persons made themselves known later, claiming to occupy this land. According to the Company, IFC surveyed and identified occupants of the Pittober land. CODEVI added that IFC justified this work because the project

it financed (construction of the CODEVI plant) had to adhere to several social standards,¹ and indicated to the Company that it was experienced in this area.

According to the Company, IFC realized during this identification survey that, prior to expropriation, several categories of people were present on the land: both land owners holding land titles and occupants who cultivated the land and paid rent to the owner, either through monetary payments or by sharing part of their harvests. CODEVI adds that under Haitian law applicable at the time, only owners with titles were entitled to be compensated for State expropriations.

According to the Company, IFC developed a Social Compensation Plan (SCP) that assigned both CODEVI and the government of Haiti several obligations. Under the plan, CODEVI's main responsibility was to compensate beneficiaries of the SCP for the loss of their harvests, and the State's main responsibility was to provide beneficiaries with replacement land. According to CODEVI, all SCP-mandated compensations owed by the Company were duly paid, for a total of USD 77,699.² CODEVI specifies that it paid both landowners and occupants, as well as those who worked the land without ownership titles.

Furthermore, CODEVI had a number of complementary responsibilities under the SCP that it had to meet once the beneficiaries had received their replacement land, including providing agricultural training, helping create and manage an agricultural cooperative, and providing agricultural inputs, as well as the equipment and technical assistance needed for beneficiaries to build their housing. However, these responsibilities were conditional on land being provided by the State. CODEVI indicates that it was unable to meet these obligations, since the State had still not, as of the date of filing the complaint with CAO, provided SCP beneficiaries with the replacement land.

However, the Company indicates that it had wanted to find alternative means to support the Complainants, as well as the broader community of the Ouanaminthe Free Zone. CODEVI adds that, in total, USD 153,000 was invested through the Grupo M Foundation in programs and activities for SCP beneficiaries and the broader community, including:

- a project to build up the technical agricultural capacities of SCP beneficiaries, through workshops and financial support;
- a project to assist women, including handicrafts, gastronomy, and business creation training workshops, as well as support to obtain personal identification cards;
- a health project, including access to free medical clinics, reproductive health assistance for women, and access to fully paid surgical consultations and procedures in the Dominican Republic;
- a literacy program, including reading and writing classes for adults;
- a youth program, to facilitate their entry into the professional world, including vocational training and provision of educational grants and job opportunities within CODEVI;
- a children's assistance project, including provision of school materials and uniforms, as well as music and sports classes;
- a senior support project, including training workshops and provision of economic assistance; and
- an outreach program for people with disabilities, including training and job opportunities within CODEVI.

¹IFC's currently applicable Social and Environmental Performance Standards did not exist at the time. IFC at the time already applied several standards, available here:

https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/safeguards-pre2006#esrp

²CODEVI states that USD 35,699 was paid directly to SCP beneficiaries as compensation, and that USD 42,000 was paid to the State, which it then paid to SCP beneficiaries. This USD 42,000 should have been paid back to CODEVI through offset, but according to CODEVI, such offset never took place.

In addition, CODEVI states that the Grupo M Foundation spent USD 58,000 to support efforts related to finding replacement land.

The Company wishes for the Complainants' concerns to be addressed and agrees to participate in a dispute resolution process with the Complainants, subject to IFC's involvement, because of the role played by IFC in the design and implementation of the SCP. The Company added that they would also like to discuss with the Complainants possible involvement of the Haitian Government in the dialogue process.

4. NEXT STEPS

The Complainants wish to address the issues raised in the complaint through a CAO dispute resolution process. The Company also wishes to participate in this process - subject to IFC's involvement, to which the Complainants agreed. IFC indicated that they agreed to participate in the process as observers. CAO will proceed to establish a facilitation team to begin working with the parties in designing a process focused on resolving issues related to the complaint. As part of the process design work, the parties will discuss whether they would like to invite any other stakeholder to the process.

ANNEX A. CAO'S 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; and (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 CAO's Operational Guidelines,³ the following steps are typically followed in response to the receipt of a complaint:

- Step 1: **Acknowledgement of receipt** of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (up to 15 working days).
- Step 3: **CAO 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 120 working days.
- 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.⁴

OR

Compliance Appraisal/Investigation: If the parties opt for a compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case Closure**

³ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁴ 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 closed the complaint and transferred it to CAO Compliance for appraisal.