



November 25, 2020
Office of the Compliance Advisor Ombudsman (CAO)

Terms of Reference for Compliance Investigation of IFC

IFC Investment in Salala Rubber Corporation (SRC)
(IFC Project #26510)
Liberia

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).

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves 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.

Once CAO concludes a compliance appraisal, a summary of the appraisal results is made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO prepares terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

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

Salala Rubber Corporation (SRC), a large producer and processor of rubber based in Liberia. In 2008, IFC provided a loan to SRC to support the plantation of new rubber trees on the existing land concession and factory rehabilitation, which had been neglected due to the Liberian civil war. In March 2020, the Company completed repayment of the IFC loan.

The complaint

In May 2019, four non-governmental organizations, representing 54 people from 22 communities from the Margibi and Bong Counties in Liberia, filed a complaint with CAO. The complaint raises concerns about land grabbing and forced eviction, lack of Free Prior and Informed Consent of indigenous peoples, destruction of ancestral graves and sacred sites, economic displacement and loss of livelihood, water pollution, poor employment conditions and labor rights violations, limited access to schools and health facilities, sex and gender-based violence (SGBV), reprisals, threats and intimidation, non-compliance with national and international law, as well as with IFC's Performance Standards (PS) and lack of freedom of association.¹

After CAO Assessment, the complaint was transferred to CAO's compliance function for appraisal. In September 2020, based on a preliminary review of IFC's documentation and discussions with the IFC team, complainant representatives and members of the affected community, CAO decided to trigger an investigation.²

Scope of the compliance investigation

CAO's compliance appraisal report identified questions regarding IFC's pre-investment due diligence and supervision of the project in relation to the environmental and social issues raised in the complaint.

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. 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.

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.

¹ Complaint to CAO in relation to IFC's investment in SRC (April 15, 2019). Available at <https://bit.ly/2ZpB0aU>

² CAO Appraisal available at <https://bit.ly/3isn9HG>

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investment in SRC in relation to the issues raised in the complaint. As noted in CAO's Appraisal Report, the complaint raises concerns regarding working conditions in the plantation, water pollution, sexual and gender-based violence, impacts resulting from the engagement of security personnel, physical and economic displacement, impacts to cultural heritage and lack of Free Prior and Informed Consent. In relation to these issues, CAO's questions include:

- a) whether IFC's pre-investment E&S review of the Company was commensurate to risk and established a realistic expectation that the Company would meet IFC's E&S requirements within a reasonable period of time.
- b) whether IFC exercised due diligence in its E&S supervision of the Company.
- c) whether IFC responded adequately to project level E&S concerns as they were raised during the period of IFC's finance and in particular whether IFC's response to the CAO complaint was adequate.

The Compliance Investigation will answer the above questions in the context of its E&S policies, procedures and standards. It will also consider whether these policies, procedures and standards as applied to this project provide an adequate level of protection. It will present findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable. CAO may also present observations as to the underlying causes of any non-compliance or adverse outcome found.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by August 2021. This timeline is dependent on whether CAO can conduct a field visit.

A 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 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 Panelist(s)

As per its established practice, CAO will engage one or more external experts to work with them on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise and experience in stakeholder consultation and community engagement in large-scale agriculture projects.
- Significant expertise and experience in land rights.
- Significant expertise and experience in the assessment and management of Sexual and Gender Based Violence issues.
- Significant expertise and experience in labor rights.
- Regional experience in West Africa and experience in conflict-affected operational environments is required.
- Knowledge of IFC's E&S policies, standards and procedures.
- Experience and knowledge relevant to the conduct of compliance investigations.