



CAO ASSESSMENT REPORT

**Third Complaint (Vizhinjam-03) Regarding
the IFC Vizhinjam Port Project (#28991)**

Kerala, India

September, 2013

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

About the Compliance Advisor Ombudsman

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..... 4

1. Overview 5

2. Background..... 5

 2.1. The Project..... 5

 2.2. The Complaint 5

3. Assessment 6

 3.1. Methodology 6

 3.2. Findings..... 7

LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
EIA	Environmental Impact Assessment
GoI	Government of India
GoK	Government of Kerala
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MP	Member of Parliament
NMDP	National Maritime Development Project
PPP	Public Private Partnerships
VISL	Vizhinjam International Seaport Limited

1. Overview

A complaint was filed to CAO in April 2013 by residents (“complainants”) of Mulloor village, one of 11 coastal villages near the Vizhinjam Port location. The complaint raises concerns about impacts of a newly constructed road that connects Mulloor village to the Vizhinjam Port area. CAO determined the complaint met its three eligibility criteria, and undertook an assessment of the issues and stakeholders.

In initial conversations between CAO and the complainants, the complainants expressed a willingness to engage in a collaborative process convened by CAO to address their concerns. VISL declined an initial interview with the CAO assessment team, and subsequently told CAO it did not wish to meet with the CAO team, or to engage in a facilitated dialogue. 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 next steps.

2. Background

2.1. The Project

Based on information provided by IFC, the Government of India 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 (PPPs), including one in which the Government of Kerala (GoK) plans to develop a state-of-the-art transshipment facility. The IFC project is a State Government initiative, not part of the NMDP.

The project involves development of a multi-purpose port at Vizhinjam, 16 km south of the state capital, Trivandrum (Thiruvananthapuram), by the GoK through the state-government owned company Vizhinjam International Seaport Limited (VISL). GoK engaged IFC’s Advisory Services, whose role was defined in the context of a long-running GoK-led process to develop the project, which had begun prior to IFC’s engagement. Within that context, IFC’s Advisory Services was engaged primarily for structuring location-specific PPPs for the port terminal and for supporting the GoK in conducting a transparent bidding process to identify a potential private investor/operator for the terminal. IFC’s Advisory Services involved the management of roughly \$1.6 million in trust funds for the structuring and bidding of the port terminal.

In August 2012, the GoK decided not to award construction and operation of the terminal to the private investor/operator identified with assistance from the IFC.

Shortly following CAO’s receipt of this complaint, IFC’s primary role in the project was completed.

2.2. The Complaint

This complaint raises concerns about the newly built port construction access road that runs through Mulloor village to the Vizhinjam port area. It states that the road was built on residents’ plantain farms, and is thus allegedly impeding rainwater run-off and aquifer recharge to those

farms. The complaint also states that construction materials and waste were left behind by project crews, further allegedly hindering the capacity for rain capture and recharge.

The complaint says no action has been taken to address these issues, despite raising the concerns with VISL. The complainants request CAO intervention in addressing (1) the waste construction materials left on the farmlands; (2) establishment of rainwater harvesting structures; and (3) strategies for rainwater to reach the farmlands.

3. Assessment

3.1. Methodology

The purpose of a CAO assessment is to clarify issues and concerns raised by complainants, to understand how other stakeholders see the situation, and to help complainants and companies determine the best alternatives for resolving the complaint via one of CAO's two functions: a cooperative / mediated solution, or a compliance investigation of the IFC's due diligence on the project.

During the assessment, CAO does not gather information to make a judgment on the merits of the complaint. (See Annex A for a complete description of the CAO complaint handling process.)

The CAO assessment of the complaint consisted of:

- Project document review
- Interviews with IFC project team
- Telephonic interviews with a representative of the complainants
- Outreach to and a telephone conversation with a representative of VISL

Due to the combination of factors described below, CAO did not travel to the project site to conduct the assessment:

- CAO had previously visited Mulloor village in October-November 2012, during the Vizhinjam-01 and Vizhinjam-02 assessment visit, and saw the road that was constructed through Mulloor to give access to the port area.
- Both the complainants and the company have shared their concerns by telephone with the CAO team, and CAO has explained its specific role regarding the two processes available to the parties.
- Because one of the parties is not willing to meet the CAO team or participate in a voluntary dispute resolution process facilitated by CAO, such a process is therefore not possible.
- Due to the tense and polarizing environment regarding the impacts of the port, and due to expectations of the complainants regarding what CAO can and cannot do, CAO concluded that visiting the area during the assessment phase would escalate tension on the ground, and would potentially pose safety and security risks both to local parties and/or to the CAO team.

3.2. Findings

CAO found no agreement among the key parties (complainants, VISL, and Government of Kerala) to proceed with a CAO-facilitated dispute resolution process. Although the complainants expressed willingness to engage with VISL, VISL believes the complainants' concerns should be addressed through the domestic Indian regulatory framework and procedures, not through a CAO process. Therefore, the complaint will proceed to CAO's Compliance function for appraisal, per the CAO Operational Guidelines.

Annex A: CAO Complaint Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) 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.

The initial assessment is conducted by CAO's Dispute Resolution 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) 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.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *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: **CAO assessment:** CAO conducts an assessment of the issues and provides 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 or initiated by a Memorandum of Understanding and/or a 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 goal. 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 affected².

¹ 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

² 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

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**

of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.