

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BUDHA ISMAIL JAM, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 1:15-CV-00612-JDB
)	
INTERNATIONAL FINANCE)	
CORPORATION,)	
)	
<i>Defendant.</i>)	

DECLARATION OF FADY M. ZEIDAN

I, Fady M. Zeidan, declare and state:

1. I am Deputy General Counsel in the Legal Department of the International Finance Corporation (“IFC”) in Washington, D.C.
2. I am familiar with the matters stated below, which are set forth to the best of my knowledge and understanding.
3. I have been asked to provide a description of the Office of the Compliance Advisor/Ombudsman (“CAO”), which is an independent office for the International Finance Corporation (“IFC”) and the Multilateral Investment Guarantee Agency (“MIGA”). I attach the following references:
 - IFC Articles of Agreement, attached hereto as Ex. 1 (“Articles of Agreement”).
 - Office of the Compliance Advisor/Ombudsman (CAO) Terms of Reference, attached hereto as Ex. 2 (“TOR”).
 - CAO Operational Guidelines, attached hereto as Ex. 3 (“Operational Guidelines”).
 - Beyond Compliance? An External Review Team Report on the Compliance Advisor/Ombudsman Office of IFC and MIGA, dated July 24, 2003, attached hereto as Ex. 4 (“Review Report”).
 - Compliance Advisor Ombudsman 2014 Annual Report, attached hereto as Ex. 5 (Annual Report).

- June 11, 2011 Letter from members of Machimar Adhikar Sangharsh Sangathan (MASS – Association for the Struggle for Fishworkers’ Rights) to Vice President Meg Taylor, CAO, attached hereto as Ex. 6 (“MASS Complaint”).
 - Ombudsman Assessment Report Regarding Community and Civil Society Concerns in Relation to IFC’s Tata Ultra Mega Project (#25797), dated January 2012, attached hereto as Ex. 7 (“Assessment Report”).
 - IFC Management Response to the Compliance Advisor Ombudsman’s (CAO) Assessment Report Dated January 2012 regarding IFC’s Tata Ultra Mega Project in Gujarat, India (IFC Project # 25797), attached hereto as Ex. 8 (“Assessment Response”).
 - CAO Appraisal for Audit of IFC dated July 27, 2012, attached hereto as Ex. 9 (“Appraisal”).
 - Terms of reference for audit of IFC dated October 24, 2012, attached hereto as Ex. 10 (“Audit TOR”).
 - CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India dated August 22, 2013, attached hereto as Ex. 11 (“Audit”).
 - Letter from Anita Marangoly George, Director, Asia and Pacific, Infrastructure and Natural Resources and William Bulmer, Director, Environment, Social and Governance to Meg Taylor, CAO dated September 12, 2013, attached hereto as Ex. 12 (“Audit Response”).
 - Statement by Jin-Yong Cai regarding CAO Audit of Tata Mundra dated November 25, 2013, attached hereto as Ex. 13 (“IFC Statement”).
 - Monitoring of IFC’s Response to: CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India dated January 14, 2015, attached hereto as Ex. 14 (“Monitoring Report”).
 - IFC Office Memorandum from Bernie Sheahan, Director, CNGDR, Morgan Landy, Director, CRKDR to Mr. Osvaldo L. Gratacós, Compliance Advisor Ombudsman, CCAVP dated January 20, 2015, attached hereto as Ex. 15 (“Monitoring Response”).
4. CAO is an independent office that reports directly to the President of the World Bank Group. Ex. 3 (Operational Guidelines) at 4. The CAO is supported by its own budget, which is decided by the President. Ex. 2 (TOR) at 3. It is a centralized review and clearance function, independent from the line management of operations of IFC and MIGA. Ex. 2 (TOR) at 1.

5. The CAO Guidelines establish restrictions on the movement of staff between CAO and IFC, and the CAO's staff is recruited by the CAO Vice President. Ex. 3 (Operational Guidelines) at 5.
6. CAO's mandate is to:
 - Address complaints from people affected by IFC/MIGA projects (or projects in which those organizations play a role) in a manner that is fair, objective, and equitable; and
 - Enhance the environmental and social outcomes of IFC/MIGA projects (or projects in which those organizations play a role).Ex. 3 (Operational Guidelines) at 4.
7. In executing this mandate, the CAO process provides communities and individuals with access to a grievance mechanism for IFC/MIGA projects. Ex. 3 (Operational Guidelines) at 4.
8. In FY2014 alone, CAO addressed 54 cases, 49 of which were filed either by community members directly or with the assistance of an outside organization. Ex. 5 (Annual Report) at 26.

History of the CAO

9. IFC was established in 1956 and is a member of the World Bank Group, along with MIGA and the International Bank for Reconstruction and Development ("IBRD" or "World Bank"), each of which is a separate entity.
10. No environmental and social accountability mechanism or office is required under IFC's Articles of Agreement. Ex. 1 (Articles of Agreement).
11. CAO was created in 1999, by the World Bank Group, as an independent recourse and accountability mechanism of IFC/MIGA for environmental and social concerns. Ex. 3 (Operational Guidelines) at 4.
12. At the time that CAO was created, the World Bank already had an Inspection Panel ("IP") to review such issues. Ex. 4 (Review Report) at 1.
13. Following an independent review, various suggestions were made for an IP for IFC similar to that of the IBRD/IDA, or for inclusion of IFC in the IBRD/IDA IP. Ex. 4 (Review Report) at 1.
14. IFC management expressed concerns regarding the proposal to form an IP for IFC, and an alternative mechanism was sought. Ex. 4 (Review Report) at 1.
15. A more flexible, settlement-oriented, and problem-solving grievance mechanism was proposed that would be less rigid than an IP, and which would be more appropriate

for dealing with the private sector. Ex. 4 (Review Report) at 1. This approach incorporated the present functions of CAO: ombudsman, compliance, and advice. Ex. 4 (Review Report) at 1.

CAO's Limited Authority and Role

16. CAO is an independent office of the World Bank Group that, in part, oversees both IFC and MIGA. CAO's authority is limited. In particular, CAO has no authority with respect to judicial processes. Ex. 3 (Operational Guidelines) at 4.
 17. CAO is not a court or a legal enforcement mechanism. Ex. 3 (Operational Guidelines) at 4.
 18. IFC operates in accordance with its Articles of Agreement. Ex. 1 (Articles of Agreement). Neither CAO nor any other environmental and social accountability mechanism with a similar role as CAO is mentioned in the Articles of Agreement. Ex. 1 (Articles of Agreement).
 19. CAO has three complementary roles:
 - **Dispute Resolution:** In responding to complaints, CAO attempts to resolve the issues raised using a flexible, collaborative, problem-solving approach. The focus is on accessing directly those individuals or communities affected by the project and helping them, the client, and other relevant stakeholders resolve complaints.
 - **Compliance:** CAO oversees compliance investigations of the environmental and social performance of IFC/MIGA and, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC involvement, with the goal of improving IFC's and MIGA's environmental and social performance.
 - **Advisory:** CAO is a source of independent advice to the President and the senior management of IFC and MIGA, with the goal of fostering systematic improvements in IFC and MIGA.
- Ex. 3 (Operational Guidelines) at 4-5.
20. The CAO is an accountability mechanism for IFC and MIGA; it is not a court of law deciding liability claims under national or international law. There was no intent to waive any of IFC's immunities as provided under the Articles of Agreement through the creation of CAO. CAO's findings and conclusions in any given case are not intended to create any legal cause of action for complainants against IFC.
 21. With IFC loan investments, IFC contractual relationships exist only among IFC and other signatories to IFC's loan documentation. In such cases, there is no privity between IFC and third parties who are not signatories and who may be adversely affected by IFC projects.

22. Requests brought before the CAO are not legal claims brought before a national court. The CAO simply ascertains whether IFC or MIGA has followed its own environmental and social policies and procedures. Ex. 3 (Operational Guidelines) at 23. These policies and procedures do not contain any *legal* obligations on the part of IFC towards third parties.
23. If remedial measures are taken in the course of the CAO process, these measures are not a consequence of or any acknowledgment of any complainant's rights to damages or other legal recourse. These measures are designed to improve the IFC's own environmental and social requirements and performance as they apply to the borrower, all in furtherance of getting results in the pursuit of the IFC's development mission and objectives.

Complaint Process

24. Complaints may be made by those who believe they are affected, or potentially affected, by the environmental and/or social impacts of an IFC or MIGA project. Ex. 3 (Operational Guidelines) at 10.
25. The grounds on which a complaint may be made have been broadly defined to encourage individuals or group(s) of individuals with concerns about a project to approach CAO. Ex. 3 (Operational Guidelines) at 10.

Screening a Complaint

26. The CAO will screen any complaint against CAO's eligibility criteria. Ex. 3 (Operational Guidelines) at 12. CAO's eligibility decision is procedural, and does not constitute a judgment on the merits of the substance of the complaint. Ex. 3 (Operational Guidelines) at 12. CAO will deem the complaint eligible if:
 - The complaint pertains to a project that IFC or MIGA is participating in, or is actively considering.
 - The issues raised in the complaint pertain to CAO's mandate to address environmental and social impacts of IFC or MIGA projects.
 - The complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

Ex. 3 (Operational Guidelines) at 13.

Assessment

27. Once CAO determines a complaint eligible, it will conduct an assessment of the complaint to:
 - Develop a thorough understanding of the issues and concerns raised in the complaint.

- Engage with the complainant and IFC/MIGA client (the parties).
- Identify the local communities and any additional stakeholders relevant to the complaint.
- Explain to the stakeholders the different roles of CAO.
- Determine which CAO role the parties seek to initiate.

Ex. 3 (Operational Guidelines) at 13.

28. CAO's assessment of the complaint does not entail any judgment on the merits of the complaint. Ex. 3 (Operational Guidelines) at 13.
29. Following a CAO assessment process, if there is no agreement to undertake CAO-facilitated dispute resolution, the complaint will proceed to the CAO Compliance role. Ex. 3 (Operational Guidelines) at 14.
30. If the CAO Dispute Resolution role is triggered, CAO will facilitate a process designed to address the issues raised in the complaint, and other issues that may have been identified during the assessment. Ex. 3 (Operational Guidelines) at 14.
31. If the CAO Compliance role is triggered, CAO will conduct an appraisal of IFC's or MIGA's involvement in the project, and determine if an investigation is warranted. Ex. 3 (Operational Guidelines) at 14.
32. CAO will provide an Assessment Report to the parties, the World Bank Group President, the Board, and the public. Ex. 3 (Operational Guidelines) at 14.

Dispute Resolution

33. Engaging in a dispute resolution process is a voluntary decision, and requires agreement between both the complainant and the client, *i.e.*, IFC's or MIGA's client, at a minimum. Ex. 3 (Operational Guidelines) at 18; *see also id.* at 33 (in defining "Client (IFC)," stating "An entity (private or governmental) to which IFC provides Investment or Advisory Services, or in the case of an IFC investment through a financial intermediary, a client or subclient of an IFC client. The term may also refer more broadly to the party that is most appropriate to address the issues raised in the complaint, including the entity that is implementing/has implemented the project in question.").
34. The main objective of CAO's Dispute Resolution role is to help resolve the issues raised about the environmental and/or social impacts of IFC/MIGA projects and improve outcomes on the ground. Ex. 3 (Operational Guidelines) at 18.
35. This is a non-judicial, non-adversarial, neutral forum through which parties may find mutually satisfactory solutions. Ex. 3 (Operational Guidelines) at 18.

36. CAO and the relevant stakeholders, e.g., IFC, IFC's client, affected community(ies), may use a number of different approaches in attempting to find resolution of the issues. Each approach will be chosen in consultation with the parties, and may include:
- Facilitation and information sharing. In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of a project. The CAO Dispute Resolution team may be able to help complainants obtain information or clarifications that result in resolution from the perspective of complainants.
 - Joint fact-finding. Joint fact-finding is an approach that encourages the parties to jointly agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that information generated from the process will be used by the parties.
 - Dialogue and negotiation. Where communication among parties has been limited or disrupted, the CAO Dispute Resolution team may encourage the parties to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Dispute Resolution team may offer training and/or expertise to assist the parties in this process.
 - Mediation and conciliation. Mediation involves the intervention by a neutral third party in a dispute or negotiation with the purpose of assisting the parties in voluntarily reaching their own mutually satisfying agreement. In conciliation, the third-party neutral may make recommendations to the participants in the conciliation process.

Ex. 3 (Operational Guidelines) at 18.

37. Where the parties have reached agreement, CAO will assist the parties in monitoring implementation of the agreement(s). Ex. 3 (Operational Guidelines) at 19.
38. Any agreements reached by the parties will usually contain a program and timelines for implementation. Ex. 3 (Operational Guidelines) at 19. The CAO Dispute Resolution team will monitor whether the agreements have been implemented, and publicly disclose the outcomes on CAO's website. Ex. 3 (Operational Guidelines) at 19.

Compliance

39. Where Dispute Resolution is refused, as was the case regarding MASS's Tata Mundra complaint, the complainant may request that the dispute resolution team conclude their involvement and transfer the case to CAO's compliance function. Ex. 7 (Assessment Report) at 8.
40. CAO's compliance function oversees compliance appraisals and investigations of the environmental and social performance of IFC or MIGA at the project level. Ex. 3

(Operational Guidelines) at 22. CAO's compliance appraisals and investigations are independent of, but complimentary to, IFC's and MIGA's internal assurance efforts.

41. The focus of CAO's compliance function is on IFC/MIGA, not their clients. Ex. 3 (Operational Guidelines) at 22.
42. CAO assesses how IFC or MIGA assured itself 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. Ex. 3 (Operational Guidelines) at 22.
43. CAO's compliance function follows a two-step approach. The first step is a compliance appraisal. The second step is a compliance investigation. Ex. 3 (Operational Guidelines) at 22.
44. Compliance appraisals are initiated in response to complaints when:
 - The outcome of the CAO assessment process determines that the compliance role should be triggered.
 - CAO Dispute Resolution transfers a case to CAO's compliance function.

Ex. 3 (Operational Guidelines) at 22.

45. The scope of the appraisal will be defined by issues raised in the complaint and identified during the CAO assessment phase. Ex. 3 (Operational Guidelines) at 22.
46. Compliance investigations are initiated upon the completion of an appraisal that determines whether the issues presented in the request for a compliance investigation, or issues related to the complaint, meet the appraisal criteria for conducting an investigation. Ex. 3 (Operational Guidelines) at 24. If an investigation is merited, the CAO will often hire independent specialists for this purpose with appropriate expertise to form a compliance panel. Ex. 3 (Operational Guidelines) at 24. The investigation is based on a review of documents, interviews, and observation of project activities and conditions. Ex. 3 (Operational Guidelines) at 23. The verification of evidence is an important part of the process. Ex. 3 (Operational Guidelines) at 23.
47. In many cases, however, in assessing the performance of the project and IFC's or 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. Ex. 3 (Operational Guidelines) at 22. In fact, this was the case with the CAO's investigation of MASS's Tata Mundra complaint, during which the CAO reviewed not only the actions of IFC's client — Coastal Gujarat Power Limited — but also the other activities in the Mundra coast, and noted that the affected communities' grievances stemmed from the wider industrialization of the region. Ex. 6 (Assessment Report) at 8.

48. CAO's working definition of a compliance investigation 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. Ex. 3 (Operational Guidelines) at 23.
49. The compliance investigation criteria include IFC or MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes. Ex. 3 (Operational Guidelines) at 23.
50. Compliance investigation criteria may have their origin, or arise from, environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC, MIGA, or other conditions for IFC/MIGA involvement in a project. Ex. 3 (Operational Guidelines) at 23.
51. When CAO conducts compliance investigations, at issue is whether:
- The actual environmental and/or social outcomes are consistent with, or contrary to, the desired effect of the policy provisions.
 - The failure to address environmental and/or social issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions.
- Ex. 3 (Operational Guidelines) at 24.
52. The Investigation Report will be prepared by a CAO compliance panel with the use of information gathered by expert panel members, as needed. The report will typically include:
- A brief description of the project.
 - A description of the underlying issues that gave rise to the investigation.
 - The objectives and scope of the investigation.
 - The criteria against which the investigation was conducted.
 - The findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable.
- Ex. 3 (Operational Guidelines) at 25.
53. In cases where IFC or MIGA is found to be in compliance, CAO will close the investigation. Ex. 3 (Operational Guidelines) at 25.

54. In cases where IFC or MIGA is found to be out of compliance, CAO will keep the compliance investigation open and monitor the situation until actions taken by IFC or MIGA assure CAO that IFC or MIGA is addressing the noncompliance. Ex. 3 (Operational Guidelines) at 25. CAO will then close the compliance investigation. Ex. 3 (Operational Guidelines) at 25.
55. CAO makes public the current status of all compliance cases. Ex. 3 (Operational Guidelines) at 25.

Cooperation among Parties is Essential to CAO's Operation

56. CAO's mission is to "serve as a fair, trusted, and effective independent recourse and accountability mechanism" of IFC. Ex. 3 (Operational Guidelines) at Inside Cover.
57. CAO's process involves close coordination with IFC and IFC's client, including reviewing documents, interviews, site visits, and other operational observations. Ex. 3 (Operational Guidelines) at 13, 23. The cooperation of all of the parties is important to the success of CAO's efforts.
58. When a complaint is filed, it is often the IFC's client, i.e., the borrower, that is most appropriate to address the issues raised in the complaint (Ex. 3 (Operational Guidelines) at 33 (definition of "Client (IFC)")); therefore, participation of IFC's clients in CAO's work is important.
59. Trust and confidence by project clients, communities, NGOs, and civil society generally are prerequisites for CAO to be able to operate according to its mandate. Ex. 3 (Operational Guidelines) at 5.
60. For the purposes of CAO appraisals and investigations, it will be necessary in many cases for CAO to review the actions of the client and verify outcomes in the field. Ex. 3 (Operational Guidelines) at 22.
61. If the results of a CAO investigation could potentially form the basis for a legal cause of action against IFC or its clients, IFC's clients would be far less willing to work with CAO and IFC in a cooperative manner.
62. Potential legal causes of action or purported waivers of immunity flowing from the activities of the CAO would have a severe chilling effect on CAO's and IFC's effectiveness without providing any corresponding benefit to IFC.
63. Beyond negatively affecting the CAO's mission, potential legal liability flowing from the CAO's function would negatively impact the IFC's ability to advance its purpose of furthering economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less-developed areas. Ex. 1 (Articles of Agreement) Art. I. In particular, IFC would be less willing to invest in projects that might otherwise further IFC's purposes.

CAO's Role in Tata Mundra

64. On June 11, 2011, one of Plaintiffs (MASS) filed a complaint with CAO “against the Tata Ultra Mega - Coastal Gujarat Power Limited investment, with funding from the International Finance Corporation (Project number: 25797) and other international and national banks.” *See* Ex. 6 (MASS Complaint).
65. In January 2012, CAO issued an assessment report. Ex. 7 (Assessment Report). In the Assessment Report’s “Conclusions and Next Steps” section, CAO wrote:
- “It is CAO’s view that a collaborative process may have been helpful in this case to address many of the concerns of the fisher folk.”
 - “Specifically, the company [*i.e.*, Coastal Gujarat Power Limited (“CGPL”)] and the users of the Tragari bandar could work together to identify who among the bandar’s users may not have been adequately compensated and may require additional assistance or compensation.”
 - “Open dialogue between the company and the fisher folk could equally help enhance benefits, such as provision of health services or schooling for the fishing communities.”
 - “Dispute resolution tools ranging from information sharing, to a review of company documentation by mutually agreed independent experts, to participatory monitoring are the types of approaches that can be used to assist parties to address such concerns jointly. *These tools may have been helpful in addressing concerns expressed by the fisher folk regarding the medium and long term impacts of plant operations on marine life and their fish stock.*” (emphasis added).
 - “*Finally, both parties [i.e., CGPL and Plaintiff MASS] understand that part of the threat to the livelihoods of the wider Mundra coast’s fisher folk stems from sources beyond Tata Power in the wider industrialization of the coast, and thus cannot be resolved by the company and community alone.*” (emphasis added).
 - “A larger effort involving other industry players along the Mundra coast and the state government could help generate a sustainable solution to securing the fishing communities’ livelihoods.”

Ex. 7 (Assessment Report) at 8.

66. While concluding that the parties could potentially benefit from CAO’s several dispute resolution resources, the CAO also noted:

A dispute resolution process is voluntary both for affected communities and for the company. After a series of meetings and discussions with the CAO’s dispute resolution team, the complainants [*i.e.*, Plaintiff MASS] *decided against a collaborative process* and

requested that the complaint be transferred to CAO's compliance function to appraise whether an audit of IFC's handling of its investment in the project is merited.

Ex. 7 (Assessment Report) at 8 (emphasis added).

67. CAO then transferred the complaint to CAO's compliance function. Ex. 7 (Assessment Report) at 8.
68. On February 1, 2012, IFC issued a response to CAO's Assessment Report. Ex. 8 (Assessment Response). In the response, IFC stated, although it was disappointed that Plaintiff MASS was not prepared to enter into a collaborative process of dispute resolution, IFC was committed to working towards a satisfactory outcome. Ex. 8 (Assessment Response).
69. On July 27, 2012, CAO issued an appraisal report for the audit of IFC. Ex. 9 (Appraisal). Echoing its conclusions in the Assessment Report, the CAO noted:

Significant in the context of the complaint is the fact that the coastline around Mundra is undergoing a rapid industrial transformation. This involves, in addition to the construction of the CGPL power plant, the development of the Adani Group's Mundra Port and Special Economic Zone (MPSEZ) which includes significant expansion of existing port facilities and the construction of a 4620MW coal fired power plant (Adani Power).

Ex. 8 (Appraisal) at 5.

70. On October 24, 2012, CAO issued the terms of reference for the audit of IFC. Ex. 10 (Audit TOR).
71. On August 22, 2013, CAO issued an audit report. Ex. 10 (Audit). In the report, CAO found that IFC was out of compliance with some of its internal policies. Ex. 11 (Audit) at 3-5.
72. On September 12, 2013, IFC responded to the CAO's audit. Ex. 12 (Audit Response).
73. On November 25, 2013, IFC issued a statement regarding the audit, which included a 10-point action plan to work cooperatively with CGPL and the Gujarat fishing communities, including Plaintiff MASS, to address their concerns. Ex. 13 (IFC Statement).
74. On January 14, 2015, CAO issued its first monitoring report. Ex. 14 (Monitoring Report). CAO decided to keep the audit open for monitoring. Ex. 14 (Monitoring Report) at 5.

75. On January 20, 2015, IFC responded to the monitoring report. Ex. 15 (Monitoring Response). In the response, IFC “agree[d] with CAO’s decision to continue its monitoring of the Project through November 2015, as at this stage the key studies that form part of the action plan have not yet been completed.” Ex. 15 (Monitoring Response) at 1.
76. CAO’s monitoring remains open and is a matter of public record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of July, 2015 in Washington, DC



Fady M. Zeidan

