

CAO Update

Issue 18 / January 2020



Did you know? The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO addresses grievances from people impacted by IFC and MIGA projects with the goal of improving environmental and social outcomes on the ground. For more information, see www.cao-ombudsman.org.

Community Members and IFC Client Sign Final Mediation Agreement Regarding Sugar Mill Project in Nicaragua

A final **mediation agreement** has been reached between community and company representatives in Nicaragua to address a **complaint** related to the Montelimar Sugar Mill, a project supported by IFC. The agreement, which builds on earlier interim agreements and was reached following 22 dialogue meetings facilitated by CAO, sets out various actions and commitments by the parties related to health, employment and income generation projects.

CAO's involvement followed a complaint filed in 2015 by the *Asociación Montelimar Bendición de Dios (AMBED)*, a local organization representing current and former workers of the sugar mill, their families, and community members residing in San Rafael del Sur near the mill. The complaint raises health, social, and environmental concerns, including the impact of Chronic Kidney Disease (CKD) on workers and surrounding communities. The Montelimar Mill is operated by *Consorcio Naviero Nicaragüense*, an IFC client.

Outcomes from the dialogue process include the establishment of a community cooperative, Manantial de Agua Viva, involving almost 180 former workers. The cooperative is generating income by operating a small textile factory, which they launched in August 2018. The agreement also includes health and food benefits for the community from the company,

"The agreement also includes health and food benefits for the community from the company, and actions in the medium-term to help with employment and income generation projects."



AMBED's President and Corporacion Montelimar's CEO shake hands after the signing of the final mediation agreement in Nicaragua, October 2019 (CAO).

(Banner photo) Representatives of AMBED, the community cooperative and Corporacion Montelimar, with members of the CAO team, after the signing of the final mediation agreement in Nicaragua, October 2019 (CAO).

and actions in the medium-term to help with employment and income generation projects. The parties also committed to cooperate with national authorities to improve health care services to communities in the area.

Moving forward, the community and company representatives will continue to engage in participatory water monitoring and exchange information about continuous improvements in company work practices. They will also collaborate regarding community complaints related to the company's operations and agreed ground rules for their continued long-term engagement.

CAO is now monitoring the implementation of the agreement and supporting the parties as needed.

IN THIS ISSUE

2 CAO Publishes Investigation of IFC's Investment in the Reventazón Hydropower Project in Costa Rica

2 CAO Initiates Compliance Investigation Regarding IFC's Investment in Bridge International Academies in Kenya

3 CAO Hosts Panel on the Role of Financiers in Enabling Remedy for Project-Affected Communities

3 CAO Initiates Compliance Investigation Regarding IFC's Investment in Indorama Eleme Fertilizer and Chemicals in Nigeria

4 CAO Participates in Outreach at the UN Business and Human Rights Forum

CAO Publishes Investigation of IFC's Investment in the Reventazón Hydropower Project in Costa Rica

CAO released a **compliance investigation** in October 2019 in response to two **complaints** from landowners affected by the Reventazón hydropower project in Costa Rica. The project is supported by IFC through a US\$100 million loan to Instituto Costarricense de Electricidad, the government-run electricity and telecommunications services provider. CAO's investigation found shortcomings in IFC's review and supervision of the project's approach to land acquisition, particularly related to landowners who were categorized as non-vulnerable during the project's environmental and social impact assessment (ESIA).

Specifically, CAO's investigation found that the acquisition of land from 'non-vulnerable' families — who account for 69 percent of the households affected by the process — was a source of significant potential impact and required the client to apply IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement, which covers mitigation measures like fair compensation. IFC's pre-investment review of the project did not focus on potential compliance issues associated with acquisition of land from these 'non-vulnerable' landowners and IFC did not ensure that the Performance Standard 5 requirement to provide compensation at full replacement cost was appropriately operationalized by its client. These compliance issues persisted during project supervision. IFC was also aware of concerns regarding the company's approach to land valuation, leading to potential under-compensation, however, it did not ensure that the company's valuation methodology was consistent with Performance Standard 5. A Resettlement Completion Audit provided an opportunity for IFC to identify and correct concerns regarding the land acquisition process. At the time of writing CAO's investigation report, IFC was in the process of reviewing information provided by their client



The Reventazón hydropower project in Siquirres, Costa Rica, February 2018 (CAO).

to determine whether 15 affected families were misclassified as non-vulnerable.

IFC's management response acknowledges the shortcomings in IFC's due diligence and supervision identified in CAO's investigation. In its response, IFC included an action plan which includes project-level and systemic-level commitments aimed at addressing the non-compliance findings. At project level, IFC noted that a review of the vulnerability classification of affected landowners was being conducted, and committed to reviewing the land valuation methodology used by the company and local courts in comparison to PS5 requirements. IFC also indicated that it would engage with its client about viable corrective actions as needed on the basis of this review. At a systemic level, IFC committed to develop guidance for staff working with public sector clients such as State-Owned Enterprises (SOEs) in applying Performance Standard requirements.

CAO is now monitoring IFC's actions in response to the findings and will issue a monitoring report no later than October 2020.

CAO Initiates Compliance Investigation Regarding IFC's Investment in Bridge International Academies in Kenya

CAO initiated a compliance investigation of IFC's investment in Bridge International Academies in Kenya in October 2019. The investigation responds to a **complaint** filed by the East Africa Centre for Human Rights, a Kenyan NGO, on behalf of current and former Bridge Academies teachers and parents raising concerns about the company's compliance with international and Kenyan law, as well as IFC's Performance Standards.

CAO's **compliance appraisal**, which informed the decision to initiate an investigation, took account of IFC's efforts during supervision to assess and address concerns about

sanitation at Bridge schools and, more recently, to review labor and working conditions. However, CAO concluded that there are substantial concerns regarding the environmental and social (E&S) outcomes of IFC's investment in Bridge considering the specific allegations of adverse impacts to teachers, parents, and students raised in the complaints; the E&S risk profile of the schools in light of their number, locations, and concerns regarding their construction; and the registration status of the schools and adherence to relevant health and safety requirements. CAO's investigation into IFC's review and supervision of the client's environmental and social performance is now underway.



OUTREACH

CAO Hosts Panel on the Role of Financiers in Enabling Remedy for Project-Affected Communities

CAO convened a discussion on the “Role of Financiers in Enabling Remediation for Project Affected Communities” during the World Bank Group/IMF Spring Meetings in October 2019. The session, which was co-hosted with the NGO Centre for Research on Multinational Corporations (SOMO) and moderated by Devex, brought together experts from Shift, ABN Amro, American University, and IFC to discuss challenges, good practices, and lessons for achieving effective remedy in cases of business-related environmental and social impacts on communities. The session explored developments in the private sector related to recourse and remedy, including a 2019 paper published by parties to the **Dutch Banking Sector Agreement**, which reflects on the practical roles banks could play, and actions they could take, to enable remedy for project-affected people.

CAO Vice President, Osvaldo L. Gratacós, opened the session by noting that while the private sector’s commitment to accountability is growing, there is still much to be done in terms of establishing mechanisms to provide redress at the community level. Panelists then discussed the Dutch Banking Sector paper, which seeks to move financial institutions from a binary choice of providing or not providing remedy, to instead consider what a bank’s role might be in enabling a ‘remedy ecosystem’, which may provide numerous options for effective redress. The paper suggests that banks should look beyond asking a client whether they have a grievance mechanism to considering whether a client’s grievance mechanism is an effective path for recourse, building leverage upfront in their investment agreements to provide for remedy, and other forms of engagement. The discussion also delved into several cases where private financiers worked with affected communities to provide remedy for project impacts, as well as IFC’s new structure and policies geared to addressing risks and reducing harms. The discussion wrapped up with consideration of a pooled risk insurance fund to deal with community-level harms.

COMPLIANCE CASE

CAO Initiates Compliance Investigation Regarding IFC’s Investment in Indorama Eleme Fertilizer and Chemicals in Nigeria

In December 2019, CAO completed its **compliance appraisal** regarding IFC’s investment in Indorama Eleme Fertilizer and Chemicals (IEFCL) in Nigeria and determined that an investigation is merited in response to this case. The investigation addresses a **complaint** filed with CAO in April 2018 by 134 IEFCL employees, which raised concerns regarding the company’s labor and working conditions and use of security forces, including impacts associated with a July 2017 protest.

In its appraisal, CAO found that the range of issues raised by the complainants are potentially serious. At the same time, following a worker protest in July 2017, IFC enhanced its supervision of the company’s approach to labor issues and security. Where gaps against Performance Standard requirements were identified, IFC documented implementation of corrective actions. While IFC supervision provides general assurance of the company’s PS2 performance, questions remain as to IFC’s response to allegations that the company has taken a retaliatory approach to workers who have raised grievances with the company.

CAO decided to trigger an investigation of IFC’s appraisal and supervision of the company’s disciplinary procedures and approach to grievance handling, including the adequacy of IFC’s response to allegations of reprisals against workers for raising grievances. CAO’s investigation into IFC’s review and supervision of the client’s environmental and social performance is now underway.

CAO Participates in Outreach to Indigenous Caucus and Gender Discussion at the UN Business and Human Rights Forum



In November 2019, CAO attended the 8th United Nations Forum on Business and Human Rights which took place in Geneva, Switzerland. CAO co-facilitated a discussion with the Indigenous Peoples' Caucus prior to the start of the Forum regarding rights of access to non-judicial grievance mechanisms. The session, which took place during the Indigenous Peoples' Preparatory Meeting on November 24, 2019, involved over 50 participants from Indigenous groups.

During the Forum, CAO participated in a session entitled "Gender Guidance: from Paper to Practice", which was part of the formal launch by the UN Working Group of its report, 'Gender dimensions of the Guiding Principles on Business and Human Rights'. The primary objective of the report is to

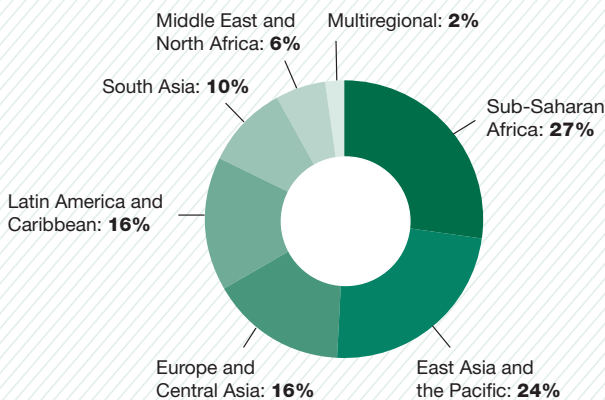
provide guidance to States and businesses on integrating a gender perspective in implementing the UN Guiding Principles. A diverse group of stakeholders were asked to showcase ways in which they were implementing the gender guidance developed by the Working Group. CAO's Principal Ombudsman, Gina Barbieri, provided an overview of the ways in which CAO is working to develop a gendered approach in fulfilling its mandate, specifically in complaints assessment and mediation. She encouraged other independent mechanisms to, at a minimum, start providing sex disaggregated data regarding the complaints they are dealing with. The full session can be viewed on the [UN's website here](#). CAO is currently working on a gender guidance note to build the capacity of its mediators in this area.

CAO CASE TRACKER FY20

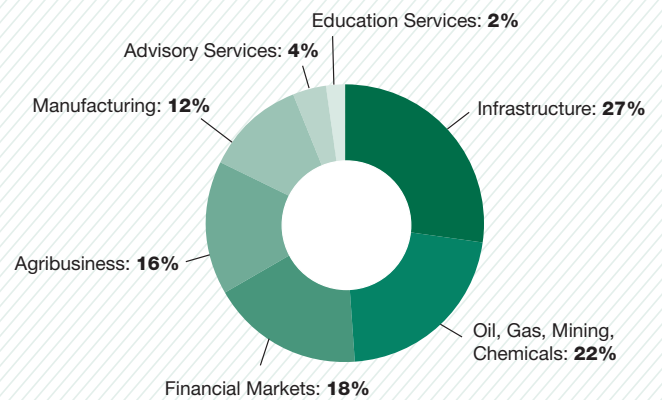
Status as of December 31, 2019. For more information about CAO cases, see www.cao-ombudsman.org/cases

During the second quarter of fiscal year 2020 (October 1, 2019 – December 31, 2019), CAO accepted a new complaint from **Kenya** regarding IFC's investment in the oil and gas sector, as well as a new complaint from **Pakistan** regarding an IFC investment in the infrastructure sector. CAO referred a case from **Indonesia** to dispute resolution following assessment, and two cases to compliance appraisal — from **Albania** and **Azerbaijan**, respectively. At the end of the quarter, CAO was handling a total of 51 cases in 31 countries in the varying stages of assessment, dispute resolution, compliance, and monitoring.

CASES BY REGION



CASES BY SECTOR



FOR MORE INFORMATION

CONTACT US

Compliance Advisor Ombudsman (CAO)
 2121 Pennsylvania Avenue NW
 Washington, DC 20433, USA
 Email: CAO@worldbankgroup.org



www.cao-ombudsman.org
www.twitter.com/CAOoffice
www.facebook.com/CAOoffice

