



CAO ASSESSMENT REPORT

Complaint Regarding the AES Sonel Project (IFC Project #11579)

Cameroon

July 2013

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

About the 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. The 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.

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LIST OF ACRONYMS

AES	AES Sonel
AfDB	African Development Bank
BDEAC	Banque de Développement des Etats de l'Afrique
CAO	Compliance Advisor Ombudsman
DEG	German Investment and Development Corporation
EIB	European Investment Bank
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. Overview

A complaint was filed to CAO in February 2013 by Mr. Teumagnie (“Complainant”), a current employee of AES Sonel (“AES”). The complaint raises labor issues, specifically regarding demotion during employment and related benefits that the complainant believes are due. The CAO determined that the complaint met its three eligibility criteria and so began the assessment of the complaint. Bringing to conclusion the CAO’s assessment, the parties agreed to resolve the highlighted concerns through a voluntary dispute resolution process. 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

According to IFC project documentation, the project is a corporate loan to AES Sonel to finance a portion of its comprehensive five-year investment program (2005-2009) designed to improve the AES’s operations and meet the objectives of a 20 year concession agreement¹. The main objectives of this investment program are: (1) meet concession objectives for new connections; (2) improve quality of service; (3) expand network capacity; (4) refurbish aging generation, transmission and distribution systems; (5) improve safety and environmental standards; (6) reduce technical and commercial losses; (7) improve work processes and management efficiency; and (8) reduce fuel and variable Operation & Maintenance costs.

IFC provided a corporate loan of up to EUR 70 million as part of the total EUR 240 million financing being appraised by a group of Development Financial Institutions (IFC, AfDB, BDEAC, DEG, EIB, Proparco) to support AES’s implementation of the concession plan.

2.2. The Complaint

In February 2013, a complaint was received by CAO in which the complainant raises specific concerns about his position within AES and what he believes are illegitimate actions taken by the company to demote him, and deprive him of benefits that he believes he is due.

3. Assessment

3.1 Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainant, to gather information on how other stakeholders see the situation, and to help the concerned parties determine which CAO function should be triggered, dispute resolution or compliance. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

¹ IFC website <http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/ERS11579> , Board Paper – May 8, 2006 and SPI – March 24, 2006

The CAO assessment of the complaint consisted of:

- reviewing project documents;
- reviewing information sent by both parties on the issues raised;
- conducting interviews with the Complainant, AES management and IFC.

This Assessment Report consolidates the perspectives shared by the parties with the CAO and captures the determination made by the parties to engage in a dispute resolution process.

3.2 Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken during CAO's assessment, below are the key concerns raised:

- The complainant stated that while he was on annual leave in 2002, the CEO of AES Sonel has sent him a letter informing him of the removal of benefits as Information System Director he then held, and that the decision will take effect starting in November 2002 as a loss of benefits and an unilateral change on his employment contract, in his view consisting of a demotion, not a promotion.
- The complainant alleged that his demotion was illegal and non-compliant with the Labor Code of Cameroon. He states that a company cannot change the employment contract of an employee while he is on leave. Moreover, according to the complainant, any substantial change in the employment contract of an employee must be notified to him and request his consent. Additionally in his view, such a decision should not be taken by the Director-General but by the Board of Directors of the company, given the complainant's position as Information System Director.
- The complainant is of the opinion that he has been discriminated against and is being subjected to unfair treatment by the company due to his insistence on being treated fairly. The complainant stated that planned/calculated actions were taken by AES to harass him and violate his dignity and professional integrity.
- The complainant also contends that this unfair treatment has caused emotional and physical stress to himself and his family.
- The complainant expressed that he has undergone several processes to be fairly paid and has even brought his case to the Cameroonian Judicial System.
- AES has shared their view that it is within the legal norms of Cameroon for a Company to be able to transfer personnel from one department to the other, and to merge positions if under restructure, and this will not be considered a demotion. AES has also expressed that in their view all steps and measures taken by the company regarding Mr. Teumagnie have been within the legal framework and denies allegations of harassment.

4. Next Steps

CAO has received confirmation from both the complainant and AES that they are willing to engage in a collaborative process to try to address the concerns raised. The CAO will facilitate this voluntary dispute resolution process and work with the parties on setting the ground rules to guide the process. Furthermore, the parties will need to agree on the scope of the dispute resolution process e.g. the issues which the dispute resolution process will be designed to address.

Annex A. CAO Complaints 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,² 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:** "Assessment of the issues and provide 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

² 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

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 affected³.

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 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.