



APPRAISAL REPORT

CAO Compliance Appraisal for
Investigation

CAO Compliance

C-I-R4-Y14-F200

26 June 2014

**AES Sonel (#11579)
Cameroon**

Case of
AES Sonel

Summary

AES Sonel (the Company) is Cameroon's national electric private utility. It was privatized in 2001 at which point it was granted a 20 year concession for distribution, transmission, and generation of electricity throughout Cameroon. The International Finance Corporation (IFC) is one of several Development Finance Institutions (DFIs) supporting AES Sonel. In 2006, IFC agreed to a corporate loan of up to EUR 70 million as part of a total of EUR 240 million financing being provided by a group of DFIs which included the African Development Bank, Banque de Développement des Etats de l'Afrique Centrale (BDEAC), Deutsche Investitions- und Entwicklungsgesellschaft MBH (DEG), European Investment Bank (EIB), and Proparco.

The IFI loans supported a 5 year investment plan designed to renew existing distribution, transmission and generation assets. This included over EUR 11 million for improvement of environmental and safety performance of the company, and EUR 25 million for improvement of dam safety of the existing hydro plants and reservoirs. As set out in IFC's public disclosure of this project in March 2006, the main objectives of this investment were to: (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 Operational & Maintenance costs.

In February 2013, CAO received a complaint from an employee of AES Sonel. The Complainant claims discrimination and unfair treatment by AES Sonel that has led to emotional and physical harm.

CAO initiated a dispute resolution process, as the complainant and AES Sonel were both willing to engage in a mediated process. Ultimately, the issues were not resolved through dispute resolution and, as per the CAO Operational Guidelines, the case was transferred to CAO's Compliance function for appraisal in January 2014.

Specifically, the issues considered in this appraisal are IFC's due diligence and mandate with respect to the project and whether IFC acted consistently with the IFC policies and performance standards in identifying and responding to environmental and social risk in relation to the investment.

Having considered the issues raised by the complainant, and the application of relevant IFC policies, standards and procedures, CAO has not identified substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA of the type that would warrant a compliance investigation. As such, CAO has decided to close the case.

About CAO

The 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 lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about the CAO, please visit www.cao-ombudsman.org

1. Overview of the CAO Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred to CAO's dispute resolution arm, CAO dispute resolution, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If CAO dispute resolution concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to CAO compliance for appraisal and potential compliance investigation.

The focus of CAO compliance 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.

In order to decide whether a compliance investigation is warranted, CAO compliance first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, the CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, the CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution role, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

2. Background

Investment

AES Sonel (the Company) is the national electric utility of Cameroon that was privatized in 2001. AES Corporation, a US-based multinational enterprise, paid US\$70 million to acquire 56% of the shares of AES Sonel, while the Government of Cameroon retained 44% of the shares. AES Sonel was granted a 20 year concession for distribution, transmission, and generation of electricity throughout Cameroon.

IFC first considered an investment in AES Sonel in 2003.¹ The then proposed project included the development of a heavy fuel oil (HFO) thermal power plant and related subprojects. However, due to the potentially significant environmental and social adverse impacts, IFC did not proceed with this investment. In 2006, IFC committed to finance up to EUR 70 million as part of a total of EUR 240 million provided by a group of Development Financial Institutions (IFC, African Development Bank, Banque de Développement des Etats de l'Afrique Centrale (BDEAC), Deutsche Investitions- und Entwicklungsgesellschaft MBH (DEG), European Investment Bank (EIB), Proparco) to support AES Sonel's 5 year investment plan. The 5-year investment plan was targeted to renew existing distribution, transmission and generation assets. It also included over EUR 11 million for improvement of environmental and safety performance of the company, and EUR 25 million for improvement of dam safety of the existing hydro plants and reservoirs. The main objectives of this investment were to: (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 and Maintenance costs.² As part of its E&S risk assessment, IFC categorized this as a Category B project.³

Complaint

In February 2013, the Complainant filed a complaint with CAO alleging discrimination and unfair treatment by AES Sonel that has led to emotional and physical harm. The complaint raises a number of issues related to:

- Discrimination and unfair treatment in the workplace;
- Intentional harassment that has affected the Complainant's dignity and professional integrity;

¹ IFC website

<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcdba85257a8b0075079d/c4f52639c70092db852576ba000e256e?opendocument>

² IFC website <http://www.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/ERS11579>, SPI (March 24, 2006).

³ Category B Projects are projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures. IFC, "International Finance Corporation's Policy on Social and Environmental Sustainability" (April 30, 2006).

- Unfair demotion in 2002, from his previous position as Information Director to an Information Officer resulting in a loss of wages and benefits;

As a result, the Complainant claims he has suffered emotional and physical harm which extends to the family he supports.

AES Sonel reports the Complainant has also pursued his claims through the national institutions in Cameroon.⁴ In 2005, through the Office of the Cameroon Labor Inspector, the Complainant sought reinstatement to his prior position and related compensation. This process led to a grant of partial relief which AES Sonel has appealed. At the time of writing a decision on the appeal was pending. Subsequently, in 2011, the Complainant brought an action through the processes of the Office of the Cameroon Labor Inspector regarding issues around compensation. The Labor Inspector failed to reach a mediated agreement and gave permission to the Complainant to litigate the case.

CAO notes that in August 2011, the Complainant submitted a complaint to the National Contact Point for the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (MNEs),⁵ claiming he was victim of salary discrimination and that AES Sonel's actions did not respect the OECD Guidelines. The National Contact Point concluded that the Complainant did not provide sufficient relevant evidence to support his claims.

As part of CAO's assessment process, from June through December 2013, a CAO team met with the Complainant and IFC's client. It found that while both parties were willing to proceed with mediation, a negotiated resolution of the issues raised in the complaint was not possible. The complaint was thus referred to the CAO Compliance function.

3. Scope of Appraisal

As noted in Section 1 above, in cases transferred after CAO's assessment, the scope of the appraisal is defined by issues raised in the complaint and identified during the CAO assessment phase. Based on the Complaint and the CAO assessment report, CAO notes that while the issues raised by the Complainant and referred to CAO Compliance are no doubt important at an individual level, the information available does not support the conclusion that the project raises "substantial concerns regarding environmental and/or social outcomes."⁶

⁴ U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises "Initial Assessment" (September 13, 2012).

⁵ The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part (Source: U.S. Department of State <http://www.state.gov/e/eb/oecd/usncp/links/rls/197766.htm>). As AES Corporation is a U.S.-based MNE, the case was transferred to the U.S. National Contact Point.

⁶ CAO Operational Guidelines, para 4.2.1.

In this context, it is important to emphasize that the CAO compliance mandate focuses on the E&S performance of IFC/MIGA and does not extend to the arbitration of disputes between employer and employee.

The remaining question for the CAO appraisal is whether the complaint raises “issues of systemic importance to IFC/MIGA.”⁷ As such, this appraisal focuses on the unresolved potential issues in relation to IFC’s approach to the identification and supervision of risks relating to Performance Standard 2 (PS2) on Labor and Working Conditions.

From the perspective of the CAO compliance mandate, the general question raised is whether IFC exercised due diligence in its review and supervision of the environmental and social (E&S) aspects of the project, particularly as relate to the issues raised by the complaint.

In the course of conducting this appraisal, CAO has reviewed IFC’s project documentation and documentation received from the complainant.

4. Discussion

In this appraisal CAO considers PS2 issues as they relate to IFC’s responsibility at each stage of the project cycle to assure itself that its client assessed and managed the risks of its project in accordance with the applicable Performance Standards as relevant to the complaint. Accordingly, this appraisal will first outline the relevant IFC’s policies and discuss the above issues in the context of the project cycle.

IFC guidelines and standards

IFC’s investment in AES Sonel was initiated in the context of IFC’s Environmental and Social Safeguards Policies (1998). However, prior to Board approval in May 2006, IFC’s Sustainability Policy and Performance Standards (2006) came into force. During appraisal, IFC and AES Sonel agreed that the Performance Standards would be included as a requirement in this investment. In line with this approach, this compliance appraisal considers the investment in the context of the 2006 Sustainability Policy and Performance Standards.

The Sustainability Policy, which became applicable on April 30, 2006, sets out IFC’s roles and responsibilities in relation to managing social and environmental risks in IFC financed projects. Under the Policy, IFC’s role is to review its client’s assessment of social and environmental risks and impacts; to assist its client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts; to categorize the project in terms of its E&S risk; to help identify opportunities to improve social and environmental outcomes; and to monitor the client’s social and environmental performance throughout the life of IFC’s investment.⁸

⁷ Ibid.

⁸ IFC, “International Finance Corporation’s Policy on Social and Environmental Sustainability” (April 30, 2006), para 11.

Prior to project commitment, IFC is required to consider the application of Performance Standard 2: Labor and Working Condition (PS2) in relation to the client's employees. Relevant to this compliance appraisal, IFC is required to assure itself that at a minimum its client provide working conditions and terms of employment that comply with national law;⁹ its client bases "the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment"¹⁰; and provide a grievance mechanism to workers to raise reasonable workplace concerns.¹¹

IFC's Performance Standards Guidance Notes provide further clarity on these requirements. Specifically, the Guidance Notes affirm that "[t]reatment of workers includes disciplinary practices, reasons and process for termination of workers and respect for the worker's personal dignity (such as avoiding physical punishment or abusive language)."¹²

With respect to non-discrimination and equal opportunity, the Guidance Notes affirm that a "client can apply the principles of equal opportunity and non-discrimination using methods that are effective and acceptable within the country's legal framework and cultural context as long as the methods used do not compromise the principles."¹³

Pre-commitment

At the pre-commitment stage, IFC reviews the E&S risks and impacts of a proposed investment and categorizes the project on this basis. The question for CAO is whether IFC's review was commensurate to the risk of the project at the time of investment.¹⁴ Therefore, it is important to understand whether IFC exercised due diligence in its review of and response to the client's assessment of the project's E&S impacts, particularly in relation to labor issues.

As part of the appraisal of its 2006 investment, in relation to labor issues, IFC noted that recent employee retrenchment had been carried out on good terms. IFC also noted that the AES Sonel had faced issues in relation to salary differences between long-term and recently-hired employees. Most of the Company's recent-hires had been previously employed in Europe, where London or Paris served as the market reference for their compensation. By contrast, local Cameroonian employees' compensation reference was the Cameroon labor market. In discussions with CAO, IFC noted that the newly hired expatriates were brought to AES Sonel in Cameroon under the assumption that they would work to improve a company's management and contribute to its productivity and that referencing the originating market (in this case, Europe) incentivized these

⁹ IFC Performance Standards (2006), PS2, para 8.

¹⁰ Ibid, para 11.

¹¹ Ibid, para 13.

¹² IFC, "Guidance Notes: Performance Standards on Social & Environmental Sustainability" (April 30, 2006) page 36, para G13.

¹³ Ibid., page 39, para G27.

¹⁴ IFC, "International Finance Corporation's Policy on Social and Environmental Sustainability" (April 30, 2006), para 13.

individuals to work for AES Sonel in Cameroon.¹⁵ As set out in the Environmental and Social Review, IFC did not require any specific actions in relation to labor issues.

CAO's review of project documentation has not found evidence to suggest that IFC's review was other than commensurate to risk in relation to the issues raised by the complaint.

Supervision in Relation to PS2

Following commitment, IFC's obligation is to monitor the client's E&S performance in accordance with its commitments in IFC's Sustainability Policy. Relevantly, this includes the requirement to review project performance on the basis of the client's commitments in the investment agreement and, in cases where a client fails to comply with these commitments, to work with the client to bring the project back into compliance.¹⁶

IFC's review of the client's first Annual Monitoring Report (AMR) for the year 2006, gave an Environmental and Social Risk Rating (ESRR) of 1 (good).¹⁷ In its second review, for the reporting period 2007, IFC concluded that the performance of AES Sonel complied with the E&S requirements agreed upon by the lenders.¹⁸ However, it gave an ESRR of 2 (satisfactory), noting the number of labor complaints registered through the grievance mechanism and those that were brought to court. IFC highlighted the need to review this during the next supervision visit or AMR Review. IFC's review of AES Sonel's 2008 AMR, in October 2009, noted again the number of labor claims and maintained an ESRR of 2. IFC also highlighted that the company had held meetings with labor unions, during which issues were raised in relation to working conditions, salaries and benefits. IFC noted that measures to address these labor issues were identified and agreed.

Following a site supervision visit conducted by IFC's E&S team in March 2010, IFC reported a lack of communication between unions and management. At this time IFC noted that representatives of the employees and the Company had not met for 5 months and that the grievance mechanism appeared not to be functioning effectively. During this visit, and in follow-up communications, the unions highlighted that employee representatives lacked the capacity to represent employees due to their lack of knowledge of labor rights. In November 2010, IFC E&S staff requested that AES Sonel update its Environmental and Social Action Plan (ESAP) to include mitigation measures for identified labor issues. CAO notes that the ESAP was not updated.

In March 2011, IFC's E&S staff conducted a site supervision visit and met with the client's human resources staff and labor unions. IFC noted concerns including the non-functioning grievance mechanism, a lack of communication with the Company's human resources staff, and the lack of union representation within the grievance mechanism. IFC, therefore, specifically required AES Sonel to: (i) strengthen its communication with the unions through quarterly meetings, (ii) set up an

¹⁵ CAO held interviews with IFC on May 2, 2014.

¹⁶ IFC, "Policy on Social and Environmental Sustainability" (April 30, 2006), para 26.

¹⁷ ESRR is the Environmental and Social Risk rating, a tool used by IFC to estimate the potential social and environmental risk of projects. ESRR includes in its computation an element of performance and risk. Ratings are: 1=good, 2=satisfactory, 3=partly unsatisfactory, 4=unsatisfactory.

¹⁸ IFC, AMR Review for the period 01/01/2007 to 12/31/2007 (November 17, 2008).

internal mediation commission, and (iii) elect and include union representatives on the commission. A single AMR Review was completed for the 2009 and 2010 reporting periods in July 2011. In review, IFC concluded that labor issues should be monitored in the following supervision visit. The ESRR for this reporting period was 3 (partly unsatisfactory) given E&S concerns that included community health and safety and labor and working conditions.¹⁹

In the AMR Review for the 2011 reporting period (completed June 2012), IFC affirmed that employees had access to AES Sonel's grievance mechanism through workers' representatives or they could also go directly to human resources. IFC noted that it would follow-up with its client on workers' grievances trends, instances of non-conciliation and number of claims received from current workers. The ESRR remained 3 due to the remaining community health issues and tensions between workers unions and management.

In July, 2012, IFC's E&S staff conducted a site supervision visit. During this visit, IFC staff met with AES Sonel's human resources staff and requested documentation to assess the client's grievance mechanism. In discussions with CAO in May, 2014, IFC noted that, based on its supervision, the company's grievance mechanism is considered to be robust.

5. CAO Decision

The decision about whether CAO should initiate a compliance investigation requires the weighing of a number of factors including the likely environmental and social impact of a project, a preliminary appraisal of IFC's E&S performance, as well as a more general assessment of whether there is an argument for the value of a compliance investigation for project-related or systemic reasons.

As noted above, while the issues raised by the Complainant and referred to CAO Compliance are no doubt important at an individual level, the information available does not support the conclusion that the project raises substantial concerns regarding environmental and/or social outcomes.

Similarly, CAO's review of IFC's approach to the appraisal and supervision of this project has not identified issues of systemic importance to IFC that would warrant an investigation. As such CAO has decided to close this case.

¹⁹ IFC, AMR Review for the periods 01/01/2009 to 12/31/2010 (July 7, 2011).