

26 April 2019

Oswaldo Gratacós, CAO Vice President
Compliance Advisor/Ombudsperson
International Finance Corporation
2121 Pennsylvania Avenue, NW
Washington, DC 20433, USA
E-mail: CAO@worldbankgroup.org

Re: Complaint regarding the International Finance Corporation's investments in Kenya Commercial Bank and Co-Operative Bank of Kenya

Dear Mr. Gratacós,

Please find enclosed a complaint filed by Save Lamu and the Kwasasi Mvunjeni Farmers Self-Help Group, highlighting their grave concerns about the International Finance Corporation's (IFC) apparent contributions to the development of the proposed 1,050-megawatt coal-fired power plant in Lamu County, Kenya. Accountability Counsel is supporting that complaint as an advisor.

The IFC's contributions to this potentially disastrous project occur through two financial intermediary clients, Kenya Commercial Bank and the Co-Operative Bank of Kenya, both of which have provided active and ongoing financial support to companies involved in the development of the coal plant. The IFC provided two active loans to Kenya Commercial Bank, approved in 2013 and 2016. It also appears that the Board approved an equity investment in Kenya Commercial Bank in 2016. The IFC also provided three active loans to the Co-Operative Bank, approved in 2012, 2015 and 2018, as well as advisory services in 2016 and 2017. Based on information available to us, we understand that, since receiving funds from IFC, both Kenya Commercial Bank and Co-Operative Bank have established active, and ongoing, credit facilities for Centum Investment, a 51% shareholder in Amu Power, the special purpose vehicle that will construct and operate the coal plant. In addition, in April 2014, following the IFC's first loan, Co-Operative Bank issued a \$5 million bid security bond directly backing Amu Power's proposal to develop the plant.

We understand that, following increased CAO and civil society attention to the IFC's financial intermediary portfolio, the IFC is asserting that 95% of its lending to financial intermediaries is now "ring-fenced", targeted to priority sectors such as financial inclusion for small and medium enterprises (SMEs). Indeed, we have noticed that the IFC has recently added "Use of Proceeds/Beneficiaries" tabs to many of its loans within its Project Information Portal, including four out of the five loans referred to above. Accordingly, we anticipate that the IFC will respond to this complaint by asserting, *inter alia*, that its funds are ring-fenced and could not be used to support the proposed coal plant. However, in this case, it's critical that the CAO

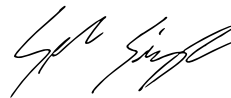
subjects any claim of ring-fencing to full investigation as part of its compliance review. Among other reasons:

- It is critical that the CAO interrogate the *traceability* of funds and the *enforceability and enforcement* of ring-fences / asserted restrictions on use of proceeds. This is especially true given that the IFC is now including “Use of Proceeds/Beneficiaries” statements on its Project Information Portal. These “Use of Proceeds/Beneficiaries” tabs use relatively vague and weak language, that certain sectors are “targeted”, rather than the language of traceable and enforceable restrictions on use of funds. The project descriptions for each of those loans also indicate that – despite “Use of Proceeds/Beneficiaries” statements asserting that the loans target the SME sector – the loans serve broader fiscal purposes, such as strengthening the Banks’ capital position in light of increased regulatory requirements. It is critical that the CAO interrogates these “Use of Proceeds/Beneficiaries” statements to determine whether civil society and other members of the public can rely on them as genuine indicators of ring-fencing, and to avoid the IFC misleading the public if they are not.
- In any event, two of the financial connections between IFC and Kenya Commercial Bank are not subject to “Use of Proceeds/Beneficiaries” limitations: the 2013 loan has no such statement; and in 2016 the Board approved a US\$70 million equity investment in the Bank which would expose the IFC to its entire portfolio of operations.
- Finally, as set out in the complaint, the IFC has a history of relationships with other financial institutions that have been linked to the coal plant. This pattern of investment leads us to fear that the current investments in Co-Operative Bank and Kenya Commercial Bank are not – or will not be – the IFC’s only connections to the proposed Lamu coal plant and its severe risks and impacts.

For these reasons, a CAO investigation is warranted even if the IFC asserts that its current investments in Kenya Commercial Bank and the Co-Operative Bank are ring-fenced. This assertion cannot be allowed to automatically undermine complaints that identify material, temporal financial connections between the IFC and harmful projects through financial intermediaries, without clear evidence that each investment is traceable and that the asserted ring-fence is enforceable and enforced.

We look forward to speaking to you further about these and other matters relating to the complaint.

Sincerely,



Sarah Singh
Communities Co-Director
Accountability Counsel



May 3, 2019

Via Electronic Mail

Osvaldo Gratacós, CAO Vice President
Compliance Advisor/Ombudsperson
International Finance Corporation
2121 Pennsylvania Avenue, NW
Washington, DC 20433, USA
E-mail: CAO@worldbankgroup.org

Re: Complaint regarding the International Finance Corporation's investments in Kenya Commercial Bank and Co-Operative Bank of Kenya

Dear Mr. Gratacós,

Since we filed a complaint to your office on Friday 26 April, it has come to our attention that the International Finance Corporation (IFC) has another connection to the proposed Lamu coal plant, through its client FirstRand Bank. This IFC investment was not disclosed in the IFC's Project Information Portal. We request that this supplementary information is taken into account in your assessment of the eligibility (and subsequently the merits) of our complaint.

In April 2014, the IFC Asset Management Company, a wholly-owned subsidiary of the IFC, provided US\$172.5 million in subordinated (convertible) debt to FirstRand Bank.¹ In September 2017, FirstRand Bank provided a corporate loan worth US\$50 million to Centum Investment that matures in 2021.² As explained in the complaint, Centum Investment is a co-developer of the Lamu coal plant through its majority shareholding in Amu Power.

While an IFC press release issued at the time of its 2014 loan to FirstRand mentioned that its funds would support small-medium enterprises,³ it is clear that the investment is much broader in scope. The press release itself mentions that the loan will also support "FirstRand's expansion into Sub-Saharan Africa."⁴ Further, and importantly, FirstRand's own disclosures indicate that the financing is a convertible loan with *mandatory* conversion from debt to equity in

¹ IFC Asset Management Company, "IFC Capitalization (Sub Debt) Fund" <https://www.ifcamc.org/funds/ifc-capitalization-sub-debt-fund>; IFC "IFC Leads Basel III Recapitalization to Support FirstRand's Expansion in Africa" (5 May 2014)

<https://ifcext.ifc.org/ifcext/pressroom/ifcpressroom.nsf/0/E3D2199374BB5F8B85257CCF005DFBB3>.

² Centum Investment, *2018 Annual Report*, p. 189 http://www.centum.co.ke/images/docs/CICL_Full_-_Annual_Report_FY18.pdf; Centum Investment, *Interim Report and Financial Statements: 6 Month Period Ended 30 September 2018*, p. 30

https://centum.co.ke/images/docs/CICP_Group_Interim_Financial_Statement_30_September_2018.pdf.

³ IFC "IFC Leads Basel III Recapitalization to Support FirstRand's Expansion in Africa" (5 May 2014) <https://ifcext.ifc.org/ifcext/pressroom/ifcpressroom.nsf/0/E3D2199374BB5F8B85257CCF005DFBB3>.

⁴ *Id.*

Save Lamu

Tel: 0723-205-998 P.O. Box 314, Lamu 80500, Kenya
Email: info@savelamu.org Website: www.savelamu.org

FirstRand Limited.⁵ An active equity/quasi-equity investment such as this cannot be effectively ring-fenced. Accordingly, the IFC’s 2014 investment in FirstRand materially exposes it to all of the Bank’s operations and activities, including FirstRand’s 2017 loan to Centum Investment.

This discovery is entirely consistent with our fear, set out in the complaint, that the “current investments in Co-Operative Bank and Kenya Commercial Bank are not – or will not be – the IFC’s only connections to the Lamu coal plant and its severe risks and impacts in our community.” It is critical that the CAO fully investigates this *pattern* of IFC investments.

We look forward to engaging with you further on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Abubakar Mohamed Ali', with a stylized flourish at the end.

Abubakar Mohamed Ali
Chairman
Save Lamu

⁵ FirstRand, ‘18 basel pillar 3 common disclosure templates for the year ended 30 June, pp.8-9
<https://www.firstrand.co.za/InvestorCentre/capitaldisclosuretemplates/FirstRand%20Base1%20III%20common%20disclosure%20templates%20-%20June%202018.pdf>.