



June 30, 2016
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE INVESTIGATION

IFC Investment in Eco Oro (Project #27961)

Colombia

**CAO Investigation of IFC Investment in:
Eco Oro Minerals Corporation Limited (#27961)**

Office of the Compliance Advisor Ombudsman
for the
International Finance Corporation &
Multilateral Investment Guarantee Agency
Members of the World Bank Group

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Executive Summary

Background

This report provides the findings of the CAO compliance investigation of IFC's investment in Eco Oro Minerals Corporation Limited, formerly Greystar Resources Limited (the company). The company is a publicly listed junior mining company¹ headquartered in Canada that owns the Angostura gold and silver mining project in the Santander region of Colombia. As of September 2015, the project remains undeveloped.

In March 2009, the IFC Board of Directors approved an equity investment of up to \$20 million in the company to fund completion of a bankable feasibility study (BFS), an environmental and social impact assessment (ESIA) and other ground works to prepare for the construction of an open-pit mine. IFC presented the proposed investment as consistent with its development strategy for the Mining Investment Division and the Latin America and Caribbean regional department.² A key issue identified by IFC in relation to the project was its proximity to, and potential impact on, neighboring communities and the páramo, an Andean ecosystem that is prioritized for conservation under Colombian legislation.

Following Board approval in March 2009, IFC made an equity investment of approximately \$9.6 million. This represented 12.5 percent of the company's shares. The percentage of shares owned by IFC fell to 9.29 percent following a capital raising exercise in which IFC did not participate. In January 2010, IFC exercised warrants to purchase additional shares for \$4.8 million, returning its ownership to a total of 12.34 percent of the company.³ In February 2015, IFC purchased an additional 390,000 shares in the company for US\$ 272,256.40.

In December 2009, the company submitted an application to the Colombian Ministry of Environment for an environmental license to construct an open-pit gold and silver mine. In April 2010, the Ministry of Environment rejected the license application on the grounds that it did not comply with the new Mining Code passed in February 2010, in part due to questions regarding the definition of *páramo* (a type of alpine tundra ecosystem that is recognized as having high conservation value) and the exclusion of mining activities from the páramo in Colombia. In March 2011, the company announced that it would not pursue an open-pit mine as originally envisaged.⁴

¹ Junior companies are small companies that are currently developing or seeking to develop a natural resource deposit or field. These companies will first conduct a resource study and either provide the results to shareholders or to the public at large to prove there is assets. If the study yields positive results, the junior company will either raise capital or attempt to be bought out by a larger company.

² IFC, appraisal documentation (January 2009).

³ Information regarding the amount invested by IFC in the company was verified during the compliance investigation process and was corrected in accordance with the information reported in IFC's commitment (March 2009) and disbursement documents (March 2009) for the early equity investment and in IFC's commitment (January 2010) and legal documents (January 2010) for the subsequent exercise of 50% of the warrants IFC held.

⁴ Eco Oro, "Greystar Resources to study viability of alternate project at Angostura," News Release (March 18, 2011), available at: <http://goo.gl/2NRbxx>.

Nevertheless, the company stated it was committed to developing the project and announced it would conduct a new pre-feasibility study for an underground operation.⁵

In June 2012, CAO received a complaint from the *Comité por la Defensa del Agua y el Páramo de Santurbán* (the complainants). The complaint raised concerns over environmental and social (E&S) aspects of IFC's investment in the company, including the project's anticipated impact on water quality and quantity in the watershed that supplies the city of Bucaramanga as well as its anticipated impact on the páramo.

The issues raised in the complaint related to the application of IFC's Sustainability Framework, comprised of its 2006 Policy on Social and Environmental Sustainability (2006 Sustainability Policy) and Performance Standards, to the project, including:

- the timing and identification of E&S risks related to the investment;
- categorization of IFC's investment as Category B rather than as Category A;⁶
- IFC's assessment of its client's capacity and commitment to meet IFC E&S standards;
- the application of PS1 (Social and Environmental Assessment and Management Systems) to the investment, in particular: (a) issues related to the client's compliance with national law, (b) the geographic scope of the E&S impact assessment conducted for the mine, (c) consideration of the cumulative impact of other mining operations in the region and (d) the adequacy of the client's approach to community consultation;
- the application of PS4 (Community Health, Safety and Security) to the investment, in particular: (a) issues related to the mine's potential impact on water resources and (b) concerns about the analysis of, and the company's potential role in contributing to, security risks in the project's area of influence.
- the application of PS6 (Biodiversity Conservation and Sustainable Natural Resource Management) to the investment, in particular: (a) whether IFC conducted adequate due diligence when approving the investment before completion of an ESIA and (b) the potential inconsistency between the Eco Oro project and other World Bank-funded projects intended to protect páramo ecosystems.

During the assessment, the company expressed its willingness to pursue a voluntary dispute resolution process. However, the complainants and representatives of potentially affected communities decided not to pursue such a process with the company.

⁵ Eco Oro, "Greystar Resources to study viability of alternate project at Angostura," News Release (March 18, 2011), available at: <http://goo.gl/2NRbxx>.

⁶ Category A Projects are "Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented." 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, "Policy for Environmental and Social Sustainability," para 18 (April 30, 2006).

In November 2012, the complaint was transferred to the CAO compliance function for appraisal. In June 2013 CAO issued a compliance appraisal concluding that there were questions as to the adequacy of IFC's approach to the definition of the project and the assessment of its E&S risks and impacts. In particular, the appraisal identified that IFC had approached the project's scope as limited to the completion of a BFS, an ESIA and other works to prepare for the construction of a mine. The appraisal noted that a broad definition of the project would have taken into consideration the longer-term potential impact of an open pit gold mine located in or near a fragile ecosystem. The appraisal raised questions as to whether the structure of the investment and the approach taken by IFC to its supervision paid sufficient attention to the potential long-term E&S impact of the investment, and the way in which its risk profile was likely to change over time. In accordance with CAO's Operational Guidelines, it was determined that a compliance investigation into IFC's investment in the company was warranted.

Summary of Discussion and Findings

Finding No. 1 (E&S Risk Assessment and Categorization):

Finding No. 1a (E&S Review): At appraisal, IFC considered the E&S impacts of the client's immediate planned activities, related to the completion of a BFS and the preparation of an ESIA for the proposed mine. IFC did not undertake an analysis of E&S risks beyond this phase. CAO notes that this approach was consistent with IFC's appraisal of other early equity mine projects. As applied in this project, this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with IFC's PSs was uncertain and potentially challenging due to the location's environmental sensitivity.

Finding No. 1b (Categorization): IFC's approach to the categorization of the project was based on this specific definition of the scope of the project as mineral exploration and feasibility study activities. As discussed further in section 4.3 below, this approach to project definition contributed to gaps between IFC's actions and community expectations. Categorization of this investment as an exploration and feasibility project with limited adverse social or environmental impacts was consistent with the early equity approach but inconsistent with the goal stated in IFC's disclosure material of developing the mine in late 2009/early 2010.

Finding No. 2 (IFC Assessment of Client Commitment and Capacity): CAO finds that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.

Finding No. 2a (Appraisal): Although IFC considered regulatory actions as part of its pre-investment due diligence, IFC's appraisal documentation did not capture or analyze information about an investigation carried out from 2006 to 2008 by the regional environmental authority, the Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga (CDMB). CAO notes that in 2008, prior to IFC's initial investment decision, CDMB had found the company to be generally compliant with environmental requirements. However, CAO finds that the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management.

Finding No. 2b (Supervision): By 2010, IFC was aware of issues related to its client's E&S performance and had initiated discussions with the company. However, CAO finds that IFC's supervision documentation did not adequately capture information about the company's non-compliance with environmental requirements relating to acid water treatment, soil erosion and slides observed by the CDMB in 2010 or its decision to fine the company for those infractions. CAO finds that the CDMB penalties, and the company's actions to resolve the non-compliance, should have been considered as part of IFC's ongoing assessment of the client's commitment and capacity.

Finding No. 3 (Consultation and Disclosure):

Finding No. 3a (Appraisal): CAO finds that IFC considered that the project, defined as the preparation of a BFS and ESIA, had the support of local communities. The intent at this point was that the client's stakeholder engagement process and associated programs would be further developed as the mine progressed toward construction. The requirement to conduct ongoing community engagement activities in accordance with IFC requirements was included in the ESAP.

Finding No. 3b (Supervision): CAO finds that IFC supervised the company's stakeholder engagement requirements and raised shortcomings when these were identified. IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks associated with the project (which included potential impacts from construction and operation of a mine).

Finding No. 4 (Compliance with National Law): CAO finds that IFC was aware of the project's proximity to the páramo at the time of IFC's investment, and identified this as a risk at appraisal as there was potential for the mine to impact the páramo. IFC recognized that the project would need to abide by national law as it applied to the area. At the time of IFC's investment in 2009, the legal restrictions related to the páramos were unclear. National legislation was being developed to determine the boundaries of the páramos, and to identify what activities would be permitted therein. It was not clear whether and to what extent the Angostura project area would overlap the páramos boundary. Legislation passed in 2010 and 2011 explicitly prohibited mining activities in the páramos. The detailed maps of final páramo boundaries were determined in 2014.

Finding No. 5 (PS4 – Community Health, Safety and Security):

Finding No. 5a (Appraisal): IFC's appraisal of the project included an assessment of security risks. This led to the development of recommendations, including adoption of new legal arrangements

with security contractors that reflected the Voluntary Principles for Security and Human Rights (VPSHR).

Finding No. 5b (Supervision): In reviewing project documents and in interviews with IFC staff, CAO determined there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements. CAO notes that IFC reviewed and reported information in relation to the company's security personnel staffing; however, IFC's supervision documentation lacks adequate reporting on the progress on the implementation of the VPSHR.

Finding No. 6 (PS6 – Biodiversity Conservation and Sustainable Natural Resource Management): One of the stated purposes of IFC's investment was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. The requirement to complete an ESIA in accordance with IFC requirements, including the biodiversity assessment, was included in the ESAP. IFC supervision documentation does not show substantive progress on the completion of necessary studies, such as an adequate biodiversity baseline study or critical habitat assessment. IFC has not pursued a remedy, but has made subsequent investments in the company.

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the E&S accountability of the private sector lending and insurance members of the World Bank Group, the International Finance Corporation and the Multilateral Investment Guarantee Agency.

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 IFC and MIGA.

CAO compliance oversees investigations of the E&S performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA E&S performance

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

1. Overview of the CAO Compliance Process

CAO's approach to its compliance mandate is set out in its Operational Guidelines (March 2013).

When CAO receives an eligible complaint, it first undergoes an assessment to determine how it should respond. If the CAO Compliance function is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted. The CAO Compliance function can also be triggered by the World Bank Group President, the CAO Vice President or senior management of IFC/MIGA.

CAO Compliance Investigations focus on IFC/MIGA, and how IFC/MIGA assured itself of project E&S performance. The purpose of a CAO Compliance Investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve E&S performance.

In the context of a CAO Compliance Investigation, at issue is whether:

- the actual E&S outcomes of a project are consistent with or contrary to the desired effect of the IFC/MIGA policy provisions; or
- a failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes contrary to the desired effect of the policy provisions.

In many cases, in assessing the performance of the project and implementation of measures to meet relevant requirements, it is necessary to review the actions of the IFC client and verify outcomes in the field.

CAO has no authority with respect to judicial processes. CAO is neither a court of appeal nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries.

Upon finalizing a Compliance Investigation, IFC/MIGA is given 20 working days to prepare a public response. The Compliance Investigation report, together with any response from IFC/MIGA is then sent to the World Bank Group President for clearance, after which it is made public on the CAO website.

In cases where IFC/MIGA is found to be out of compliance, CAO keeps the investigation open and monitors the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing the non-compliance. CAO will then close the Compliance Investigation.

2. Background to the CAO Compliance Investigation

2.1 The Complaint

In June 2012, CAO received a complaint from the *Comité por la Defensa del Agua y el Páramo de Santurbán* (the complainants), which claimed to represent 75,000 community members in the region of Bucaramanga, Colombia. The complainants filed the complaint with the support of three international civil society organizations: The Center for International Environmental Law, the Inter-American Association for the Defense of the Environment, and MiningWatch Canada.

The complaint raised a number of E&S concerns with the company's Angostura mining project (the project), including impact on water quality and quantity within the watershed that supplies Bucaramanga, and environmental damage to the páramo. The páramo is a type of alpine tundra ecosystem that is recognized as having high conservation value, and is prioritized for conservation under Colombian legislation. Furthermore, the complainants contend that the project does not conform to IFC's E&S policies, and that IFC should have not invested in the project.

The complainants claim IFC's investment in, and supervision of, the project is noncompliant with its 2006 Sustainability Policy in the following matters:

- Timing and identification of E&S risks – IFC should not have invested in the company before the completion of an ESIA and before review of the ESIA by Colombian authorities.
- Categorization of investment – the complainants express disagreement with IFC's categorization of the project as a Category B reasoning that the categorization violated the IFC Sustainability Policy. Had IFC appropriately applied its policy, it would have categorized the investment as Category A due to the project's potential significant adverse social and environmental impacts.
- Assessment of client capacity and commitment – IFC did not properly assess the company's commitment and capacity to perform according to the IFC Performance Standards. The complainants state that the company has violated Colombian law and has limited E&S capacity.

Furthermore, the complainants raise issues about non-compliance with the following IFC Performance Standards:

- PS1 (Social and Environmental Assessment and Management Systems) – the complainants claim that the proposed mine cannot be developed because it is located in the páramo, an area where mining is prohibited under Colombian national law. Also in relation to PS1, the complainants claim that the company failed to consider the cumulative impact of other mining operations in the region and did not engage in effective community consultation;
- PS4 (Community Health, Safety and Security) – the complainants raise concerns about water quality and supplies for non-project uses and the company's potential role in

contributing to security risks in the project's area of influence, including the role of armed security guards on the project site; and

- PS6 (Biodiversity Conservation and Sustainable Natural Resource Management) – the complainants claim that the project negatively affects endangered fauna and the páramo ecosystem and that the investment is at cross-purposes with World Bank Group-financed projects aimed at páramo conservation.

CAO concluded that the complaint met CAO eligibility criteria and conducted an assessment to determine how the complaint would proceed. During the assessment, the company expressed its willingness to pursue a voluntary dispute resolution process. However, the complainants and representatives of potentially affected communities decided not to pursue such a process with the company.

2.2 CAO Compliance Appraisal

The complaint was referred to the CAO compliance function for appraisal in November 2012. A CAO compliance appraisal evaluates whether a complaint and information gathered during the CAO assessment raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance for IFC, and whether an investigation is warranted.

In this case, CAO reviewed IFC's approach to the definition of the project and the assessment of its E&S risks and impacts; whether IFC's assessment of risk and impact at IFC appraisal was appropriate and reflected in the E&S categorization; and whether IFC required the appropriate level of client E&S impact assessment and community consultation. The appraisal also focused on whether the structure of the investment and whether IFC's supervision paid sufficient regard to the potential long-term E&S impacts of the investment and the way in which its risk profile was likely to change over time.

Among other things, the CAO compliance appraisal noted that IFC's decision to invest was made on the basis of evaluating the client's immediately planned activities. These activities were the completion of a bankable feasibility study (BFS), an environmental and social impact assessment (ESIA) and other works to prepare for the construction of a mine. Defined in this way, IFC concluded that the project could be expected to meet the PSs over a reasonable period of time. However, the appraisal noted that a broader definition of the project would have taken into consideration the longer-term potential impacts of the construction and operation of an open pit gold mine located in or near a fragile ecosystem. CAO had questions as to whether, on the basis of information available to IFC at appraisal, it was reasonable for IFC to determine that the project broadly defined could meet its E&S requirements.

CAO released its appraisal report in June 2013. In accordance with its Operational Guidelines, CAO determined that it would conduct a compliance investigation into IFC's investment in the company.

2.3 Scope of the Compliance Investigation

As set out in CAO's appraisal report and in the Terms of Reference, this compliance investigation focuses on whether IFC's investment in the company was appraised, structured, and supervised in accordance with applicable IFC policies, procedures, and standards. In particular, CAO has considered whether IFC's approach to the definition of the project and the assessment of its E&S risks and impacts was adequate in relation to IFC's E&S policies, standards, and procedures. CAO has also considered whether the structure of this investment and IFC's approach to its supervision paid sufficient attention to the potential long-term E&S impacts of the investment, and the way in which its risk profile was likely to change over time.

From the perspective of the CAO compliance mandate, the general question raised is whether IFC exercised due diligence in its review and supervision of E&S aspects of the investment, as they relate to the issues raised in the complaint.

2.4 Methodology

This compliance investigation was conducted in accordance with the CAO Operational Guidelines, with two independent expert panelists participating. From May to July 2014, the CAO team reviewed the administrative record for the investment and related documents, gathered information through interviews with IFC staff with direct knowledge and/or responsibilities for the project, and gathered information during a field visit to Colombia (Bogota and Bucaramanga). The CAO team met with IFC, the IFC client, Colombian officials, the complainants and an international CSO involved with the complainants. Interviews were conducted both in-person and by telephone. Relevant secondary material was gathered using conventional internet searches, and materials were also provided by interviewees.

In considering the adequacy of IFC's E&S performance in relation to this investment, CAO does not determine performance with the benefit of hindsight; rather, the standard for each requirement reviewed is whether IFC's actions were based on reasonable professional judgment and care in the application of the relevant policies in the context of contemporaneously available sources of information.

2.5 Applicable IFC Policy and Performance Standards

At the time of IFC's decision to invest in the company, the relevant environmental and social policy was the 2006 Sustainability Policy.⁷ This policy sets out IFC's roles and responsibilities in relation to managing E&S risks in IFC projects, and requires that clients comply with its Performance Standards (PSs).⁸

⁷ IFC, "Policy and Performance Standards on Social and Environmental Sustainability" (April 30, 2006), available at: <http://goo.gl/q4Rtr9>.

⁸ *Ibid.*, para. 10; IFC, "Performance Standards on Social and Environmental Sustainability" (April 30, 2006), available at: <http://goo.gl/2krTjm>.

The PSs establish standards that the client is to meet throughout the life of an investment by IFC. Clients are also required to comply with applicable aspects of national law.⁹

To ensure that clients appropriately manage E&S risks and impacts of their projects, IFC reviews and assesses how clients implement the necessary measures to meet the PSs. IFC's procedure for applying the PSs is defined in the Environmental and Social Review Procedures (ESRPs). The ESRPs guide IFC's review and supervision of its client's E&S performance throughout the investment life cycle.¹⁰ Additional policy guidance is set out in the Guidance Notes for the PSs and IFC Environmental Health and Safety (EHS) Guidelines.

⁹ *Ibid.*, Introduction.

¹⁰ IFC's early appraisal of this project was completed under the July 2007 ESRP (v2). IFC management and Board approval, and commitment and disbursement were completed under the February 2009 ESRP (v3), August 2009 ESRP (v4), August 2010 ESRP (v5) and June 2011 ESRP (v6).

3. Background to the Investment

The following sections provide information regarding the company and IFC's involvement in the Angostura project, including background on IFC's general involvement in mining projects and IFC's assessment and supervision of its investment in the company.

3.1 IFC's Early Equity Mining Approach

CAO has received several complaints in relation to IFC's approach to equity investments in junior mining companies, many presenting similar issues to those raised by the complainants.¹¹ This section summarizes the key aspects of IFC's early equity mining approach as it relates to the current complaint, including its scope and stated purpose.

IFC's Mining Group provides equity and loan financing for mining companies.¹² The investment strategy includes adherence to IFC's E&S policies, standards, and procedures to manage the risks and costs associated with the projects. IFC's mining strategy focuses on two lines of business:¹³

- Mining companies implementing large-scale projects — these companies seek IFC's support to mitigate and manage governance, political, and E&S risks.
- Junior companies carrying out mining or exploration activities that have made potentially significant discoveries – IFC supports companies that typically have little internal technical capacity in E&S management by offering E&S advice, preparing them to raise debt once the construction stage is reached.

A mining project progresses through several phases, including exploration, feasibility, construction, production, and eventually decommissioning and reclamation. The project moves from one phase to the next only after it meets certain criteria and shows sufficient promise to justify additional work and investment. During the exploration and feasibility phases, economic, technical, social, and environmental information is developed and usually progresses through several iterations to adjust for changing variables that may affect project viability.

IFC's stated goal in participating in early phases of project development is to have a positive impact in terms of technical, E&S guidance in countries where industrial-scale mining is not robustly regulated and supervised in terms of E&S performance.¹⁴

Many junior companies do not proceed to mine construction and instead sell their interest or form joint ventures with more established mining companies. IFC states that it invests in junior companies once a commercial discovery has been made and the chances of a mine being

¹¹ See, for example, CAO Investigation of IFC Investment in Minera Quellaveco SA, Peru, August 29, 2014, available at: <http://goo.gl/862OT7>.

¹² IFC, internal sector documentation (2010).

¹³ *Ibid.*

¹⁴ *Ibid.*

constructed are high.¹⁵ IFC's rationale in using equity instruments to finance projects at early phases is to influence companies' E&S performance and strengthen their capacity and commitment to comply with the PSs.¹⁶

IFC emphasizes the value it adds as a long-term partner and it seeks involvement throughout the project cycle to provide further equity and debt as the mining project progresses.¹⁷

3.2 IFC's Investment in the Company

The company is a junior mining company that owns 100 percent of the Angostura gold and silver exploration project in the region of Santander, Colombia. The gold and silver deposit has been estimated as one of the largest undeveloped deposits globally.¹⁸

The company first became involved in the Angostura region in 1994, and began exploration in 1995. From the outset, the company experienced serious security issues associated with the national conflict in Colombia. In 1995, two company geologists were kidnapped. The company remained in the area and continued exploration, completing an Environmental Management Plan (EMP) for exploration activities. In 1997, the EMP was approved by the autonomous regional environmental authority, *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga* (CDBM).¹⁹ Security concerns continued, and in 1998 the Revolutionary Armed Forces of Colombia (FARC) kidnapped two company contractors. Given the continuing security issues involving the FARC and another militarized group, the National Liberation Army (ELN), the company suspended exploration in November 1999. In 2002, the company left the site and suspended all other related activities. The company contributed to the financing of a military base near the Angostura region and, shortly after, signed an agreement with the military forces. A security department was created within the company with technical support from the Ministry for National Defense. In 2003, the company resumed exploration.²⁰

By December 2008, the company had completed an intensive drilling program yielding a resource estimate of 10.2 million ounces of measured and indicated gold and 2.4 million ounces inferred for a total of 12.6 million ounces.²¹ IFC's proposed investment was intended to provide working capital as the company completed a bankable feasibility study (BFS), an environmental and social impact assessment (ESIA) and other related works. IFC expected the company to complete all studies by August 2009 and planned to assist the company in building capacity to raise financing

¹⁵ *Ibid.*

¹⁶ Debt instruments, rather than equity, are usually employed following detailed feasibility studies for mine construction, after an assessment and an evaluation of the risks and once a more defined reserve position has been proven, *Ibid.*

¹⁷ IFC, "Global Mining," available at: <http://goo.gl/bRElpU>.

¹⁸ IFC, appraisal documentation (January 2009).

¹⁹ Resolution No. 568 (June 1997).

²⁰ IFC, appraisal documentation (January 2009).

²¹ IFC, appraisal documentation (December 2008).

for mine construction by the end of 2009 or early 2010.²² IFC reviewed studies completed by the company prior to investment and sought to ensure that its early engagement would be able to shape the company's approach to E&S issues in accordance with the identified PSs.²³

The IFC's Board of Directors approved the investment in March 2009, and IFC and the company signed a legal agreement to invest up to \$20 million in the company. The first half of the investment was used to acquire 12.5 percent of the company at signing, while IFC maintained the option to increase its share in the company through a warrant package. IFC's stake was diluted to 9.29% as a consequence of an additional capital raise that took place in August 2009 in which IFC did not participate.²⁴ IFC exercised 50 percent of its outstanding warrants in January 2010 at a price of \$5.8 million, bringing its share in the company back to 12.34%.²⁵ The remaining warrants were allowed to expire.

In January 2015, the company invited key shareholders, including IFC, to participate in a private placement to fund the company's ongoing capital requirements. The funds were sought to advance project design and evaluation and to restart the company's efforts to market itself to other investors. In February, 2015 IFC and the company signed a subscription agreement for a further investment of approximately US\$280,000 which was sufficient to maintain IFC's 10.75 percent equity stake in the company.

3.3 IFC's Pre-investment Appraisal

The 2006 Sustainability Policy states, "when a project is proposed for financing, IFC conducts a social and environmental review of the project as part of its overall due diligence."²⁶ The review aims to establish "the preliminary social and environmental performance requirements that apply to a Direct Investment project, based on an initial identification of potential S&E issues of concern."²⁷ During appraisal and through to the Investment Review Meeting, IFC carries out an E&S review.²⁸

In December 2008, during its pre-investment appraisal, IFC's investment team noted potential E&S risks with the company. Appraisal documentation highlighted the presence of the páramo habitat, noting that the ESIA process would include a full assessment of biodiversity in the project affected area, including the páramos. Environmental risks from activities included water management, tailings, cyanide, and other risks commonly associated with mine development. CAO notes IFC's assessment that the company was committed to best environmental management practices, and had expected these risks to be manageable. IFC also noted that cyanide and mercury occurred in small-scale artisanal mining sites downstream. IFC determined

²² IFC, pre-investment review documentation (January 2009).

²³ IFC, pre-investment review documentation (January 2009).

²⁴ IFC, exercise of warrants documentation (January, 2010).

²⁵ IFC, disbursement documentation (February, 2010).

²⁶ IFC, "Policy on Social and Environmental Sustainability," para 13 (April 30, 2006).

²⁷ IFC, "Environmental and Social Review Procedures," para 2.1.1 (July 31, 2007).

²⁸ *Ibid.* para. 3.1.1.

it was necessary to assess the potential risks of these activities for both communities and the company. IFC reported that the project was supported by communities in the local area.²⁹ Bucaramanga, a city of 1 million about 55 kilometers downstream from the project site, was not considered to be within the “area of influence” of the project as defined. As a result, the citizens of Bucaramanga were initially not consulted about the project. IFC did note that security risks in Colombia were viewed as an issue by international investors and that IFC would need to assess the company’s security practices according to IFC’s PS4 requirements.³⁰

During appraisal IFC assessed E&S risks only in relation to the company’s immediate planned activities – including exploration, completion of the BFS, ESIA and other related works. IFC identified the following applicable PSs: PS1 (Social and Environmental Assessment and Management Systems), PS2 (Labor and Working Conditions), PS3 (Pollution Prevention and Abatement), PS4 (Community Health, Safety and Security), PS5 (Land Acquisition and Involuntary Resettlement), PS6 (Biodiversity Conservation and Sustainable Natural Resource Management) and PS8 (Cultural Heritage). Risks identified included the management of exploration activities, the Development of Environmental, Health and Safety Management System and Policy commitments, and management of community expectations during consultations and disclosure. Based on such review, the project was provisionally categorized as a “Category B” investment.³¹ As defined in the 2006 Sustainability Policy, “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.”³²

In January 2009, IFC conducted an Appraisal Mission to develop IFC’s Environmental and Social Review Summary (ESRS) and the Environmental and Social Action Plan (ESAP) for the project. During the site visit, IFC held meetings with the company; E&S consultants; community representatives in California, Colombia; the mayors of California and Vetás; the CDMB; and other stakeholders.³³ IFC’s integrity due diligence (IDD) on the company’s background reported three opinion pieces in local Colombian newspapers that opposed the project due to concerns about its location within a fragile ecosystem. No other negative findings were reported. In its decision on whether the investment should proceed, IFC stated its view that these opinions were not serious accusations from international organizations or NGOs, but instead were considered common in projects of this nature.³⁴

In February 2009, IFC completed the ESRS and the ESAP. The ESRS confirmed the categorization of the investment as “Category B,” based on the scope of the project defined as

²⁹ IFC, appraisal documentation (December 2008) and IFC, pre-investment review documentation (January 2009).

³⁰ IFC, appraisal documentation (December 2008).

³¹ IFC, appraisal documentation (January 2009).

³² IFC, “International Finance Corporation’s Policy on Social and Environmental Sustainability,” para 18 (April 30, 2006).

³³ IFC, appraisal documentation (January 2009).

³⁴ IFC, integrity due diligence review documentation (January 2009).

the completion of exploration and feasibility studies and other ground works. In the ESAP, the company committed to submit a compliance report for the EMP for the exploration phase, to complete an ESIA in compliance with the PSs and to take certain actions related to biodiversity conservation, Environmental Safety, Social, and Health Management Systems, consultation and disclosure, and security. In particular, IFC reviewed the company's approach to security and human rights and requested that it sign new contracts with public security forces and private security companies that incorporated PS4-compliant provisions.³⁵ In March 2009, the IFC Board of Directors approved the equity investment in the company under a streamlined "no objections" procedure.

3.4 IFC's Supervision

The supervision stage of an IFC project begins after the first disbursement, lasts for the life of the investment and ends when the investment is closed.³⁶ The objective of supervision is to "develop and retain the information needed to assess the [client's] status of compliance with the PSs, general and sector-specific EHS Guidelines, and the [ESAP]."³⁷

Following IFC's first disbursement to the company, IFC's E&S team provided detailed suggestions on the table of contents of the ESIA that the company was preparing in September 2009. IFC asked the company to clarify: the ESIA's objectives (addressing both areas of direct and indirect influence), EMP programs for each stage of the project, impacts on communities, and land acquisition. IFC reviewed and provided input on the company's new security services contract, and on a political risk analysis provided to the company by a security consultant.

In December 2009, the company submitted an Environmental Impact Assessment (EIA) to the Ministry of Environment as required by national law. The EIA was prepared to accompany an application for an environmental license for an open-pit mine. This submission was made without consulting IFC, and the company had not yet completed an ESIA in accordance with the PSs. IFC continued to provide input on the ESIA that its investment was intended to help fund, expecting the company to complete it in compliance with the PS requirements. In January 2010, IFC documents noted that the BFS and ESIA were expected to be completed in the second half of 2010, and that mine production was expected by 2012.³⁸

In February 2010, the Ministry of Environment modified the Mining Code (Law 685 of 2001) by introducing Law 1382 of 2010,³⁹ which added páramos to the areas excluded from mining. In April, the Ministry of Environment returned the company's application for a mining license and requested the development of the project be adjusted in accordance with these new exclusions. The company appealed the decision on the basis that the application had been submitted before

³⁵ IFC, appraisal documentation (February 2008).

³⁶ IFC, Project Cycle Website, available at: <http://goo.gl/7AkbVY>.

³⁷ IFC, "Environmental and Social Review Procedures," section 6 para 1 (August 16, 2010).

³⁸ IFC, warrant exercise documentation (February 2010).

³⁹ Law 1382 of 2010, amending the Mining Code (Law 685 of 2001).

the amendment. In May 2011, for unrelated reasons, Law 1382 was declared unconstitutional and the Ministry of Environment was given two years to remedy it.⁴⁰ After no action was taken, in 2013 the mining code reverted to Law 685 of 2001.

IFC's E&S team continued its review of the environmental studies and required the company to provide a "critical habitat" assessment and an environmental policy that included a "no net loss" position for biodiversity. In 2010, when the company had not progressed in completing such studies, IFC carried out a site visit. In July 2010, IFC advised the company on follow-up actions, including completion of the critical habitat assessment, researching re-vegetation and restoration of the páramo and conducting a hydrogeological study.

In a supervision document for the 2009-2010 reporting period, IFC noted that the mining project had led to significant social unrest and that the company had not yet completed the ESIA.⁴¹ In October 2010, the CDMB fined the company due to failure to follow the conditions of its exploration license.⁴² In November 2010, IFC's E&S team carried out a site visit and attended a public hearing organized by the Ministry of Environment in California, Colombia, to assess community concerns. The team noted that attendees expressed support for the project. Community representatives from Bucaramanga, however, were not able to attend this first hearing due to inclement weather. In February 2011, an estimated 20,000 people gathered in Bucaramanga to demonstrate against the company's project. IFC staff reported surprise at the strong opposition to the project.

Following the Ministry of Environment's EIA decision in April 2010, the company's share price dropped considerably, and remained volatile. IFC noted the project's future was uncertain, due to concerns raised by various environmental and regional political groups over the project's potential impact on water resources derived from the páramo area, but committed to remain engaged with the company on E&S issues. On February 28, IFC management communicated to the company its concern about the lack of progress in building capacity to carry out satisfactory impact assessments on biodiversity and ecosystem services. IFC requested, once again, that the company complete the studies.

In March 2011, the Ministry of Environment organized a second public hearing, this time in Bucaramanga. The hearing was suspended, allegedly due to tensions and violence among participants. In May 2011, the Ministry of Environment denied the company's application for an environmental license for an open-pit mine. In June 2011, Colombian Congress enacted the National Development Plan through Law 1450, which aimed to improve the country's social and economic development between 2011 and 2014. Among other issues, the plan prioritized environmental sustainability and prohibited mining in the páramo. The plan temporarily defined

⁴⁰ Law 1382 was declared unconstitutional on the grounds that it had not been developed in consultation with indigenous and afro-descendent communities of Colombia, as required by Colombia's Constitution: Case No. C-366-11, May 13, 2011: available at, <http://goo.gl/s9xouZ>.

⁴¹ IFC, supervision document (April 2011).

⁴² CDMB, Resolution No. 1248 (October 22, 2010).

páramos based on 1:250,000 scale maps included in the *Atlas of Páramos*, produced by the Instituto Alexander von Humboldt, an independent biological resources research institute. The plan required the Ministry of Environment to determine detailed, permanent páramo boundaries.

In August 2011, at the initiative of shareholders and with the support of IFC, the company changed its management and board. The same month, the company announced that it had begun an evaluation of an underground operation and that it had set a time for conducting a feasibility study as well as a local community engagement plan.⁴³ In its supervision documentation for the 2011 reporting period, IFC highlighted the introduction of the new National Development Plan, persistent community concerns and the company's decision to evaluate an underground mine design.⁴⁴

Public opinion in the region was divided, with demonstrations in support of, or in opposition to the project occurring simultaneously in March 2012. In December 2012, IFC conducted a field visit and reported that the company had reduced its workforce by 50 percent due to activity slowdown, causing a decline in community support.⁴⁵ In April 2013, further protests took place in Bucaramanga.⁴⁶ In November 2013, an estimated 1,000 people organized a third demonstration in Bucaramanga for the protection of the city's water.

In April 2014, the Ministry of Environment announced that the boundaries of the páramo had been delineated at a scale of 1:25,000. In December 2014, the Government of Colombia publically announced the páramo boundaries.

In February 2015, IFC participated in a rights issue to acquire an additional 418,451 shares in the company for a total price of US\$278,256.40. The investment was approved by IFC Management, and internal documentation noted the ongoing CAO investigation, and that the project had an Environmental and Social Risk Rating of 2: Satisfactory.⁴⁷

In April 2015, protests took place in Bucaramanga to protest against the Angostura project and in Bogotá against mining in the páramos generally.⁴⁸

In July 2015, the National Development Plan was issued through Law 1753, and included exemptions to allow mining operations in areas of the páramos where a mining title had been issued prior to 2010. The same month, the company released a report stating that it was

⁴³ Greystar, "Greystar Awards contracts and Sets Time Line for Angostura Feasibility Study" (August 11, 2011), available at: <http://goo.gl/2kq19s>.

⁴⁴ IFC, supervision documentation (September 2012).

⁴⁵ IFC, supervision report (December 2012).

⁴⁶ CBC, "Canadian Mine Companies Subject of Worldwide Protests" (April 3, 2013), available at: <http://goo.gl/6Je8aD>.

⁴⁷ Delegated authority memorandum March 25, 1996 (IFC/R96-68) adopted by the IFC Board of Directors on April 4, 1996 (IFC/M96-9).

⁴⁸ Center for International Environmental Law (CIEL), MiningWatch Canada "IFC boosts investment in contested Canadian mining project in Colombia despite ongoing investigation" (May 12, 2015), available at: <http://goo.gl/rXh2T3>.

assessing how the Angostura project would be developed taking into account the Santurbán Páramo.⁴⁹

In February 2016, the Colombia Constitutional Court issued a ruling deeming certain provisions of Law 1753 to be unconstitutional, effectively prohibiting all mining activities in the páramos and revoking the exemption for pre-2010 mining titles.

In March 2016, the company announced that it had formally notified the Government of Colombia of the existence of a dispute between Eco Oro and the Government under the Free Trade Agreement between Canada and Colombia.⁵⁰ The company's statement cited "the Government's unreasonable delay in clarifying the limits of the Santurbán Páramo and whether it overlapped with the Angostura Project and its persistent failure to provide clarity as to Eco Oro's right to continue developing its mining project in light of further undefined requirements and later as a consequence of the Constitutional Court's decision of February 8, 2016, which has broadened the prohibition of mining activities in the páramo areas."⁵¹ The company noted it remained open to continue amicable discussions with the Government with a view to the prompt settlement of the dispute, noting its option of submitting the dispute to international arbitration if there is no acceptable settlement with the Government during the following six months.⁵²

⁴⁹ Micon International Limited: "Eco Oro Minerals Corp. Technical Report on the Updated Mineral Resource Estimate for the Angostura Gold-Silver Deposit, Santander Department, Colombia" (July 17, 2015), available at: <http://goo.gl/9P1YFB>.

⁵⁰ Eco Oro, "Eco Oro Minerals Notifies Colombian Government of Investment Dispute," News Release (March 7, 2016), available at: <http://goo.gl/HwkMYd>.

⁵¹ *Ibid.*

⁵² *Ibid.*

4. Discussion and Findings

4.1.a Scope of the Project and Identification of E&S Risks

The terms of reference for this investigation raise the question of whether IFC's approach to the definition of the project and the assessment of its E&S risks and impacts was adequate in the context of IFC's E&S policies, standards, and procedures. As noted in CAO's appraisal, a key consideration is, whether there was sufficient information available to IFC to support a conclusion that the project (taking into consideration the advanced stage of exploration activities and the longer-term potential impact of an open-pit gold mine located in or near a fragile ecosystem) could have been expected to meet the PSs over a reasonable period of time. This point is addressed in the analysis that follows.

Relevant IFC policy and procedures

As set out by IFC's 2006 Sustainability Policy, IFC's assessment and review of E&S risks of any given project determine "the scope of the social and environmental conditions of IFC financing."⁵³ In particular, "IFC's role is to review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards [...]."⁵⁴ When a project is considered for IFC financing, "IFC conducts a social and environmental review of the project as part of its overall due diligence. This review is appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts."⁵⁵

The social and environmental review includes three key components: "(i) the social and environmental risks and impacts of the project as assessed by the client; (ii) the commitment and capacity of the client to manage these expected impacts, including the client's social and environmental management system; and (iii) the role of third parties in the project's compliance with the Performance Standards. Each of these components helps IFC to ascertain whether the project can be expected to meet the Performance Standards."⁵⁶ IFC bases its review on the client's own social and environmental assessment. In cases where the client's assessment does not meet the requirements of Performance Standard 1, IFC requires the client to undertake additional assessment or, where appropriate, to commission assessment by external experts.⁵⁷ As stated in its Sustainability Policy, "IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time."⁵⁸

⁵³ IFC, "Policy on Social and Environmental Sustainability," para 5 (April 30, 2006).

⁵⁴ *Ibid.*, para 11.

⁵⁵ *Ibid.*, para 13.

⁵⁶ *Ibid.*, para 15.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, para 17.

IFC's initial assessment of a project highlights potential E&S issues, whether the impacts of the project are to be considered significant and adverse, site-specific and limited, or minimal, and any specific PSs that apply based on the information available at the time.⁵⁹ PS1 (2006) states that the client will conduct a process of Social and Environmental Assessment that will consider in an integrated manner the potential E&S risks and impacts of the project.⁶⁰ These risks and impacts are to be analyzed in the context of the project's "area of influence," encompassing the primary project site and facilities as well as areas "potentially impacted by cumulative impacts from further planned development of the project," and "areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location."⁶¹

It also provides that "projects with potential significant adverse impacts that are diverse, irreversible, or unprecedented will have comprehensive social and environmental impact assessments."⁶² The Policy does acknowledge that "narrower scopes of Assessments may be conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures."⁶³ The 2006 Sustainability Policy does not explicitly contemplate a phased approach to investments where formal reviews are conducted at specific points to assess project economics, characteristics, and E&S performance to determine whether the investment should continue.

Discussion

IFC's E&S appraisal material acknowledged that exploration work had been completed, but noted that the investment was being processed internally as early equity. It also stated that staff made the assumption that IFC was investing in order to complete the exploration process – not to finance mine development. Consequently, the impacts of mine development generally were not analyzed at the time given the specific scope of the project and were considered only when a major policy issue, such as PS6, was anticipated.⁶⁴ Accordingly, given the specific scope of the business activities, at the time of IFC's investment, IFC did not consider the E&S impacts of mine construction or operation and whether such activities could be expected to meet the PSs.

When proposing the investment to the Board of Directors, IFC explained that it was seeking to support a junior mining company to a point at which mine construction could occur.⁶⁵ IFC noted that the company had completed a substantial drilling program on its Angostura gold and silver deposit, which had been shown to be one of the largest undeveloped gold resources in the

⁵⁹ IFC, "E&S Review Procedures," para 2.2.3 (July 31, 2007).

⁶⁰ IFC, "Performance Standards on Social and Environmental Sustainability," PS1 para 4 (April 30, 2006).

⁶¹ *Ibid.*, para 5.

⁶² *Ibid.*, para 9.

⁶³ *Ibid.*, PS1 para 10.

⁶⁴ IFC, E&S appraisal material (January 21, 2008).

⁶⁵ IFC, internal approval documentation (March 3, 2009).

world.⁶⁶ IFC stated that it had a clear role and additionality for both the immediate phase of the project and for future project development including assisting with access to capital and E&S best practices.⁶⁷ The proposal stated that, with IFC involvement, the E&S systems developed would become a part of the mining operation and provide benefits consistent with IFC's objectives.⁶⁸ Further, IFC noted that its involvement in the E&S aspects of the project would serve as a stamp of approval that would be valuable in attracting additional investors for the project finance funding if the mine project progressed to the next phase.⁶⁹

At the time of the investment, IFC stated that any decision to construct a mine would be based on the results of the BFS, the ESIA, and other studies conducted with IFC support.⁷⁰ IFC noted the strong possibility that the Angostura project would proceed to mine construction within 12-18 months but no long-term E&S impacts of potential mine development were presented.⁷¹

The stated purpose of the BFS and the ESIA was to determine whether a project was viable based on a number of factors, including economic, technical, social, and environmental considerations. IFC developed an Action Plan which required the company to complete certain work necessary to make that determination, including completion of an ESIA with an estimated timeframe of August-November 2009. The Action Plan also set the deadline for certain actions to be completed after mine construction commenced. In the legal agreement between IFC and the company, the company agreed to conduct its business in compliance with the Action Plan, and also to provide IFC with copies of an ESIA before any construction associated with the project.⁷²

4.1.b Categorization

This section considers whether IFC's categorization of the project as Category B was consistent with IFC's requirements.

Relevant IFC policy and procedures

The 2006 Sustainability Policy states that IFC's categorization of its projects aims to "(i) reflect the magnitude of impacts understood as a result of the client's Social and Environmental Assessment; and (ii) specify IFC's institutional requirements to disclose to the public project specific information prior to presenting projects to its Board of Directors for approval."⁷³

Projects may be categorized as:

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ IFC, internal approval documentation (March 3, 2009).

⁷⁰ IFC, "Summary of Proposed Investment" (February 9, 2009).

⁷¹ *Ibid.*

⁷² IFC, Investment Agreement (March 2009).

⁷³ IFC, "Policy on Social and Environmental Sustainability," para 18 (April 30, 2006).

- Category A Projects: those with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented;
- Category B Projects: those with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures;
- Category C Projects: those with minimal or no adverse social or environmental impacts, including certain financial intermediary projects with minimal or no adverse risks.⁷⁴

Discussion

IFC's investment in the Angostura project is similar to many other IFC early equity investments in junior mining companies. As discussed above in section 3.1, IFC's early equity approach evaluates the opportunity to provide equity financing once a potentially commercial discovery has been made, to give support to companies to build their capacity to prepare for mine construction.⁷⁵

Before investing in the project, IFC evaluated its potential to reach the mine construction phase and assessed that there was a high likelihood of progressing within 12-18 months. As stated in IFC's review and appraisal documentation of the proposed investment, upon completion of the required studies, the company would require additional financing to advance it. IFC provisionally categorized the project as a "Category B" investment,⁷⁶ on the basis that the project's scope was funding feasibility studies, the development of an ESIA and other ground works. Following an appraisal visit, an E&S report noted that staff made the assumption that IFC was investing in order to complete the exploration process, which was the basis for the "Category B" determination.⁷⁷

As presented to the IFC Board, the category determination was based on IFC's summary of the impacts typically associated with early stage mining projects, which generally do not involve mineral production or major civil construction activities.⁷⁸ IFC stated that the categorization was publicly disclosed and based on IFC's evaluation of risks related to the project defined as the scope of work funded.⁷⁹ The categorization recognized that potential E&S impacts of exploration activities would have to be managed. These potential impacts were associated with sampling management, trenching and drilling sites, water resource management, and protection of soils, waste management, vehicle impacts, use and storage of fuels, and reclamation of exploration

⁷⁴ *Ibid.*

⁷⁵ IFC, internal sectoral documentation (2010).

⁷⁶ IFC, appraisal documentation (January, 2009).

⁷⁷ *Ibid.* The SPI and the ESRS for IFC's investment in Eco Oro stated that IFC determined that it is a Category B project, based on the identification of limited and adverse E&S impacts associated with the investment. See "Summary of Proposed Investment" (February 9, 2009); IFC, "Environmental and Social Review Summary" (February 9, 2009).

⁷⁸ IFC, investment proposal documentation (March, 2009).

⁷⁹ *Ibid.*

areas, temporary access to land, labor (exploration camps and influx management), and stakeholder consultation.⁸⁰

Conclusion

Finding No. 1 (Appraisal & Project Categorization):

Finding No. 1a (E&S Review): At appraisal, IFC considered the E&S impacts of the client's immediate planned activities, related to the completion of a BFS and the preparation of an ESIA for the proposed mine. IFC did not undertake an analysis of E&S risks beyond this phase. CAO notes that this approach was consistent with IFC's appraisal of other early equity mine projects. As applied in this project, this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with IFC's PSs was uncertain and potentially challenging due to the location's environmental sensitivity.

Finding No. 1b (Categorization): IFC's approach to the categorization of the project was based on a specific definition of the scope of the project as mineral exploration and feasibility study activities. As discussed further in section 4.4 below, this approach to project definition contributed to gaps between IFC's actions and community expectations. Categorization of this investment as an exploration and feasibility project with limited adverse social or environmental impacts was consistent with the early equity approach but inconsistent with the goal stated in IFC's disclosure material of developing the mine in late 2009/early 2010.

4.2 Assessment and Supervision of Client Capacity and Commitment

This section considers whether IFC's appraisal and supervision documentation identified relevant regulatory actions that should have been taken into account in IFC's assessment of the company's capacity and commitment to manage E&S risks and impacts.

Relevant IFC policy and procedures

Before presenting a proposed project to the Board of Directors, IFC conducts a review of the project, including the client's capacity and commitment in relation to E&S risks and impacts, as part of the due diligence and appraisal process.⁸¹

According to the July 2007 ESRP (v2), IFC assesses local and national political considerations, a process that includes discussions with regulatory agencies, recognized community representatives, religious leaders and other stakeholders.⁸² Before investing, IFC records relevant information in the E&S appraisal documentation, the IDD procedure and other evaluation

⁸⁰ *Ibid.*

⁸¹ IFC, "Policy on Social and Environmental Sustainability," para 15 (April 30, 2006) and IFC, "Performance Standards on Social and Environmental Sustainability," PS1 para 3 and para 17 (April 30, 2006).

⁸² IFC, "Environmental and Social Review Procedure," Section 3, Annex (July 2007).

documentation. In particular, IFC's IDD procedure includes queries about disciplinary action taken by regulatory agencies, including any previous or current investigations.

As noted in section 3.4 above, following project approval and disbursement, IFC continues to supervise its investments, including by: reviewing the client's compliance with the E&S Conditions of Disbursement prior to every disbursement; assessing the client's E&S performance by reviewing AMRs, conducting site visits, monitoring the client's implementation of the ESAP and reporting any E&S information that may be significant for project review.⁸³

The August 2010 ESRP (v5) adds that IFC's ongoing supervision should highlight projects that are not performing in line with IFC's expectations and ones where clients are not compliant with their E&S commitments.⁸⁴

Discussion

IFC's assessment of client capacity and commitment during due diligence

As outlined in section 3.2 above, the company conducted environmental studies and produced an EIA for the exploration phase of the project in 1994, and it completed an EMP that was approved by the CDMB in 1997.⁸⁵ On March 17, 2006, the CDMB found that the company had breached the EMP, including a failure to manage the system that treats acid drainage.⁸⁶ As a result, the CDMB suspended certain activities and required that the company put in place preventative measures (under Resolution 488 of 2006). In August 2006 CDMB initiated an investigation of the company's environmental compliance.⁸⁷ The investigation continued until October 31, 2008, when the CDMB noted that the treatment of acid waters by the company was adequate and that no further infractions were observed.⁸⁸

As part of its due diligence review, IFC assessed potential E&S risks. During an appraisal visit in January 2009, IFC reported its observations on potential risks associated with each PS. With regard to PS1 and PS3, IFC noted that the company's EMP adequately addressed environmental, safety, and social issues during the exploration phase of the project. IFC also reported that it had met with the CDMB during its field visit, and that CDMB had not expressed concern with the company's performance.⁸⁹ It is not apparent from the record that IFC had knowledge of the environmental infractions observed by the CDMB in 2006 or of the CDMB investigation. IFC's IDD

⁸³ IFC, "Environmental and Social Review Procedure," para 6.2.1 (August 2009).

⁸⁴ IFC, "Environmental and Social Review Procedure," Section 6, para 1 (August 2010).

⁸⁵ CDMB, Resolution No. 568 (June 4, 1997).

⁸⁶ CDMB, Resolution No. 1248 (October 22, 2010).

⁸⁷ CDMB, Resolution No. 488 (May 23, 2006).

⁸⁸ CDMB, Resolution No. 1248 (October 22, 2010).

⁸⁹ CAO Appraisal Report, "Eco Oro Minerals Corp: Colombia" (June 28, 2013).

procedure did not report any disciplinary action undertaken by regulatory agencies and professional associations against the company.⁹⁰

CAO notes that, although concluded, the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management, as required by the ESRPs.

IFC's assessment of client capacity and commitment during supervision

IFC's investment was intended to fund completion of a BFS, an ESIA and other ground works to prepare for mine construction. Accordingly, following disbursement, IFC initiated a supervision and technical assistance process that included direction on the completion of an ESIA that would meet IFC's PSs.

As noted in section 3.4 above, the company submitted an EIA to Colombian regulators in December 2009 on the basis of an open-pit mine plan, without consulting IFC. IFC informed the CAO that, at the date the EIA was submitted, the mine design had not been fully decided. The submission of the EIA triggered a regulatory process that concluded with a rejected application for an environment license (Resolution 1015, May 31, 2011, Ministry of Environment, Housing, and Territorial Development).

IFC engaged with its client and restated its expectation that the company complete an ESIA that met IFC's PSs. To this end, in 2010, IFC carried out site visits and gave the company detailed follow-up actions to take to ensure completion of the required studies, including suggestions for external consultants. When no substantial improvement in the company's commitment was observed, IFC communicated to the company's CEO the importance of completing studies in compliance with the PSs and fulfilling IFC's requirements.

In August 2010, the CDMB Deputy Director responsible for watershed management and protected areas in rural territories was requested to conduct a visit to assess and report on the company's compliance with a number of technical environmental requirements.⁹¹ In October 2010, IFC was already concerned with the client's commitment and capacity, when the CDMB's report observed issues relating to the acid water treatment system, as well as slides, soil erosion and unstable slopes in the project area.⁹²

The CDMB found that the company had not complied with the conditions of its 1997 authorization, as set out in the EMP, and was affecting the environment in the area where the project is located.⁹³ Further, the CDMB concluded that the company had not followed the preventive measures set

⁹⁰ IFC, integrity due diligence documentation (January 2009).

⁹¹ CDMB, Resolution No. 1248 (October 22, 2010) Section III, para. 10.

⁹² *Ibid.*

⁹³ *Ibid.*

out in Resolution 488 of 2006. The CDMB therefore fined the company COP 24,480,000 (USD 10,381.76).⁹⁴

As part of its legal arrangements, the company had agreed to complete monitoring documentation throughout the project, in accordance with a standardized IFC template. The monitoring reports included sections on compliance with host-country requirements relating to pollution prevention and abatement, E&S incidents caused by the company or its contractors and any fines, penalties or charges imposed. However, the company did not report specific information to IFC about the CDMB investigation or the fine. In 2011, the company did submit a monitoring report for the 2009/2010 period in accordance with the IFC template. That monitoring report indicated that the company had incurred "...[a] fine, penalties or increased permit charges" by checking the relevant box "yes". The form did not contain any detail on the charges.

IFC is required to report internally any "serious incidents" in relation to the company in accordance with the ESRP,⁹⁵ and to supervise "all other project-specific reporting requirements defined in the Investment Agreement."⁹⁶ However, IFC's review of the 2009/2010 monitoring report did not discuss the CDMB fine. IFC reported only that the company's plan to ensure good environmental practices at its drilling sites should be reviewed during future supervision activities.⁹⁷

CAO notes that the CDMB actions should have been considered as part of IFC's ongoing assessment of its client, especially if evaluated in the context of the ongoing issues related to incomplete studies by the company. If the incident identified in October 2010 was a continuation of the problem that began in 2006, then an inquiry by IFC could have been warranted to determine the reason and the company's inability to correct the problem. The investigation of regulatory compliance problems along with the development of an IFC-compliant ESIA could have provided a more complete picture of the risks associated with the project, and of the client's limited capacity to manage them. IFC staff reported high-level staff turnover at the company, and the need to revisit the IFC policies and company commitments with each leadership succession. While this demonstrates responsive IFC supervision, it also indicates a lack of company integration of IFC PSs into its business.

Conclusion

Finding No. 2: CAO finds that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.

Finding No. 2a (Appraisal): Although IFC considered regulatory actions as part of its pre-investment due diligence, IFC's appraisal documentation did not capture or analyze information about CDMB investigation carried out from 2006 to 2008. CAO notes that in 2008, prior to IFC's

⁹⁴ *Ibid.*

⁹⁵ IFC, "Environmental and Social Review Procedures," Section 6, para 2.3 (August 2010).

⁹⁶ *Ibid.*

⁹⁷ IFC, January 2009-June 2010 monitoring documentation (April 2011).

initial investment decision, the CDMB had found the company to be generally compliant with environmental requirements. However, CAO finds that the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management.

Finding No. 2b (Supervision): By 2010, IFC was aware of issues related to its client's E&S performance and had initiated discussions with the company. However, CAO finds that IFC's supervision documentation did not adequately capture information about the company's non-compliance with environmental requirements relating to acid water treatment, soil erosion and slides observed by the CDMB in 2010 or its decision to fine the company for those infractions. CAO finds that the CDMB penalties, and the company's actions to resolve the non-compliance, should have been considered as part of IFC's ongoing assessment of the client's commitment and capacity.

4.3 Performance Standard 1: Consultation and Disclosure

This section considers why IFC did not identify the interests of the Bucaramanga community at appraisal, and whether IFC's subsequent supervision of its client's stakeholder engagement, disclosure and consultation obligations was sufficient.

Relevant IFC policy and procedures

The 2006 PSs require that clients identify E&S issues related to IFC projects and implement effective stakeholder engagement programs to inform and consult affected communities on both opportunities and risks.⁹⁸ Consultation allows communities and the IFC client to express views and exchange information about the project, its risks and how these may be avoided or mitigated.⁹⁹

Stakeholder engagement is initiated by the client before IFC investment, and is reviewed by IFC before it presents the proposed project to the Board of Directors. The 2006 Sustainability Policy states "through its own investigation, IFC assures itself that the client's community engagement is one that involves free, prior, and informed consultation, and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities."¹⁰⁰

As part of IFC's stakeholder engagement requirements, clients must continuously disclose relevant E&S information, including regular reports about their progress against the ESAP, and any assessment documents produced through a Social and Environmental Assessment.¹⁰¹ The

⁹⁸ IFC, "Performance Standards on Social and Environmental Sustainability," Introduction, para 2 (April 30, 2006).

⁹⁹ *Ibid.*, PS1 para 21.

¹⁰⁰ IFC, "Policy on Social and Environmental Sustainability," para 20 (April 30, 2006). CAO notes that the 2012 version of the Performance Standards have limited the application of this requirement to indigenous communities, *c.f.* para 30 (January 1, 2012).

¹⁰¹ *Ibid.*, PS1 para 20.

2006 PS1 underscores that “when local communities may be affected by risks or adverse impacts from a project, the engagement process will include consultation with them.”¹⁰² Furthermore, consultation should be carried out on an ongoing basis as risks and impacts arise.¹⁰³

According to the 2009 ESRP (v4), as part of a client’s supervision, IFC reviews “the status of the client’s community engagement process, including ongoing local disclosure of the ESRS and Action Plan content, consultation and any participatory monitoring or reporting obligations.”¹⁰⁴ The 2010 ESRP (v5) specifies that the status of the client’s community engagement should include “not less than annual local disclosure of the Action Plan progress where required.”¹⁰⁵

Discussion

IFC assessment of stakeholder engagement during due diligence

During the due diligence process, IFC personnel visited the project site and assured themselves that there was support for the project among the communities in California, Vetás and Surata. It is clear, however, that neither the company nor IFC engaged stakeholders in Bucaramanga before or at the time of the investment.

In September 2008, the company had conducted a stakeholder engagement process for the open-pit mine EIA. Through this, the company visited the municipalities of Surata, Vetás, California and Tona to present the purpose of the EIA, the environmental baseline studies, and general feasibility results and to gather information on community concerns about the project.

During appraisal, IFC reported that the project would be located in an area where communities historically supported mining.¹⁰⁶ IFC highlighted industry recognition of the company’s strong capacity for community engagement, and noted that the company would be required to prepare a Stakeholder Engagement Plan to continuously assess support for the project and identify needs and priorities.¹⁰⁷

During the appraisal visit, IFC clarified that before the mine progressed to construction, the company would prepare, consult on and disclose an ESIA to demonstrate how the company would manage the risks of its operation in order to achieve compliance with the PSs and EHS Guidelines. At that time, IFC stated that assessment of “broad community support” was not required for this investment, on the basis that the investment would not lead to any activities creating significant E&S impacts on communities and there were no indigenous people in the

¹⁰² IFC, “Performance Standards on Social and Environmental Sustainability,” PS1 para 19 (April 30, 2006).

¹⁰³ *Ibid.*, para 26.

¹⁰⁴ IFC, “Environmental and Social Review Procedures,” para 6.2.7 (August 2009).

¹⁰⁵ IFC, “Environmental and Social Review Procedures,” section 6, para 2.3 (August 2010).

¹⁰⁶ IFC, appraisal documentation (December 2008).

¹⁰⁷ In 2006, the company had won the Prospectors and Developers Association of Canada’s Environmental Excellence in Exploration Award. IFC, appraisal documentation (January 2009).

area.¹⁰⁸ IFC later noted that the company had engaged with local communities, and restated that it potentially had the commitment and capacity to increase engagement with directly and indirectly affected communities at the mine construction phase.¹⁰⁹ However, in the summary of the investment provided to the IFC Board, the company was stated to have engaged in significant ongoing consultation with the key communities, that there was broad community support for the project, and that the proposed mining project also enjoyed broad support.¹¹⁰

IFC's publicly disclosed Summary of Proposed Investment (SPI) specified the location of the mine to be 55 kilometers by road from Bucaramanga and 10 kilometers from three villages.¹¹¹ IFC noted that the municipalities of Vetás, California and Surata were directly influenced by the project, while the municipality of Cucutilla would be affected if the project were to expand. IFC also noted that these municipalities would receive royalties from mine development and that the company had established a foundation for social programs and would implement a grievance mechanism through which the communities could express concerns. The ESRS would be disclosed at the World Bank Infoshop and would be available in Spanish at the company's offices in Bucaramanga and California.¹¹²

The ESIA was considered by IFC to be a part of the scope of IFC's early equity investment, not a pre-investment requirement. One of the objectives of IFC's investment was to assist the company in developing its E&S management capacity, including its stakeholder engagement obligations, and community consultations for the Angostura project.

IFC assessment of consultation and disclosure during supervision

At investment, IFC set the conditions for stakeholder engagement. As disclosed in the ESRS, and presented to the Board of Directors, E&S impacts would be fully assessed and consultation and disclosure would be carried out before any potential mine construction.¹¹³ The legal agreement between IFC and the company includes commitments by the company to prepare a stakeholder engagement plan to assess and monitor community support and any needs and priorities.¹¹⁴ The standardized monitoring report also included sections to be completed by the company on its consultation and disclosure activities, and on community complaints or grievances and resolution activities.¹¹⁵

As part of the investment in the company, IFC's CES team assisted in the development of stakeholder engagement strategies and tools. These included a workshop, guidance, information

¹⁰⁸ IFC, E&S appraisal documentation (January 2008).

¹⁰⁹ IFC, appraisal documentation (January 2009).

¹¹⁰ IFC, board approval documentation (March 2009).

¹¹¹ IFC, "Summary of Proposed Investment" (February 9, 2009).

¹¹² IFC, "Environmental and Social Review Summary" (February 9, 2009).

¹¹³ IFC, "Environmental and Social Review Summary" (February 9, 2009) p. 3; IFC, board approval documentation (March 2009).

¹¹⁴ IFC, project legal documentation (March 2009).

¹¹⁵ *Ibid.*

about developing approaches to stakeholder engagement and instruction on how to conduct stakeholder mapping. As part of its disclosure activities, the company met with representatives from the CDMB, the business community, NGOs, academic institutions, and financial companies in Bucaramanga in May and June 2010. During these meetings, the company provided information about the Angostura project, emphasizing its E&S aspects, and on the management projects it supported in California, Vetás and Berlin, Colombia. The company also had developed the “Digame” Program, a grievance mechanism for communities, and was in the process of testing its effectiveness. The company reported that acceptance of the program had been slow in Bucaramanga, but some concerns had been addressed.¹¹⁶ Following a Supervision Site Visit (SSV) by IFC E&S staff in July 2010, IFC recommended the company carry out a stakeholder-mapping exercise and develop an ongoing outreach program for the company to better position itself with stakeholders and opinion makers.

In November 2010, the Ministry of Environment organized a public hearing on the Angostura project in California, Colombia. IFC observed the public hearing and reported there was broad support for the project among attendees, particularly for the economic benefits that it would contribute to the community. IFC noted, however, that citizens of Bucaramanga were not able to take part in the November 2010 public hearing due to inclement weather and concluded that the results of the public consultation may not have been valid because of their absence. IFC added there was little discussion around the environmental impacts of the project. According to IFC, it appeared that communities either did not have a clear understanding of the environmental impacts and mitigation measures, or they did not recognize the role environmental factors play. Therefore, according to IFC, it was important for the company to strengthen understanding of the environmental aspects of the project among local communities.¹¹⁷

The absence of the Bucaramanga communities clearly led to gaps in community consultations with Bucaramanga that needed to be addressed. In February 2011, 20,000 people gathered in Bucaramanga to demonstrate against the project. In its supervision document IFC noted that, despite extensive disclosure of project information by the client and IFC’s view that the project was in compliance with the PSs, the project had caused significant unrest among communities.¹¹⁸

In March 2011, the Ministry of Environment organized a public hearing in Bucaramanga. However, the hearing was suspended, allegedly due to tensions and violence among participants and police intervention. In May 2011, the Ministry of Environment denied the company’s application for an environmental license for the open-pit mine. The company announced it would begin to carry out feasibility studies for an underground operation.¹¹⁹ The company continued to conduct consultation and disclosure activities, including project briefings, workshops, and presentations of community development initiatives by the company’s foundation in California, Vetás, Berlin and

¹¹⁶ IFC, monitoring reports for January 2009-December 2010.

¹¹⁷ IFC, supervision documentation (March 2011).

¹¹⁸ IFC, supervision documentation January 2009-June 2010 (April 2011).

¹¹⁹ Eco Oro, “Greystar Awards Contracts and Sets Time Line for Angostura Feasibility Study,” News Release (August 11, 2011): available at: <http://goo.gl/i0c02K>.

Matanza.¹²⁰ Opposition to the project in Bucaramanga was strong, however, and, IFC noted that the project still generated social unrest, despite stakeholder engagement activities.¹²¹ However, IFC did not provide any recommendations to the company to strengthen its capacity to deal with the lack of support from citizens in Bucaramanga. The contrasting opinions on the Angostura project were highlighted in March 2012, when an estimated 4,000 people gathered in Bucaramanga to demonstrate for protection of water resources, while another estimated 4,000 people demonstrated in Berlin, Colombia, in favor of agricultural and mining activities in Santurbán.

In August 2012, a second public hearing was convened in Bucaramanga, this time by a legislator, the *Comité para la Defensa y Protección del Agua* in North Santander and the *Conciencia Ciudadana* Civic Movement. The hearing stressed citizens' opposition to the Angostura project, their concern for water provision and the presence of large mining companies in the páramo area.¹²² In November 2012, IFC's supervision in response to public opposition included that the company prepare a Community Development and Engagement Strategy to strengthen support from stakeholders.¹²³ Soon after, the company reported to IFC it had been holding meetings with communities in order to regain support for the project and to disclose the new plan to undertake an underground mining project. In November 2013, however, an estimated 1,000 people demonstrated in Bucaramanga to support the protection of water quality and supplies for non-project uses in the city.

In reviewing IFC documentation, CAO notes that IFC made efforts to assess the company's compliance with PS1 requirements throughout supervision. IFC reviewed the company's implementation of the ESAP regularly, conducted supervision site visits and reported any relevant gaps in the company's stakeholder engagement strategy.

Conclusion

Finding No. 3:

Finding No. 3a (Appraisal): CAO finds that IFC considered that the project defined as completion of a BFS and ESIA had the support of local communities. The intent at this point was that the client's stakeholder engagement process and associated programs would be further developed as the mine progressed toward construction. The requirement to conduct ongoing community engagement activities in accordance with IFC requirements was included in the ESAP.

Finding No. 3b (Supervision): CAO finds that IFC supervised the company's stakeholder engagement requirements and raised shortcomings when these were identified. IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded.

¹²⁰ IFC, supervision documentation for January-December 2011 (September 2012).

¹²¹ *Ibid.*

¹²² "Report on the public hearing convened by Senator Alexander Lopez" (August 2012).

¹²³ IFC, supervision documentation (December 2012).

This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at the appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks associated with the project (which included potential impacts from construction and operation of a mine).

4.4 Performance Standard 1: Compliance with National Law

This section considers whether IFC assured itself that the company met PS1 requirements on compliance with national law.

Relevant IFC policy and procedures

According to PS1, an IFC client must “comply with applicable national laws, including those laws implementing host country obligations under international laws.”¹²⁴ In particular, “the client will conduct a process of Social and Environmental Assessment that will consider in an integrated manner the potential social and environmental (including labor, health, and safety) risks and impacts of the project. [...] Applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law, will also be taken into account.”¹²⁵

Discussion

The government's role in protecting the páramo ecoregion has been recognized under Colombian law since 1991. The primary drivers for its protection are its hydrologic function, as the headwaters of many important watersheds in the country, as well as high rates of biodiversity and endemism.¹²⁶ The Colombian Constitution of 1991 states that it is the responsibility of the government of Colombia to protect the environment and ensure its sustainable use. The Constitution establishes the Ministry of Environment as the entity to develop the necessary environmental policies and regulations to protect the environment, including the páramos, sub-páramos, headwaters, and zones of aquifer recharge. Principle 8 calls for the protection of “landscapes.” The law does not specify how páramos should be regulated, but rather establishes their protection as a general principle and the Ministry of Environment as the entity charged with developing the regulations to do so.

¹²⁴ IFC, “Performance Standards on Social and Environmental Sustainability,” Introduction, para 3 (April 30, 2006).

¹²⁵ *Ibid.*, PS1 para 4.

¹²⁶ Santiago Madriñán et al., “Páramo is the world's fastest evolving and coolest biodiversity hotspot,” in *Frontiers in Genetics*,” Volume 4, Article 192, pp. 1-7 (October 9, 2013). DOI: available at, <http://goo.gl/94EtHn>.

In 2002 and 2003, the Ministry of Environment required the development of a series of studies on the status of the nation's páramos and plans for their management. The entities responsible for these plans did not have authority to exclude mining from the regions, except in cases where they coordinated with national authorities to establish a national protected area.¹²⁷ At this time, several new, large-scale mining projects began to take shape in Colombia, including the Angostura project. These projects presented regulatory challenges for the Ministry of Environment, including the need to clarify regulations related to mining in the páramo, and to coordinate with the Ministry of Mines and Energy the issuance of exploration permits in areas of environmental sensitivity.

As discussed in section 3.4 above, the Colombian Mining Code was modified in 2010 by Law 1382 to prohibit mining in the páramos. While this law was in effect, the Ministry for the Environment adopted maps of the páramos prepared on a coarse 1:250,000 scale.¹²⁸ It was not clear from these maps whether and to what extent the Santurbán páramo would overlap with the Angostura project site.

In the same year, regulations were promulgated calling upon regional environmental authorities to seek approval from the Ministry of Environment and Sustainable Development to issue licenses for project development in the páramos.¹²⁹

Because of issues relating to consultation with indigenous communities, Law 1382 was found unconstitutional. The legislature did not remedy the issue within the given time period, and the law fell out of force in May 2013. Nevertheless, in 2011, Colombia had also passed a National Planning Law, prohibiting mining in the páramos, as defined by the 1:250,000 scale maps until such time that a national map could be produced at a 1:25,000 scale.¹³⁰ In December 2014, the Government of Colombia publically announced the páramo boundaries, some sections of which do overlap with the Angostura project site. The company advised IFC that the project would lose approximately 5% of its total area to the páramo.

Conclusion

Finding No. 4: CAO finds that IFC was aware of the project's proximity to the páramo at the time of IFC's investment, and identified this as a risk at appraisal as there was potential for the mine to impact the páramo. IFC recognized that the project would need to abide by national law as it applied to the area. At the time of IFC's investment in 2009, the legal restrictions related to the páramos were unclear. National legislation was being developed to determine the boundaries the

¹²⁷ Law 685 of 2001 (August 15), the Mining Code, Articles 35-38.

¹²⁸ CDMB, Resolution No. 937 (May 25, 2011). Morales M., Otero J., Van der Hammen T., Torres A., Cadena C., Pedraza C., Rodríguez N., Franco C., Betancourth J.C., Olaya E., Posada E. y Cárdenas L., "Atlas de páramos de Colombia," Bogotá, D. C.: Instituto de Investigación de Recursos Biológicos Alexander von Humboldt (2007).

¹²⁹ Ministry of Environment and Sustainable Development, Decree No. 2820 (August 5, 2010), Article 10, which provided regulations for Title VIII of Law 99 of 1993.

¹³⁰ Law 1450 of 2011 (June 16), issuing the National Development Plan 2010-2014.

páramos, and to identify what activities would be permitted therein. It was not clear whether and to what extent the Angostura project area would overlap the páramos boundary. Legislation passed in 2010 and 2011 explicitly prohibited mining activities in the páramos. The detailed maps of final páramo boundaries were determined in 2014.

4.5 Performance Standard 4: Assessment and Supervision of Security Risks

This section considers whether IFC adequately considered security risk related to the project area's history of conflict, and whether IFC's supervision has been sufficient to assess the company's compliance with security requirements under PS4.

Relevant IFC policy and procedures

Under PS4, IFC seeks to ensure that clients protect the health of communities, their safety, and security. PS4's objectives include to "ensure that the safeguarding of personnel and property is carried out in a legitimate manner that avoids or minimizes risks to the community's safety and security."¹³¹ IFC's 2012 PSs add that such objective "is carried out in accordance with relevant human rights principles."¹³²

In relation to security, PS4 states that "when the client directly retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks to those within and outside the project site posed by its security arrangements."¹³³ Paragraph 13 of PS4 sets out certain guiding principles, including "proportionality, good international practices in terms of hiring, rules of conduct, training, equipping, and monitoring of such personnel, and applicable law." Moreover, "if government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, communicate its intent that the security personnel act in a manner consistent with paragraph 13 above, and encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns."¹³⁴

IFC Guidance Notes on the 2006 Performance Standards provide that:¹³⁵

[F]or larger operations or those in unstable environments, the review will be a more complex and thorough risk assessment that may need to consider political, economic, legal, military and social developments, and any patterns and causes of violence and potential for future conflicts. It may be

¹³¹ IFC, "Performance Standards on Social and Environmental Sustainability" (April 30, 2006) PS4, "Objectives".

¹³² IFC, "Performance Standards on Social and Environmental Sustainability" (January 1, 2012), PS4, "Objectives."

¹³³ IFC, "Performance Standards on Social and Environmental Sustainability" (April 30, 2006) PS4, para. 12.

¹³⁴ IFC, "Performance Standards on Social and Environmental Sustainability" (April 30, 2006) PS4, paras. 13-14.

¹³⁵ IFC, "Guidance Notes: Performance Standards on Social and Environmental Sustainability" (July 31, 2007) Guidance Note 4, para G28.

necessary for clients to also assess the record and capacity of law enforcement and judicial authorities to respond appropriately and lawfully to violent situations. If there is social unrest or conflict in the project's area of influence, the client should understand not only the risks posed to its operations and personnel but also whether its operations could create or exacerbate conflict. Conversely, if provided consistent with Performance Standard 4, the client's operations involving the use of security personnel may avoid or mitigate adverse impacts on the situation and contribute to the improvement of security conditions around the project area.

According to the February 2009 ESRP (v3), IFC takes into account factors in relation to public security policy, as part of the project context analysis during appraisal.¹³⁶ IFC ensures during supervision that the requirements of PS4 are met.

Discussion

Appraisal of compliance with PS4

During pre-investment due diligence, IFC noted consultations with local stakeholders, including Human Rights Watch, on the subject of the company's security track record.¹³⁷ IFC retained an external human rights and security specialist to review the company's approach to security and assess the security situation in the area. The security specialist noted that, following the kidnappings of company personnel and security threats by the FARC and ELN, the company had signed security agreements with the Ministry of Defense which were renewed annually from 2003 to 2008. The security situation in the project area was managed by Colombian public forces and, since 2004, guerrillas had abandoned the area.

At appraisal, in 2009, IFC reported that the company would sign a new agreement reflecting the Voluntary Principles on Security and Human Rights (VPSHR).¹³⁸ At this point, the security specialist reviewed the company's existing agreements with public and private security forces, as well as the company's internal security department. The security specialist noted that the company lacked a clear strategy and description of activities carried out by its internal security department, but reported that the company had a clean human rights record. Although the security specialist stated that there were no reports of company collaboration with illegal armed groups, CAO notes that, during its investigation, it received an account of interactions between the company and guerilla groups operating in the region 10 years prior to IFC's engagement.

The security specialist's review recommended the following actions for the company to take to regularize its arrangements with public and private security forces, and to comply with PS4 requirements:

- to modify its agreement with the Ministry of Defense to incorporate the VPSHR and strengthen supervision of military presence in the project area;

¹³⁶ IFC, "Environmental and Social Review Procedure" (February 2009).

¹³⁷ IFC, appraisal documentation (January 2009).

¹³⁸ *Ibid.*

- to ensure that funds paid by the company to the Ministry of Defense would be managed by the military but to include a clause that would prohibit the military from purchasing arms and ammunitions and from carrying out any intelligence activity; to evaluate a potential agreement with the National Police on the same terms;
- to formalize its agreement with private security forces to limit the use of arms only to defensive actions and to refer to the VPSHR;
- to ensure that security personnel are technically and professionally trained and independent from public forces; and
- to develop and implement internal policies, programs, and action plans to regulate the use of arms and force, personnel contracting, and management of complaints.

In its ESAP, the client was required to upgrade its procedures as needed to reflect the VPSHR by June 2009.¹³⁹

Supervision of client compliance with PS4

Information presented to the Board of Directors in 2009 noted that IFC had engaged a human rights and security specialist both to assess the company's use of security forces and also to support it in implementing the VPSHR. However, CAO found no record of any review performed during supervision to assess the progress with the security program or other documentation indicating that the security specialist worked with the company to implement programs and agreements in compliance with the VPSHR.

Following IFC's investment, the company contracted another firm (referred to here as the security consultant) to conduct an analysis of sociopolitical and security risks posed by the project and to review a new agreement with the Ministry of Defense required to be implemented in 2010. The company sent IFC the new agreement in September 2009, and IFC received the company's contract with the security consultant in November 2010. Also in 2010, IFC received the security consultant's analysis of sociopolitical and security risks, and provided comments on these. IFC noted that the assessment was too general and did not provide a detailed analysis of the sociopolitical risks posed by this specific project. IFC underscored the need for the company to implement actions recommended by the security consultant. These included: strengthening the communities' perspective on the role of the military in the project as a means to protect the company and in protecting communities; considering the possibility of including police forces in the agreement with public security forces; and disseminating information on the objectives and implementation of the VPSHR to all project contractors. In its review of supervision documentation, CAO notes that it is not evident that IFC assured itself that the company had implemented recommended actions with regard to private security or the company's internal security department.

¹³⁹ IFC, project legal documentation (March 2009).

The company's 2009/2010 monitoring report included data on the number of private security personnel contracted and their level of training. However, it did not provide information on the implementation of recommendations related to private security or the company's internal security department.¹⁴⁰ In its review of the monitoring report, IFC did not comment or provide follow-up actions on the company's compliance with PS4 requirements.¹⁴¹

In its monitoring report for the 2011 period, the company noted that procedural upgrades required for compliance with PS4 requirements were being implemented. The company reported that it planned to carry out awareness campaigns, training, evaluations, and safety inspections as part of PS4 requirements, but did not provide detail on implementation.¹⁴² Further, the company did not report details on security forces' training, the number of people trained and progress on implementation of the VPSHR, as required by IFC. The monitoring report submitted by the company for the 2012 period states that there had not been any update on progress to implement the VPSHR since June 2009.¹⁴³ IFC reported that it had followed up on the development and renewal of contracts between military forces and the company as part of the site review. In its review of the monitoring report for the 2012 period, IFC eventually reported that the company's security staff was certified in the VPSHR.¹⁴⁴

Conclusion

Finding No. 5:

Finding No. 5a (Appraisal): IFC's appraisal of the project included an assessment of security risks. This led to the development of recommendations, including adoption of new legal arrangements with security contractors that reflected the VPSHR.

Finding No. 5b (Supervision): In reviewing project documents and in interviews with IFC staff, CAO determined there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements. CAO notes that IFC reviewed and reported information in relation to the company's security personnel staffing; however, IFC's supervision documentation lacks adequate reporting on the progress on the implementation of the VSPHR.

4.6 Performance Standard 6: Biodiversity Conservation

This section considers whether IFC assured itself that the company adequately assessed and managed risks in relation to protection and conservation of biodiversity in compliance with PS6.

Relevant IFC policy and procedures

¹⁴⁰ IFC, January 2009-December 2010 monitoring report.

¹⁴¹ IFC, January 2009-June 2010 supervision documentation (April 2010).

¹⁴² IFC, January-December 2011 monitoring report.

¹⁴³ IFC, January-December 2012 monitoring report.

¹⁴⁴ IFC, January-December 2012 supervision documentation.

For all IFC-financed projects, compliance with PS1 requires the client to establish and maintain a Social and Environmental Management System (SEMS) and to undertake a Social and Environmental Assessment (Assessment). PS6 provides requirements for the content of the ESIA on biodiversity and ecosystem services and the associated management plan for mitigating impacts, often referred to as a Biodiversity Action Plan or Biodiversity Management Plan.

The objectives of PS6 are to ensure biodiversity protection and conservation and to adopt measures and practices that ensure sustainable management of natural resources by integrating conservation and development objectives.¹⁴⁵ PS6's scope of application is determined through the completion of the Assessment.¹⁴⁶ "The client will assess the significance of project impacts on all levels of biodiversity as an integral part of the Social and Environmental Assessment process. The Assessment will take into account the differing values attached to biodiversity by specific stakeholders, as well as identify impacts on ecosystem services. The Assessment will focus on the major threats to biodiversity, which include habitat destruction and invasive alien species."¹⁴⁷

In particular, PS6 defines critical habitat as "a subset of both natural and modified habitat that deserves particular attention", including areas with high biodiversity value and that provide key ecosystem services.¹⁴⁸ According to PS6, an IFC client will not implement "any project activities" in areas of critical habitat unless certain requirements are met.

The 2011 ESRP (v6) states that "if the client fails to comply with its E&S commitments expressed in the Action Plan or legal agreements with IFC, the Lead Environmental and Social Specialist shall work with the client to bring it back into compliance to the extent feasible and, if the client continues to fail to achieve compliance, shall exercise remedies when appropriate."¹⁴⁹ Neither the ESRPs, nor the Sustainability Framework, provide further guidance for IFC staff on what remedies may be exercised and in what circumstances.

Discussion

At the time of appraisal, the project's proximity to the páramo was clearly flagged as a risk, and IFC had acknowledged that biodiversity that trigger critical habitat was potentially present in the project area. However, as the biodiversity values in the project area, and the magnitude and significance of potential impacts to them had not been assessed, these were not reviewed by IFC at the time of the appraisal of its investment.

The legal agreement between IFC and the company includes covenants that specify the project must comply with IFC PSs and submit an ESIA before any project-related construction.¹⁵⁰ The

¹⁴⁵ IFC, "Performance Standards on Social and Environmental Sustainability," PS6 (April 30, 2006).

¹⁴⁶ *Ibid.*, para 2.

¹⁴⁷ *Ibid.*, para 4.

¹⁴⁸ *Ibid.*, para 9.

¹⁴⁹ IFC, "Environmental and Social Review Procedures," Section 6, para 2.8.2 (June 2011).

¹⁵⁰ IFC, project legal documentation (March 2009).

ESAP further details PS6-related commitments agreed by the company, with deadlines linked to “operational” milestones:

- a) IFC to approve Terms of Reference for a second phase of biodiversity baselines with a critical habitat assessment, prior to tendering process for the second baseline study;
- b) a management and mitigation plan for mine development, including offsets (if applicable) as specified in PS6, was to be developed during ESIA preparation (estimated March to September, 2009); and
- c) a partnership with a conservation organization (presumably to provide guidance and assistance) was to be established before any significant exploration in the páramo and before the start of construction.

IFC’s supervision of the completion of these commitments provided guidance for targeted studies of Critically Endangered and Endangered species, as well as local species endemism, in the *Serranía de Santurbán* that would trigger Tier 1 classification of critical habitat.¹⁵¹

IFC supervision documentation, as well as correspondence with the client, show that IFC engaged with the client frequently during supervision of ESAP commitments, and provided guidance on topics such as critical habitat assessment and biodiversity impact mitigation planning. However, between the time IFC invested in Eco Oro and the time the project curtailed on-the-ground activities in September 2012 to await a legal decision about the boundaries of the páramo, IFC supervision materials do not show that substantive progress was made on the studies necessary to understand whether or how the project might eventually comply with PS6. Of specific importance was the necessity to perform an adequate biodiversity baseline study and a critical habitat assessment, which would have informed IFC as to the potential biodiversity risks the project could confront.

In mid-2010, the company met with Colombian authorities in relation to a biodiversity offset proposal.¹⁵² At that time, IFC recommended an extensive set of actions for the company to reach PS compliance, including to develop a critical habitat report, to analyze whether any critical habitat could be compensated, and to assess the páramo “ecosystem services” of water “provisioning” and “regulating.”¹⁵³ IFC’s supervision documentation does not record any outcome of this meeting. The IFC client subsequently engaged a consulting firm to develop a “gap analysis” of the EIA.¹⁵⁴ This analysis was not shared with IFC.

¹⁵¹ See PS6 Guidance Note for description of Tier 1 critical habitat: IFC, “Guidance Notes: Performance Standards on Social and Environmental Sustainability” (July 31, 2007), Guidance Note 6, para GN74.

¹⁵² IFC, client communication to IFC, July 2010.

¹⁵³ IFC communication to the client, July 2010.

¹⁵⁴ IFC communication to the client, October 2010.

In 2012, IFC reported that the client had hired a new team of qualified and experienced E&S staff, and had started a process to develop an environmental study to identify the boundaries of strategic ecosystems, especially the páramo. This study was completed and presented to the Colombian authorities.

In September 2012, the IFC client implemented cost reduction initiatives in light of the uncertainty surrounding the boundaries of the proposed regional park and Santurbán Páramo. IFC met with representatives of the Instituto Von Humboldt during a supervision visit to discuss the regional park and páramo proposals. In relation to biodiversity, IFC noted that the company had retained its E&S team while awaiting a decision, but also that analysis of flora/fauna/hydrology impacts analysis and E&S management plan were on hold until after a feasibility study could be completed. No progress toward compliance with PS6 was reported.

Over the supervision period, the client did not make substantive progress to execute the ESAP commitments in a timely manner. To date, IFC has not pursued legal or financial means to enforce the company's commitments to complete these studies, but has made subsequent investments in the company.

In July 2015, the IFC client released an updated resource estimate, taking into account the defined páramo boundaries.¹⁵⁵ In December 2015, the IFC client announced that it had commenced a tender for an underground mine plan and prefeasibility study, referencing the updated mine resource estimate.¹⁵⁶ The client stated that it expected the study could be used to complete a revised EIA to be submitted to the Colombian authorities, and that it intended to proceed with additional baseline work and other studies required for completing the EIA.

However, as outlined in section 3.4 above, a decision by the Colombian Constitutional Court in February 2016 effectively prohibited all mining activities in the páramos. The company announced in March 2016 that it had formally notified the Government of Colombia of an existence of a dispute between Eco Oro and the Government under the Free Trade Agreement between Canada and Colombia.

Conclusion

Finding No. 6: One of the stated purposes of IFC's investment was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. The requirement to complete an ESIA in accordance with IFC requirements, including the biodiversity assessment, was included in the ESAP. IFC supervision documentation does not show substantive progress on the completion of necessary studies during the supervision period, such

¹⁵⁵ Micon International Limited, "Technical Report on the Updated Mineral Resource Estimate for the Angostura Gold-Silver Deposit, Santander Department, Colombia" (July 12, 2015).

¹⁵⁶ Eco Oro Minerals Corp., News Release, "Eco Oro Minerals Provides Corporate Update" (December 1, 2015), available at: <http://goo.gl/tyRY8M>.

as an adequate biodiversity baseline study or critical habitat assessment. IFC has not pursued a remedy, but has made subsequent investments in the company

5. Conclusion

In this section, CAO sets out general observations about the IFC early equity mining program, and summarizes the conclusions reached through the investigation process.

Scope of the Project and Identification of E&S Risks

At appraisal, IFC considered the E&S impacts of the client's immediate planned activities, related to the completion of a BFS and the preparation of an ESIA for the proposed mine. IFC did not undertake an analysis of E&S risks beyond this phase. CAO notes that this approach was consistent with IFC's appraisal of other early equity mine projects. As applied in this project, this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with the PSs was uncertain and there were potential challenges due to the location's environmental sensitivity.

IFC's approach to the categorization of the project was based on this specific definition of the scope of the project as mineral exploration and feasibility study activities. As discussed further in section 4.3 above, this approach to project definition contributed to gaps between client actions and community expectations in relation to project disclosure and community consultation. Categorization of this investment as an exploration and feasibility project with limited adverse social or environmental impacts was consistent with the early equity approach but inconsistent with the goal stated in IFC's disclosure material of developing the mine in late 2009/early 2010.

Assessment and Supervision of Client Capacity and Commitment

CAO finds that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.

Although IFC considered regulatory actions as part of its pre-investment due diligence, available IFC documentation did not capture or analyze information about an investigation carried out from 2006 to 2008 by the regional environmental authority, the Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga (CDMB). CAO notes that in October 2008, prior to IFC's initial investment decision, the CDMB had found the company to be generally compliant with environmental requirements. However, CAO finds that the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management.

By 2010, IFC was aware of issues related to its client's E&S performance and had initiated discussions with the company. However, CAO finds that IFC's supervision documentation did not adequately capture information about the company's non-compliance with environmental requirements relating to acid water treatment, soil erosion and slides observed by the CDMB in 2010 or its decision to fine the company for those infractions. CAO finds that the CDMB penalties

should have been considered as part of IFC's ongoing assessment of the client's commitment and capacity, especially in the context of other contemporaneous issues.

Performance Standard 1: Stakeholder Engagement

CAO finds that IFC considered that the project, defined as the preparation of a BFS and ESIA, had the support of local communities. The intent at this point was that the client's stakeholder engagement process and associated programs would be further developed as the mine progressed toward construction. The requirement to conduct ongoing community engagement activities in accordance with IFC requirements was included in the ESAP.

CAO finds that IFC supervised the company's stakeholder engagement requirements and raised shortcomings when these were identified. IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project was faced with considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at the appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks associated with the project (which includes potential impacts from construction and operation of a mine).

Performance Standard 1: Compliance with National Law

CAO finds that IFC was aware of the project's proximity to the páramo at the time of IFC's investment, and identified this as a risk at appraisal as there was potential for the mine to impact the páramo. IFC recognized that the project would need to abide by national law as it applied to the area. At the time of IFC's investment, national legislation was being developed to determine the boundaries of, and to define management plans for, the páramos, and it was not clear whether and to what extent the Angostura project area would overlap the páramos boundary. Legislation passed in 2010 and 2011 explicitly prohibited mining activities in the páramos. The detailed maps of final páramo boundaries were determined in 2014.

Performance Standard 4: Assessment and Supervision of Security Risks

IFC's appraisal of the project included an assessment of security risks. This led to the development of recommendations, including adoption of new legal arrangements with security contractors that reflected the VPSHR.

In reviewing project documents and in interviews with IFC staff, CAO determined there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements. CAO notes that IFC reviewed and reported information in relation to the company's security personnel staffing; however, IFC's supervision documentation lacks adequate reporting on the progress on the implementation of the VPSHR.

Performance Standard 6: Biodiversity Conservation

One of the stated purposes of IFC's investment was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. The requirement to complete an ESIA in accordance with IFC requirements, including the biodiversity assessment, was included in the ESAP. IFC supervision documentation does not show substantive progress on the completion of necessary studies during the supervision period, such as an adequate biodiversity baseline study or critical habitat assessment. IFC has not pursued a remedy, but has made subsequent investments in the company.

Annex 1: Abbreviations and Acronyms

AMR	Annual Monitoring Report
BFS	Bankable Feasibility Study
BMP	Biodiversity Management Plan
CAO	Office of the Compliance Advisor Ombudsman
CDMB	Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga
CES	Environmental and Social Development Department [at IFC]
CIEL	Center for International Environmental Law
CSO	Civil Society Organization
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ELN	National Liberation Army of Colombia
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
ESRR	Environmental and Social Risk Rating
FARC	Revolutionary Armed Forces of Colombia
IDD	Integrity Due Diligence
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standard
SPI	Summary of Proposed Investment
SSV	Supervision Site Visit
VPSHR	Voluntary Principles on Security and Human Rights

Annex 2: Project Timeline

Date	Milestone, events and documents
1995	
	The company begins exploration activities for the Angostura project.
1997	
---	The CDMB approves the Environmental Management Plan presented by the company (Resolution 568).
1999	
---	The company suspends exploration activities due to security threats by the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army of Colombia (ELN).
2002	
January	The company abandons completely all activities in the region for a year due to continued security threats by the FARC and ELN.
May	The Constitutional Court of Colombia issues its decision in Case C-339, establishing the obligation to adopt effective measures for protection of the páramos. It noted that protected ecosystems are not limited to those expressly included in legislation.
August	The Constitutional Court of Colombia issues its decision in Case T-666, stating that areas of ecological importance (including the páramos) have a higher level of protection than the rest of the environment, and that the use of these areas should be compatible with conservation and should prevent exploitation of resources
August	The Colombian Ministry of Environment passes Resolution 0769 requiring regional and municipal authorities to evaluate the status of and develop protection measures, conservation, and sustainable management plans for the páramos.
2003	
---	The company returns to the site, but encounters challenges by local miners over its property rights. Exploration activities eventually resume in July, once property rights issues are settled.
August	Resolution 0839 establishes the terms of reference for regional and municipal authorities to evaluate the status of the páramos and develop protection measures, conservation, and sustainable management plans for the páramos.
2006	
May	The CDMB notes that the company is not in compliance with its Environmental Management Plan and imposes preventative measures that include the suspension of certain activities related to exploration (Resolution 488). The CDMB initiates an administrative investigation to regularly monitor the company's compliance with the Environmental Management Plan.
2008	
September	The company conducts a stakeholder engagement process for the Environmental Impact Assessment with communities in the municipalities of Surata, Vetas, California and Tona.
October	The CDMB determines that the company's activities are generally compliant with environmental requirements.
December	During appraisal, IFC determines the environmental and social risks identified are those normally associated with open-pit gold mines and IFC considers them to be manageable, there is strong local community support, minimal resettlement, and little to no economic displacement associated with the project.
2009	

January	IFC categorizes the project as “Category B,” ¹⁵⁷ based on the limited E&S risks associated with the silver and gold exploration activities. The investment is for the purpose of supporting the completion of a bankable feasibility study (BFS), an environmental and social impact assessment (ESIA) and other ground works to prepare for the construction of an open pit mine.
February	IFC discloses the Environmental and Social Review Summary, noting: Applicable PSs: PS1, PS2, PS3, PS4, PS5, PS6, and PS8. Applicable Environmental, Health, and Safety Guidelines: General EHS Guidelines (2007); and Mining Guidelines (2007). ¹⁵⁸ Communities in the municipalities of California, Surata, Vetas, would be directly affected by the project, and Cucutilla would be affected if the project were to continue to the construction phase.
March	IFC Board of Directors approves the investment in the Angostura silver and gold project to provide financing for the completion of a BFS, the ESIA and other related works to prepare for an open-pit mining project. IFC invests \$9.6 million, with the option of exercising warrants in the future to buy additional shares.
March	IFC hires a security specialist to review the company’s approach to security and human rights. IFC asks the company to sign an agreement with public and private security forces to adjust to Voluntary Principles on Security and Human Rights requirements and to protect the company from security or reputational risks.
July	The Constitutional Court of Colombia issues decision C-443 of 2009 reiterates the 2002 ruling that environmental authorities may declare certain ecosystems excluded from mining areas, even if those areas are not listed expressly in legislation or included in national regional parks or forest reserves.
September	IFC reviews the table of contents of the ESIA that the company is preparing and notes that there are deficiencies. IFC provides comments and recommendations on how the company should adjust the table of contents to comply with IFC’s E&S requirements.
December	The company submits an EIA to the Colombian Ministry of Environment as part of an application for an environmental license to exploit the proposed open-pit mine. The EIA submitted to the government does not fulfill IFC’s PS requirements and IFC continues to provide guidance for the completion of an ESIA in compliance with the PSs.
2010	
January	IFC exercises 50% of its warrants, buying additional shares in the company for \$4.8 million for a total of 12.34% ownership of the company.
January	A company contractor conducts an analysis on socio-political and security risks in Colombia. IFC provides feedback, highlighting the lack of analysis of the potential impact of the identified risks on the project and company and states that the company needs to address recommendations made by the contractor.
February	IFC sends a guidance note on critical habitat in relation to PS6 requirements to the company to support the completion of an ESIA in compliance with IFC’s PSs.

¹⁵⁷ “Category B Projects: 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, “Policy on Social and Environmental Sustainability” (April 30, 2007) para 18.

¹⁵⁸ IFC, “Environmental, Health, and Safety (EHS) Guidelines” (April 30, 2007) and IFC, “Environmental, Health and Safety Guidelines for Mining” (December 10, 2007).

February	Law 685 of 2001 is modified by Law 1382, and among other changes adds páramos to the areas excluded from mining.
April	The Ministry of Environment returns the company's application and requests that it adjust the proposed project in accordance with the new Mining Code prohibiting mining in the páramo approved in February. The company appeals the decision on the basis that it was submitted under the prior code, and, therefore, should be considered under the previous Mining Code provisions.
September	IFC reviews the company's terms of reference for developing a biodiversity offset and notes that the assessment of critical habitat is missing. IFC asks the company to complete the studies as required.
October	As the result of a technical visit, the CDMB finds the company again out of compliance with the Environmental Management Plan. The CDMB lifts the preventive measures established through Resolution 488 of 2006 and fines the company (Resolution 1248).
November	The Ministry of Environment holds a public hearing as required under its process for mining applications. The hearing is held in California in northeastern Colombia. Citizens from Bucaramanga do not attend.
November	The company informs IFC of a new security contract with the Ministry of Defense and the military that addresses IFC's PS4 requirements.
2011	
February	IFC communicates to the company its concerns about the company's lack of progress in building capacity to carry out PS-compliant environmental impact assessments on biodiversity and ecosystem services.
February	Estimated 20,000 people gather in Bucaramanga to demonstrate against the company's project.
March	The Ministry of Environment organizes a second public hearing in Bucaramanga. The hearing is suspended.
March	The company announces it will not withdraw its request for an environmental license for the exploitation of an open-pit mine, but that it decided to continue studies into the feasibility of an underground operation, which will require a new EIA to be submitted.
April	The company announces a change of officers and directors, in accordance with an agreement with a shareholder, stating that the company will focus on reformulating the Angostura project in a manner that is environmentally sustainable and socially responsible. ¹⁵⁹
May	The environmental license is denied by the Ministry of Environment.
June	The Colombian Congress enacts the National Development Plan through Law 1450, which prohibits mining in the páramo and requires the Ministry of Environment to determine the páramo boundaries. The law temporarily defines páramos based on the Instituto Alexander von Humboldt's <i>Atlas of Páramos</i> on a scale 1:250,000, until more detailed maps can be produced at a scale of 1:25,000.
August - September	The company's name is changed to Eco Oro Minerals Corporation. Further executive appointments are made in September.
2012	

¹⁵⁹ Eco Oro, "Greystar Resources Announces Change of Officers and Directors," News Release (April 14, 2011), available at: <http://goo.gl/cN7Hne>.

March	The company estimates 4,000 people in Bucaramanga demonstrate against the project and 4,000 people demonstrate in Berlin, Colombia, in favor of agricultural and mining activities in Santurban.
2013	
May	Law 1382, which excludes mining in the páramos, automatically falls out of force.
November	The company estimates 1,000 people demonstrate to support the protection of water in Bucaramanga.
December	The Ministry of Environment announces workshops to decide on the final boundaries of the páramo.
2014	
April	The Ministry of Environment announces that the boundaries of the páramo have been delineated at a scale of 1:25,000. The company states in a press release that, once it has received the cartography, it will assess the impact on its assets of the delineation of the páramo. ¹⁶⁰
2015	
February	IFC participates in a rights issue, acquiring an additional 390,000 shares for a total price of US\$278,256.40.
April	Approximately 30,000 people protest against the Angostura project in Bucaramanga, while another march occurs on the same day in Bogotá in defense of the Santurbán Páramo.
July	The company issues a report stating that is assessing how the Angostura project will be developed taking into account the Santurbán Páramo.

¹⁶⁰ *The Wall Street Journal*, “Boundaries of Páramo of Santurban Announced,” (April 1, 2014).

Annex 3: Summary of Key Findings

Finding No. 1: Appraisal & Project Categorization
<i>Finding No. 1a (E&S Review):</i> At appraisal, IFC considered the E&S impacts of the client's immediate planned activities, related to the completion of a BFS and the preparation of an ESIA for the proposed mine. IFC did not undertake an analysis of E&S risks beyond this phase. CAO notes that this approach was consistent with IFC's appraisal of other early equity mine projects. As applied in this project, this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with IFC's PSs was uncertain and potentially challenging due to the location's environmental sensitivity.
<i>Finding No. 1b (Categorization):</i> IFC's approach to the categorization of the project was based on a specific definition of the scope of the project as mineral exploration and feasibility study activities. As discussed in section 4.4, this approach to project definition contributed to gaps between IFC's actions and community expectations. Categorization of this investment as an exploration and feasibility project with limited adverse social or environmental impacts was consistent with the early equity approach but inconsistent with the goal stated in IFC's disclosure material of developing the mine in late 2009/early 2010.
Finding No. 2: Due diligence and supervision of client capacity and commitment
CAO finds that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.
<i>Finding No. 2a (Appraisal):</i> Although IFC considered regulatory actions as part of its pre-investment due diligence, IFC's appraisal documentation did not capture or analyze information about the CDMB investigation carried out from 2006 to 2008. CAO notes that in 2008, prior to IFC's initial investment decision, the CDMB had found the company to be generally compliant with environmental requirements. However, CAO finds that the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management.
<i>Finding No. 2b (Supervision):</i> By 2010, IFC was aware of issues related to its client's E&S performance and had initiated discussions with the company. However, CAO finds that IFC's supervision documentation did not adequately capture information about the company's non-compliance with environmental requirements relating to acid water treatment, soil erosion and slides observed by the CDMB in 2010 or its decision to fine the company for those infractions. CAO finds that the CDMB penalties, and the company's actions to resolve the non-compliance, should have been considered as part of IFC's ongoing assessment of the client's commitment and capacity.
Finding No. 3: PS1: Stakeholder engagement
<i>Finding No. 3a (Appraisal):</i> CAO finds that IFC considered that the project, defined as the preparation of a BFS and ESIA, had the support of local communities. The intent at this point was that the client's stakeholder engagement process and associated programs would be further developed as the mine progressed toward construction. The requirement to conduct ongoing community engagement activities in accordance with IFC requirements was included in the ESAP.
<i>Finding No. 4b (Supervision):</i> CAO finds that IFC supervised the company's stakeholder engagement requirements and raised shortcomings when these were identified. IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project

at the appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks associated with the project (which included potential impacts from construction and operation of a mine).

Finding No. 4: PS1: Compliance with national law

CAO finds that IFC was aware of the project's proximity to the páramo at the time of IFC's investment, and identified this as a risk at appraisal as there was potential for the mine to impact the páramo. IFC recognized that the project would need to abide by national law as it applied to the area. At the time of IFC's investment in 2009, the legal restrictions related to the páramos were unclear. National legislation was being developed to determine the boundaries of the páramos, and to identify what activities would be permitted therein. It was not clear whether and to what extent the Angostura project area would overlap the páramos boundary. Legislation passed in 2010 and 2011 explicitly prohibited mining activities in the páramos. The detailed maps of final páramo boundaries were determined in 2014.

Finding No. 5: PS4: Security

Finding No. 5a (Appraisal): IFC's appraisal of the project included an assessment of security risks. This led to the development of recommendations, including adoption of new legal arrangements with security contractors that reflected the Voluntary Principles for Security and Human Rights (VPSHR).

Finding No. 5b (Supervision): In reviewing project documents and in interviews with IFC staff, CAO determined there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements. CAO notes that IFC reviewed and reported information in relation to the company's security personnel staffing; however, IFC's supervision documentation lacks adequate reporting on the progress on the implementation of the VPSHR.

Finding No. 6: PS6: Biodiversity conservation

One of the stated purposes of IFC's investment was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. The requirement to complete an ESIA in accordance with IFC requirements, including the biodiversity assessment, was included in the ESAP. IFC supervision documentation does not show substantive progress on the completion of necessary studies during the supervision period, such as an adequate biodiversity baseline study or critical habitat assessment. IFC has not pursued a remedy, but has made subsequent investments in the company.