



CAO ASSESSMENT REPORT

**Regarding complaint in relation to
IFC's investment in Reventazón HPP – 02 (Project # 31383)
in Siquirres, Costa Rica**

June 2017

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

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
EIA	Environmental Impact Assessment
HPP	Hydroelectric Power Plant
ICE	Costa Rican Electricity Institute
IDB	Inter-American Development Bank
IFC	International Finance Corporation
MICI	Independent Consultation and Investigation Mechanism
MIGA	Multilateral Investment Guarantee Agency
PHR	Reventazón Hydropower Project

1. OVERVIEW

In December 2016, a local family that owns land (the “Complainants”) in Limón, Costa Rica, lodged a complaint with CAO raising concerns about the impacts of the Reventazón Hydropower Project (PHR or the “project”). The project is operated by the Costa Rican Electricity Institute (ICE, per its Spanish acronym, or the “Project Sponsor”). In January 2017, CAO determined that the complaint met its three eligibility criteria and conducted an assessment of the issues raised in the complaint.

CAO’s assessment concluded with ICE’s decision that the complaint be referred to CAO’s Compliance function for an appraisal of IFC’s compliance with its environmental and social due diligence in relation to the project. This CAO Assessment Report provides an overview of the assessment process, including descriptions of the project, the complaint, the assessment methodology, and next steps.

In addition to CAO, the complaint was also filed with the Inter-American Development Bank’s (IDB) Independent Consultation and Investigation Mechanism (MICI, per its Spanish acronym).

2. BACKGROUND

2.1 The Project

According to IFC documentation,¹ the project consists of the development, construction, and operation of a 305.5 megawatt (MW) hydropower generation plant on the Reventazón river basin, located eight kilometers southeast of the city of Siquirres in the province of Limón, Costa Rica. The project is expected to generate around 1,400 gigawatt hours (GWh) annually upon entering the operational stage. IFC’s commitment is a US\$100 million A loan.

IFC indicated that the project is developed through a special purpose vehicle (a Costa Rican trust, Fideicomiso Reventazón or the “Trust”). It was contractually established that the Trust would lease the project duly built (plant) to ICE beginning on November 15, 2016, supplying electricity throughout Costa Rica. ICE is a wholly state-owned company dedicated to the provision of power and telecom services in Costa Rica. In the telecom sector, ICE is the incumbent operator and currently provides all related services in the country (fixed, mobile voice, data and broadband internet).²

The project design, according to IFC, includes the construction of a 130-meter-high dam, a 6.9-km² reservoir with a volume of 118 million m³, two 700-meter-long diversion tunnels, and hydroelectric generation facilities. In addition, project construction also requires about 20 km of new internal access roads, a 1.8-km-long transmission line, spoils disposal and construction material extraction sites, and a campsite. Project construction started in 2009, and the first unit started operation in March 2016.³

¹ See: <https://disclosures.ifc.org/#/projectDetail/SII/31383> Accessed on April 27, 2017.

² See: <https://disclosures.ifc.org/#/projectDetail/SII/31383> Accessed on April 27, 2017.

³ See: <http://presidencia.go.cr/comunicados/2016/09/ice-entrega-a-los-costarricenses-planta-hidroelectrica-reventazon/> Accessed on April 27, 2017.

2.2 The Complaint

In December 2016, CAO received a complaint filed by a family (the “Complainants”), which owns land neighboring the project that was partially expropriated by the Project Sponsor. The complaint raises concerns regarding the land acquisition process, particularly the value paid during expropriation and impacts to water sources on the non-expropriated portion. The Complainants also raise concerns about environmental impacts, including increased risk of landslides in the area and CO₂ emissions resulting from vegetation that was not cleared. The issues raised during the assessment are described in more detail below.

3. ASSESSMENT PROCESS

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the complainants, gather information on the views of different stakeholders, and determine whether the Complainants and the IFC Project Sponsor would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO’s Compliance function for appraisal of IFC’s performance (see Annex A for CAO’s complaint-handling process). CAO does not gather information during the assessment to make a judgment on the merits of the complaint.

In this case, CAO’s assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations with the Complainants;
- telephone conversations with the Project Sponsor, ICE; and
- a meeting with IFC’s project team.

3.2 Summary of Views

CAO heard different perspectives from the Complainants and the Project Sponsor about the issues raised regarding the land-acquisition process and the environmental impacts of the project. While both parties recognized that the Complainants’ property was partially expropriated by the Project Sponsor, and that some communications had occurred between the Complainants and the Project Sponsor regarding the impacts of the expropriation process on the family’s land, these understandings had not led to an agreed path forward.

Complainants’ perspective

- The Complainants’ main points of concern relate to the expropriation process and impacts to the non-expropriated portion of their land, which they believe have not been properly recognized or addressed by the Project Sponsor. The Complainants claim that when their land was partially expropriated, the expropriation prevented them from accessing water springs that were previously part of their land, and on which they depended to raise cattle and carry out small-scale dairy production. According to the Complainants, they had installed a system to pump water and irrigate their land, and this system was impacted by the expropriation, leaving them with no access to water and diminished livelihood opportunities.

The Complainants state that they have raised this issue with ICE on several occasions, and although some interactions took place, their concern remains unaddressed.

- The Complainants also expressed concern with certain aspects of the land acquisition process, particularly how the value of their land was assessed and why some legal provisions were not applied to the assessment of their land. Specifically, the Complainants contend that the land was not expropriated at market value, that their land was inherited as one plot with one bill of sale and it lost value as it was divided into two plots as a result of ICE's mapping exercise, and that this loss was not duly compensated. According to the Complainants, Costa Rican law stipulates that this damage ("daño al remanente") should be calculated and compensated accordingly.
- The Complainants expressed concerns over the environmental impacts of the project. They report that ICE informed neighboring communities that it would remove vegetation from the reservoir, but this never took place. The Complainants are concerned that decomposing vegetation will contribute to the release of CO₂ emissions over time. They are also concerned about what they perceive as an increased risk of landslides due to material excavations allegedly conducted by ICE at the tail of the reservoir, an area that according to the Complainants is only accessible to ICE. They contend this would affect the stability of land in the area, including another parcel of land owned by the family that was not subject to expropriation and other environmentally important areas in the region.
- The Complainants understand that their complaint with CAO is taking place in the midst of a complex background of other processes with other institutions and one other process with CAO, in which similar claims of environmental issues are being raised in relation to the project. They indicated that, while ideally they would welcome an opportunity to engage with ICE on all the issues raised, their main interest is to focus on resolving the issue of access to water in their land so they can continue their livelihood activities. The Complainants therefore expressed their interest and openness to participate in a dispute-resolution process or otherwise engage with ICE to find a solution to these issues.

Project Sponsor's perspective

- ICE representatives (the Project Sponsor) indicated to CAO that it preferred for the complaint to be dealt with by Compliance.
- ICE stated that a series of requirements and/or technical and legal obligations had to be met in Costa Rica as part of the property acquisition process (Constitution, Procurement Act, expropriations and creation of easements, Expropriations Act, the Project Sponsor's environmental policies and guidelines for the energy sector and compensatory measures established in the project's EIA), which had been implemented during the Reventazón hydroelectric project. In addition, ICE mentioned that it had fulfilled a series of additional conditions in accordance with the IDB and IFC resettlement policies (Performance Standard 5: Land Acquisition and Involuntary Resettlement).
- ICE also indicated that an individual analysis of each affected family was conducted to understand better their level of vulnerability. As a result of this analysis, the project sponsor determined that the Complainants were not vulnerable according to the Livelihood Restoration Framework (LRF) because their production area was not affected, this was not their only income (they have other productive land) and the claimants did not prove that this was allegedly caused by ICE due to the (rising) water issue. ICE stated that the claimants' house located in another land has drinking water (supplied by the rural aqueduct).

- ICE stated that they purchased the Complainants' non-productive land and that the productive area still owned by the Complainants never had access to water. As a result, they indicate that acquisition of the non-productive land did not result in water access restriction.
- In relation to the problem concerning the water system, ICE indicates that before visiting the farm with a view to the expropriation process, and based on the concerns raised by the Complainants at that time, it made several proposals. ICE indicates that the Complainants never accepted these proposals. ICE states that after physically inspecting the property and prior to taking possession, it saw no evidence of a water system that would require higher compensation. ICE adds that it recorded in the national courts the existence of a pipeline and new tank once it took possession.
- According to ICE, a land acquisition plan was developed for purchasing 137 properties from 62 owners. Ninety percent of the owners accepted the price offered by ICE and 10 percent did not. ICE indicated that the national courts are in the process of making a determination in this regard, including in relation to the Complainants.
- The project sponsor indicated that there is no material evidence or visual indication to support the arguments made by the Complainants regarding illegal excavations. ICE alleges that it extracted material from the riverbed in accordance with the concession granted to them by national authorities. In addition, according to ICE, this extraction of material did not have any impact on landslides. ICE representatives affirm that the instability of that area and the risk of landslides are due to steep slopes, intensive wear processes in a wet tropical climate, heavy rainfall, the effect of the riverbed on the slopes and material transported by rainwater. They maintain that the claims made by the claimants regarding landslides are prior to the construction of the project. According to ICE, they have a photographic record of several decades prior to the construction of the project where this situation can be observed.
- ICE also indicated that they hired an external expert, as required by lenders, and in addition the lenders hired yet another independent expert, to study the landslide issue. Both experts concluded that water-level fluctuations in the reservoir did not influence erosion processes and that the project does not increase that risk.
- Regarding CO₂ emissions due to decomposition of vegetation, ICE maintains that environmental modeling considered this and concluded that it would not have an impact on the environment. In addition, it indicated that they have established robust programs for environmental monitoring, and that the first figures recently produced, according to the report prepared by the National University of Costa Rica, indicate a insignificant amount of CO₂ emissions from that source, confirming what the U.S. Environmental Resource Management company (ERM) predicted through its modeling.

4. NEXT STEPS

Given the voluntary principle guiding participation in a CAO dispute-resolution process, and ICE's preference for the complaint to be referred to CAO Compliance, CAO is referring the complaint to its Compliance function. In accordance with its Operational Guidelines, CAO will conduct a compliance appraisal of IFC's environmental and social performance related to the project.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s), (2) gather information on how other stakeholders see the situation, and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,⁴ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgment** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating Settlement:** If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed dispute-resolution approaches, leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.⁵

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is

⁴ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁵ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**