



November 13, 2017
Office of the Compliance Advisor Ombudsman (CAO)

Terms of Reference for Compliance Investigation of IFC

Reventazón HPP (IFC Project #31383)
Costa Rica

Complaints 01 and 02

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

Background to the investment

The Reventazón Hydropower Project (PHR, or "the project") comprises the construction and operation of a dam and a 305.5 MW hydroelectric power plant on the Reventazón river, located 8 kilometers southwest of the city of Siquirres in Costa Rica. The PHR is the third hydroelectric dam project the Instituto Costarricense de Electricidad (ICE) constructed in the Reventazón river and is expected to be the hydroelectric project with the highest energy production in Costa Rica.

The total project cost is expected to be around US\$1.4 billion. As per IFC's disclosure, the IFC investment consists of a US\$100 million A Loan and was approved by the IFC Board in November 2012. The remaining debt financing for the project was expected to be provided by the Inter-American Development Bank (IDB) and a group of international institutional investors, including a €61 million allocation from the European Investment Bank (EIB) through the Central American Bank for Economic Integration (CABEI).

The complaints

In September and December 2016, CAO received two complaints from families who are land owners neighboring the project. The primary area of alleged adverse impact of the project on the complainants relates to the project's land acquisition process. In particular, the complainants allege that the value of their lands was not evaluated in accordance with the requirements of Performance Standard 5 (Land Acquisition and Involuntary Resettlement), and that the project negatively impacted their livelihoods. The complainants further raise allegations as to project impacts on biodiversity, risks of landslides and subsequent impacts on wetlands, and project-related GHG emissions.

Scope of the compliance investigation

In October 2017, CAO released a compliance appraisal report regarding IFC's pre-investment review and supervision of the E&S impacts of the PHR. CAO's appraisal has identified a number of compliance questions relating to the adequacy of IFC's application of Performance Standard 5 (PS5: Land Acquisition and Involuntary Resettlement) which are relevant to the issues raised by the complainants and the project's land acquisition and resettlement process more generally.

The focus of a CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

In relation to the issues raised by the complainants, the compliance investigation will consider whether IFC's investment in the project was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

More specifically, given the issues raised by the complainants and the outcomes of CAO's compliance appraisal, the compliance investigation will consider whether IFC's review and supervision of the project provided assurance that:

1. the project's approach to land acquisition was consistent with the requirements for provision of compensation and other benefits to displaced persons under PS5; and
2. affected landholders had access to a recourse mechanism designed to resolve resettlement related disputes in an impartial manner as provided for by PS5.

As in all cases, the scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Compliance investigation process and preliminary timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by April 2018.

A draft investigation report will be circulated to IFC's senior management and all relevant IFC departments for factual review and comments. IFC's comments should be submitted in writing to CAO within 20 working days of receipt.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC's senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the investigation report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC's senior management, the President will provide clearance for the investigation report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the investigation report and IFC's response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this investigation. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in the application of land acquisition and resettlement policies in the context of international finance, as relates to land valuation, compensation, expropriation processes and grievance mechanisms.
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) and Performance Standard 5 (Land Acquisition and Involuntary Resettlement).
- Experience and knowledge relevant to the conduct of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
- Fluency in Spanish.