



The Independent Accountability Mechanism for IFC & MIGA

NOVEMBER 2024

Compliance Investigation Report

Regarding IFC's Investment in ABBank,
Viet Nam, in Relation to the Lower Sesan 2
Hydropower Sub-Project, Cambodia

IFC Project #29745

November 25, 2024

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group (WBG). We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO’s compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO’s compliance function follows a three-step approach:

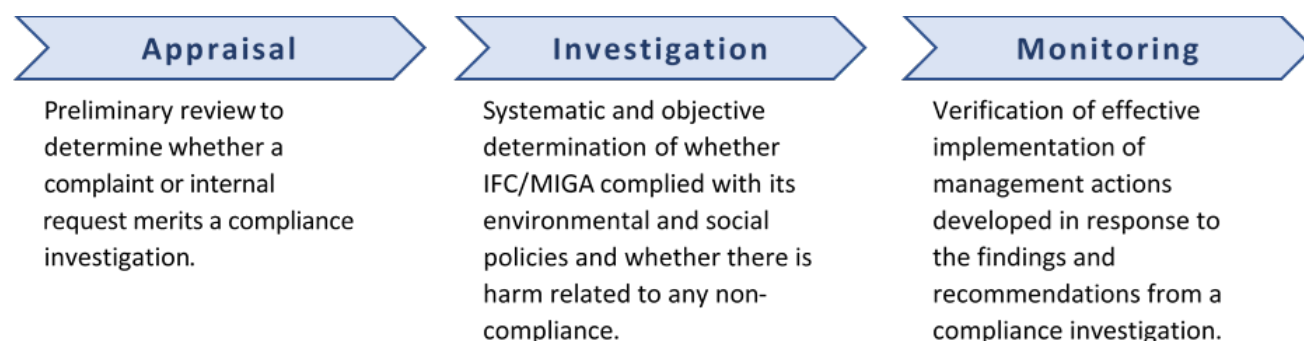


Table of Contents

1. Background	1
1.1 Context and IFC Investment	1
1.1.1 IFC’s Investments in ABBank and ABBank’s investment in EVNI.....	1
1.1.2 Dam Development in the Mekong Basin	5
1.1.3 The Lower Sesan 2 Hydropower Project.....	7
1.1.4 World Bank Group context for hydropower development in 2010	10
1.2 Timeline of Key Events	12
2. Compliance Investigation Framework	15
2.1 Community Complaints	15
2.2 IFC Response	18
2.3 CAO Process	19
2.4 Scope of Investigation	19
2.5 Investigation Methodology	20
2.6 CAO Lack of Access to the IFC Sub-Client and Sub-Project	21
2.7 Applicable IFC Policies	23
3. Analysis and Findings	28
3.1 IFC Pre-Investment Due Diligence	28
3.1.1 Summary of IFC Actions	28
3.1.2 CAO Analysis and Findings of IFC’s Pre-Investment Review (ESDD).....	30
3.1.3 Missed opportunities to influence project development.....	34
3.2 IFC Project Supervision	36
3.2.1 IFC’s Compliance Obligations Regarding ABBank Investments	36
3.2.2 Summary of IFC’s Supervision Actions	40
3.2.3 Compliance Analysis of IFC’s Supervision and CAO Findings.....	44
4. CAO Assessment of Related Harm	54
4.1 Villagers from Kbal Romeas and Srekor in the reservoir area (complainants that resettled and those that refused to do so)	55
4.2 Villagers from Old Kbal Romeas and Old Srekor who refused to resettle	57
4.3 Villagers who resettled to New Kbal Romeas and New Srekor	62

4.4	Upstream Villages	66
5.	Underlying Causes of Non-Compliance	70
6.	Recommendations for IFC’s Management Action Plan	73
Annex A:	Sub-Project Level Actions and Information	77
Annex B:	Fisheries impacts reported by communities.....	93
Annex C:	Overview of the CAO Investigation Process.....	98
Annex D:	CAO Non-Compliance Findings, Related Harm, and Recommendations.....	102

Acronyms

ABBank	An Binh Joint Stock Commercial Bank
ADB	Asian Development Bank
AEPR	annual environmental performance report
AH	affected household
amsl	above mean sea level
AVI	Asian Vision Institute
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CPS	Country Partnership Strategy
CRP	Compensation and Resettlement Policy
CSR	corporate social responsibility
E&S	environmental and social
EIA	environmental impact assessment
ESAP	Environmental and Social Action Plan
ESDD	environmental and social due diligence
ESMS	environmental and social management system
ESRP	Environmental and Social Review Procedures
EVN	Vietnam Electricity
EVNI	Vietnam Electricity International Joint Stock Company
FI	financial intermediary
GN	Guidance Notes to IFC’s Performance Standards on E&S Sustainability
Ha	hectares
IBRD	International Bank for Reconstruction and Development
ICLT	Indigenous Communal Land Title
IFC	International Finance Corporation
IFReDI	Inland Fisheries Research and Development Institute
IP	Indigenous Peoples
IRM	investment review meeting
IUCN	International Union for Conservation of Nature

km	kilometer
Lao PDR	Lao People’s Democratic Republic
LS2	Lower Sesan 2 Hydropower Project (IFC sub-project)
M ²	square meter
MAP	Management Action Plan
MIGA	Multilateral Investment Guarantee Agency
MSME	micro, small, and medium enterprises
MW	megawatt
NGO	nongovernmental organization
PS	Performance Standards (IFC)
PS1	Social and Environmental Assessment and Management System
PS4	Community Health, Safety, and Security
PS5	Land Acquisition and Involuntary Resettlement
PS6	Biodiversity Conservation and Sustainable Natural Resource Management
PS7	Indigenous Peoples
PS8	Cultural Heritage
RAP	resettlement action plan
Sacombank	Saigon Thuong Tin Commercial Joint Stock Bank
SME	small and medium enterprise
SEMS	Social and Environmental Management System
SPI	Summary of Proposed Investment
UN	United Nations
VND	Vietnamese dong
WBG	World Bank Group
WCD	World Commission on Dams

Executive Summary

From 2010 to 2024, the IFC invested in financial intermediary (FI) An Binh Joint Stock Commercial Bank (ABBank) of Viet Nam. ABBank, in turn, had an equity investment in Vietnam Electricity International Joint Stock Company (EVNI), a subsidiary of Vietnam Electricity (EVN) created to develop overseas projects, including the Lower Sesan 2 hydropower project (LS2) in northeastern Cambodia. This compliance investigation responds to three complaints from communities in the reservoir area and upstream of LS2 who raised concerns about significant adverse environmental and social (E&S) impacts from the IFC sub-project. CAO finds that IFC did not conduct an adequate pre-investment E&S due diligence of ABBank and, during supervision, did not monitor the E&S commitments in its legal agreement with the client, contrary to the Sustainability Policy. CAO finds related Harm to the livelihoods and biodiversity, threats against community members opposing the project, and damage to socio-culturally significant sites, and recommends both project and systemic-level actions to IFC, which exited the investment in May 2024.

Context and IFC Investment

During the early 2000s, IFC played a key role in supporting Viet Nam’s shift to a market economy, including transitioning the country’s banking system to majority private sector participation. In December 2010, IFC made an approximately US\$40.6 million investment in ABBank, a national medium-sized commercial bank, through a mandatory convertible bond, which converted to equity in April 2013 (IFC project #29745). IFC held 10 percent equity in ABBank from 2013 to 2021, and 8.2 percent from December 2021 to 2023 after deciding not to participate in ABBank’s 2021 rights issue. IFC’s long-term partnership with ABBank aimed to allow the client to maintain a healthy capital adequacy ratio while growing its loan portfolio, and support climate change initiatives and energy efficiency projects. On May 22, 2024, IFC fully divested from its shares in ABBank.

When IFC invested in ABBank in 2010, the bank had an existing 10.31 percent equity investment in EVNI, a subsidiary of EVN, which was an ABBank shareholder and its largest client at the time. EVNI was created in 2007 to construct and operate international energy projects, including LS2 in Cambodia.

At the time of IFC’s investment in ABBank, the World Bank Group was engaged in an extensive series of initiatives to address the E&S impacts and risks of large-scale hydropower development, spurred by public scrutiny of several highly visible hydropower projects it had financed. IFC itself published a Hydropower Strategy in 2007, where it recognized that hydropower must be developed cautiously, with responsible E&S management, among other conditions.

Sub-project

LS2 is Cambodia’s largest hydropower project—a 400-megawatt (MW) dam located in Sesan District on the Sesan River about 25 kilometers (km) upstream of the Mekong River, which supports the largest freshwater wild-capture fishery in the world.

EVNI developed the LS2 project from 2007 to January 2011, when the Hydropower Lower Sesan 2 Company Ltd was created between EVNI (51 percent) and the Royal Group Cambodia (49 percent). Until November 2012, EVNI was the majority shareholder and managed the planning and approval process. Subsequently, the company became a joint venture between China’s Hydrolancang International Energy (51 percent) and the Royal Group of Cambodia (39 percent), with EVNI’s stake dropping to 10 percent.

During the time EVNI was the majority shareholder and project developer, it received permission from the Cambodian government to conduct a feasibility study, which it completed as part of an environmental impact assessment (EIA) in 2008. The EIA was approved by the Cambodian government in June 2010, and in 2011, EVNI finalized the Compensation and Resettlement Policy (CRP) for LS2. Project construction took place from 2013 to 2018, leading to the physical or economic displacement of nearly 5,000 people and impacting upstream and downstream fishing communities. While resettlement of a majority of households occurred between 2015 and 2018, 136 families in the reservoir area refused to resettle and relocated near their flooded villages just outside the flood zone. From 2008 through 2018, community members protested against the project, and media reports, studies, and civil society groups raised concerns about its E&S impacts.

The Complaint

In June 2018, CAO received three complaints alleging widespread negative E&S impacts from communities affected by the hydropower project’s operations. These groups of complainants included: (1) resettled villagers; (2) villagers who refused to resettle; and (3) upstream villagers.

1. *Resettled villagers*: Allege their new living conditions are inadequate and that they did not receive livelihood restoration programs or support. They also claim they were not able to participate in decisions about land allocation.
2. *Villagers who refused to resettle*: Claim their livelihoods have been affected by a significant decline in local fish stocks. Some identify as Indigenous Peoples and seek to protect their cultural identity and sacred sites. Others allege they lack basic infrastructure and sufficient land to farm due to dam-related flooding.
3. *Upstream villagers*: Allege harms to their livelihoods due to changing water levels and fewer fish in the Sesan and Srepok rivers. They say they were never informed or consulted about the hydropower project or its compensation policies.

All three groups include Indigenous People and all three groups requested confidentiality due to fear of threats and reprisals.

IFC Response

CAO received IFC Management’s response to the complaints in July 2022. IFC argues that there is no link between IFC’s investment in ABBank and Lower Sesan 2 and that therefore IFC’s E&S requirements do not apply to the hydropower project. IFC makes this argument on the grounds that ABBank’s investments in EVNI predated IFC’s 2010 investment in ABBank.

ABBank did not submit a formal response to the complaints as part of the CAO compliance process. In addition, CAO made multiple attempts to engage EVNI and the Lower Sesan 2 Hydropower company and to access project documentation, including through ABBank, but these attempts were unsuccessful.

CAO Findings

CAO finds that IFC did not conduct adequate environmental and social due diligence (ESDD) before its investment in ABBank and, during supervision, failed to monitor the E&S commitments included in its legal agreement with ABBank, as required under the Sustainability Policy.

Regarding IFC’s claim that there is no link between IFC’s investment in ABBank and LS2, CAO found that the E&S commitments in the Social and Environmental Management System Plan (SEMS Plan), included in the legal agreement between IFC and ABBank, state the client would ensure compliance “*of all existing loans and investments*” with the 2006 IFC Performance Standards (PS). ABBank’s stake in EVNI was an “*existing investment.*” Following the Sustainability Policy, IFC had an obligation to monitor the client’s E&S commitments as expressed in the action plan included in the legal agreement.

Due Diligence

CAO finds that IFC failed to conduct an adequate ESDD before its investment in ABBank as required by the IFC’s 2006 Sustainability Policy (para. 28).

Project documents demonstrate that IFC was aware that ABBank was involved in hydropower projects, which have significant known E&S impacts and risks. However, IFC did not review the portfolio of the FI for E&S risks through its Environmental and Social Review Procedures (ESRP), as required by the Sustainability Policy. Specifically, IFC did not identify ABBank’s business activities with potential E&S impact and their applicable performance requirements, nor did it review whether ABBank’s sub-projects met the relevant requirements of the IFC Performance Standards in addition to relevant national laws and regulations.

This omission created a significant blind spot in IFC’s due diligence. As a result, IFC’s Management and Board approved the investment without an understanding of the E&S risks in its prospective client’s portfolio, including hydropower investments such as LS2. Additionally, while IFC Management informed the Board that ABBank’s E&S risk management framework had “room for improvement,” IFC had no real basis upon which to improve the client’s E&S framework because the client had no environmental and social management system (ESMS), E&S policy, or E&S staff in place until after IFC’s investment, and IFC did not have an understanding of the portfolio’s E&S risks, which would be needed to improve a client’s ESMS.

Moreover, at the time of IFC’s investment in ABBank, the World Bank Group was seeking to address the risks of hydropower projects, particularly those involving large dams. In this context, IFC should have strengthened its due diligence to identify the E&S risks of a client bank that it knew: (a) had hydropower investments; (b) had never had an ESMS or an E&S officer; and (c) had

no experience examining E&S risks of its financial investments.

Given the context in which this investment was made and ABBank’s reported lack of experience and E&S capacity, IFC’s pre-investment review could have been an opportunity for IFC to identify ABBank’s exposure to LS2 and possibly enhance the sub-project’s E&S safeguards while the client was a main LS2 financier of the project. Improvements could have been sought on relevant issues, including stakeholder engagement, grievance mechanisms, involuntary resettlement, biodiversity and cumulative impact assessments, and impacts on vulnerable populations and Indigenous Peoples.

Supervision

CAO finds that IFC did not monitor the E&S commitments in its legal agreement with ABBank, as required by the Sustainability Policy (2006 SP, para. 26; 2012 SP, para. 24).

IFC and ABBank’s legal agreement included a social and environmental action plan (called a SEMS Plan) under which the client would ensure compliance of its existing loans and investments with IFC E&S requirements, including the Performance Standards. Yet, at no point during supervision did IFC require ABBank to apply the PS to its existing investments, including EVNI and the LS2. Over the life of the investment, IFC failed to adequately monitor its client’s E&S performance against SEMS Plan commitments, as follows:

- In 2011, the client missed SEMS Plan milestones to establish an effective E&S management system, which was in turn missed by IFC who did not undertake any supervision activities that year.
- Between 2011 and 2016, IFC’s supervision failed to effectively review ABBank’s E&S due diligence for its investments in high-risk sectors. This lack of supervision contributed to the client’s failure to develop an E&S management system capable of ensuring PS compliance for high-risk projects, as required by the Sustainability Policy.
- Until 2017, IFC did not thoroughly review the E&S information submitted by ABBank, and thus did not adequately supervise the client’s E&S performance and PS application to its sub-projects. IFC took no immediate action upon learning that ABBank was categorizing large hydropower projects as investments with no E&S risks, applying only national E&S regulations and using the Performance Standards only as recommendations. This persistent problem was a key reason for IFC downgrading the FI’s E&S performance in 2020, nine years after first becoming aware of the SEMS Plan shortcomings.
- In 2017, IFC first identified that ABBank’s portfolio included loans to high-risk sectors such as hydropower projects and that ABBank’s SEMS was not adequate to manage such issues. From then until 2024, IFC consistently encouraged the client to come back into compliance. However, IFC failed to sufficiently use its leverage and influence as a shareholder to ensure such compliance, by not conditioning key E&S requirements, such as the SEMS implementation, to the commitment or disbursement and not using other

tools or methods of influence over the client, such as shareholder meetings or the prioritization of E&S issues in its nomination of a board director, to raise awareness of ABBank’s shortcomings in E&S compliance.

- Finally, while IFC’s supervision improved after 2017, IFC continued to narrowly focus its SEMS Plan supervision on implementation and the hiring of E&S staff and did not require ABBank to comply with all of the plan’s time-bound commitments, as required by the Sustainability Policy and ESRP.

Because of the above, at no point during supervision did IFC satisfy itself that ABBank’s monitoring of EVNI and, in turn, the Lower Sesan 2 sub-project met the requirements of the 2006 Performance Standards.

CAO finds that IFC’s inadequate supervision led to missed opportunities to positively influence LS2’s design, planning, construction, and implementation, namely:

- Between 2011 and 2012, when EVNI was LS2’s majority owner and developer, IFC and ABBank had opportunity to align the hydropower plant’s design and early planning with PS requirements. Instead, no action was taken to address shortcomings in EVNI’s 2011 Compensation and Resettlement Policy related to the requirements of PS1 (Social and Environmental Assessment and Management System) and PS5 (Land Acquisition and Involuntary Resettlement). These deficiencies remain unaddressed.
- After EVNI became a minority shareholder in LS2 in November 2012, requiring PS application became more challenging. However, through EVNI’s continued seat on the operating company’s board, IFC still had some opportunity to positively influence LS2 planning, construction, and implementation. IFC’s non-financial additionality, and one of the key purposes of IFC’s E&S supervision, is precisely for IFC to provide guidance and advice to clients on how to address E&S risk issues and to identify opportunities for improvement and good practices that could be applied to similar projects. However, CAO has found little evidence that IFC advised or provided guidance to ABBank or EVNI on the application of PS requirements during this time.

Related Harm

The CAO Policy requires a compliance investigation report to include findings on Harm to project-affected communities related to non-compliances. CAO finds Harm to complainants related to IFC’s non-compliances during due diligence and supervision of ABBank’s legal commitment to apply its SEMS Plan, and consequently the Performance Standards, to its existing investment in EVNI and Lower Sesan 2 sub-project. As described above, IFC missed opportunities to avoid, reduce, and/or address the Harm experienced by communities due to a sub-project developed without proper identification and mitigation of E&S risks and impacts to affected people.

In reference to each of the complainant groups, CAO finds:

1. The villagers who refused to resettle have been harmed due to: lack of consideration of their wish to be resettled within their customary land or of their views on alternatives to LS2; the loss of sacred and ancestral lands and the culturally significant rituals tied to them; the lack of free, prior, and informed consultation, as most are Indigenous Peoples; the absence of compensation for physical and economic displacement; and intimidation and retaliation during 2017–2018 as the dam’s construction ended and operations began. Currently residing on customary lands, these communities continue to lack security of land tenure.
2. The villagers who resettled have been harmed because the resettlement packages were not based on an asset inventory and comprehensive socio-economic survey of pre-displacement assets and thus their compensation was inadequate. They were not able to meaningfully participate in resettlement decision-making processes, including the Bunong Indigenous People from Old Kbal Romeas, and have experienced ongoing issues with the resettlement site’s layout, infrastructure, and quality, which have remained unaddressed. The project lacks a grievance mechanism, limiting their ability to raise these issues with the dam operator. The resettled communities are located several kilometers from the river, limiting fishing activity, and their substitute agricultural plots are not as productive as their former lands. To compensate for this decrease in fish catch and agricultural yields, they now buy much of what they used to fish or farm, in addition to water. They have not received livelihood restoration assistance to rehabilitate their livelihoods to pre-project levels.
3. Most of the upstream villagers have never been consulted by the project (only three of the eighteen complainant upstream villages were consulted during the EIA process). They have experienced adverse livelihood impacts due to declining migratory fish populations and changes in river flow, forcing them to buy food and water in the marketplace. They have received no compensation for these impacts, nor any acknowledgment that they are project-affected people.

Underlying Causes of Non-Compliance

CAO finds that there were several underlying causes for IFC’s non-compliances in this case:

1. IFC lacked understanding of the FI’s portfolio exposure to E&S risks when it approved this investment, compromising IFC’s ability to ensure the adequacy of ABBank’s ESMS and to provide the support that a client with little prior experience and capacity would need to develop an ESMS capable of managing high-risk projects under IFC E&S requirements.
2. IFC failed to supervise the E&S commitments established in its contract with ABBank, as required by the Sustainability Policy. Proper monitoring of these E&S commitments would have given IFC the opportunity to address the significant E&S gaps in the Lower Sesan 2 sub-project and provided important information on the potential E&S and reputational risks of a bank in which it had owned equity for over 10 years.
3. During both the structuring and supervision of the investment, IFC failed to sufficiently consider and use its leverage to ensure client compliance with the E&S commitments.

Except for the nomination of the SEMS officer, IFC did not structure the investment so that key E&S requirements were established as conditions of commitment or disbursement, nor did it use any other tools of influence over the client during supervision, apart from encouraging the client to comply in the course of its regular monitoring activities. This insufficient use of leverage impacted IFC’s capacity to effect change in its client’s practices and compromised IFC’s ability to comply with its Sustainability Policy obligation to only finance activities that are expected to meet PS requirements within a reasonable period of time.

4. The client never gained a comprehensive understanding of the IFC E&S requirements. Yet IFC’s approach to E&S risk management of its FI investments rests on the client’s capacity to manage the E&S risks of its loans and investments. IFC should carefully consider approving general purpose investments, such as equity investments in FIs with medium or high-risk portfolios with minimal existing E&S risk management capacity. Otherwise, it risks exposing sub-project affected people to unassessed and unmitigated E&S impacts and exposing IFC to the risk of contributing to Harm at the sub-project level.

CAO Recommendations to IFC

Taking into account the above findings, CAO recommends that IFC take the following actions at the project and institutional levels:

Project-Level Recommendations

Under the CAO Policy (para. 120), in cases where IFC has exited an investment, “recommendations will take into account the implications of such an IFC/MIGA Exit.” Due to IFC’s exit from its investment with ABBank on May 22, 2024, CAO’s project-level recommendations are limited, and suggest that IFC engage a range of local stakeholders to explore how it could contribute to the proposed remedial actions. At the same time, CAO notes that IFC determined that its exit from ABBank would have no detrimental effect on the CAO case because EVNI and LS2 were not subject to IFC’s E&S requirements, without considering the E&S commitment in the legal agreement that extended the application of IFC E&S requirements to existing investments at the time the contract was signed. Not considering this obligation when deciding to exit the ABBank investment is not consistent with a responsible exit.

CAO also notes that, in this case, because IFC was a shareholder in ABBank for over 10 years, it indirectly benefited from the proceeds of the LS2 dam. EVNI is a successful ABBank investment, which provided dividends to ABBank from profits that mostly came from LS2. IFC should take this into consideration when deciding on remedial actions, together with its broader development mandate.

CAO acknowledges that this case presents a unique and complex set of circumstances. However, CAO considers that IFC’s non-compliances and the related harm experienced by communities due to the LS2 sub-project merit genuine efforts on the part of IFC to explore and approach a wide range of stakeholders, including affected communities, to contribute to remedy at the sub-project level. CAO’s recommendations have been designed taking IFC’s limitations into account,

while remaining mindful of the previously stated considerations and complainants’ requests and comments.

1. Explore with the International Bank for Reconstruction and Development (IBRD) the possibility of incorporating the Old Kbal Romeas community in its Land Allocation for Social and Economic Development Project III (LASED III), which has an Indigenous Communal Land Title (ICLT) component, to assist the community—with its consent—in completing and obtaining its ICLT.
2. Either through ABBank, EVNI, or by directly approaching LS2, their shareholders or other relevant local stakeholders, offer assistance to establish a grievance mechanism, in consultation with affected communities, that meets PS1 and PS5 requirements and would allow affected communities, including upstream communities, to submit their questions, concerns, and grievances. Through this mechanism, the project could receive and facilitate the resolution of complaints from affected communities and provide information on project measures.
3. Through IBRD, engage government authorities to offer cooperation and support to undertake a completion audit of the LS2 resettlement and livelihood restoration programs against PS5 requirements. The external auditor should recommend and propose corrective actions for any gaps found. Actions should be consulted with affected communities, have clear timelines and estimated costs, and, to the extent possible, include a determination of the sources of financing for those actions.
4. Explore with IBRD and other relevant stakeholders, including government authorities and in consultation with the affected communities, opportunities to develop and implement a biodiversity action plan for the restoration of riverine habitats and a comprehensive set of mitigation measures to respond to biodiversity losses. The plan should include, as necessary, actions to compensate users from directly and indirectly affected communities whose livelihoods have been impacted due to biodiversity loss, with appropriate attention to differentiated impacts on Indigenous Peoples and women.

Institutional-Level Recommendations

To address the underlying causes of the non-compliance findings, CAO recommends that IFC:

1. Enhance E&S capacity and procedures for FI investments in order to ensure an adequate understanding of E&S risks and the client’s E&S capacity during due diligence and proper monitoring of all E&S commitments during supervision. The capacity should be developed to ensure that IFC has specialized staff in FI E&S risk management with relevant training, knowledge, and experience to review and monitor FI investments.
2. Develop and disseminate among E&S staff detailed guidance on E&S due diligence requirements for FI clients’ general purpose investments, such as equity investments. This guidance should include, among other things, explicit guidance on:

- a. How to review a representative sample of high-risk investments, transactions, products, and sectors in the FI’s portfolio during due diligence to define the required E&S capacity for the client and to determine costs of the project Environmental and Social Action Plan (ESAP) and the average annual costs of client ESMS implementation.
 - b. How to assess the minimum necessary E&S staff required for the FI based on the E&S risk of the portfolio and the FI’s turnover and capacity to onboard new E&S staff. In this and other cases, CAO has observed that shortcomings in the client’s E&S capacity is often a recurrent problem. IFC should develop tools and parameters for its E&S staff to assess the client’s E&S staff needs in relation to the client’s E&S risk portfolio.
3. Conduct a portfolio review of IFC’s active equity FI investments since 2006 that include an obligation in the legal agreements (ESAP or elsewhere) for the client to apply its ESMS to “existing loans and investments” and ensure that adequate monitoring of the legal commitments is carried out.
4. Update its ESRP to provide more explicit guidance to E&S staff on how to structure investments to best use IFC’s leverage during the life of the investments to ensure a client’s compliance with E&S requirements. As has been recommended in previous cases, this should include explicit guidance on the need to link E&S commitments in the ESAP or legal agreement to investment milestones such as commitment, first disbursement, and subsequent disbursements, to ensure that IFC has sufficient leverage to require their completion.

Next Steps

This report, as dated, has been finalized by CAO and sent to IFC Management and the IFC Board of Executive Directors. In accordance with the CAO Policy, IFC will be required to submit a Management Report to the Board for consideration that will include a Management Action Plan (MAP) for the purpose of addressing CAO’s findings of non-compliance and related harm. The MAP comprises timebound remedial actions proposed by Management. The Management Report should also include a reasoned response to CAO’s findings or recommendations that IFC/MIGA is unable to address in the MAP. Once the IFC Board approves the MAP, CAO publishes this investigation report and IFC’s Management Report. CAO’s role thereafter is to verify, through compliance monitoring, the effective implementation of the actions set out in the MAP.

1. Background

This section describes the country, regional, and World Bank Group context for the investment of the IFC in the An Binh Joint Stock Commercial Bank (ABBank). It then describes the chain of investments between IFC, ABBank, Vietnam Electricity International Joint Stock Company (EVNI), and the Lower Sesan 2 Hydropower Sub-project (LS2) in Cambodia—the subject of the complaints to CAO—and provides a timeline of key events.

1.1 Context and IFC Investment

IFC started engaging with Viet Nam in 1992 in response to the country’s search for foreign investment and technology to transition to a market-oriented economy.¹ During the early 2000s, IFC played a pioneering role in developing private joint stock banks in Viet Nam.² In its 2007–2011 Country Partnership Strategy (CPS), the World Bank Group emphasized the need for continued reform to Viet Nam’s financial system to make it more responsive to private sector needs and to liberalize the banking sector.³ By 2008, IFC had invested more than US\$260 million in the financial sector, providing liquidity in the form of trade finance and equity to banks and other market participants.⁴

In 2010, at the time of its investment in ABBank, IFC’s strategy in Viet Nam was focused on reinforcing the country’s economic competitiveness and promoting inclusive economic and sustainable growth by supporting the transition of Viet Nam’s banking system to majority private sector participation. IFC increased its commitments in Viet Nam from US\$62 million in 2007 to over US\$1 billion in 2011,⁵ with investments in the financial sector dominating IFC’s portfolio.⁶

1.1.1 IFC’s Investments in ABBank and ABBank’s investment in EVNI

Established in 1993 in Southern Viet Nam, ABBank transformed from a small rural bank into a national medium-sized commercial bank by the early 2000s. In 2003, Vietnam Electricity (EVN),

¹ World Bank, *Vietnam and the World Bank: A Strong and Enduring Partnership. A Brief Annotated History* (2012), 6, <https://bit.ly/3L3rCRT>.

² World Bank, *Vietnam and the World Bank*. In 2002, IFC made its first investments in the Vietnamese banking sector. It provided up to US\$10.2 million in equity to Saigon Thuong Tin Commercial Joint Stock Bank (Sacombank), along with an equity investment of US\$5 million to Asia Commercial Bank (ACB), the two largest private joint stock banks in Vietnam at that time. See <https://disclosures.ifc.org/project-detail/SPI/10807/sacombank> and <https://disclosures.ifc.org/project-detail/SPI/11402/asia-commercial-bank-vietnam>; IFC, “Vietnam—IFC to Make Equity Investment in Sacombank,” press release (October 24, 2002), <https://bit.ly/4eBg7P5>.

³ World Bank, *International Development Association and International Finance Corporation and Multilateral Investment Guarantee Agency Country Partnership Strategy with the Socialist Republic of Vietnam for the Period 2007–2011* (CPS Vietnam 2007-2011), January 3, 2007), vi, vii, 27–28, <https://bit.ly/3RK5gsj>.

⁴ IFC “IFC to Reduce Shareholding in Vietnam’s Sacombank: Partnership Strengthened through Increased Collaboration in Innovative Products,” press release (December 25, 2008), <https://bit.ly/4cAk98D>.

⁵ World Bank, *International Development Association International Bank for Reconstruction and Development International Finance Corporation Multilateral Investment Guarantee Agency Country Partnership Strategy for the Socialist Republic of Vietnam for the Period FY12–FY16* (November 7, 2011), 51, <https://bit.ly/45DRNYR>.

⁶ Independent Evaluation Group, IEG CPSCR Review, Vietnam, FY07–FY10 (December 9, 2011), 4, <https://bit.ly/4bjQhft>.

a long-term client of the World Bank,⁷ acquired 30 percent of ABBank. In 2008, Maybank, another long-term IFC partner, also became a shareholder of ABBank, by acquiring a 15 percent stake, which then increased to 20 percent in 2009, and to 30 percent in 2013.⁸

Since 2009, IFC has made the following investments in ABBank:

1. IFC’s first investment in ABBank was a US\$18 million trade line provided in April 2009 under its Global Trade Finance Program Guarantee Facility,⁹ which is still currently active (IFC project #27851).
2. In December 2010, IFC subscribed a mandatory convertible bond, which converted to equity in April 2013 (IFC project #29745). This equity investment of approximately US\$40.6 million¹⁰ gave IFC 10 percent equity in ABBank from 2013 to 2021, and 8.2 percent equity from December 2021 to May 2024 after IFC decided not to participate in ABBank’s 2021 rights issue. IFC’s investment was designed to create a long-term partnership between IFC and ABBank that would allow ABBank to maintain a healthy capital adequacy ratio while growing its loan portfolio, supporting climate change initiatives, and enhancing financing for eligible energy-efficiency projects.¹¹ On May 22, 2024, IFC fully divested from ABBank, selling nearly 85 million shares of ABBank—representing 8.2 percent of its capital.¹²
3. In October 2017, IFC provided a loan of up to US\$150 million (IFC project #40081) to grow ABBank’s loan portfolio for micro, small, and medium enterprises (MSMEs) and women-owned small and medium enterprises (SMEs). ABBank agreed to only use the funds from IFC’s 2017 loan to support MSMEs in Viet Nam.¹³ This loan was fully repaid at the end of

⁷ EVN, a state-owned company, has been a client of the World Bank since 1996. See <https://bit.ly/3RG8Qne>.

⁸ See ABBank corporate history at <https://abbank.vn/en/corporate-history.html>.

⁹ In late 2007, IFC launched its Global Trade Finance Program in Viet Nam. The program extends and complements the capacity of banks to deliver trade finance to local importers and exporters on a per-transaction basis. The program supports the liquidity requirements of private sector banks to improve their capacity to cover the payment risk in granting trade financing to local companies, mostly small and medium enterprises. IFC, “IFC provides record funding for trade finance for small businesses in Vietnam” (July 22, 2011). Independent Evaluation Group, *IEG Vietnam CPSCR Review, CPS Period FY07-FY10*, p.3, available at: <https://bit.ly/4bjQhft>

¹⁰ The approved amount was close to US\$49 million, but the actual disbursed amount is US\$40.6 million. See IFC Management Response (July 20, 2022), 7, and Summary of proposed investment (SPI) for project #29745” at <https://disclosures.ifc.org/project-detail/SPI/29745/abbank-equity-cb>.

¹¹ See SPI for project #29745 at <https://disclosures.ifc.org/project-detail/SPI/29745/abbank-equity-cb>.

¹² Han Dong, “Divesting all nearly 85 million shares, IFC is no longer a shareholder of ABBank,” *Vietstock* (May 22, 2024). <https://bit.ly/45KNFGC>.

¹³ CAO concluded in its appraisal report that EVNI cannot be considered a sub-project of ABBank’s SME loan portfolio because IFC’s funds from this loan cannot be used to finance the Lower Sesan 2 project, EVNI, or EVN. The specific requirements that MSMEs and SMEs must meet to be considered eligible to receive funds from this loan are set out in the project’s legal agreement. According to public information, EVNI has assets that exceed the maximum for eligible MSMEs and SMEs under the loan’s legal agreement. Further, according to representations made by IFC, EVNI has not requested or been granted a loan by ABBank between 2017 and the present date. The Lower Sesan 2 dam could also not be considered an eligible MSME or SME as it is operated through a company incorporated in Cambodia and has assets that would exceed the maximum for the eligible SMEs under the loan’s legal agreement. Thus, this investment is not being reviewed in this compliance investigation. See SPI for project #40081 at <https://disclosures.ifc.org/project-detail/SII/40081/abbank-sr-loan>.

2022.

4. Between 2010 and 2021, IFC signed six Advisory Services agreements with ABBank on issues such as energy-efficiency financing and corporate governance to help ABBank develop into a specialized bank servicing SMEs—an underserved segment of the Vietnamese economy.¹⁴

This compliance investigation only examines IFC’s 2010 equity investment in ABBank, which by creating a general exposure to the FI’s operations, provided IFC with an opportunity to positively influence the environmental and social (E&S) performance of ABBank’s portfolio and sit on its board of directors.¹⁵

When IFC approved its 2010 general investment, ABBank already held 10.31 percent equity in the Vietnam Electricity International Joint Stock Company (EVNI). EVNI is a subsidiary of EVN, ABBank’s shareholder and largest client at the time. EVNI was created in 2007 to construct and operate international energy projects, mainly in Cambodia and Lao People’s Democratic Republic (Lao PDR), including the Lower Sesan 2 Hydropower project.¹⁶

EVN, a major Vietnamese state-owned enterprise specializing in electric power generation, transmission, and distribution, was tasked by the Vietnamese government with doubling generation by 2020 and enhancing interconnectivity with Cambodia and Lao PDR.¹⁷ In 2007, EVN and partners, including ABBank, promoted the establishment of EVN Cambodia Joint Stock Company, the predecessor of EVNI.¹⁸ EVNI’s investment in LS2 was one of the largest investments in Cambodia’s hydropower sector, the largest planned investment of a Vietnamese group in Cambodia, and is the company’s only hydropower project in the country to date.¹⁹

ABBank bought 6 percent of shares of EVNI in 2007 as a founding member of the EVN subsidiary and increased its shareholding to 10.31 percent on November 1, 2010, shortly before IFC’s board approved the equity investment in ABBank on November 11, 2010.²⁰

EVNI was solely tasked with developing the LS2 project from 2007 to 2011. In January 2011, a joint venture—the Hydropower Lower Sesan 2 Company—was created between EVNI (51 percent) and the Royal Group Cambodia (49 percent) to develop LS2.²¹ Until November

¹⁴ IFC, “Investment in Vietnam’s An Binh Bank Promotes Financing for Small and Midsize Enterprises,” press release (January 24, 2011), <https://bit.ly/3KX0a8p>.

¹⁵ Due to national banking requirements, this investment was made through a convertible bond, which was soon after converted into equity.

¹⁶ See EVNI website “About Us: page at <http://evni.vn/en/about-us> (consulted June 26, 2024); see also EVNI’s 2011 Financial Statement. EVNI Annual Report 2021, p. 16 (<https://bit.ly/3s4hej5>).

¹⁷ Office of the Prime Minister, Viet Nam, “Decision No. 1208/QĐ-TTg of the Prime Minister approving the national master plan for power development in the 2011–2020 period, with considerations to 2030” (July 21, 2011), 3, <https://bit.ly/4ceUpPI>.

¹⁸ See EVNI website at <http://evni.vn/gioi-thieu>.

¹⁹ Business Monitor Online, “EVN International Breaks into Cambodia’s Power Sector,” *Business Monitor Online* (January 24, 2011).

²⁰ IFC Management Response (July 20, 2022), 10.

²¹ T. Bennan, “Sesan Dam to Proceed this Year,” *Phnom Penh Post* (April 25, 2011).

2012, EVNI owned the majority of shares and managed the planning and approval process for LS2.²²

In November 2012, EVNI’s shareholding in LS2 was reduced to 10 percent after the Cambodian government expressed concern about EVNI’s “capital ability,” as the Vietnamese government was simultaneously reducing its investments.²³ According to EVNI, the remaining 10 percent represented the exploration work and feasibility studies it had completed to that point.²⁴ The Hydropower Lower Sesan 2 Company Ltd. became a joint venture of China’s Hydrolancang International Energy (51 percent), a subsidiary of China’s Huaneng Group²⁵; the Royal Group of Cambodia (39 percent); and EVNI (10 percent). Also in November 2012, the Royal Group of Cambodia and Hydrolancang International Energy signed an agreement for the dam’s construction and development, which was expected to take five years, as well as its subsequent operation as a private company for 40 years before being handed over to the Cambodian government.²⁶

Hence, since 2013, IFC sub-project EVNI has not been directly involved in the daily management and operation of LS2, although its residual 10 percent shareholding gives it the right to appoint a director to the joint venture company’s board. Publicly available information shows that 72–80 percent of EVNI’s revenue still comes from the Lower Sesan 2 hydropower sub-project.²⁷

²² D-H. Chen, “Vietnam Confirms Stake in Sesan Dam Bought by Chinese Firm,” *Cambodia Daily* (December 11, 2012).

²³ There are conflicting perspectives on whether it was EVNI’s decision to withdraw from the LS2 sub-project or whether it was at the request of the Cambodian government. Joshua Wilwohl, “Electricity Vietnam No Longer Involved in Lower Sesan 2 Dam,” *Cambodia Daily* (November 28, 2012), <https://bit.ly/4bkslsr>; Chen, “Vietnam Confirms Stake in Sesan Dam Bought by Chinese Firm,” *Cambodia Daily*, (December 11, 2012), <https://bit.ly/4dQbkYy>.

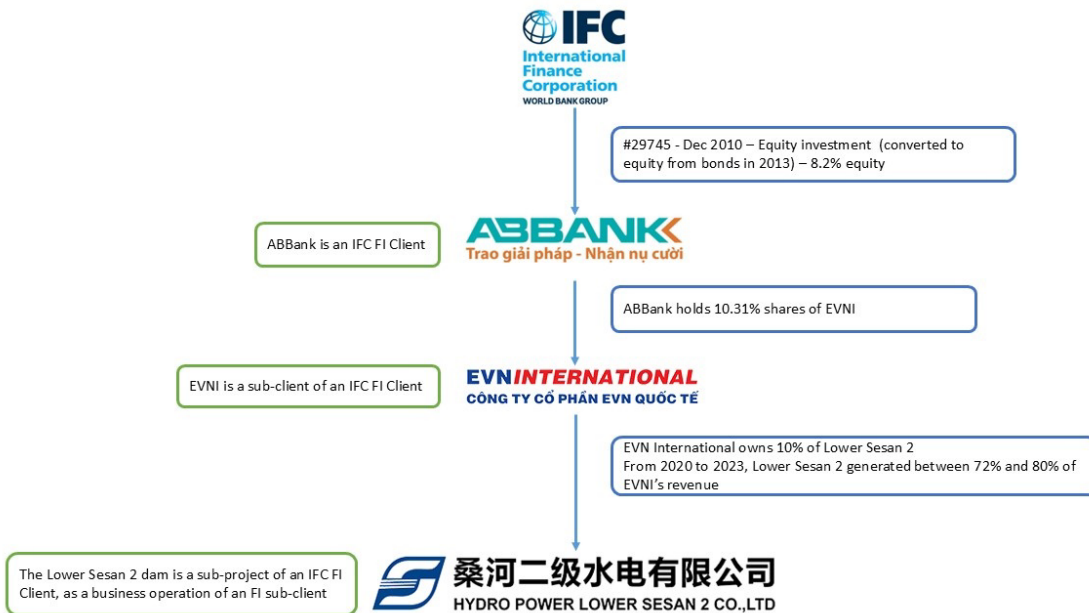
²⁴ Joshua Wilwohl, “Electricity Vietnam No Longer Involved in Lower Sesan 2 Dam,” *Cambodia Daily* (November 28, 2012), <https://bit.ly/4bkslsr>

²⁵ Hydrolancang International Energy is a wholly owned (100 percent) subsidiary of Huaneng Lancang River Hydropower, which in turn is a majority owned (50.4 percent) subsidiary of the China Huaneng Group Co., Ltd. See annual reports of China Huaneng Group and Huaneng Lancang River Hydropower Inc. at www.sse.com.cn; China Huaneng Group, “Cambodia’s Largest Hydropower Project—Huaneng Lower Se-San River II Hydropower Station Starts Reservoir Impoundment,” press release (September 27, 2017), <https://bit.ly/4gZYmKF>, and China Huaneng Group, “All Units of Huaneng Sesan Cascade II Hydropower Station Put Into Operation,” press release (October 21, 2018), <https://bit.ly/3zYSVeh>.

²⁶ China Huaneng Group and Huaneng Lancang River Hydropower Inc. annual reports at www.sse.com.cn; China Huaneng Group, “Cambodia’s Largest Hydropower Project—Huaneng Lower Se-San River II Hydropower Station Starts Reservoir Impoundment,” press release (September 27, 2017), <https://bit.ly/4gZYmKF>, and China Huaneng Group, “All Units of Huaneng Sesan Cascade II Hydropower Station Put Into Operation,” press release (October 21, 2018), <https://bit.ly/3zYSVeh>.

²⁷ EVNI, *2020 Annual Report* (April 2021), 23, <https://bit.ly/3NtfLOk>; EVNI, *2021 Annual Report* (April 2022), 5–7, <https://bit.ly/3XEZXOI>; EVNI, *2023 Annual Report* (March 2024), 7, <https://bit.ly/3NitTd7>.

Figure 1: IFC financial exposure to Lower Sesan 2 hydropower project through ABBank



1.1.2 Dam Development in the Mekong Basin

Investments by IFC’s client ABBank in the region were made in the context of prolific dam development. Hydropower development in the Mekong River Basin intensified in the 1990s to 2000s due to energy demands from economic expansion, population growth, and rural-urban migration, as well as a shift from public funding to commercial partnerships between governments and private companies that brought in capital for dam projects.²⁸ In the 2010s, hydropower development surged significantly in Lao PDR, China, and Cambodia,²⁹ from a combination of rising private sector investment, strong support from international financial institutions, and policy changes attracting investment.³⁰

The Mekong’s mainstream, one of the world’s largest river systems, flows more than

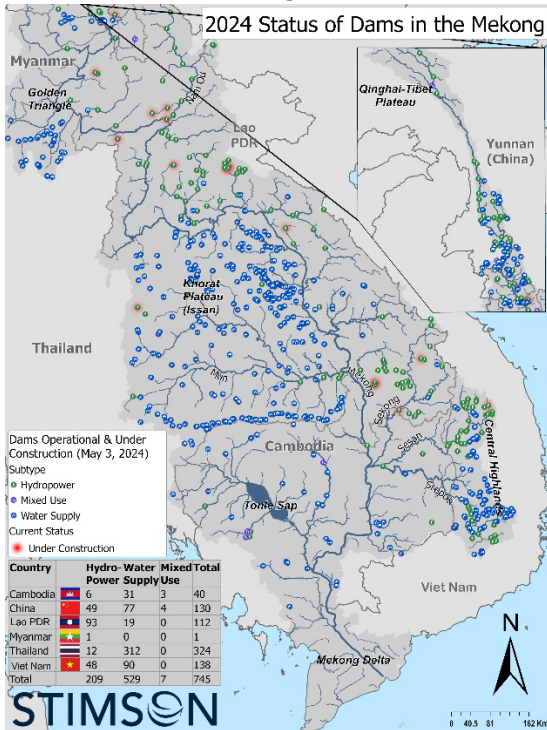
²⁸ Ang, W. J., Park, E., Pokhrel, Y., Tran, D. D., and Loc, H. H., “Dams in the Mekong: A Comprehensive Database, Spatiotemporal Distribution, and Hydropower Potentials, *Earth System Science Data* (March 7, 2024), <https://bit.ly/3L74S3b>

²⁹ While China had the largest capacity increase from the 2000s to the 2010s (+16 854 MW), Lao PDR has the most planned dams and the highest projected growth post-2020s (+18 223 MW). See: Ang, W. J., Park, E., Pokhrel, Y., Tran, D. D., and Loc, H. H., “Dams in the Mekong.” In China, several large dams were constructed on the mainstream Lancang (Mekong) River during the 2010s, including the two largest—the Xiaowan and Nuozhadu—which each hold more than 11 cubic kilometers. See: Chen, Xiaoxian et al., “Balancing competing interests in the Mekong River Basin via the operation of cascade hydropower reservoirs in China: Insights from Systems Modeling,” *Journal of Cleaner Production*, Volume 254 (May 2020), <https://bit.ly/3AZlqkS>. In addition to China’s Lancang Cascade of 11 dams on the mainstream Lancang (Mekong) River in China, other dams have also been built on tributaries of the Lancang River, which ranks first in the region in terms of active storage. See Brian Eyler and Courtney Weatherby, “New Evidence: How China Turned Off the Tap on the Mekong River,” *Stimson* (April 13, 2020), <https://bit.ly/3R1Tuym>.

³⁰ V. Merme et al., “Private Equity, Public Affair: Hydropower Financing in the Mekong Basin,” *Global Environmental Change* 24 (2014), 20–29 (see specifically page 22), <https://bit.ly/3VY4Fph>.

4,800 kilometers (km) through parts of China, Myanmar, Thailand, Lao PDR, Cambodia, and Viet Nam.³¹ The Lower Mekong Basin outside of China includes over 25,000 km of tributaries, and its catchment areas of lowland and floodplain comprise over 80 percent of the national territory of Lao PDR and Cambodia and about 50 percent of Thailand’s national territory.³²

Map 1. Mekong River Basin



(Source: [Stimson Center](#))³³

Currently, around 745 dams have been completed or are under construction on the mainstream and tributaries of the entire Mekong Basin. This development has transformed the natural river system into a highly engineered watershed used for hydropower production, irrigation, urban water supply, and flood control,³⁴ while still supporting the largest freshwater wild-capture fishery in the world.

Studies have described how the rapid development of these dams over the last three decades has occurred without much coordination among the riparian countries of China, Myanmar, Lao PDR, Thailand, Cambodia, and Viet Nam.³⁵

The Lower Sesan 2 dam that is the subject of this complaint is situated near the confluence of the Sesan and Srepok tributaries, approximately 25 km upstream from the mainstream Mekong (see map 2). It sits within the 3S River Basin, which encompasses the Sesan, Sekong, and Srepok river systems in northeastern Cambodia, the central highlands of Viet Nam, and Southern Lao PDR, and makes up the largest tributary basin of the Mekong system, contributing approximately 20 percent to the river’s annual flow.³⁶

³¹ Fred Pearce, *When the Rivers Run Dry: Water, the Defining Crisis of the 21st Century* (Boston: Beacon Street, 2006).

³² Merme et al., “Hydropower Financing in the Mekong Basin,” 21; B. Eyler, “Damming the Mekong to its Ecological Tipping Point,” *Stimson* (January 2021), <https://bit.ly/3XI4eAQ>.

³³ This map was produced by the [Stimson Center](#). The boundaries, colors, denominations, and any other information shown on this map do not imply, on the part of the World Bank Group, any judgment on the legal status of any territory, or any endorsement or acceptance of such boundaries.

³⁴ B. Eyler and R. Kwan, “All Dams Map of the Mekong Basin, Mainstream and Tributaries,” *Stimson* (May 7, 2024), <https://bit.ly/3XF27hi>.

³⁵ Ang, W. J., Park, E., Pokhrel, Y., Tran, D. D., and Loc, H. H., “Dams in the Mekong;” Eyler and Kwan, “All Dams Map of the Mekong Basin.” (2024), 4.

³⁶ B. Eyler et. al., “Analysis of Hydropower Impacts in the Mekong’s 3S Basin,” *Stimson* (June 13, 2023), <https://bit.ly/45L8nWS>

Due to its proximity to Cambodia’s Tonle Sap Lake and Viet Nam’s Mekong Delta, the 3S Basin serves as a crucial pathway for ecological processes such as fish migration, fish feeding and spawning, and sediment transport.³⁷

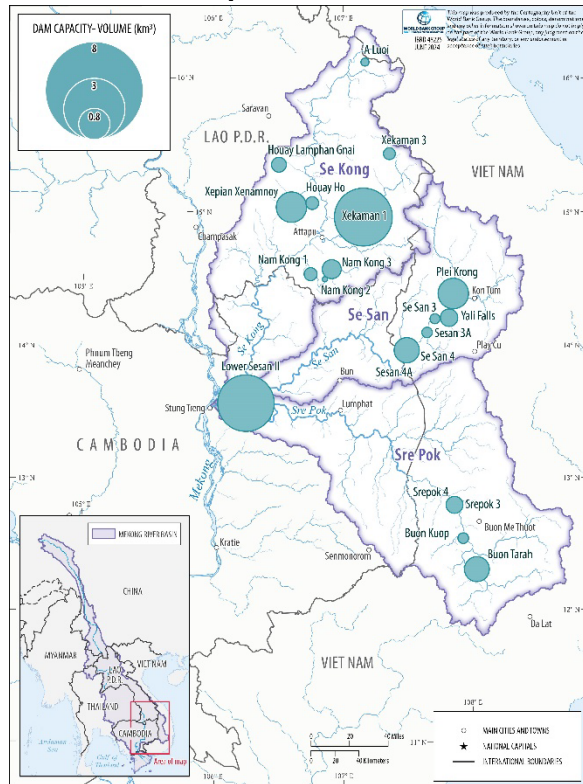
Over the last three decades, 20 hydropower dams have been built on the 3S rivers, totaling an active storage³⁸ of around 6.597 cubic km³⁹ —the third-largest volume within the Mekong Basin.⁴⁰

The largest dam in the 3S Basin is the Xekaman 1 (1.538 km³, 2015) in the Sekong Basin, with the Lower Sesan 2 (1.037 km³, 2018) ranking second in terms of active storage in the 3S Basin and 10th in reservoir size in the Mekong Basin.⁴¹

1.1.3 The Lower Sesan 2 Hydropower Project

In 1999, the Asian Development Bank (ADB) published a master plan for hydropower dam development in the Nam Theun, Sekong, and Sesan River Basins that identified LS2 as a potential project in Cambodia, although located at a different site from where it was eventually developed, upstream of the confluence between the Sesan and Srepok rivers.⁴² In 2007, EVN, through its subsidiary EVNI, sought to activate the LS2

Map 2: 3S Basin



Source: World Bank Group, IBRD 48225, June 2024.

³⁷ Eyler et. al., “Analysis of Hydropower Impacts.”

³⁸ Active storage is water that is above the outflow level and is available to flow through the dam for hydropower production or put to other uses. Active storage is calculated by finding the difference between the total volume reading for a given week and the known or estimated dead storage level for each reservoir. Eyler et. al., “Analysis of Hydropower Impacts.”

³⁹ Eyler et. al., “Analysis of Hydropower Impacts.”

⁴⁰ For comparison, the active storage of the Lancang Cascade is nearly 4 times that of the 3S Basin and comprises 49.5 percent of all estimated active storage in the Mekong. Eyler et. al., “Analysis of Hydropower Impacts.”

⁴¹ Eyler et. al., “Analysis of Hydropower Impacts.”

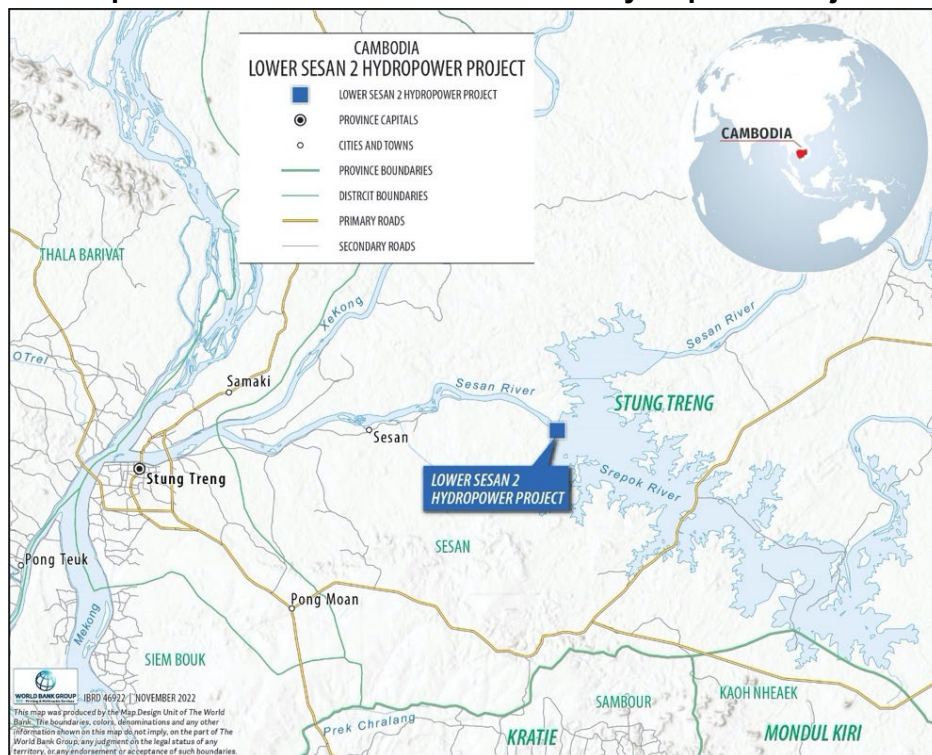
⁴² Halcrow (Sir William) and Partners and Asian Development Bank (ADB). *Se Kong, Se San and Nam Theun River Basins Hydropower Study. Initial Environmental Examination* (1998); Halcrow (Sir William) and Partners and ADB, *Se Kong, Se San and Nam Theun River Basins Hydropower Study. Final Report* (1999). This ADB study aimed to select dam sites for the development of hydropower projects in the Nam Theun, Sekong, and Sesan river basins. The study also developed an index for weighting the economic returns and social and environmental impacts of the projects. Two of the 13 dams examined in this ADB study were the Lower Se San 2 and Lower Srepok 2, located at two sites upstream of the Sesan-Srepok confluence. In its ranking of the 13 projects, the ADB study considered these two dams the least economically sensible. See also, Joakim Öjendal, Vikrom Mathur, and Mak Sithirith, *Environmental Governance in the Mekong, Hydropower Site Selection Processes in the Se San and Sre Pok Basins*, SEI/REPSI Report Series No. 4, Stockholm Environment Institute (2002), 43–45.

project and received permission to conduct a feasibility study.⁴³

LS2 is located in Sesan District, Stung Treng Province, and is the largest hydropower project in Cambodia to date, with an installed capacity of 400 MW. Its location on the Sesan River just below the confluence of the Sesan and Srepok tributaries means it receives flow from both river basins.⁴⁴

The earth-filled LS2 dam stretches over 8 km and has a dam crest situated 83 meters (m) above mean sea level (amsl). According to the project’s 2008 environmental impact assessment (EIA), the dam was expected to create a reservoir covering a surface area of 335 km² at 75 m amsl, leading to the resettlement of 1,059 families from six villages.⁴⁵ It was anticipated that LS2 would contribute approximately one-sixth of Cambodia's total power generation.⁴⁶ However, actual production levels are contested and reportedly significantly lower.⁴⁷

Map 3: Location of the Lower Sesan 2 Hydropower Project



Source: World Bank Group, IBRD 46922, November 2022.

⁴³ *Environmental Impact Assessment for Feasibility Study of Lower Sesan 2 Hydropower Project, Stung Treng Province, Cambodia*, (October 2008, [EIA], p. 3; Vietnam News Agency, “EVN to Look at Cambodian Power Projects. Vietnam News Agency (June 16, 2007).

⁴⁴ EIA, p. S-2

⁴⁵ EIA, p. S-2

⁴⁶ Stimson, “Cambodia Country Profile, An Overview of Policies and Trends on Energy, Transportation, Water, and Industrial Infrastructure in Cambodia,” *Stimson* (January 2021), <https://bit.ly/4bpFvo2>.

⁴⁷ Human Rights Watch, “Underwater—Human Rights Impacts of a China Belt and Road Project in Cambodia,” *Human Rights Watch* (August 10, 2021), <https://bit.ly/3XBzh1j>.

In preparation for LS2, EVNI drafted an EIA in 2008 and a Compensation and Resettlement Policy (CRP) in 2011. In January 2011, the Vietnamese Ministry of Planning and Investment approved a construction budget of US\$816 million,⁴⁸ and the project received government approval in November 2012.⁴⁹ Construction began in 2013. In 2017, the dam’s gates began to close, flooding the reservoir and previously occupied settlements.⁵⁰

Image 1. Aerial view of the Lower Sesan 2 hydropower project



Source: Chen Gang, Xinhua / Alamy Stock Photo.⁵¹

Completed in 2018, the Lower Sesan 2 dam ultimately resulted in the displacement of nearly 5,000 people and impacted upstream and downstream communities who depended on the fisheries of the Sesan and Srepok rivers for food and income.⁵² Relocation of households accepting the resettlement package occurred in 2015–16, but 136 families residing in the reservoir area refused to resettle and instead relocated nearby, just outside the flood zone.

From 2008 through the dam’s completion in 2018, there were ongoing protests by community members expressing opposition to the project, with media reports, studies, and civil society groups raising concerns about the dam’s E&S impacts.⁵³

⁴⁸ Adam Miller and Phak Seangly, “Electricity for Vietnam, *Phnom Penh Post* (June 1, 2011).

⁴⁹ BBC News, “Cambodia Approves Lower Sesan 2 Hydroelectric Dam” (November 2, 2012), <https://bit.ly/45F6U4j>.

⁵⁰ Human Rights Watch, “Underwater, 2021.”

⁵¹ Used with the permission of Alamy Stock Photo. Further permission required for reuse.

⁵² Human Rights Watch, “Underwater, 2021.”

⁵³ Mean Meach, *The Lower Sesan 2 Dam: Potential Impacts of Relocation on Affected Communities* (EarthRight

1.1.4 World Bank Group context for hydropower development in 2010

At the time of IFC’s E&S due diligence for its investment in ABBank, the related risks and impacts of hydropower development were well known.⁵⁴ The World Bank had financed several highly visible hydropower projects that had come under public scrutiny, and large hydroelectric dams had been among the most controversial types of development projects.⁵⁵ The controversies centered around changes in water quantity and quality, soil erosion and sedimentation, biodiversity losses, involuntary resettlement, and disruption to community livelihoods and social fabric.

These controversies had led the World Bank to largely withdraw from the sector in the 1990s, and later to actively invest in developing knowledge on the impacts of dams and how to manage them. In 1998, the World Bank joined with the International Union for Conservation of Nature (IUCN) to establish the World Commission on Dams, led by South Africa’s Water Minister Kader Asmal. The commission, comprising experts from government, the private sector, and civil society, issued a report in 2000 that set the gold standard for determining when and how large dams should be developed, with 26 guidelines for good practice.⁵⁶ Particularly relevant to the allegations in the Lower Sesan 2 case, the report found that:

- In too many cases, an unacceptable and often unnecessary price has been paid in social and environmental terms for the development benefits of dams.
- It is essential to consult and negotiate mitigation measures with all those affected in order to achieve positive outcomes of dam development.
- Conducting comprehensive E&S assessments, paying special attention to maintaining

Mekong School, EarthRights International, 2008); Neou Vannarin and Paul Vrieze, “Dam Project a Dilemma for Stung Treng Villagers,” *The Cambodian Daily* (August 2009), 22–23; David Boyle, “Damming the Future of Villages on the Banks of the Sesan River,” *Phnom Penh Post* (April 30, 2010); May Titthara and Adam Miller, “Flood of Hydrodam Fears,” *Phnom Penh Post* (May 20, 2011). *Phnom Penh Post*, “Little Information on Lower Sesan 2 Dam: Report,” *Phnom Penh Post* (January 25, 2013); K. Ham, S. Hay, and T. Sok, The Politics of the Lower Sesan 2 Dam in Cambodia,” in *Hydropower Development in the Mekong Region: Political, Socio-Economic and Environmental Perspectives*, edited by N. Matthews and K. Geheb (Routledge, 2015), 153–72; Sithirith Mak. “Dams and State Security: Damming the 3S Rivers as a Threat to Cambodian State Security,” *Asia Pacific Viewpoint* 57, no. 1 (2016), 60–75; Oliver Hensengerth, “Regionalism, Identity, and Hydropower Dams: The Chinese-Built Lower Sesan 2 Dam in Cambodia,” *Journal of Current Chinese Affairs* 46, no. 3 (2017), 85–118; W. Nathan Green and Ian G. Baird, “The Contentious Politics of Hydropower Dam Impact Assessments in the Mekong River Basin,” *Political Geography* 83 (2020).

⁵⁴ In May 1998, the World Bank Group and IUCN led the formation of the World Commission on Dams (WCD) to: (i) review the development effectiveness of large dams and assess alternatives for water resources and energy development; and (ii) develop internationally acceptable criteria, guidelines, and standards, where appropriate, for the planning, design, appraisal, construction, operation, monitoring, and decommissioning of dams.

⁵⁵ In 1993, the World Bank withdrew from the Sardar Sandovar Dam because of publicized concerns regarding the loss of fertile land and the large-scale resettlement of communities.

⁵⁶ The World Commission on Dams was born out of a workshop held in April 1997 in Gland, Switzerland, where the World Bank and IUCN invited around 40 representatives from the dam industry, governments, academia, NGOs, and dam-affected people’s movements to discuss a review of World Bank lending for dams. At the workshop, participants agreed on the need for an independent commission to review large dams in general. The Gland workshop mandated the World Bank and IUCN to oversee the establishment of the World Commission on Dams, in close consultation with those present. See WCD, “Dams and Development, A New Framework for Decision-Making, The Report of the World Commission on Dams,” WCD (November 2000), <https://bit.ly/3XFBzfB>.

productive fisheries, and providing an environmental flow to meet social and ecosystem objectives and are all key aspects of successful project design and implementation.⁵⁷

IFC’s 2010 environmental and social due diligence (ESDD) for its investment in ABBank occurred at a time when the World Bank was continuing to grapple with E&S concerns associated with hydropower investments, including Nam Theun 2 in Lao PDR and Bujagali in Uganda. Both projects raised concerns similar to those raised by LS2 complainants, including resettlement and loss of land and biodiversity. In response to the concerns about Nam Theun 2, the World Bank established an International Environmental and Social Panel of Experts to provide an independent review of and guidance for addressing the project’s E&S issues. This panel issued reports from 1997 to 2018, with the 16th report published in 2010, the same year IFC conducted its ESDD on ABBank.⁵⁸ In parallel, in December 2008, the World Bank Board of Directors discussed a report issued by its Inspection Panel on the Bujagali dam project, which examined E&S issues common to large-scale hydropower projects.

Table 1: World Commission on Dams Guidelines for Good Practice		
<p>Strategic Priority 1: Gaining Public Acceptance</p> <p>1 Stakeholder Analysis 2 Negotiated Decision-Making Processes 3 Free, Prior, and Informed Consent</p> <p>Strategic Priority 2: Comprehensive Options Assessment</p> <p>4 Strategic Impact Assessment for Environmental, Social, Health and Cultural Heritage Issues 5 Project-Level Impact Assessment for Environmental, Social, Health, and Cultural Heritage Issues</p>	<p>6 Multi-Criteria Analysis 7 Life Cycle Assessment 8 Greenhouse Gas Emissions 9 Distributional Analysis of Projects 10 Valuation of Social and Environmental Impacts 11 Improving Economic Risk Assessment</p> <p>Strategic Priority 3: Addressing Existing Dams</p> <p>12 Ensuring Operating Rules Reflect Social and Environmental Concerns 13 Improving Reservoir Operations</p> <p>Strategic Priority 4: Sustaining Rivers and Livelihoods</p> <p>14 Baseline Ecosystem Surveys 15 Environmental Flow Assessment 16 Maintaining Productive Fisheries</p>	<p>Strategic Priority 5: Recognizing Entitlements and Sharing Benefits</p> <p>17 Baseline Social Conditions 18 Impoverishment Risk Analysis 19 Implementation of the Mitigation, Resettlement and Development Action Plan 20 Project Benefit-Sharing Mechanisms</p> <p>Strategic Priority 6: Ensuring Compliance</p> <p>21 Compliance Plans 22 Independent Review Panels for Social and Environmental Matters 23 Performance Bonds 24 Trust Funds 25 Integrity Pacts</p> <p>Strategic Priority 7: Sharing Rivers for Peace, Development, and Security</p> <p>26 Procedures for Shared Rivers</p>

Source: World Commission on Dams, “Dams and Development, A New Framework for Decision-Making, The Report of the World Commission on Dams,” WCD (November 2000).

⁵⁷ WCD 2000: Dams and Development, pp. xxviii-xxxv.

⁵⁸ David McDowell, Thayer Scudder, and Lee M. Talbot, “Lao People’s Democratic Republic Nam Theun 2 Multipurpose Project, Sixteenth Report of the International Environmental and Social Panel of Experts,” Lao People’s Democratic Republic (February 25, 2010), <https://bit.ly/4cLwfMI>. See also the book published by the World Bank Group at the time examining the lessons learned from preparation phase of Nam Theun 2: Ian. C. Porter and Jausankar Shivakumar (eds.), *Doing a Dam Better: The Lao People’s Democratic Republic and the Story of Nam Theun 2* (Washington, DC: World Bank, 2010), <https://bit.ly/45JBLMR>.

IFC had also evaluated the E&S impacts and risks inherent in large-scale hydropower development before its ABBank investment. Its 2007 Hydropower Strategy “recognize[d] that hydropower, like many natural resource projects, poses risks, particularly when it involves regulation of rivers or resettlement of local communities. Hence, hydropower must be developed cautiously in the context of broader development goals, including (a) responsible environmental management, (b) poverty alleviation and social development, (c) integrated water and energy management, and (d) institutional development.” The strategy envisions the World Bank Group contributing to hydropower development through a combination of lending, technical assistance, and analytical advisory services, including through financial intermediation, and commits to “attention to environmental and social management and cross-cutting issues, such as revenue management and benefit sharing across all stakeholders, retaining water flows to sustain the environment, and climate change.”⁵⁹

This context is relevant because, in 2010, at the time of IFC’s investment in ABBank, large hydropower projects accounted for over half the client’s lending for power generation.⁶⁰

1.2 Timeline of Key Events

The timeline below shows the key phases and events in relation to IFC’s investment in ABBank and the client’s Lower Sesan 2 hydropower sub-project.

⁵⁹ IFC, “Building a Sustainable Hydropower Partnership,” IFC (June 2007): 29–31. <https://bit.ly/4eGXYiJ>.

⁶⁰ William Rex, Vivian Foster, Kimberly Lyon, Julia Bucknell, and Rikard Liden, “Supporting Hydropower: An Overview of the World Bank Group’s Engagement,” *LiveWire* (World Bank, 2014), 2. <https://bit.ly/3VZXYTW>.

Timeline of IFC’s investment in ABBank and the development of the Lower Sesan 2 hydropower project

ABBank and IFC

Lower Sesan 2 Hydropower Project Development

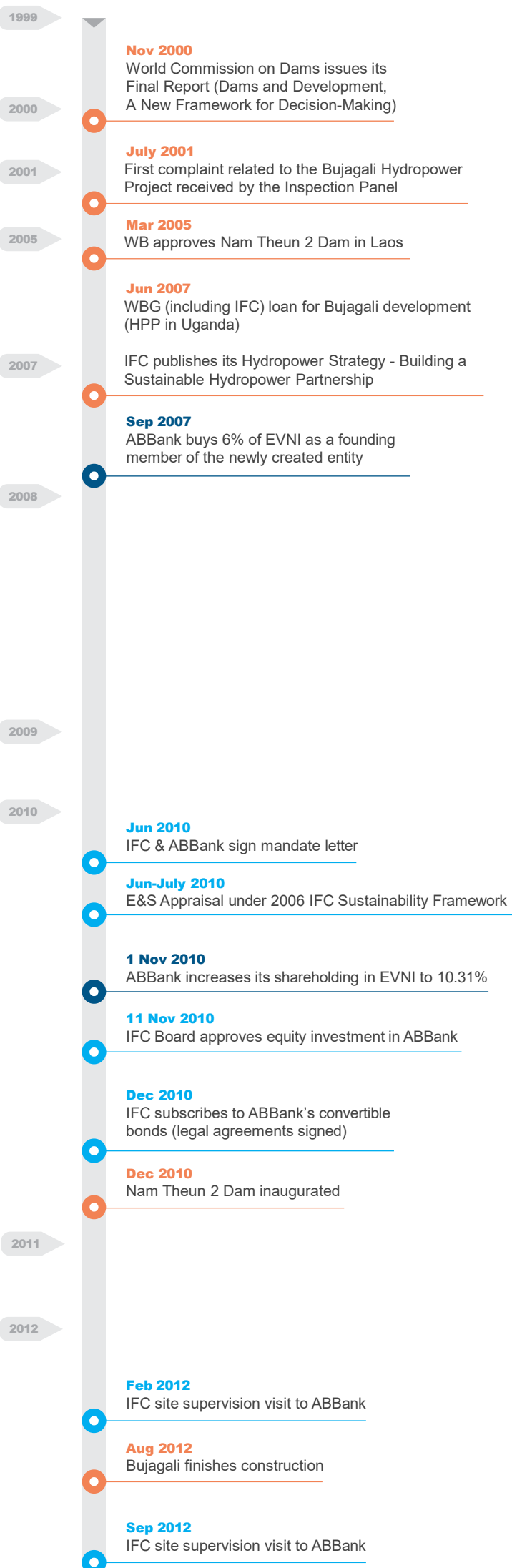
● IFC’s investment in ABBank

● ABBank’s investment in EVNI

● Relevant hydropower dams developments

● EVNI’s investment in LS2

● Community Actions



Continued

Timeline of IFC’s investment in ABBank and the development of the Lower Sesan 2 hydropower project

ABBank and IFC

Lower Sesan 2 Hydropower Project Development

IFC’s investment in ABBank

ABBank’s investment in EVNI

Relevant hydropower dams developments

EVNI’s investment in LS2

Community Actions

2013

Apr 2013
IFC becomes a shareholder of ABBank with 10% of common equity (bonds converted to equity)

May 2013
2012 Annual Environmental Performance Report Review by IFC (first AEPR)

2014

May 2014
2013 AEPR Review

Oct 2014
IFC site supervision visit to ABBank

2015

Apr 2015
2014 AEPR Review

2016

Apr 2016
2015 AEPR Review

Jun 2016
Second Bujagali complaint received by the Inspection Panel

2017

Jul 2017
2016 AEPR Review

2018

Jun 2018
IFC site supervision visit to ABBank + 2017 AEPR Review

2019

May 2019
IFC site supervision visit to ABBank + 2018 AEPR Review in June

Dec 2019
IFC site supervision visit to ABBank

2020

May 2020
2019 AEPR Review

May 2021
IFC virtual supervision visit to ABBank + 2020 AEPR Review

Dec 2021
IFC virtual supervision visit to ABBank
IFC decides not to participate in a rights issue, its position in ABBank is diluted to 8.2%

2023

Mar 2023
IFC site supervision visit to ABBank and 2022 AEPR review

May 2023
2023 AEPR review

Nov 2023
IFC site supervision visit to ABBank

2024

22 May 2024
IFC fully divests from ABBank

2013

Feb 2013
The Lower Sesan 2 Company is registered with Ministry of Commerce
First relocations offered

Apr 2013
Construction of LS2 begins. Logging of the reservoir area began in early 2013

2014

Jan 2014
LS2 and local Cambodian government reportedly finalized a resettlement and compensation plan, but it is allegedly not distributed widely

2014-2015
Indigenous Peoples leaders write letters opposing the project to the companies, Cambodian and Chinese officials

2015

2015
Communities allegedly pressured to accept resettlement packages

2016

By 2018
Approximately 700 families resettled
Approximately 180 families refuse to resettle

2018

Hydropower dam’s gates begin to close

2018
Communities’ lands flooded

2018
Resettled villagers and those who refused report various impacts on their livelihoods
Upstream villagers report frequent and higher level of floods

Dec 2018
Hydropower project fully operational

2019

2020

Nov 2020
Asian Vision Institute (AVI) publishes a Corporate Social Responsibility Report commissioned by the Huaneng Group regarding LS2.

2021

2023

2024

2. Compliance Investigation Framework

This section provides the process and context for CAO’s compliance investigation of IFC’s investment in ABBank. It describes the scope and methodology followed by a summary of IFC policies and procedures that are applicable to this case and therefore relevant to CAO’s analysis.

2.1 Community Complaints

In June 2018, CAO received complaints from three groups of villagers alleging negative E&S impacts from the Lower Sesan 2 project, which they linked to IFC’s investment in ABBank.⁶¹ The complaints were submitted with support from three international nongovernmental organizations (NGOs)—International Rivers, International Accountability Project, and Mekong Watch.

The complainants, who requested that CAO keep their identities confidential, included:

- a) Villagers permanently resettled from Old Kbal Romeas and Old Srekor villages due to the hydropower project
- b) Villagers from Old Kbal Romeas and Old Srekor who refused to resettle
- c) Villagers from Taveng, Lumphat, Kon Mom, Andong Meas, and Veunsai Districts in Ratanakiri Province, located along the Sesan and Srepok rivers upstream of the dam.⁶²

The summary below is based on their written complaints and verbal submissions to CAO.

- a) The resettled villagers state that living conditions and infrastructure at their relocation site are inadequate. Specifically, they allege:
 - Living conditions are not in accordance with verbal promises made by local government officials. Their concerns include insufficient availability of clean well water, lack of capacity at health centers, low quality housing, flooding of new farmlands, and the lack of a properly working sewage system.
 - They were not provided with livelihood restoration programs and support, including for irrigation and to plow farmland, and claim that available farmland does not include planted trees or space to raise animals.
 - They cannot catch fish in the pond provided at the resettlement site because the water is too deep. The resettlement site of New Kbal Romeas is located 3 km from the LS2 reservoir and 7 km by motorboat to their old fishing grounds. Since the dam closed in

⁶¹ The complaints also alleged that IFC was exposed to the hydropower project via two other FI clients. One of them was excluded at eligibility because CAO determined that the nature of IFC’s investment in that client could not have provided exposure to the project, while another (Vietinbank) was excluded during the compliance appraisal because CAO did not find sufficient basis to conclude that IFC has or had exposure to the Lower Sesan 2 hydropower project through such a relationship to provide a basis for a compliance investigation of IFC’s investment in the second FI.

⁶² The spelling of the names of communities, villages, communes, and districts may vary slightly between different documents and sources due to the complexity of adapting names from their original language to English. For example, Sre Angkrang commune also appears as Srea Angkrong commune in the EIA; Kon Mom district may also appear as Koun Mom and Veunsai district as Veum Sai, among other possible spellings.

2017, they have observed a decline in migratory fish species. Following an initial increase in fish population, they say the reservoir’s fish stocks have also declined. Village leaders have indicated that some 30 villagers have died between 2017 and 2022, primarily from high blood pressure due to the changes in their diet.

- They were not appropriately consulted or invited to participate in decision making regarding land allocation; the location, layout, and infrastructure of the resettlement site; the design and size of the replacement houses; livelihood restoration assistance; or the implementation and monitoring of these resettlement activities.
- The options for resettlement packages were not based on their pre-displacement assets and livelihoods and, as a result, their living conditions and livelihoods have not been restored to pre-project levels. The three relocation options (wooden house, concrete house, or cash) were all of the same value and size, which resulted in villagers selling parts of their replacement land and undermining the sustainability of their livelihoods. The replacement land—five hectares (ha) of non-irrigated land per household—was allocated through a lottery system, with some good-quality plots close to the reservoir and other plots with poor soil fertility, leading to yields below pre-displacement production levels. Complainants also argue that the allocation system did not reflect demographic changes between the baseline surveys taken in 2009–2010 and the resettlement in 2016–2017.
- Due to the absence of safe grievance mechanisms in the resettlement area, the complainants did not and still do not feel safe in expressing their issues and concerns about living in the resettlement village. Some allege that they are being closely monitored and have been told that making complaints about living conditions could lead to their resettlement land and homes being taken away from them.

b) The villagers who refused to resettle include about 136 families who did not want to leave their homes and livelihoods and remained in the area around the reservoir. They allege:

- The reservoir flooded their old village and rice fields, and they were not consulted on the boundaries of a logging concession on their customary land, which reduced the space available for in-situ resettlement within their traditional land.
- They are unaware of where the buffer zone of the reservoir ends (the 75 m asl⁶³) and thus did not know where it was safe to build their new houses.
- The villagers from Old Srekor complain that they lack basic infrastructure and sufficient land to farm as a result of flooding, which they attribute to the hydropower project and for which they want to claim compensation.
- Complainants from Old Kbal Romeas and Old Srekor indicate that the change from a running river to a stagnant reservoir has reduced their access to clean water and the productivity of their residual farmland. Some were not allowed to collect salvageable materials from their former houses. They understood it was because they were offered compensation, and the houses then belonged to the government. They were not

⁶³ EIA, p. S-2.

- offered in-kind compensation for the loss of agricultural land and/or assisted in their effort to purchase/obtain replacement land from the companies that lease land surrounding their former villages from the government. The project did not assist those that refused to relocate in restoring their livelihoods to pre-project levels and/or to find alternative livelihoods.
- Complainants from both villages allege that there has been a significant decline in the local fish population, affecting both their diets and incomes.
 - Complainants from both villages allege being subjected to intimidation due to their opposition to the project, including threats from authorities and police checkpoints preventing free movement of villagers and outsider access. Community members state they were accused of being anti-government and charged with incitement. They also claim that staff from schools and health centers in their old villages were removed to the resettlement site, while some households remained in the old villages and therefore lost their access to social services and infrastructure.
- c) The upstream complainants include about 800 families in seven villages along the Sesan River and 1,300 families in eleven villages along the Srepok River, all above the LS2 dam, who jointly allege lack of consultations and dam-related harms to their sources of livelihood. They allege:
- They were not informed or consulted about the hydropower project, the identified impacts from a fall in migratory fish, or the project’s mitigation measures and compensation policies. They claim their only source of information was a local NGO in 2008, which subsequently faced threats from government authorities. Specifically, upstream villagers allege in their complaint that the local government organized a public forum and asked villagers along the Sesan and Srepok rivers to point out who was working with a local NGO and who was against the LS2 project. They add that intimidation by the authorities and police surveillance restricted their ability to hold meetings on LS2.
 - Water levels are changing and fluctuating for communities near the reservoir, and there are fewer fish farther upstream in the Sesan and Srepok rivers, affecting their nutrition and livelihoods as well as damaging property. They claim that floods force them to relocate for one to two weeks annually and have reduced the productivity of their rice fields located near the river as well as their access to clean water during that time. They have also alleged that children and women experience frequent diarrhea, skin problems, and fever, and that the difficulties in accessing clean water for domestic use has particularly affected the sanitation and reproductive health of women.
 - While the 2018 complaint filed by upstream communities reported more fish than usual after the dam gates closed in 2017, they stated that the high and fluctuating water levels made it difficult to use traditional fishing gear. When the complaint was filed, the dam had recently closed, which meant the complaint did not cover subsequent impacts, such as the decline in migratory fish species and reservoir fish stocks, which villagers later observed.

Impacts on Indigenous Communities

All three community groups allege impacts from the LS2 project on Indigenous communities.

Complainants from Kbal Romeas are members of a government-recognized Indigenous community (Bunong), as are complainants from upstream villages (Brao, Kreung, Lun, Tampuan, Jarai, and Kachak),⁶⁴ while communities from Old Srekor include Lao minorities and upstream communities also include other ethnic minorities. All of these groups allege that they were not appropriately consulted during the project’s planning and development process. They claim the dam resulted in their physical and/or economic displacement, negatively impacted their livelihoods, disrupted their socio-cultural setting, and caused destruction of sites that hold significant cultural heritage value.

The members of the Bunong Indigenous community from Old Kbal Romeas who refused to resettle state that they seek to protect their cultural identity and sacred sites. They have indicated that they are willing to sacrifice their lives to protect their land and ancestral graves. They stress that the hydropower project and related flooding has affected the boundaries of their communal forest and their access to sacred sites and ancestral burial grounds, impacting their cultural identity. They also emphasize that they applied for an Indigenous Communal Land Title (ICLT), for which only recognized Indigenous Peoples are eligible. However, their application has been delayed and significantly altered due to an economic land concession granted by the Cambodian government to a private company.

2.2 IFC Response

IFC Management’s response to the complaints⁶⁵ asserts that there is no link between IFC and the Lower Sesan 2 hydropower sub-project that would require the ABBank to apply IFC’s E&S requirements, including the relevant Performance Standards (PS).

IFC Management makes this argument on the basis that ABBank’s investments in EVNI predated IFC’s general purpose investment in ABBank. IFC subscribed to a convertible bond issued by ABBank on December 28, 2010, and became a shareholder after exercising the conversion option of the bond on April 18, 2013. Therefore, IFC argues that its funds were not used to finance ABBank’s existing investment in EVNI, and ABBank’s investments in EVNI were not subject to the E&S requirements under IFC’s Sustainability Policy.

IFC, ABBank, and EVNI did not respond to the complainants’ allegations of harm stemming from LS2.

⁶⁴ In addition to the groups mentioned in the written complaint, upstream complainants reported that some villagers are ethnic Bunong, Kreung, Brao, Lun, or Kavet, which are Indigenous Peoples recognized by the Cambodian government, as well as Khmer Khe, an ethnic minority.

⁶⁵ See the IFC Management Response from July 20, 2022 in appendix 2 of the Cambodia: Financial Intermediaries 01-03, Compliance Appraisal of Complaints Regarding IFC’s Exposure to the Lower Sesan 2 Hydropower Project in Cambodia through ABBank and Vietinbank, November 18, 2022, <https://bit.ly/4gidUJa>.

Further details of IFC Management’s response and perspective on the issues raised, as well as CAO’s response to this stance, are provided in the Analysis and Findings section (sub-section 3.2.1 IFC’s compliance obligations regarding ABBank investments).

ABBank did not provide a written response during the compliance process. However, during the assessment phase of the CAO process, the client argued that its minority equity exposure to EVNI predates IFC’s investment and thus, in their opinion, is not linked to the IFC investment.⁶⁶

2.3 CAO Process

In July 2018, CAO found the villagers’ complaints eligible for an assessment in relation to IFC’s investments in ABBank and Vietinbank. The complainants subsequently sought to engage in a dispute resolution process convened by CAO. However, neither the IFC clients nor the hydropower project operator wished to be involved in the process, as they believed the Cambodian government was better placed to deal with the E&S impacts of the project in the context of a CAO dispute resolution process. Since there was no consensus, and with the complainants’ consent, the case was transferred to CAO’s compliance function on July 5, 2022, for a compliance appraisal.⁶⁷ On November 18, 2022, CAO completed its appraisal, concluding that a compliance investigation was merited in this case.

CAO’s investigation was carried out from December 2022 to June 2024. A draft report was circulated to the IFC and complainants for factual review and comment. IFC and complainants submitted their comments on September 11 and 16, 2024, respectively. CAO’s final report has taken into consideration the parties’ comments on the draft report.

2.4 Scope of Investigation

CAO’s compliance mandate is to carry out reviews of IFC’s compliance with its E&S policies, assess related harm, and recommend remedial actions where appropriate. (See annex C for a summary of CAO’s compliance investigation process). Accordingly, this report documents the investigation findings concerning IFC’s compliance, non-compliance, and any related harm to complainants. In determining whether IFC has complied with its E&S Policies, CAO will include, where appropriate, an assessment of whether IFC has deviated in a material way from relevant directives and procedures.⁶⁸

This report also includes CAO’s conclusions about the underlying causes of the non-compliance identified and recommendations for IFC to consider in developing a Management Action Plan to

⁶⁶ CAO, “Assessment Report regarding Concerns in Relation to IFC’s Investments in ABBank (#29745, #40081) and VietinBank (#28509, #31300, #34124) and Issues Raised in Cambodia,” CAO (June 2022), 5. <https://bit.ly/3AYHSSr>.

⁶⁷ CAO, “Assessment Report regarding Concerns in Relation to IFC’s Investments in ABBank (#29745, #40081) and VietinBank (#28509, #31300, #34124) and Issues Raised in Cambodia”, June 2022, available at: <https://bit.ly/3AYHSSr>

⁶⁸ CAO, “IFC/MIGA Independent Accountability Mechanism (CAO) Policy (hereinafter “CAO Policy”),” CAO (June 28, 2021), paras. 76 and 112

remediate project and sub-project-level non-compliance and related harm and taking institutional steps to prevent future non-compliance.⁶⁹

Terms of Reference from November 2022⁷⁰ set out the following questions for this investigation to answer:

1. Whether IFC has complied with its E&S Policies, including:
 - a. Whether IFC conducted a pre-investment E&S review of its 2010 investment in ABBank as required by the Sustainability Policy; and
 - b. Whether IFC has supervised its 2010 investment in ABBank, including the E&S commitments made in its legal agreements with the client, as required by the Sustainability Policy.
2. Whether the harms and potential harms raised by the complainants are related to any IFC non-compliance.⁷¹

In considering findings regarding Harm and whether any Harm is related to IFC non-compliance, CAO assesses IFC’s review and supervision of its E&S requirements at the project and sub-project level. For this case, CAO considered project- or sub-project-level E&S performance, particularly as it relates to the application of 2006 Performance Standards to the sub-project. The PS relevant to the issues raised in the complaints are summarized in section 2.7 below.

2.5 Investigation Methodology

The CAO investigation team comprised CAO staff, a Khmer interpreter, and the following three external expert consultants:

- A social and environmental specialist with more than 30 years of experience assessing E&S issues in project finance, financial intermediaries, and hydropower projects in more than 70 countries. This consultant reviewed all aspects of the complaint.
- A geography and environmental studies professor with more than 30 years of experience studying the impacts of hydropower dams in the Mekong region, including fisheries and other biodiversity aspects, as well as issues related to Indigenous People in northeastern Cambodia.
- A local Cambodian researcher with more than 10 years of experience on the impacts of development projects in Southeast Asia, particularly Cambodia. His research interests include equitable development and water vulnerability and transboundary impacts in the Mekong region.

⁶⁹ CAO Policy, para. 113.

⁷⁰ CAO, "Terms of Reference for Compliance Investigation of IFC’s Environmental and Social Performance in relation to its Investment in ABBank and its investment in the Lower Sesan 2 hydropower project in Cambodia" (November 18, 2022) <https://bit.ly/4bup1uW>.

⁷¹ CAO Policy, paras. 112–14.

This investigation report was prepared on the basis of:

- A review of IFC project documentation and other materials provided by IFC and ABBank
- A review of publicly available documentation about the Lower Sesan 2 Hydropower Project and EVNI, and sub-project information shared by the parties and other stakeholders
- Interviews with IFC staff, ABBank staff, the complainants, Cambodian government officials, and other stakeholders.

CAO carried out a site visit to Viet Nam and Cambodia in October 2023. During this visit, CAO met with IFC and ABBank staff in Viet Nam. In Cambodia, CAO visited five complainant communities, where it held meetings at which approximately 105 community members participated. One additional meeting was held with about 20 representatives of other affected communities that CAO did not visit directly. CAO also met with 10 civil society organizations who work with and have knowledge of the context, the affected communities’ experiences, and the sub-project. Additionally, CAO met with NGOs supporting the complainants’ communities; national government officials in the Ministry of Environment, the Ministry of Rural Development, and the Ministry of Mines and Energy; the Inland Fisheries Research and Development Institute (IFReDI); and local representatives in Stung Treng of the Provincial Department of Rural Development. As explained in the next section, CAO did not have access to LS2 staff or the sub-project site. CAO also held individual interviews with 15 IFC staff members who are or were involved in the project or who had relevant information regarding the case issues.

2.6 CAO Lack of Access to the IFC Sub-Client and Sub-Project

During this compliance investigation, CAO did not have access to the IFC sub-client, EVNI, or to the sub-project, LS2. CAO made multiple attempts to engage EVNI and the Lower Sesan 2 Hydropower company to include their perspectives on the issues raised in this case and consider any project-specific information and documentation. These attempts, summarized below, have been unsuccessful:

- Since the beginning of this investigation, CAO compliance requested on several occasions between February 2023 and May 2024 that ABBank provide (i) contact information for an EVNI representative and EVNI’s board member in the Lower Sesan 2 project; (ii) supporting documentation of its financial relationship with EVNI and between EVNI and the LS2 project; and (iii) internal ABBank documents and records regarding its management of E&S risks and the management of its EVNI investment.⁷² ABBank confirmed in multiple meetings with CAO that it had contact information for EVNI’s

⁷² Between December 2022 and May 2024, CAO reached out to and followed up with ABBank multiple times requesting this information (CAO emails dated December 8 and 14, 2022; February 6, 2023; August 24, 25, 28, 29, 30, 2023; September 6, 17, 25, 30, 2023; October 3, 2023; November 29, 2023, December 18; 2023; May 2, 8, 9 2024; and conversations during virtual meetings on February 6, 2023; September 11, 2023; and the CAO compliance site visit on October 16–17, 2023.

chairman, who is also EVNI’s representative on the LS2 board of directors.⁷³ However, in June 2024, ABBank informed IFC that EVNI had not consented to ABBank providing CAO with the requested contact information or the supporting documentation, particularly the legal agreements governing their financial relationship. ABBank explained that national law required them to have EVNI’s consent to provide this information to CAO. Hence, CAO was not able to directly contact the sub-client or sub-project, nor was it able to directly review the legal agreements or supporting documentation of the financial relationship between EVNI and ABBank or between EVNI and the LS2 project. Regarding ABBank’s internal records and documents, the client explained that much of the documentation of its investment in EVNI is unavailable due to the passage of time and staff turnover. CAO notes, however, that most of the information requested consists of official records, such as board resolutions governing an active financial relationship between ABBank and EVNI and E&S information regarding ABBank’s environmental and social management system (ESMS).

- CAO also attempted to reach out to EVNI and LS2 through publicly available contact information. In September 2023, CAO sent emails to EVNI and the Lower Sesan 2 Hydropower Company⁷⁴ but received no responses. After further attempts to reach the company by phone, an LS2 representative asked CAO to submit a request through the Ministry of Mines and Energy in Cambodia, which CAO did. Members of the Ministry met with the CAO team, but they did not put CAO in contact with sub-project personnel.
- CAO reached out by email, phone, fax, and courier to Hydrolancang International Energy, LS2’s majority shareholder,⁷⁵ but received no response.

The legal agreement between IFC and ABBank states that the client would provide CAO, as IFC’s independent accountability mechanism, with access to all ABBank records and those of its subsidiaries, employees, and agents who could have knowledge of matters about which CAO seeks information.⁷⁶ CAO notes that the findings in this investigation do not benefit from a full review of project and sub-project information due to CAO’s lack of access to the records and agents of the sub-client and sub-project, in breach of this legal agreement. Nevertheless, despite

⁷³ CAO conducted online meetings with ABBank on February 6, 2023, and September 11, 2023, and conducted the CAO compliance mission to Viet Nam on October 16–17, 2023.

⁷⁴ Emails sent to the chairman and business representative of the Lower Sesan 2 Hydropower Company in Cambodia and to the EVNI chairman and contact person regarding LS2 in Viet Nam on September 8, 2023.

⁷⁵ In September and October 2023, CAO emailed, faxed, and sent letters by courier to different email addresses and two different physical addresses for the chairman of the board and the Overseas Business Department of Hydrolancang International Energy in China. CAO received confirmation by phone that the letters had been received in October 2023. However, Hydrolancang International Energy did not respond to CAO.

⁷⁶ This practice was later established as a requirement for all IFC and MIGA legal agreements in para. 26 of the CAO Policy, which indicates that “[f]inancing or advisory agreements, and contracts of guarantee between IFC/MIGA and their Clients will include obligations for the Clients to permit CAO to (i) have access to the Clients’ records relating to the Project, and in the case of financial intermediary (FI) Clients, such FI Clients’ records relating to relevant Sub-Clients and relevant Sub-Projects, and (ii) visit and inspect the Project, for the purpose of carrying out CAO’s role under this Policy, upon reasonable prior notice to the Clients, and subject to any applicable laws and regulations.”

this lack of access, CAO considers that its findings on the complaints’ issues are supported by sufficient relevant evidence, which is described in each relevant section.

2.7 Applicable IFC Policies

IFC’s 2006 Policy on Environmental and Social Sustainability (the Sustainability Policy) and Performance Standards, together referred to as the Sustainability Framework, were applicable when IFC made its 2010 investment in ABBank. In 2012, IFC updated its Sustainability Framework.⁷⁷

The IFC’s 2006 Sustainability Policy states that “efforts to carry out investment and advisory activities with the intent to ‘do no harm’ to people and the environment” are “central to IFC’s development mission.”⁷⁸ To help meet this mandate, IFC seeks to ensure that the projects it finances are “operated in a manner consistent with the requirements of the Performance Standards.”⁷⁹

As a first step, IFC is required to conduct pre-investment ESDD of all its investment activities. For potential financial intermediary clients, the 2006 Sustainability Policy states that IFC should “revie[w] the business of its FI clients” “through its Environmental and Social Review Procedure”

⁷⁷ CAO notes that IFC has argued that the 2012 Sustainability Policy does not apply to this investment. In this regard, as CAO has indicated in previous cases (see, CAO Compliance Appraisal, Peru: Anglo American Quellaveco SA, May 15, 2013, p. 6; CAO Investigation Report, IFC Investment in Minera Quellaveco SA, Peru, August 29, 2014, p. 17; CAO Compliance Appraisal, Peru: Yanacocha (IFC project #2983), Complaints 04-07, May 29, 2015, p. 9), CAO must apply IFC policies as approved by the Board.

- The 2012 Sustainability Policy was adopted by the Board to be “effective January 2012” without qualification. Later, IFC Management indicated on its [website](#) that the 2012 Sustainability Policy would apply to “investment and advisory projects that undergo IFC’s initial credit review process after January 1, 2012.” However, CAO must apply the policies as approved by the Board, and thus without the limitation added by IFC Management. Therefore, in this case, IFC’s supervision obligations were governed by the 2012 Sustainability Policy from January 2012 onwards.
- In practice, the distinction in this case makes little difference in IFC’s supervision obligations, as both the 2006 and the 2012 Sustainability Policies, as well as all the ESRPs that were in place during the life of this investment (2010–24), required that IFC monitor compliance with the client’s commitments “as expressed in the Action Plan or legal agreement with IFC.” IFC, Sustainability Policy 2006, para. 26, IFC, Sustainability Policy 2012, para. 24,
- At the same time, the obligations in the legal agreement between IFC and ABBank should be carried out as established in the legal agreement, which was never amended. This means, that the client’s (ABBank) obligations remained under the 2006 Performance Standards and the client had an obligation to apply its SEMS Policy to new and *existing* investments during the life of the investment.
- IFC has argued that if the 2012 Sustainability Policy applies to IFC’s supervision obligations, then paragraph 37 of the 2012 Sustainability Policy should also apply, which indicates that E&S requirements will apply to the entire portfolio of the FI that is originated from the time IFC became a shareholder or investor. However, CAO notes that while the 2012 Sustainability Policy applies to IFC’s supervision obligations from January 2012 onward, paragraph 37 does not invalidate a legal commitment made before the 2012 Sustainability Policy that was never amended.

⁷⁸ IFC, “International Finance Corporation’s Policy on Social and Environmental Sustainability,” IFC (April 30, 2006), para. 8, <https://bit.ly/4fy6hgP>; IFC, “International Finance Corporation’s Policy on Environmental and Social Sustainability,” IFC (January 1, 2012), para. 9, <https://bit.ly/40TvfTl>.

⁷⁹ IFC Sustainability Policy 2006, para. 5. The 2012 Sustainability Policy includes similar terms when it states that: “Proposed investments that are determined to have moderate to high levels of environmental and/or social risk, or the potential for adverse environmental and/or social impacts, will be carried out in accordance with the requirements of the Performance Standards.” IFC Sustainability Policy 2012, para. 3.

(ESRP) and “identify activities where the FI could be exposed to social and environmental risk as a result of its investments.”⁸⁰ Based on the ESDD results, IFC will require the FI client to implement E&S policy requirements “proportional to the level of potential risk” posed by its business activity.⁸¹ In all cases, FIs are “required to establish and maintain a Social and Environmental Management System to ensure that its investments meet IFC’s requirements.”⁸²

After a project has been approved by the IFC Board of Directors, committed, and disbursed, IFC monitors the FI’s performance through the client’s Social and Environmental Management System⁸³ and “the client’s commitments in [any] Action Plan [agreed] or the legal agreement with IFC.”⁸⁴ Both the 2006 and 2012 Sustainability Policies establish that in cases where the client fails to comply with its E&S commitments in an action plan or the legal agreement with IFC, IFC must “work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate.”⁸⁵

For FIs providing project finance, IFC’s E&S requirements must include “the Performance Standards where the activity financed presents significant social or environmental risks.”⁸⁶ The following IFC Performance Standards are relevant to the allegations of harm made by complainants in relation to the Lower Sesan 2 Hydropower Project:

⁸⁰ IFC Sustainability Policy 2006, para. 28. A similar requirement is included in the 2012 Sustainability Policy (para. 34), currently in force: “In order to appropriately identify the environmental and social risks related to FI investments during the appraisal process, IFC reviews the existing portfolio and prospective business activities of its FI clients to identify activities where the FIs and IFC could be exposed to risks as a result of their investments, and defines requirements for managing these risks. IFC reviews the implementation capacity of FIs as well as their ESMS, as required by Performance Standard 1.”

⁸¹ IFC Sustainability Policy 2006, para. 28.

⁸² IFC Sustainability Policy 2006, para. 29; see also, IFC Sustainability Policy 2012, paras. 33 and 35.

⁸³ IFC Sustainability Policy 2006, para. 28.

⁸⁴ IFC Sustainability Policy 2006, para. 26; IFC Sustainability Policy 2012, paras. 24 and 45; IFC ESRP 2009, section 10.2.7; IFC ESRP 2014, section 2.1; IFC ESRP 2016, section, 9.2.1; IFC ESRP 2022 and IFC ESRP 2023, section 4.2. The 2012 Sustainability Policy (para. 24) establishes that “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate. *If the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents*, IFC will work with the client to bring it back into compliance and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate.” Additionally, paragraph 45 of the same policy establishes that, to supervise FI investments, IFC must “[i]mplement a regular program of supervision of FI investments with environmental and social risks and/or impacts in accordance with the requirements of IFC’s Environmental and Social Review Procedures.” At the same time, the applicable IFC E&S procedures during the life of the investment all reflected the obligation to monitor the client’s commitments and action plan agreed in the legal agreement. The 2009 IFC ESRP (section 10.2.7) indicates that supervision of FI investments should include a review of the client’s performance against the applicable performance requirements and the status of the implementation of the client’s SEMS plan. This procedure was updated in 2014, and the 2014 and 2016 IFC ESRP (section 9.2.1) indicate that FI supervision entails “[a]ssessing the client’s level of compliance with the E&S requirements including all conditions of disbursement, *Environmental and Social Action Plan (ESAP) items and other E&S covenants included in the legal agreement*”. The procedures were again updated in 2022 and 2023 ESRPs, where the first objective of the E&S supervision is listed as “Assess[ing] the status of Client compliance with E&S requirements of *the investment contract (including the ESAP, COD, Negative and Affirmative Covenants and reporting requirements)*” (emphasis added).

⁸⁵ IFC Sustainability Policy 2006, para. 26; IFC Sustainability Policy 2012, para. 24.

⁸⁶ IFC Sustainability Policy 2006, para. 28.

- *PS1 (Social and Environmental Assessment and Management System)*: Requires clients and sub-clients to engage with affected communities through the disclosure of information, consultation, and informed participation in a manner commensurate with the risks to and impacts on the affected communities.⁸⁷ The client is required to establish a grievance mechanism to receive, respond to, and facilitate the resolution of affected communities’ concerns and grievances about the client’s E&S performance.⁸⁸ Requirements on project consultation and grievance mechanisms are also found in PS 5, 6, 7, and 8.
- *PS4 (Community Health, Safety, and Security)*: Requires clients to avoid or minimize adverse impacts from project activities on soil, water, and other natural resources in use by affected communities.⁸⁹ These requirements primarily apply to projects that may result in significant changes to the physical environment, including hydrologic regimes. In these cases, special precautions should be followed to prevent geological instability, safely manage storm water flow, prevent a reduction in surface and groundwater for human and agricultural use (depending on what water sources the community traditionally relied on), and prevent degradation in the quality of these resources. These requirements also apply to soil resources used by the community for agricultural or other purposes.⁹⁰
- *PS5 (Land Acquisition and Involuntary Resettlement)*: Requires clients to avoid or minimize involuntary resettlement and economic displacement and, when unavoidable, to carefully plan appropriate measures to mitigate the adverse impacts on displaced persons and communities. When physical displacement cannot be avoided, PS5 requires that the client “offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods.” PS5 also requires a census with socio-economic baseline data to identify affected persons, the development of a Resettlement Action Plan, and the monitoring of its implementation.⁹¹ Resettlement is considered complete when

⁸⁷ PS1 requires the client to implement an ongoing process of community engagement. The purpose of community engagement is to build and maintain over time a constructive relationship with communities that may be affected by the project. Community engagement must be free of external manipulation, interference, coercion, and intimidation, and conducted on the basis of timely, relevant, understandable, and accessible information. As part of its community engagement process, the client is required to disclose relevant project information that helps affected communities understand the risks, impacts, and opportunities of the company’s operations. Where the client prepares an ESIA and an action plan, these should be disclosed. When affected communities may be subject to risks or adverse impacts from a project, community engagement further requires the client to undertake a process of consultation providing the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, which allows the client to consider and respond to them. 2006 PS1, paras. 16, 19–21.

⁸⁸ The grievance mechanism should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution. 2006 PS1, para. 23.

⁸⁹ 2006 PS4, para. 9

⁹⁰ 2006 Guidance Note 4, Community Health, Safety and Security, (July 31, 2007), para. G16.

⁹¹ The requirements include: (i) carrying out a census with an appropriate socio-economic baseline data to identify the

the adverse impacts have been addressed in a manner consistent with PS5.⁹² Where the client uses land that results in loss of productive assets, income, and/or livelihood (economic displacement), PS5 requires the client to:⁹³ (i) promptly compensate persons for loss of assets or access to assets at full replacement cost; (ii) provide replacement property (such as agricultural land) of equal or greater value or cash compensation to persons with a legal right or recognizable claim under national law; (iii) compensate persons without a legally recognizable claim to land for loss of assets such as crops at full replacement cost; (iv) provide additional targeted assistance and opportunities to affected persons to at least restore their income-earning capacity, production levels, and standards of living; and (v) provide transitional support to displaced persons for a reasonable estimated amount of time required to restore their income-earning capacity, production levels, and standards of living. PS5 also requires clients to disclose all relevant information to people affected by resettlement to facilitate their informed participation in decision-making processes related to their physical and economic displacement, and to establish a grievance mechanism to receive and address specific concerns about compensation and relocation, including “a recourse mechanism designed to resolve disputes in an impartial manner.”⁹⁴

- *PS6 (Biodiversity Conservation and Sustainable Natural Resource Management):* Requires clients to avoid or minimize adverse impacts to biodiversity in the project’s area of influence and to assess the significance of project impacts on biodiversity during the Social and Environmental Assessment process. Such an assessment should account for differing values attached to biodiversity by specific stakeholders and should identify impacts on ecosystem services. The client should not significantly convert or degrade natural habitats unless there are no technically and financially feasible alternatives; the overall benefits of the project outweigh the costs, including to the environment and biodiversity; and any conversion or degradation is appropriately mitigated. Mitigation measures should be designed to achieve no net loss of biodiversity where feasible and may include a combination of actions such as post-operation restoration of habitats, offset of losses through the creation of ecologically comparable area(s) managed for biodiversity, and compensation to direct users of biodiversity. In modified habitats, clients should exercise care to minimize any conversion or degradation and, depending on the nature and scale of the project, identify opportunities to enhance the habitat and protect and conserve biodiversity as part of their operations.⁹⁵

persons who will be displaced by the project, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits; (ii) developing a resettlement action plan or a Resettlement Policy Framework based on a E&S assessment that covers the applicable requirements of PS5 to mitigate the negative impacts of displacement, identifying development opportunities, and establishing the entitlements of all categories of affected persons; and, (iii) establishing procedures to monitor and evaluate the implementation of resettlement plans and taking corrective action as necessary. 2006 PS5, paras. 11 and 12.

⁹² 2006 PS5, para. 12.

⁹³ 2006 PS5, para. 20.

⁹⁴ 2006 PS5, paras. 9–10.

⁹⁵ 2006 PS6, paras. 4–7.

- *PS7 (Indigenous Peoples)*: Requires clients and sub-clients to undertake an assessment of whether their business activities pose risks to or have impacts on Indigenous Peoples.⁹⁶ In addition to identifying project-affected Indigenous Peoples, the IFC client’s assessment must identify the nature and degree of the expected social, environmental, and cultural impacts (including impacts on cultural heritage, which is also protected under PS8) and avoid adverse impacts whenever feasible.⁹⁷ Where avoidance is not feasible, the client must minimize, mitigate, or compensate for these impacts in a culturally appropriate manner. The client’s actions will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan or broader community development plan with separate components for Indigenous Peoples as required by PS7.⁹⁸ Where there are adverse impacts on Indigenous Peoples, clients must hold a consultation process to ensure free, prior, and informed consultation⁹⁹ and facilitate their informed participation on matters that directly affect them.¹⁰⁰
- *PS8 (Cultural Heritage)*: Requires clients to protect cultural heritage from adverse impacts of project activities and to support its preservation.¹⁰¹ The client should assess such adverse impacts in the project’s area of influence using qualified and experienced experts.¹⁰² IFC clients must also identify cultural heritage sites based on consultations with relevant communities and incorporate their views into project decision making.¹⁰³

⁹⁶ 2006 PS7, para. 5. PS7 outlines the following characteristics by which to determine if a group should be considered Indigenous Peoples: (i) self-identification as members of a distinct Indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture; (iv) an Indigenous language, often different from the official language of the country or region.

⁹⁷ 2006 PS7, para. 7.

⁹⁸ 2006 PS7, para. 8 and 9.

⁹⁹ CAO notes that free, prior, and informed consent is a 2012 Performance Standard requirement. Under the 2006 Performance Standards, the requirement is free, prior, and informed consultation.

¹⁰⁰ 2006 PS7, para. 9. The consultation process should include: (i) the involvement of Indigenous Peoples’ (IP) representative bodies; (ii) be inclusive of women and men and of various age groups; (iii) provide sufficient time for IP collective decision-making process; (iv) facilitate IP expression of their views, concerns, and proposals in their language without external manipulation, interference, or coercion, and without intimidation; and (v) ensure that a grievance mechanism is established that is culturally appropriate and accessible to IP. Through the process of free, prior, and informed consultation and with the informed participation of the affected communities of IP, the client will: (i) identify opportunities for culturally appropriate development benefits commensurate with the degree of project impacts and document these development benefits; (ii) avoid, minimize, and document impacts on IP land; expert documentation of their use by IP; inform Indigenous Peoples of their rights under national laws, negotiate in good faith with IPs; (c) consider feasible alternatives to the relocation of Indigenous Peoples from traditional or customary lands and when not feasible to enter into good faith negotiations with the affected Indigenous communities and document their informed participation and the successful outcome of the negotiation. 2006 PS7, paras. 10, 12–14.

¹⁰¹ 2006 PS8, Objectives.

¹⁰² 2006 Guidance Note 8, Cultural Heritage, (July 31, 2007), para. GN9.

¹⁰³ 2006 PS8, para. 6.

3. Analysis and Findings

Under the policies summarized above, IFC’s ESDD and supervision activities should have identified and assessed the E&S risks and impacts of ABBank’s operations and supervised the client’s E&S performance against the project’s Environmental and Social Action Plan (ESAP) and legal commitments. This section examines IFC’s actions during pre-investment ESDD and subsequent client supervision from 2010 to 2024 in relation to the complainants’ allegations of impacts and harm associated with the Lower Sesan 2 hydropower sub-project.

3.1 IFC Pre-Investment Due Diligence

3.1.1 Summary of IFC Actions

IFC carried out its ESDD of ABBank from June 30 to July 26, 2010. As part of this due diligence, IFC reviewed the following information provided by the client:

1. FI Social and Environmental Management System (SEMS) questionnaire: States that ABBank had no E&S policy or procedures but did include some social and environmental considerations during its credit appraisals. These considerations focused on the client’s management capacity, compliance with national laws, and technical support from external parties.
2. PS2 questionnaire related to labor issues: The client provided information about its human resources policies, terms of employment, and workforce labor statistics.
3. FI questionnaire on energy efficiency/renewable energy: ABBank provided information about its products, targets, and strategy, and emphasized the bank’s involvement in financing hydropower projects, but did not address related E&S issues.
4. A sample equity due diligence questionnaire: The client sample included a section on “environmental matters” but contained no E&S information. When asked about equity investments, ABBank did not mention EVNI.

This limited E&S due diligence did not include a detailed review of IFC’s prospective client’s portfolio and related exposure to E&S risks, falling significantly short of what was required under the Sustainability Policy.¹⁰⁴ As a result, IFC was not in a position to fully understand and evaluate the E&S risk profile of its client or the resulting implications.

In contrast to its inadequate E&S due diligence, IFC project documents demonstrate robust financial due diligence of ABBank’s portfolio. IFC’s financial analysis involved a detailed review of the bank’s 25 largest exposures, 10 largest non-performing loans, six economic groups/related parties, and 25 randomly selected loans, covering approximately 40 percent of ABBank’s loan

¹⁰⁴ IFC Sustainability Policy 2006, para. 28.

portfolio. Documents from this analysis provide evidence that the client’s strategic partnership with EVN, ABBank’s largest client and shareholder, was a key driver for this IFC investment. IFC was therefore aware that EVN owned and operated at least 21 hydropower and coal-fired power plants, that it had been tasked by the Vietnamese government to double generation by 2020 and enhance its interconnectivity with Cambodia and Lao PDR, and that ABBank had put together a comprehensive service package for EVN companies, including corporate loans.¹⁰⁵ Project financial documentation also confirms that IFC Management considered ABBank to have exposure to a wide range of clients, including limited exposure to the renewable energy sector in the form of hydropower projects via its involvement with EVN. This analysis included ABBank’s relationship with EVN’s sub-entity, EVNI, created specifically to develop the Lower Sesan 2 dam. ABBank’s annual reports from 2007–09 all reported that ABBank held equity in EVNI, and IFC’s own credit risk rating listed EVNI (under its previous name of EVN Cambodia JSC) as one of ABBank’s equity investments.¹⁰⁶

CAO also notes that ABBank increased its shareholding in and thus exposure to EVNI from 6 to 10.31 percent immediately prior to IFC’s approval of its investment. ABBank acquired the new shares in EVNI on November 1, 2010, while the IFC Board of Directors approved IFC’s investment in ABBank on November 11, 2010.¹⁰⁷

IFC’s parallel E&S due diligence determined that the applicable performance requirements for the prospective client to meet included: (i) the IFC FI exclusion list; (ii) applicable national laws and regulations; and (iii) the 2006 IFC Performance Standards. IFC and ABBank agreed on a Social and Environmental Management System Plan (SEMS Plan) (equivalent to an ESAP), which was attached to their binding legal agreement. This plan required ABBank to fulfill the following commitments within three to nine months after disbursement.

¹⁰⁵ ABBank stated that it had “signed a Comprehensive Corporate Agreement with EVN’s member companies” in 2007. ABBank, *Annual Report 2007* (2007), 25, bit.ly/3XZc5K3.

¹⁰⁶ ABBank’s 2007 annual report stated that ABBank had contributed to the establishment of EVN Cambodia Joint Stock Company, which in 2008 became EVNI. See ABBank, *Annual Report 2007*, p. 21, <https://bit.ly/3XZc5K3>. In its 2008 annual report, ABBank highlights that it had invested VND 84 billion, i.e. 3.5 percent in EVN Cambodia. See ABBank, *Annual Report 2008*, p. 28, <https://bit.ly/3XYz8EU>; ABBank, *Annual Report 2009*, pp. 26–29, <https://bit.ly/3TMBuEa>.

¹⁰⁷ Timeline of the investment provided by IFC; ABBank 2009 Financial Report, and ABBank 2011 Financial Report 2011.

IFC/ABBank SEMS Plan
<ol style="list-style-type: none">1. Nominate a SEMS officer to oversee the implementation of the E&S management system before commitment.2. Establish a SEMS policy document to ensure that bank operations are consistent with the Performance Standards, applicable E&S regulations of the country and the IFC exclusion list. The SEMS policy needed to incorporate the following as risk screening and management criteria: (i) a list of relevant applicable E&S laws; (ii) the IFC exclusion list; and (iii) the 2006 IFC Performance Standards.3. Develop a SEMS Implementation Plan.4. Develop SEMS procedures and implementation guidelines.5. E&S staff training.6. Incorporate E&S criteria into the bank’s internal information/monitoring system.7. Apply the SEMS policy to all new loans and investments.8. Ensure compliance of all existing loans and investments with the SEMS policy document requirements.9. Conduct quarterly reputational risk screening.10. Conduct annual internal review of SEMS implementation.

Central to CAO’s investigation was the agreement, under item eight above, that ABBank would ensure compliance of all existing loans and investments, which included its investment in EVNI, with the 2006 IFC Performance Standards. The compliance implications of this legal commitment are further discussed in section 3.2 of this report.

IFC also shared with the client an Environmental and Social Policy template, indicated it had reviewed the FI’s capacity to manage E&S risks and to establish and maintain a SEMS, and stated that “IFC may suggest supplemental actions to address any gaps in the SEMS.”¹⁰⁸

The legal agreement between IFC and ABBank was signed in December 2010, with the SEMS plan attached as a legal commitment for this investment.

3.1.2 CAO Analysis and Findings of IFC’s Pre-Investment Review (ESDD)

CAO finds that IFC did not conduct an adequate pre-investment review of ABBank’s business to identify activities with potential social and environmental risks as a result of its investments, as required by the 2006 Sustainability Policy (para. 28), for the reasons

¹⁰⁸ The publicly available information about the SEMS plan only mentions the following: “Based on the review, the project will be required to: (i) Develop an, or upgrade, if necessary, any existing SEMS, prior to disbursement to the satisfaction of IFC; (ii) Identify responsible, qualified persons to manage and implement the SEMS (SEMS officer); (iii) Commit to implement the SEMS, to ensure that its investments/activities supported by IFC financing are in compliance with the Applicable Performance Requirements; (iv) Demonstrate commitment to applying the labor standards established by the IFC Performance Standard 2: Labor and Working Conditions; and (v) Submit a periodic report to IFC as per a format to be provided by IFC.” See <https://disclosures.ifc.org/project-detail/SPI/29745/abbank-equity-cb>.

discussed below.

IFC made its 2010 investment in ABBank under the 2006 Sustainability Policy. The 2006 Sustainability Policy required IFC to review, through its ESRP, the FI client’s business to identify activities where the FI could be exposed to E&S risks as a result of its investments and, on that basis, establish the needed E&S requirements.¹⁰⁹

The ESRP applicable in 2010 indicates that IFC’s review of ABBank’s business activities to identify possible environmental, social, and reputational risks, should have involved:

- IFC recording its decision and supporting analysis on the project’s E&S requirements.
- IFC obtaining information from the Investment Department on the FI’s portfolio and ESMS, including labor practices.
- IFC determining: (i) the significance of business activities that have potential E&S impact by reviewing the portfolio and sectoral information; and (ii) the applicable performance requirements.
- IFC reviewing “the tenor, transaction sizes and the industrial sectors where the FI is investing,” so that, “where the portfolio review indicates that the FI’s investments could have potentially significant E&S impact,” the FI ensures that its subprojects meet the relevant elements of the IFC PS in addition to national laws and regulations.¹¹⁰
- IFC reviewing the client’s ESMS and existing sub-projects when the FI’s portfolio requires the application of the Performance Standards to consider the ESMS’s adequacy to implement the applicable performance requirements, considering the following client competencies:
 - E&S policies and procedures
 - Current organizational structure and staffing

¹⁰⁹ IFC Sustainability Policy 2006, paras. 28 and 29.

¹¹⁰ The 2009 IFC ESRP (section 7.2.8) states: “For FI investments where the FI is engaged in providing equity, loans, or other financing to corporate or legal entities other than individuals, or for other activities that are expected to have potential E&S impacts: (a) Categorize the project as Category the project as Category FI, and require the FI to develop an ESMS to ensure application of the FI Exclusion List, applicable national E&S regulations and possibly the IFC PS; record the decision and supporting analysis in the ESRD; and provide language for the MOR, as indicated in Annex 7.5.7. i. For FIs where there are potential significant E&S risks associated with their financing activities (e.g., large infrastructure or extractive sector projects) or where IFC is more directly exposed to the E&S risks of their financing activities (e.g., private equity fund operations), apply the requirement that IFC will reserve the rights to review the FIs’ first few financing activities in such areas to ensure the FIs’ ESMS implementation.” Sections 7.2.12 and 7.2.13 of the 2009 IFC ESRP add that “For all FI investments [...] meeting the requirements outlined in Procedure No. 7.2.8: a. Obtain further information regarding the FI’s portfolio either using the Financial Intermediary Portfolio Questionnaire (Annex 7.5.8) and/or similar portfolio information available from the Investment Department,” and “Determine the significance of business activities that have potential E&S impact by reviewing the portfolio and sectoral information. Determine the Applicable Performance Requirements as outlined below:

- a. All FIs will ensure that their financing and investments are not in contravention of an IFC Exclusion List;
- b. In addition, review the tenor, transaction sizes and the industrial sectors where the FI is investing:
 - i. Where the portfolio review indicates that the FI’s investments are expected to have limited E&S impact, the FI will ensure that its subprojects meet the applicable national E&S laws and regulations;
 - ii. Where the portfolio review indicates that the FI’s investments could have potentially significant E&S impact, the FI will ensure that its subprojects meet the relevant elements of the IFC PS in addition to applicable national E&S laws and regulations.”

- Skills and competencies in E&S areas
- Training and awareness of the client’s investment, legal, and credit officers on the organization’s E&S requirements and the ESMS
- Performance monitoring procedure
- Reporting of results to management
- Track record in ESMS implementation.¹¹¹
- IFC identifying any gaps in the ESMS that would need to be addressed before commitment or as a condition of disbursement. Gaps in the ESMS of FIs engaged in projects with either potentially significant E&S risks or that risk exposure more directly to IFC had to be closed to ensure compliance with the applicable performance requirements before IFC commitment or as a condition of IFC disbursement.¹¹²

IFC’s E&S due diligence records do not include documentation of any review of specific loans and investments in ABBank’s portfolio as required by the 2006 Sustainability Policy, which mandates that IFC review an FI’s business to identify activities with potential E&S risks through the processes detailed in the ESRP. There is no record in project E&S documents that IFC followed the procedures in the ESRP, as also required by the 2006 the Sustainability Policy (para. 28) to: (i) record its analysis of the project’s E&S requirements; (ii) obtain information from the Investment Department on the FI’s portfolio review; (iii) determine the significance of business activities with potential E&S impact and their applicable performance requirements; and (iv) review whether the prospective FI client’s sub-projects met the relevant elements of the IFC PS in addition to national laws and regulations.

Project documents demonstrate that IFC was aware that ABBank was involved in power-generating projects, including hydropower projects, which have known significant E&S impacts and risks.¹¹³ However, IFC’s ESDD did not evaluate and identify activities where the FI client, and by association IFC, could be exposed to E&S risk as a result of its investments.

Not reviewing the prospective client’s portfolio from an E&S perspective¹¹⁴ created a significant blind spot in IFC’s E&S due diligence. For example, during the investment’s approval process from August 2010 to just prior to signing the legal agreement in December 2010, there were questions as to whether ABBank was financially exposed to thermal/coal power operations. IFC’s investment team repeatedly informed IFC Management that ABBank had no exposure to thermal/coal power operations. Given the E&S risks and impacts of thermal/coal power operations, a diligent E&S review of ABBank’s business activities would have found that, as of 2010—the same year of the IFC investment—ABBank had become a shareholder of EVN entities, including EVNI and the Pha Lai Thermal-Power Company,¹¹⁵ which operates the largest coal-

¹¹¹ IFC ESRP 2009, section 7.2.17.

¹¹² IFC ESRP 2009, section 7.2.18.

¹¹³ WCD 2000: Dams and Development.

¹¹⁴ The applicable ESRP requirements have been previously noted. As described in section 3.1.1, IFC’s ESDD did not include a review of the client’s portfolio and related E&S risks of its operations, in contrast to the financial due diligence, which did review the bank’s 25 largest exposures, 10 largest nonperforming loans, six economic groups/related parties, and 25 randomly selected loans, covering approximately 40 percent of ABBank’s loan portfolio.

¹¹⁵ ABBank *Annual Report 2010*, p. 28, <https://bit.ly/3N8uH3U>.

fired power plant in Southeast Asia.¹¹⁶

Additionally, information provided by ABBank to IFC during the ESDD included inconsistencies that IFC should have analyzed to fully understand the nature and scale of E&S risks present in the client’s business activities. For example, in the SEMS questionnaire, ABBank stated that it had not financed projects that entailed land acquisition. Yet IFC was aware at the time that ABBank had made significant loans to EVN, which operated hydropower projects, which usually involve land acquisition. In fact, ABBank stated in the energy efficiency questionnaire that it had financed hydropower projects, some of which required land acquisition and community resettlement.

CAO notes that the investment was thus approved by IFC Management without consideration of the significant E&S risks of its prospective client’s portfolio. Specifically:

- *The significant risks and impacts associated with hydropower investments.* IFC was aware that ABBank had hydropower investments and was invested in EVNI. While it does not appear that IFC made the connection between EVNI and LS2 in 2010, CAO notes that at the time, EVNI was ABBank’s largest overseas equity investment, and EVNI’s main purpose was developing the LS2 project. Despite this clear connection, IFC did not identify or assess the significant E&S and reputational risks that EVNI and the LS2 dam would represent in ABBank’s portfolio.
- *The IFC investment review meeting did not include consideration of E&S information.*¹¹⁷

IFC Management’s statement to the IFC Board of Executive Directors, when submitting this investment for approval, indicated that ABBank’s E&S risk management framework had “room for improvement” and that ABBank was willing to work with IFC to develop the SEMS and corresponding procedures. However, at the time of Board approval, ABBank did not have an E&S risk management framework, policy, or procedure in place. According to the information provided by ABBank during due diligence, it simply included some social and environmental considerations during its credit appraisals. In addition, ABBank did not have dedicated staff tasked with E&S assessment or monitoring of E&S risks and impacts. IFC therefore had no real basis on which to “improve” the client’s “E&S framework,” particularly without a corresponding understanding of the E&S risks of the portfolio, which it did not have due to the lack analysis of such risks. While IFC did inform the Board that the client “would develop” a SEMS policy document, the information provided to the Board failed to adequately convey how little information IFC had regarding ABBank’s E&S capacity, practices, and procedures.

CAO notes that IFC was required under the ESRP to review prior to investment whether the

¹¹⁶ Minh Hein, “Pha Lai Thermal Power JSC: Full Operation to Power National Economy,” *Vietnam Business Forum* (August 17, 2010), <https://vccinews.com/news/21315/index.html>.

¹¹⁷ The investment review meeting (IRM) is where the project team presents the project to IFC Management for it to make a decision on the investment. The supporting documentation provided by IFC about the IRM for the ABBank investment does not include E&S information.

client’s ESMS was adequate for implementing the applicable E&S performance requirements in areas such as policies, staff capacity, organizational structure, and track record, among others.¹¹⁸ During ESDD, IFC gathered no information on most of these aspects, as the client did not have an ESMS or any type of E&S policy in place until after IFC’s investment.

As described in section 1.1.4, the World Bank Group was focused on careful planning and monitoring of compliance with E&S standards to mitigate the risks and impacts inherent in dam construction and operations at the time IFC conducted its due diligence on ABBank. In this context, and given that its own hydropower strategy had been published three years earlier, IFC should have strengthened its due diligence to identify the E&S risks of the FI’s investments. Instead, IFC conducted an inadequate ESDD of a prospective client it knew: (i) had hydropower investments; (ii) had never had an ESMS or an E&S officer; and (iii) had no experience in examining the E&S risks of its own financial investments.

As a result, IFC Management submitted the investment to the Board for approval without appropriately apprising it of the nature and magnitude of the E&S risks associated with the client’s portfolio.¹¹⁹ As such, the IFC Board of Directors approved the project without being appropriately informed of the considerable E&S risks in the FI’s existing portfolio.

3.1.3 Missed opportunities to influence project development

CAO notes that, at the time of IFC’s investment, ABBank was a founding financier of the Lower Sesan 2 developer (see section 1.1.1 above) and as such had an opportunity to positively influence the project’s development.

IFC conducted its pre-investment due diligence two years after the EIA for the Lower Sesan 2 project was drafted in 2008. However, the project was still early in development, with construction getting underway in 2013. In such circumstances, and given the sub-project’s sensitivity, IFC could have provided ABBank with technical guidance related to stakeholder engagement, disclosure of information, and grievance mechanisms; physical and economic displacement; impacts on biodiversity and natural resources; and impacts on Indigenous Peoples. Instead, this opportunity was missed because IFC’s pre-investment review of ABBank’s client activities failed to identify E&S risks.

The ESRP applicable at the time required IFC to consider reviewing the E&S performance of existing sub-clients during ESDD if a review of the overall client portfolio identified potential E&S

¹¹⁸ IFC ESRP 2009, section 7.2.17.

¹¹⁹ IFC Sustainability Policy 2006, para. 28.

risks and impacts.¹²⁰ Given IFC’s expertise on E&S issues, combined with ABBank’s reported lack of experience and E&S capacity, as well as the heightened attention being afforded to sustainable hydropower development by the World Bank Group at the time, this review could have been an opportunity for IFC to significantly enhance the Lower Sesan 2 project by ensuring that ABBank fully understood IFC’s E&S requirements and how they should be applied to a hydropower project, including others in its portfolio.

Taking into account the impacts, risks, and mitigation measures identified in the LS2 project’s 2008 EIA (see annex A for a detailed description), CAO considers that IFC could have provided guidance to supplement the existing EIA or encouraged ABBank to require its client EVNI to enhance the project E&S assessment, in the following areas:

1. Expanding and increasing the frequency of the consultations and information disclosure to all affected communities identified by the EIA on an ongoing basis. The EIA reported that “approximately 300,000 people upstream and downstream of the project area” would be directly or indirectly affected,¹²¹ yet consultations consisted of two meetings between February and April 2008 in only the five communities that would be completely or partially submerged by the reservoir.¹²²
2. Better reflecting the specific needs of and differentiated impacts on disadvantaged or vulnerable individuals and groups and on Indigenous Peoples.¹²³ The EIA identified project-affected Indigenous Peoples and ethnic minority groups but included no special

¹²⁰ The applicable ESRP at the time of ESDD for this investment provides that the IFC E&S officer should “[d]etermine the significance of business activities that have potential E&S impact by reviewing the portfolio and sectoral information. Determine the Applicable Performance Requirements as outlined below: a. All FIs will ensure that their financing and investments are not in contravention of an IFC Exclusion List; b. In addition, review the tenor, transaction sizes and the industrial sectors where the FI is investing i. Where the portfolio review indicates that the FI’s investments are expected to have limited E&S impact, the FI will ensure that its subprojects meet the applicable national E&S laws and regulations; ii. Where the portfolio review indicates that the FI’s investments could have potentially significant E&S impact, the FI will ensure that its subprojects meet the relevant elements of the IFC PS in addition to applicable national E&S laws and regulations.” It further states that the IFC E&S officer will request and obtain information about the client’s SEMS as provided in the relevant questionnaire, and “where the Applicable Performance Requirements, includes the IFC’s PSs, and where it is considered necessary to review further the client’s ESMS or existing sub-projects, the LESS will discuss with the Team Leader and communicate with the Transaction Leader and the client on the need to carry out an appraisal visit to the FI.” IFC ESRP 2009, sections 7.2.15 and 7.2.17.

¹²¹ EIA, p. 121. The Ministry of Environment Department of EIA review and monitoring guidelines as well as the EIA’s terms of reference, both included in the annexes to the EIA, included requirements related to public participation that needed to include “opinion of the public towards the developmental project and consultation” and two stages of consultation to share information with “all affected people and local authorities” and receive “opinions about the project (...) impacts, mitigation methods.” EIA report guideline MOE—unofficial translation by Department of EIA, Annexed to EIA pp. 316 ff., p.2–6 and EIA terms of reference.

¹²² The community engagement conducted by EVNI was limited to five villages with a total population of around 1,500. The EIA also suggests that, within those three months, the five consulted communities changed their perception of the project from 85 percent opposition to 84 percent approval of the project. The stakeholder engagement process was not commensurate with the nature, size, and location of the project. 2006 PS1, paras. 8, 19. See also, 2006 Guidance Note 1, Social and Environmental Assessment and Management Systems, (July 31, 2007), paras. GN15, G46-G54, and GN66 and IFC, *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*,” (2007).

¹²³ 2006 PS1, 2006 PS7, 2006 Guidance Note 1, Social and Environmental Assessment and Management Systems, (July 31, 2007), paras. G46.

measures or consideration for their rights.¹²⁴ IFC’s ESDD could have identified this risk and provided the expertise to adapt the consultation process to Indigenous communities, taking into account the requirements for free, prior, and informed consultation. IFC could also have advised on an Indigenous Peoples Plan to incorporate special and differentiated measures respectful of their rights and traditions and to consider adverse impacts on cultural heritage.¹²⁵

3. The need for a grievance mechanism for general project concerns and for displacement-related issues.¹²⁶ The EIA did not provide for this mechanism and, according to stakeholders with whom CAO met during its field visit, the project still lacks one.
4. Regarding physical displacement, the EIA is generally in line with PS1 requirements. However, the project’s Compensation and Resettlement Plan (CRP) was still under development at the time of IFC’s investment, and IFC could have advised ABBank to supervise EVNI’s development of a CRP that met PS5 requirements.¹²⁷
5. Identifying ecosystem services and establishing a biodiversity baseline to allow for proper monitoring of the LS2 dam’s biodiversity impacts. In addition, IFC could have emphasized the need for a comprehensive cumulative impact assessment, given the number of other dams constructed and planned for the 3S and greater Mekong basins.¹²⁸

3.2 IFC Project Supervision

This section first summarizes IFC’s E&S compliance obligations during supervision of ABBank and its business activities and addresses IFC’s perspective about the complaint. It then summarizes IFC’s key actions during its supervision of ABBank in relation to EVNI and LS2, followed by CAO’s analysis and findings of non-compliance.

3.2.1 IFC’s Compliance Obligations Regarding ABBank Investments

IFC’s Sustainability Policy establishes requirements for supervision of E&S risks emerging from

¹²⁴ Environmental checklist for hydropower development, annexed to EIA, p. 1; Socio-Economic Report for LS2, annexed to EIA, pp.1,5,21; EIA pp. 84, 102, 113.

¹²⁵ 2006 PS7 requires clients to avoid adverse impacts on Indigenous People whenever feasible, and where avoidance is not feasible, the client will minimize, mitigate, or compensate for these impacts in a culturally appropriate manner through an Indigenous Peoples Development Plan. This plan should be time-bound, developed with the informed participation of affected Indigenous Peoples as a standalone program or contained in a broader community development plan with separate components for Indigenous Peoples consistent with the requirements of PS7, paragraph 9. 2006 PS7, paras. 7–9.

¹²⁶ 2006 PS1, para. 23; 2006 PS5.

¹²⁷ While the 2008 EIA mentions the need for displacement and resettlement (S-5–6, 102–5, 146–159 ff), it clarifies that the detailed provisions and entitlements will be provided in a resettlement framework (S-6).

¹²⁸ In 2010, 45 dams were planned in the 3S river basin: 22 on the Sekong, 13 on the Sesan, and 10 on the Srepok (see map in appendix A). The EIA took into account 16 (8 on the Sesan and 8 on the Srepok). In the Mekong River Basin, there are currently 209 hydropower dams and an additional 536 dams for water supply and mixed use. Asian Development Bank, “Sesan, Sre Pok, and Sekong River Basins Development Study in Kingdom of Cambodia, Lao People’s Democratic Republic, and Socialist Republic of Viet Nam,” ADB Technical Assistance Consultant’s Report, project 40082, (July 2010), <https://bit.ly/3zyKtS4>; see also Eyler and Kwan, “All Dams Map of the Mekong Basin.”

investments in FIs such as ABBank. A key requirement is that IFC monitor a client’s compliance with its E&S commitments as included in the legal agreements governing the investment, as well as any related client action plan agreed with IFC. If a client fails to comply with these commitments, IFC must work with the client to return it to compliance or exercise remedies when appropriate.¹²⁹

In this case, the environmental and social action plan (called SEMS Plan in this investment) was attached to the investment’s legal agreement, and mandates that ABBank shall:

1. Establish an E&S management system policy document (called SEMS Policy in this investment) to ensure that bank operations are consistent with IFC and national E&S requirements. Specifically, the SEMS policy shall incorporate the following as risk screening and management criteria: (i) A list of relevant applicable S&E laws; (ii) The IFC exclusion list; and (iii) the 2006 IFC Performance Standards.
2. Apply the SEMS Policy document requirements to all new loans and investments.
3. Ensure compliance of all **existing loan and investments** with SEMS policy document requirements.

IFC therefore had an obligation under paragraph 26 of the 2006 Sustainability Policy and later paragraph 24 of the 2012 Sustainability Policy, to monitor the application of the Performance Standards to ABBank’s existing investments at the time of the contract with IFC due to the commitment contained in the legal agreement with ABBank.

Both the 2006 and the 2012 Sustainability Policies are clear that IFC must supervise an investment based on the legally binding E&S requirements agreed with the client.¹³⁰ Thus, IFC has an obligation, arising from the Sustainability Policy, to monitor the client’s legal commitments and E&S action plans, such as the SEMS Plan included in this investment.

¹²⁹ IFC Sustainability Policy 2006, para. 26; IFC Sustainability Policy 2012, para. 24.

¹³⁰ The IFC’s 2006 Sustainability Policy (para. 26) establishes that: “After IFC financing is committed in legal documents and disbursed, IFC carries out the following actions to monitor its investments as part of its portfolio supervision: (i) Require the project to submit periodic Monitoring Reports on its social and environmental performance as agreed with IFC; (ii) Conduct site visits of certain projects with social and environmental risks and impacts; (iii) Review project performance on the basis of the client’s commitments in the Action Plan, as reported by the client’s Monitoring Reports, and, where relevant, review with the client any performance improvement opportunities; (iv) If changed project circumstances would result in adverse social or environmental impacts, work with the client to address them; (v) If the client fails to comply with its social and environmental commitments, as expressed in the Action Plan or legal agreement with IFC, work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate; (vi) Encourage the client to report publicly on its social, environmental and other nonfinancial aspects of performance, in addition to reporting on the Action Plan as required by Performance Standard 1; (vii) Encourage the client to continue to meet the Performance Standards after IFC’s exit from the project.” IFC Sustainability Policy 2006, para. 26. The 2012 Sustainability Policy (para. 24) establishes that “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate. If the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents, IFC will work with the client to bring it back into compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate.”; IFC Sustainability Policy 2012, para. 24.

- There is a commitment in the SEMS Plan, which is part of the investment contract between IFC and ABBank, whereby ABBank committed to establish a SEMS and apply this SEMS, which includes the application of the 2006 IFC Performance Standards, to its existing investments at the time it signed the agreement with IFC.¹³¹

CAO has not received a singular explanation as to why this commitment was added in the SEMS plan of the ABBank investment. IFC Management’s response does not acknowledge or address this commitment in the legal agreement. Some IFC staff have indicated to CAO that the commitment in the SEMS plan for ABBank to apply IFC Performance Standards to existing investments at the time of signing might have been an unintended oversight because IFC does not require the application of its E&S requirements to investments that happened prior to IFC financing. However, CAO notes that:

- The ABBank investment was approved and committed under the 2006 Sustainability Policy, which was silent on PS application to an FI’s existing business activities. It was only under the 2012 Sustainability Policy that IFC introduced the provision establishing that, “IFC requirements regarding environmental and social risk management [in equity investments ...] will apply to the entire portfolio of the FI that is originated from the time IFC became a shareholder or investor.”¹³²
- CAO has encountered at least three other investments with legal agreements that also included commitments to apply the SEMS or ESMS to an IFC financial intermediary client’s “existing” loans and investments at the time of commitment.¹³³ Thus, it cannot be said that it was contrary to the existing practice prior to the 2012 Sustainability Policy.
- Project documents and communications during the due diligence and commitment phases of IFC’s investment in ABBank indicate that IFC and the client actively discussed the SEMS Plan. While some revisions were discussed, no revisions or adjustments were made to the commitment to apply the SEMS policy requirements to existing loans and investments, apart from a request to change the timeline for its completion. This suggests that IFC and ABBank were aware of this obligation in the SEMS plan and its inclusion was not simply an oversight in the legal agreement.

¹³¹ As indicated in the applicable ESRP at the time, the “Applicable Performance Requirements” against which IFC has to supervise the investment are “All IFC Performance Standards (PSs) are applicable to projects as stated by investment contract covenants. In the case of Financial Intermediaries (FI), this may be the combination of an exclusion list, the national laws and regulations, and the IFC PSs in general, including specific elements of the IFC PSs that are identified during the review, and that are applicable to sub-projects supported by the FI and implemented through the FI’s Environmental and Social Management System.” IFC ESRP 2009 (key terms and acronyms).

¹³² IFC Sustainability Policy 2012, para. 37.

¹³³ These commitments do not follow a single template or have identical text in all cases, but all require the application of the SEMS or ESMS to existing investments of the corresponding FI. It should also be noted that, generally, CAO reviews a very small sample of IFC investments (usually representing around 1–1.6 percent of IFC’s projects and lending volume). Thus, the fact that CAO has identified four investments with the same commitment to apply the SEMS or ESMS to existing investments is indicative that these types of commitments may not have been extraordinary nor unique. Among other sources of CAO case data in relation to IFC’s portfolio, see CAO Strategic Priorities FY23–FY25, (June 1, 2022), 7, <https://bit.ly/4ebM2nC>.

Other IFC staff have also suggested to CAO that the commitment to apply the SEMS to “existing loans and investments” should be read as a commitment to apply the SEMS to “new loans and investments of existing clients.” However, CAO notes that:

- There are two distinct commitments with two different deadlines in the SEMS Plan, which is part of the legal agreement between IFC and ABBank: (i) applying the SEMS Policy requirements to “all new loans and investments”; and (ii) ensuring compliance of “all existing loans and investments” with SEMS policy requirements.
- There is no evidence in project documents, meeting minutes, communications, or memoranda of understanding that IFC and ABBank intended anything other than what is explicitly stated and committed to in the SEMS Plan.
- As with any contract, the natural and ordinary meaning of the words used in the freely entered agreement are of primary importance in interpreting its provisions.

Therefore, CAO considers that IFC had an obligation under the Sustainability Policy to monitor the application of the 2006 Performance Standards to ABBank’s existing investments, where applicable. Under IFC’s Sustainability Policy, FI sub-projects with higher E&S risks are required to apply the Performance Standards.¹³⁴

At the time of IFC investment in 2010, ABBank had an existing equity investment in EVNI, whose main business activity was then and remains now the Lower Sesan 2 hydropower project. LS2 was then early in development, with the EIA approved by the Cambodian government in June 2010. CAO therefore considers this a sub-project with clear E&S risks, where IFC could have worked with its client to ensure PS compliance (see sections 3.2.3, 3.2.3.1, and 3.2.3.2 below for further details).

CAO understands that ensuring E&S compliance with IFC’s E&S requirements to all past or existing ABBank investments was a challenging commitment. Without discounting the client’s compliance obligation existed without qualifications or exceptions,¹³⁵ CAO has examined IFC’s actions in the context of opportunities during supervision to improve or positively influence the LS2 sub-project’s E&S performance, taking into account ABBank’s and EVNI’s level of leverage and the stage of development.

¹³⁴ 2006 Sustainability Policy, para. 28; IFC Sustainability Policy 2012, para. 35; IFC Interpretation Note on Financial Intermediaries, January 1, 2012, updated in November 2018, para. IN12 <https://bit.ly/3UY8olS>.

¹³⁵ The commitment in the SEMS Plan was to apply the 2006 Performance Standards to all existing loans and investments, regardless of the subproject’s stage of development or ABBank’s level of influence through its shareholding. Similarly, both the 2006 and 2012 IFC Sustainability Policies require the application of the PS to all projects with significant E&S risks, regardless of the sub-project’s stage of development or the FI’s level of influence through its shareholding.

Table 2: Relevant Timeline for IFC’s E&S Supervision	
ABBank’s existing investment in EVNI	IFC’s investment in ABBank
<ul style="list-style-type: none"> • ABBank was a minority shareholder in EVNI (10.31 percent), with shares bought in 2007 and 2010. • From 2007 to 2012, EVNI was the main developer for the LS2 sub-project and invested in project planning and early-stage development. • In November 2012, EVNI’s shareholding was reduced to 10 percent, and Hydrolancang International Energy became the majority shareholder and project operator. • EVNI has been a minority shareholder in LS2 since 2012. but LS2 represents at least 75 percent of EVNI’s revenue. 	<ul style="list-style-type: none"> • In December 2010, IFC subscribed to mandatory convertible bonds with ABBank. • In April 2013, those bonds converted to equity and IFC became a minority shareholder in ABBank (10 percent). • In December 2021, IFC’s shareholding in ABBank was diluted to 8.2 percent. • On May 22, 2024, IFC divested from ABBank by selling its shares.

3.2.2 Summary of IFC’s Supervision Actions

IFC disbursed all the funds for this investment in one tranche in December 2010,¹³⁶ soon after signing the legal agreement with ABBank.

The only E&S condition ABBank had to meet for disbursement was the nomination of a SEMS officer, which it did by nominating its deputy manager of Credit Policy and Framework Department for the role. In January 2012, ABBank appointed its credit policy manager in the new and additional role of E&S officer, and in February 2012, ABBank appointed its credit portfolio management officer as the SEMS officer. She performed the role of SEMS officer until 2019, when a full-time, in-house E&S consultant was hired. From 2019 to 2021, this consultant was in charge of implementing the SEMS policy, together with a part-time E&S coordinator. After the consultant’s resignation in 2021, another in-house consultant was hired, who then left in June 2022. In August 2022, another E&S consultant was appointed who had resigned by November 2023. At the time of IFC’s exit in May 2024, ABBank was in the process of hiring a successor.

¹³⁶ According to the 2009 IFC ESRP, applicable during commitment of this investment, the IFC E&S officer needs to “identify any SEMS actions that the client would need to undertake to address gaps in these areas [the client’s E&S policies and procedures; current organizational structure and staffing; skills and competencies in E&S areas; training and awareness of the client’s investment, legal, and credit officers on the organization’s E&S requirements and the SEMS; performance monitoring procedure; reporting of results to management; and track record to date in SEMS implementation] to ensure compliance with the Applicable Performance Requirements. The suggested approach is [as follows] (i) Gaps in the SEMS of FIs that are engaged in projects with either potentially significant E&S risks or risk exposure to IFC must be closed to ensure compliance with the Applicable Performance Requirements before IFC Commitment or as a condition of IFC disbursement; (ii) Gaps in the SEMS of FIs with either relatively low E&S risks or no immediate financing activities in such risky areas must be closed according to a time-bound ESMS Action Plan to be included in the legal agreements and approved by the TL.” IFC ESRP 2009, section 7.2.19.

During its supervision of the ABBank investment, IFC repeatedly highlighted the need for more experienced E&S officers, particularly ones with knowledge and experience in managing E&S risks according to the Performance Standards.

Regarding IFC’s supervision of the project, CAO notes that there was no supervision activity in 2011¹³⁷ despite the fact that most actions in the SEMS Plan included commitments to achieve them within three to nine months after the disbursement, and thus should have been completed in 2011.¹³⁸ Apart from the nomination of a SEMS officer, ABBank did not complete any of the commitments in the SEMS plan within the agreed timeframes. There is no evidence that IFC undertook any efforts to enforce those deadlines.

SEMS Plan	
1.	Nominate a SEMS officer before commitment.
2.	Establish a SEMS policy document to ensure that bank operations are consistent with the Performance Standards, applicable E&S regulations of the country, and the IFC exclusion list. The SEMS policy needed to incorporate the following as risk screening and management criteria: (i) a list of relevant applicable E&S laws; (ii) The IFC exclusion list; and (iii) the 2006 IFC Performance Standards.
3.	Develop a SEMS Implementation Plan.
4.	Develop SEMS procedures and implementation guidelines.
5.	E&S staff training.
6.	Incorporate E&S criteria into the bank’s internal information/monitoring system.
7.	Apply the SEMS policy to all new loans and investments.
8.	Ensure compliance of all existing loans and investments with the SEMS policy document requirements.
9.	Conduct quarterly reputations risk screening.
10.	Conduct annual internal review of SEMS implementation.

By February 2012, when IFC’s first supervision activity was recorded, two E&S commitments had been met: (i) the designation of an E&S officer; and (ii) the establishment of the first ABBank Social and Environmental Management System (SEMS). The latter was finalized in December 2011, about nine months after the original deadline in the SEMS plan.¹³⁹ From the available evidence, ABBank submitted its first SEMS policy document in February 2012 to IFC. This policy mostly committed to analyze and assess the E&S risks of operations according to the prevailing health, safety, and environmental laws of Viet Nam by Customer Relation Specialists of ABBank. IFC found the SEMS policy partially satisfactory and asked the client to revise it. CAO does not have details of IFC’s feedback. However, in September 2012, IFC indicated that the client had developed a new SEMS policy in July 2012, with support and guidance from IFC E&S specialists. IFC characterized this policy as generally satisfactory but raised concerns regarding project E&S categorization not always corresponding with the level of E&S risk, and the absence of both E&S covenants in the legal agreements and a formal E&S monitoring process.

IFC’s supervision records show that it considered these gaps to have been addressed by ABBank between 2014 and 2015. At the same time, in both 2014 and 2015, IFC stated that, while the client required strict compliance with E&S national laws and regulations from its investments, it

¹³⁷ The client did not submit an AEPR for 2011, and hence there is no review of it. There is also no evidence on engagements between IFC and the client during 2011 (communications, site visits, or email exchanges), or that IFC required the client to submit any information regarding its fulfillment of E&S commitment or an AEPR during 2011.

¹³⁸ The client’s first submitted AEPR covered 2012.

¹³⁹ IFC indicated to CAO that no site visit had happened in 2011. However, project documents mention a visit in which the client provided IFC with a first draft E&S policy document, to which IFC provided feedback (of which CAO has no record) but did not receive a revised document later.

treated Performance Standards requirements as recommendations and did not enforce them. Nevertheless, IFC continued to consider the client to be “in compliance with IFC E&S requirements” and rated its E&S performance and implementation of the SEMS as satisfactory.

CAO also notes that a review of IFC’s supervision records between 2012 and 2015 showed a significant inconsistency in the client’s E&S performance reporting. ABBank’s annual environmental performance reports (AEPRs) submitted to IFC from 2012 to 2016 indicate that no loans or activities in its portfolio entailed E&S risks. The same AEPRs simultaneously reported funding in high-risk sectors, including several hydropower projects, power stations, transmission lines, cement factories, and rubber plantations. IFC’s reviews of these AEPRs did not identify this inconsistency. Further, IFC considered that the SEMS was satisfactory from 2012 to 2015, indicating that it reviewed several loans and confirmed that a proper ESDD was being implemented.

In 2017, a new IFC E&S officer conducted a more thorough review of ABBank’s SEMS implementation and identified that the management system lacked sufficient procedures and internal capacity to address the E&S risks of large corporate deals. The officer reiterated that the SEMS focused on legal compliances with national E&S laws and that categorization of projects seemed not to align with corresponding E&S risks. At this point, IFC suggested the following improvements to ABBank:

- (i) Review the existing loan portfolio, identify high E&S risk loan projects such as hydropower projects, and recategorize such loan projects as high E&S risk
- (ii) Develop and implement separate E&S risk control procedures for large corporate lending projects that are required to comply with the PS
- (iii) Establish E&S capacity to address large corporate lending by hiring an in-house E&S expert with an appropriate background and assemble a pool of external E&S consultants that support the ESDDs of new or renewed large corporate loan projects.

These suggestions were incorporated in the ESAP for the SME loan IFC provided ABBank in 2017. On the basis of these requirements, ABBank proceeded to upgrade its SEMS, issuing a new policy in December 2019. IFC considered the revised SEMS to be generally in line with its requirements and suggestions, except for a provision that based the hiring of external E&S consultants on a credit amount threshold.

Between 2018 and 2023, IFC consistently noted that ABBank continued to conduct E&S assessments by only considering E&S national law and regulations, and without considering relevant PS requirements. In 2019 and 2020, IFC provided some guidance through meetings and email exchanges to ABBank’s in-house E&S consultant on the application of the PS to subprojects.¹⁴⁰ This advice included guidance on the application of the Performance Standards

¹⁴⁰ Interviews with relevant IFC E&S staff.

to two proposed high-risk subprojects.¹⁴¹ However, when the in-house consultant left in 2021, most of that capacity-building effort was lost. ABBank had neither created an E&S team that was resilient to staff turnover nor built solid institutional E&S capacity 10 years into the investment.¹⁴² In 2020, IFC downgraded ABBank’s E&S rating to “partly unsatisfactory” on the basis that its ESDD for high-risk projects was insufficient and that the bank continued to not require clients to apply the PS. IFC also recommended a series of actions to improve SEMS implementation, reiterating its suggestions in 2021, 2022,¹⁴³ and 2023.¹⁴⁴

After its final supervision visit in November 2023, before exiting the investment in May 2024, IFC determined that no improvement had been observed in ABBank’s SEMS and its implementation during the project supervision. It also noted that the gap in PS application for transactions with high E&S risks remained.

Despite a marked increase in the quality of IFC’s supervision of ABBank after 2017, the Lower Sesan 2 project was not identified at any point in E&S supervision documents as a sub-project for which ABBank should ensure PS compliance. The first mention of LS2 in IFC documents, in 2017, was not because of its link to IFC via EVNI and ABBank but due to its potential reputational risk to EVN, a major client of ABBank and other Vietnamese banks.¹⁴⁵ The next time the sub-project was mentioned in IFC supervision records was after the CAO complaints were submitted in 2018, when LS2 was identified as a source of reputational risk to ABBank. However, no follow-up with the client was suggested based on the fact that ABBank’s equity investment in EVNI

¹⁴¹ In 2019, IFC hired an ESDD consultant to support and advise ABBank’s understanding of the scope and mechanics of ESDD for investments in large infrastructure projects. The consultant did a gap analysis study for a specific power plant sub-project, which was shared with ABBank together with an ESAP to address several E&S shortcomings. The external E&S consultant hired by IFC was not able to visit the sub-project site. ABBank agreed to review the outcomes and ESAP when carrying out the sub-project ESDD, but as of 2022, the sub-project remained pending due to national regulatory requirements, and no ESDD had been carried out to continue guiding ABBank on the implementation of the PS. CAO did not find evidence that IFC followed up with ABBank regarding this sub-project after 2022. Similarly, in 2020, IFC reviewed the E&S assessment of a category A hydropower sub-project and determined it inadequate on several points, including that it was not conducted against the IFC Performance Standards (and associated WBG Environmental, Health, and Safety -EHS- Guidelines), for which its provided specific advice on the application of the Performance Standards. IFC subsequently downgraded ABBank’s E&S rating, but CAO found no follow up regarding this sub-project or evidence of adequate application of the PS to this hydropower sub-project in IFC’s project supervision documents.

¹⁴² Both IFC and ABBank staff who spoke to CAO highlighted how each time an E&S officer left the bank (there was very frequent staff turnover, see beginning of section 3.2.2), the bank had to restart building its E&S institutional capacity. Interviews with IFC E&S staff and ABBank staff.

¹⁴³ ABBank updated its ESMS in 2022, but IFC considered it did not include the necessary improvements for PS application to high-risk projects.

¹⁴⁴ In 2020, IFC recommended, among other actions, that ABBank: (i) revise its external consultant hiring policy to ensure that qualified external experts were involved in ESDD for higher E&S risk transactions; (ii) develop sample E&S provisions/clauses to require borrowers to comply with ABBank’s E&S Standards, including the Performance Standards, and undertake E&S corrective action plans; (iii) amend the categorization procedure; and (iv) include monitoring of E&S corrective action plan implementation in ABBank’s portfolio monitoring program. In 2021, IFC recommended that ABBank: (i) complete the E&S action plan indicated before; (ii) submit evidence of adequate ESMS implementation for potentially high E&S risk transactions; (iii) provide periodic updates on ABBank’s ESDD process regarding one particular high-risk project; and (iv) hire an in-house E&S consultant to build adequate capacity via training and project experience.

¹⁴⁵ The IFC supervision report quotes an NGO report which mentions that the “highly controversial LS2 Dam in Cambodia, is expected to profoundly harm the Mekong River’s fish stocks and damage food security for hundreds of thousands of people.”

predated IFC engagement and thus was presumed to be not subject to its E&S requirements. There is no evidence that IFC reviewed the commitments in the legal agreement and the SEMS plan before dismissing the link between ABBank, EVNI, LS2, and the application of E&S requirements to the sub-project.

In general, IFC’s supervision of ABBank did not monitor all the SEMS Plan commitments but instead focused on two actions: the hiring of E&S officers or external consultants and SEMS implementation. While these are key aspects for the E&S supervision of a financial intermediary, they are not the only commitments in the legal agreement. CAO observes that not only did IFC not require the application of the SEMS policy to existing loans and investments, but there is no evidence that IFC required or monitored if ABBank fulfilled other SEMS Plan commitments, including developing a SEMS implementation plan, procedures, and implementation guidelines; conducting ongoing E&S staff training and quarterly reputational risk screenings; and conducting an annual internal review of SEMS implementation, to be attached to the AEPRs.

On exiting the investment in May 2024, IFC reviewed its responsible exit principles and determined that the exit would not have a detrimental effect on ABBank’s management of E&S issues. Regarding this ongoing CAO case, as stated above, IFC considered that EVNI and its investment in LS2 were not subject to IFC’s E&S requirements because the investment predated IFC’s engagement with ABBank. IFC concluded that the exit would not have any detrimental impact on the CAO case without considering its obligation to supervise ABBank’s legal commitment to ensure the compliance of existing investments with the 2006 Performance Standards. However, given ABBank’s obligation in the SEMS Plan, IFC should have taken into account the effects of its exit on the outstanding E&S issues regarding the Lower Sesan 2 sub-project, which was one of the “existing” investments to which the SEMS policy requirements should have been applied. There is no evidence that IFC reconsidered this position once the CAO case moved forward in November 2022, highlighting the obligations in the legal agreement and SEMS Plan.

3.2.3 Compliance Analysis of IFC’s Supervision and CAO Findings

CAO finds that IFC failed to monitor the E&S commitments contained in IFC’s legal agreement with ABBank, as required by IFC’s Sustainability Policy (2006 SP, para. 26; 2012 SP, para. 24). Particularly relevant to this case, IFC failed to monitor ABBank’s commitment to ensure its existing investments complied with IFC’s E&S requirements. As a result, IFC did not require ABBank to apply the 2006 IFC Performance Standards to its existing investment in EVNI and the Lower Sesan 2 sub-project, in breach of its Sustainability Policy commitments.

During 14 years of supervision, IFC also failed to monitor ABBank’s performance with respect to the SEMS and other commitments in the SEMS Plan agreed with the client in 2010. Key performance milestones related to the establishment of an effective E&S management system were allowed to be delayed during 2011, a year in which IFC undertook no supervision activities, contrary to para. 26 of the 2006 Sustainability Policy. From 2012 to 2015, ABBank continued to invest in high-risk sectors, yet IFC’s supervision did not effectively review the process and results

of the FI’s E&S due diligence for its investments nor did it review a sample of ABBank’s business activities with significant E&S risks, as required by para. 45 of the 2012 Sustainability Policy.¹⁴⁶ As a result, IFC failed to identify high-risk projects in its client’s portfolio, and its supervision was not commensurate with the risks of its investment, contrary to the 2012 Sustainability Policy (para 45). Deficiencies in IFC’s supervision contributed to its client’s inability to develop an ESMS capable of ensuring compliance with Performance Standards for high-risk projects, as required by the Sustainability Policy, and ultimately to its client’s poor E&S performance throughout the investment.¹⁴⁷

Specifically, CAO highlights the following shortcomings in IFC’s supervision from 2010 to 2016:

- By not establishing key E&S requirements such as a SEMS policy and implementation procedures as conditions of commitment or disbursement, IFC failed to structure the investment in a way that would give it sufficient leverage to ensure that the client implemented the agreed E&S requirements.¹⁴⁸ Further, IFC did not use any alternative avenues of influence or leverage over the client, such as shareholders meetings or its right to nominate a board director to raise awareness of ABBank’s E&S shortcomings.¹⁴⁹ These failures compromised IFC’s ability to bring the client into compliance during supervision. In 2017, IFC appropriately used the new SME loan as leverage to require the client to commit to an ESAP that largely corresponded to the actions it had required from ABBank in the supervision of its 2010 equity investment. However, once again, IFC failed to structure that investment to ensure it had sufficient leverage after the contract was signed and the full amount of the loan was disbursed by not conditioning any of the E&S requirements to either the commitment or disbursement milestones.¹⁵⁰ As explained below, after 2017, ABBank continued to fall behind in achieving the commitments in the SEMS Plan.
- From December 2010 to at least February 2012, ABBank did not have an established

¹⁴⁶ According to the 2012 Sustainability Policy (para. 45), “IFC carries out the following actions to monitor its investments and advisory activities as part of its portfolio supervision program: [...] *Investments Through Financial Intermediaries*—Implement a regular program of supervision of FI investments with environmental and social risks and/or impacts in accordance with the requirements of IFC’s Environmental and Social Review Procedures. - To determine the effectiveness of an FI’s ESMS, IFC will periodically review the process and the results of the environmental and social due diligence conducted by the FI for its investments. In addition, as part of its supervision efforts, IFC periodically reviews a sample of other FI investments, especially for business activities with significant environmental and social risks. IFC supervision may include visits at the FI level, as well as to recipients of FI loans/investments, particularly high risk subprojects. The frequency and focus of supervision visits is commensurate with the identified risks. IFC works with its FI clients to help them address any shortcomings in their ESMS.” See also IFC ESRP 2014–16, section 2.5; IFC ESRP 2022–23, section 4.21.

¹⁴⁷ In 2020, IFC decided to downgrade ABBank’s E&S rating to “partly unsatisfactory” because its ESDD was insufficient regarding high-risk projects as its E&S assessments only considered E&S national law and regulations and not the requirements of the Performance Standards (see section 3.2.2).

¹⁴⁸ Both projects had a single disbursement, without any of the E&S requirements in its SEMS Plan and ESAP, respectively, being conditioned to the disbursement.

¹⁴⁹ CAO has found no evidence in project documents that IFC proposed or raised such issues for shareholder meetings or as a priority area when nominating its director.

¹⁵⁰ The legal agreement for the SME loan (project #40081) was signed on October 20, 2017, and the loan was disbursed on December 22, 2017. None of the actions in the ESAP for this loan were conditions to disbursement or commitment.

social and environmental management system despite investing in high E&S risk projects. Thus, for the first 14 months of IFC’s investment, not only did the client have no policy or procedure in place to assess and manage E&S risks, but IFC had no basis on which to monitor its E&S performance.¹⁵¹

- IFC’s supervision of ABBank’s investments was mostly limited to its loans. IFC failed to review other client business activities, including equity investments in companies such as EVNI. IFC’s template for the client’s AEPRs did not include questions related to equity investments or subsidiaries, omitting elements of the FI’s portfolio potentially exposed to E&S risks. As a result of this incomplete approach, IFC was not alerted to the E&S risks associated with ABBank’s exposure to EVNI and the Lower Sesan 2 hydropower dam.
- IFC did not thoroughly review the information submitted by ABBank during these early years, and thus did not adequately supervise the client’s E&S performance and PS application to its sub-projects. For example:
 - In 2013, ABBank indicated that none of the projects it was funding entailed E&S risks, while at the same time reporting loans to four hydropower projects of 190 MW, 32 MW, 15.6 MW, and 14 MW, respectively. As described in the Background section, hydropower projects generally entail E&S risks, some of which merit category A (high risk) status. Nonetheless, IFC did not comment on this inconsistency and failure to apply the PS, nor did it identify this opportunity to align ABBank’s project categorization with IFC standards.
 - In 2014 and 2015, IFC’s review of ABBank’s annual performance reports stated that the FI’s portfolio had medium to high E&S risks exposure. Yet IFC did not question ABBank’s continued assertion that none of its projects entailed E&S risks. During that same time period, IFC noted that ABBank was only requiring compliance with E&S national requirements and using the Performance Standards as recommendations that were not enforceable. There is no evidence that IFC raised this issue at the time as a problem that required correction. This pattern of contradictory reporting and non-compliance was a persistent problem with ABBank’s SEMS implementation and one of the reasons IFC downgraded its E&S performance to “partially unsatisfactory” in 2020.

During the later years of the investment (2017–2022), IFC’s supervision improved. In 2017, the year IFC agreed and disbursed a loan of up to US\$110 million to grow ABBank’s SME loan portfolio, IFC E&S staff conducted a more thorough review of the client’s portfolio and SEMS implementation. As described above, this review was the first time IFC identified that ABBank’s portfolio included loans to large hydropower projects, power plants, and compensation and resettlement programs. IFC brought to its client’s attention the following serious issues:

- The lack of application of Performance Standards to high-risks projects

¹⁵¹ The IFC’s 2006 Sustainability Policy establishes that “IFC will monitor the FI’s performance on the basis of the [Social and Environmental] Management System.” IFC Sustainability Policy 2006, para. 29.

- The incorrect categorization of projects and the subsequent insufficient E&S requirements, which led to significant unidentified and unaddressed E&S impacts and risks
- The absence of proper legal clauses and provisions in loan contracts
- The lack of an adequate E&S monitoring process by ABBank and the frequent turnover of E&S staff.

CAO notes that, during this period, IFC made consistent efforts to bring the client back into compliance. However, IFC’s efforts mainly consisted of encouraging the client to comply. IFC failed to adequately use its leverage to ensure ABBank’s compliance with its E&S obligations, as all funds had been disbursed when only one of ten E&S requirements in the SEMS Plan had been met, and no other tools or methods of influence over the client were used, such as the shareholder meetings or the nomination of the board director, to increase awareness regarding ABBank’s compliance shortcomings with its E&S commitments. Additionally, while supervision improved after 2017, IFC continued to be selective in monitoring SEMS Plan commitments. As described above, IFC solely focused its supervision on the hiring of E&S staff and SEMS implementation; it did not require ABBank to comply with all of the time-bound commitments in the SEMS Plan, as required by the Sustainability Policy and ESRP.¹⁵² As a result, at no point during IFC’s supervision did the obligation to require ABBank to apply the SEMS policy to “existing loans and investments,” including in EVNI, emerge as an issue that required IFC’s attention.

CAO also notes that IFC did not downgrade ABBank’s E&S performance rating until 2020, nine years after first becoming aware of its client’s significant shortcomings regarding SEMS implementation. Despite IFC’s more robust later supervision, most of the E&S concerns it raised with the client regarding the assessment of E&S risks in high-risk projects and PS application to sub-projects were left unresolved at the time of IFC’s exit in 2024.

¹⁵² As previously noted, both the 2006 and 2012 Sustainability Policies require IFC to monitor a client’s E&S performance on the basis of the client’s agreements in the action plan or legal agreement with IFC. Sustainability Policy 2006, para. 26; Sustainability Policy 2012, para. 24. In development of this obligation the applicable ESRP, during the life of this investment instructed the IFC E&S officer to supervise FI investments against the clients SEMS Plan and legal commitments. The August 2009 IFC ESRP indicates that the E&S officer monitors on the basis of, inter alia, “the client’s performance against the Applicable Performance Requirements [which as those ‘stated by investment contract covenants’] as determined during project review and appraisal, and the client’s implementation of the Social and Environmental Management System (SEMS) Action Plan.” IFC ESRP 2009, section 9.2.6. The 2014 IFC ESRP, in addition to an identical provision as the 2009 IFC ESRP, indicates that “[e]ffective E&S supervision entails periodic reviews of the client’s E&S performance and compliance with IFC’s E&S requirements, including through the following key supervision tasks: (i) Assessing the client’s level of compliance with the E&S requirements including all conditions of disbursement, Environmental and Social Action Plan (ESAP) items and other E&S covenants included in the legal agreement.” IFC ESRP 2014, sections 9.2.1 and 9.2.5. The 2022 and 2023 IFC ESRPs establish that “E&S Supervision is an essential part of Portfolio risk management throughout the life of a project and relationship with a Client. The objective of the E&S Supervision at the Client level is to: (i) Assess the status of Client compliance with E&S requirements of the investment contract (including the ESAP, COD, Negative and Affirmative Covenants and reporting requirements); Assess the ongoing level of E&S risk, including contextual risk; Provide advice to Clients on how to address critical E&S issues; and Identify opportunities for improvement and good practices that could be applied to similar projects.” IFC ESRP 2022; IFC ESRP 2023, section 4.2.

3.2.3.1 Early missed opportunities for positive IFC influence on LS2 sub-project, 2011–2012

For the reasons explained above (subsection 3.2.2), IFC did not require ABBank to apply the 2006 Performance Standards to its existing investments. Consequently, IFC did not satisfy itself that ABBank’s monitoring of EVNI and, in turn, the Lower Sesan 2 sub-project met the requirements of these standards. CAO finds that IFC’s lack of PS supervision led to missed opportunities to positively influence the design of the sub-project in the years immediately following its investment.

Between 2011 and 2012, EVNI was the majority owner and developer of LS2, and thus IFC and its client ABBank had a significant opportunity to align the large-scale hydropower dam’s design and early planning with PS requirements and the IFC’s 2007 Hydropower Strategy. Based on information available to CAO, EVNI finalized a compensation and resettlement policy (CRP) for LS2 in 2011. More thorough IFC E&S due diligence and early supervision would have revealed ABBank’s equity shareholding in EVNI and corresponding exposure to LS2-related E&S risks, including the potential physical and economic displacement of thousands of households.¹⁵³ However, there is no evidence that IFC or ABBank provided guidance to EVNI on PS5 (Land Acquisition and Resettlement) requirements for a sub-project resettlement and compensation policy, either generally for all high-risk projects or specifically for LS2.¹⁵⁴

A summary description of the CRP is included in annex A. In brief, the policy had significant deficiencies in terms of meeting PS1 and PS5 requirements. Had IFC been aware of its exposure to LS2, it could have provided guidance to ABBank and, in turn, EVNI on the 2011 CRP’s following aspects and shortcomings:

- a) There is no evidence that the CRP was based on a comprehensive asset inventory of all affected land, houses, and other assets in the project-affected area, nor that a complete socio-economic survey was conducted to understand the pre-displacement standard of

¹⁵³ The EIA estimated that 1,059 households needed to be physically displaced. It did not identify the number of people to be potentially economically displaced but estimated that 300,000 people upstream and downstream of the project area would be indirectly affected by the project. News and internet articles from around that time include Vannarin and Vrieze, “Dam Project a dilemma for Stung Treng villagers”, *The Cambodian Daily*, August 22, 2009 at: <https://bit.ly/3RNglDn>, and “Vietnam Premier Asks for Quick Dam Approval”, *The Cambodian Daily*, November 16, 2010, at: <https://bit.ly/45LORem>. In 2009, a civil society study commissioned by the Rivers Coalition of Cambodia found that around 78,000 people would suffer impacts on food security and income losses from LS2. Ian G. Baird, *Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia* (Phnom Penh: Phnom Penh: Rivers Coalition in Cambodia, 2009), 138; See also International Rivers, “Proposed Lower Sesan 2 Dam Cambodia Fails to Uphold Best Practice,” *International Rivers* (August 2009), <https://bit.ly/4cE3nFA>.

¹⁵⁴ From the information available to CAO, the CRP is the only E&S policy completed after the EIA and the IFC ESDD. It was finalized by EVNI in 2011 and later implemented by the project. CAO did not have specific sub-project access during this investigation to confirm whether any significant amendments were made by the project developer after 2012. There are some reports that Hydrolancang, the current project developer, developed additional and subsequent versions of an EIA, as well as several internal mitigation and resettlement plans. CAO was not provided access to these documents. However, information from communities and local stakeholders indicates that the version of the CRP CAO has access to largely corresponds to what was later implemented.

living and livelihoods of the affected households.¹⁵⁵

- b) The CRP appears to cover only physically displaced households (less than 50 percent of affected households according to the 2008 EIA),¹⁵⁶ leaving out the economically displaced (i.e., those who could stay in their houses while losing part or all of their agricultural land). The CRP also did not address the difference between these two groups.¹⁵⁷
- c) The CRP does not provide a map and/or outline of the resettlement sites, the planned infrastructure provision, or areas of replacement land—key details that are required for a PS5-compliant resettlement action plan (RAP).¹⁵⁸
- d) The in-kind resettlement packages (size of replacement houses, residential, and agricultural land) do not seem to be informed by the households’ pre-displacement assets.¹⁵⁹
- e) The cash compensation options provide no substantiation that they meet full replacement standards—a condition required by PS5.¹⁶⁰
- f) There is no indication of how the LS2 sub-project aims to enhance affected people’s standard of living and livelihoods beyond replacing what has been lost, an aspiration in line with PS5.¹⁶¹
- g) There is no indication that a draft CRP was disclosed to, discussed with, and/or validated by project-affected people to ensure their informed participation in decision-making processes related to resettlement.¹⁶²
- h) There is no outline of how and when the CRP would be further detailed through a

¹⁵⁵ The CRP reflects a baseline census apparently conducted in 2010. However, it does not have any information regarding the methodology, and the sources or basis of most of its information is unclear given differences in livelihood data provided in the 2008 EIA and a study conducted in 2012 by the civil society association NGO Forum. Also, while there is a socio-economic survey in the 2008 EIA, it does not meet the requirements of IFC PS5 (para. 11) and IFC’s *Handbook for Preparing a Resettlement Plan* (specifically pages 11–23). (2002), 36–39, <https://bit.ly/48OwNAh>; NGO Forum on Cambodia, *Lower Sesan 2 Hydropower Dam: Current Livelihoods and Local Communities: A Baseline Study* (2012), <https://bit.ly/3xBmRvM>.

¹⁵⁶ The CRP projected that 797 households would need to be resettled by 2014. It is unclear from the project documentation available to CAO how the number of affected households decreased from 1,059 in the EIA to 797 in the CRP. The CRP starts with 515 households apparently identified in 2010 in a baseline census and projects an increase to 797. It is unclear where the initial 515 households came from as the EIA had identified 1,059 households that would need to be resettled. EVNI 2011 CRP, 2–3.

¹⁵⁷ IFC’s 2006 PS5 clarifies that PS5 applies to physical and economic displacement (para. 5) and that both forms of displacement need to be addressed (paras. 15 and 20).

¹⁵⁸ See 2006 PS5, para. 12; 2006 Guidance Note 5, Land Acquisition and Involuntary Resettlement, (July 31, 2007), para. G12; and IFC RAP *Handbook* 2002 36-39.

¹⁵⁹ 2006 PS5, paras. 17, 20, 2006 Guidance Note 5, Land Acquisition and Involuntary Resettlement, (July 31, 2007), para. G8, G11, and G12.

¹⁶⁰ 2006 PS5, para. 17.

¹⁶¹ 2006 PS5, para. 3.

¹⁶² 2006 PS5, paras. 3 and 9. In addition to the absence of evidence of any records or memory of this consultation among community members, there are circumstantial elements that support the notion that the CRP was not developed in close consultation with those affected. A proper resettlement action plan would have easily identified the large desire of a significant amount of people to be physically resettled *in situ* to stay close to their former houses and assessed: (i) the option of obtaining replacement agricultural land from the land and forest concession using the customary land of the six communities; and (ii) the feasibility of alternative livelihoods to restore income levels to pre-displacement levels without the need to remove households from their customary land.

resettlement action plan in close consultation with those affected.¹⁶³

- i) The CRP does not take into account that some resettled communities are Indigenous Peoples and were so identified in the 2008 EIA for the LS2 sub-project.
- j) There is no provision for a project grievance mechanism to receive and address concerns about compensation and relocation raised by displaced persons as required by both PS1 and PS5.¹⁶⁴

CAO concludes that there was a window to address the above significant gaps in PS requirements for this major sub-project, which displaced around 5,000 people and affected thousands more. This window existed from 2011, when the sub-project was in early stages of design and development, until the first resettlement packages were offered in 2013. IFC had a unique opportunity to align the sub-project with PS requirements on physical and economic displacement through ABBank’s legal commitment to apply them to existing investments. As the majority shareholder, EVNI had significant influence over the sub-project’s design and E&S mitigating measures. By not supervising this commitment in the SEMS Plan, and particularly by not supervising the ABBank investment in 2011 at all, IFC failed to help mitigate the harms experienced by sub-project-affected people.¹⁶⁵

3.2.3.2 Missed opportunities for positive IFC influence on LS2 sub-project after 2013

CAO acknowledges that requiring PS application to the hydropower dam became more challenging after EVNI became a minority shareholder in November 2012. IFC could not demand that ABBank ensure PS application to the sub-project because EVNI did not have enough leverage in LS2 and decisions would rest with the new majority shareholder, Hydrolancang International Energy. However, EVNI maintained a seat on the LS2 Board, a platform it could have used to provide guidance and knowledge of PS requirements as well as good international industry practice.¹⁶⁶

Thus, through ABBank, IFC still had some opportunity to positively influence sub-project planning, construction, and operation. CAO notes that IFC’s non-financial additionality for clients, and one of the key purposes of its E&S supervision, is precisely to provide guidance and advice to clients on how to address E&S risk issues and to identify opportunities for improvement and good practices that could be applied to similar projects.¹⁶⁷ However, CAO found little evidence that IFC advised or provided guidance to ABBank on PS requirements, apart from a brief period between

¹⁶³ 2006 PS5, para. 9.

¹⁶⁴ 2006 PS5, para. 10; 2006 PS1, para. 23.

¹⁶⁵ See, among others, Human Rights Watch, “Underwater, 2021;” Phnom Penh Post, “Flood of Hydrodam Fears,” *Phnom Penh Post* (2011); Phnom Penh Post, Little Information on Lower Sesan 2 Dam”; Ham, Hay, and Sok, “The Politics of the Lower Sesan 2 Dam in Cambodia”; Mak. “Dams and State Security”; Hensengerth, “Regionalism, Identity, and Hydropower Dams”; Green and Baird, “The Contentious Politics of Hydropower Dam Impact Assessments.”

¹⁶⁶ Despite requesting this information several times through ABBank, CAO is unaware of the specific provisions and conditions in the shareholder agreement between Hydrolancang International Energy, Cambodia Royal Group, and EVNI. However, CAO understands that, in general terms, it has the regular rights of a shareholder in the LS2 sub-company and, particularly, the right to appoint a board member in the LS2 company board.

¹⁶⁷ IFC ESRP 2014, section 9.1.1 (regarding FIs specifically); IFC ESRP 2022 and 2023, 4.2.

2019 and 2020, and found no evidence that it provided such advice to EVNI or other sub-clients at any point.

CAO highlights the following opportunities where IFC could have had a positive influence on the sustainable development and implementation of LS2 between 2013 and 2024:

- **Biodiversity:** In 2012, a study published in the *Proceedings of the National Academy of Sciences* concluded that the Lower Sesan 2 dam should not be built because its power-generating benefits did not outweigh the costs to biodiversity.¹⁶⁸ Shortly after, in 2013, international donors to the Mekong River Commission, including the World Bank, encouraged the Cambodian government to redesign the IFC sub-project, “given the potentially detrimental regional effects of the Lower Sesan 2 dam in its current design (including on fish migration, sediment flow and the resettlement of local communities)” (see annex A for more details).¹⁶⁹

The project went ahead, and construction began in January 2014. Communities were resettled between 2015 and 2018, and by 2018, the reservoir was filled, and the dam began operations.

A year before, in 2017, seemingly in response to public pressure to address LS2’s impacts on biodiversity, the dam developer built a fish passage despite the project EIA recommending against it and academic literature suggesting that this strategy is ineffective in tropical rivers due to the diversity of species, which makes it difficult to develop designs that accommodate all or most of them.¹⁷⁰ In 2019, Cambodia’s government subsequently created a “fishery community” within the reservoir for the conservation of aquatic species,¹⁷¹

¹⁶⁸ PS6, para. 7. The study examined 27 dams that were planned to be built in the Mekong river basin between 2015 and 2030 and concluded that LS2 would have the largest impact on fish biomass (9.3 percent drop in fish biomass basin-wide), at the same time it estimated that the LS2 dam would result in 4 percent of fish loss (~25,300 tons/y) per TWh/y produced. Guy Ziv, Eric Baran, So Nam, Ignacio Rodríguez-Iturbe, and Simon A. Levin, “Trading-Off Fish Biodiversity, Food Security, and Hydropower in the Mekong River Basin,” *Proceedings of the National Academy of Sciences*, 109, no. 15 (2012), 5,609–14.

¹⁶⁹ Mekong River Commission, “Report of Informal Donor Meeting,” Phnom Penh, Cambodia (June 27–28 2013); Dene-Hern Chen, “International Donors Call for Redesign of Sesan 2 Hydro Dam,” *Cambodia Daily* (July 2013), <https://bit.ly/3VlqGr6>.

¹⁷⁰ Fish passes, fish ladders, and other kinds of fish passes tend to be ineffective in tropical rivers because their diversity of fish species makes it challenging for one type to accommodate all or most of them. In tropical environments, there are few examples of successful fish ladders and passes and there are many cases of fish passage failure, either due to poor design, poor management, or both. There are examples from South America that show that in a species-rich tropical environment, up to 116 species were found in the fish passage systems but that only a few were able to reach the top. Fish ladders have also generally performed poorly in the Mekong River Basin, such as the one from the Pak Mun Dam in Thailand, generally considered a failure. Pratch Rujivanarom, “Dispute Over Fish Ladders to Save Species.” *The Nation* (September 18, 2017); WCD 2000: Dams and Development; Pelle Gätke, Eric Baran, Helio Martins Fontes Jr., Sergio Makrakis, Maristela Cavicchioli Makrakis, Timo A. Räsänen, and Saray Samadee. *Fish Passage Opportunities for the Lower Sesan 2 Dam in Cambodia—Lessons from South America* London: Earthscan Publications, 2013); ICEM – International Centre for Environmental Management, Hanoi Vietnam, Project report: Challenge Program on Water and Food Mekong Project MK3 “Optimizing the Management of a Cascade of Reservoirs at the Catchment Level.” Asian Institute of Technology; 2011; T. R. Roberts, “On the River of No Returns: Thailand’s Pak Mun Dam and Its Fish Ladder. *Natural History Bulletin of the Siam Society* 49 (2001), 189–230.

¹⁷¹ The scope and extent of their mandate, capacity and functions is unclear to CAO.

and more recently released fish fingerlings into the reservoir to increase fish stocks (see more details in annex A regarding sub-project level actions and information). However, these measures were not accompanied by a comprehensive assessment of the state of the fishery and measures necessary to restore it.

Had IFC been aware of its exposure to LS2, these events and the sub-project’s high profile may have motivated IFC to provide guidance and advice to the dam developer through ABBank and EVNI. This opportunity was not recognized when it would have been most useful. Through its supervision of ABBank, IFC could have leveraged ABBank’s legal commitment to provide advice to help address biodiversity concerns and detailed guidance on how to conduct comprehensive biodiversity studies, as well as assisted in identifying experts and proper mitigation measures, following PS6 requirements.¹⁷²

- **Retaliation issues:** In 2014–15, there were protests and public complaints from Indigenous Peoples surrounding LS2, stating that the project would result in the loss of their culture, traditions, and identity.¹⁷³ In 2017 and 2018, the communities who refused to resettle also raised allegations of threats and reprisals for voicing opposition to the project,¹⁷⁴ and three groups of villagers submitted their complaints to CAO.

When protests against the sub-project gained momentum, resulting in retaliation against the protestors, IFC was simultaneously issuing its 2018 Position Statement on Retaliation Against Civil Society and Project Stakeholders.¹⁷⁵ Had IFC been aware of its exposure to LS2, these events and the sub-project’s high profile could have been an opportunity for IFC to leverage ABBank’s legal commitment to provide advice to EVNI or the dam developer through ABBank and EVNI on handling of grievances and criticism of development projects and the human rights obligation to not retaliate against protestors. However, there is no evidence in IFC’s supervision documents that IFC provided guidance to ABBank or EVNI on its new zero-tolerance policy for reprisals against project-affected people at the time.

- **Addressing E&S risk:** IFC’s 2017 acknowledgment of ABBank’s link to the LS2 dam in Cambodia coincided with its supervision finding that ABBank’s SEMS was inadequate to address the E&S risks of high-risk projects. IFC recommended ABBank use external

¹⁷² 2006 Guidance Note 6, Biodiversity Conservation and Sustainable Natural Resource Management, (July 31, 2007), paras. G3–G9.

¹⁷³ Human Rights Watch, “Underwater, 2021,” citing several statements addressed to the National Assembly; Press release and community statements: “Phnong Ethnic Villagers in Kbal Romeas and Lao villager in Srekor 1 and 2 Village Publicly Announce: ‘We Refuse to be Resettled by the Lower Sesan 2 Dam,’” (September 29, 2014). See A. Cuddy, and P. Seangly, “Villagers Refuse Relocation,” *Phnom Penh Post* (September 29, 2014).

¹⁷⁴ Protests against the project began in 2008 and continued well through 2018 when the project began operations. Community leaders from Old Kbal Romeas and Old Srekor were charged with “incitement” in 2017 for their protests and opposition against the resettlement. Teachers and staff were withdrawn from schools and the health center in the old village, while many households remained in the old villages. Police-monitored roadblocks were set up to screen all people using the access roads to the villages, limiting access to people who wanted to visit and for community members to seek health services. (See more details in the section 4 on related harm).

¹⁷⁵ IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders (October 2018), <https://www.ifc.org/content/dam/ifc/doc/2023/201810-ifc-position-statement-on-reprisals-en.pdf>.

expertise and upgrade its SEMS but provided little guidance or training on how to apply PS requirements to this or any other sub-project with high E&S risks. While some notable advice on the application of the PS was provided between 2019 and 2020, the client’s frequent staff turnover meant that most of IFC’s guidance during those years was lost once the E&S consultant left in 2021 (see section 3.2.2 above). No institutional capacity for E&S management existed prior to IFC’s investment, and very little was built during IFC’s supervision.

Beyond LS2, IFC also missed opportunities to improve the performance of other high-risk projects in ABBank’s portfolio. IFC provided little guidance or recommendations for its client to adequately assess and supervise E&S issues at the sub-project level, when considering the more than 13 years of this investment, and failed to ensure that its client built sufficient institutional E&S capacity to manage the application of the PS to its investments.¹⁷⁶

In summary, CAO finds that IFC’s shortcomings in supervising ABBank led to a series of missed opportunities to positively influence the manner in which the Lower Sesan 2 project was designed, developed, and ultimately implemented. There can be no guarantee that any guidance and advice provided by IFC to ABBank or EVNI would have been adopted or implemented by the LS2 sub-project after 2013. However, IFC’s failure to monitor either ABBank’s legal commitments or its implementation of the full SEMS Plan eliminated that possibility.

¹⁷⁶ IFC did provide guidance on improving the SEMS procedures and hiring of external consultants to improve the ESDDs; it provided less detailed guidance on the substantive issues raised, particularly during the first 10 years of the investment (see section 3.2.2 for more details). As previously noted, in 2019 and 2020 there were specific instances of IFC providing detailed advice on the application of the Performance Standards, but due to the client’s frequent staff turnover, which was known to IFC, most of this training was lost after the E&S consultant left in 2021, with little institutional capacity for E&S management built in the 13-plus years of IFC’s supervision (see section 3.2.2).

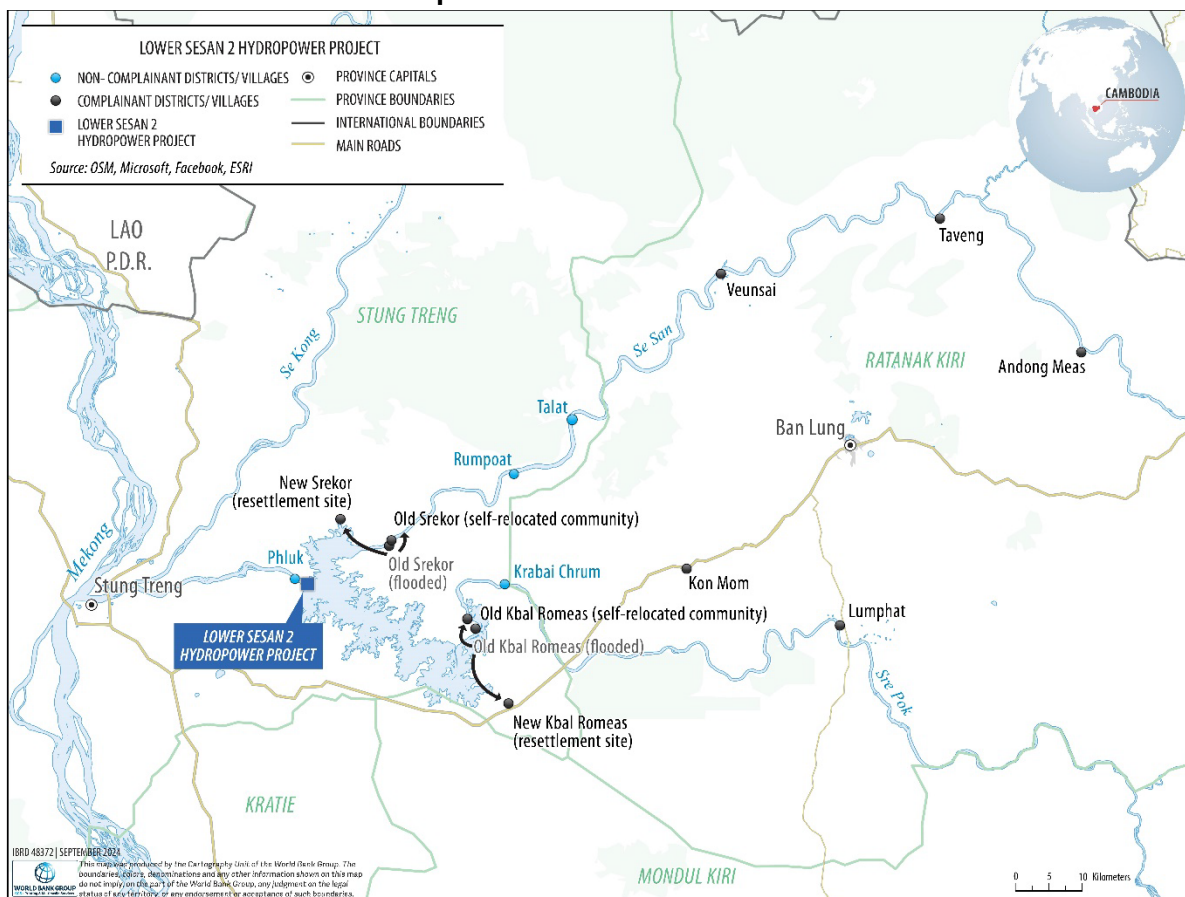
4. CAO Assessment of Related Harm

CAO finds there has been Harm to complainants related to IFC’s non-compliances during pre-investment due diligence and in supervising ABBank’s legal commitment to apply its SEMS policy requirements and consequently the Performance Standards to its existing investment in EVNI and LS2.

As a result of these shortcomings, IFC missed several opportunities to contribute to avoiding, reducing, and/or addressing the harm experienced by communities due to a sub-project developed without proper identification and mitigation of E&S risks and impacts to affected people.

The discussion of Harm that follows is organized according to the three complainant groups. CAO acknowledges that women and girls may have been affected differently by most of these harms. However, the evidence gathered and available during this investigation did not provide specific information regarding gender-differentiated impacts.

Map 4. Affected Communities



Source: World Bank Group, IBRD, September 2024.

4.1 Villagers from Kbal Romeas and Srekor in the reservoir area (complainants that resettled and those that refused to do so)

The 2008 EIA of the Lower Sesan 2 dam and testimonies shared with CAO in 2023 for this investigation describe how the dam developer and government representatives engaged with residents of Kbal Romeas and Srekor villages in the reservoir’s flooding area. This engagement included surveying village households and their land, disseminating information about the resettlement packages, and encouraging people to move to the relocation sites. The information available to CAO indicates that consultations for the EIA took place between February and April 2008, before IFC invested in ABBank. In 2011, the Ministry of the Environment conducted a national consultation on the dam’s development and additional discussions occurred between 2013 and 2015 when LS2 and government representatives visited the villages identified for resettlement to offer compensation packages. (For more details, see annex A).

However, communities shared that during these rounds of meetings they felt that decisions had already been made and lacked a clear understanding of whether the compensation offered was sufficient to compensate for their dam-related losses. Civil society organizations and academics have widely criticized these stakeholder engagement processes for disregarding the concerns and objections raised by the communities, dismissing calls for exploring alternative project designs, providing insufficient compensation to those affected, and failing to establish an effective grievance mechanism.¹⁷⁷

These comments and criticisms by communities and civil society organizations are corroborated by independent studies and reports, including a 2016 Report of the Special Rapporteur on human rights in Cambodia by the United Nations (UN), which emphasized “a clear need for adequate consultation with affected communities.”¹⁷⁸ Human Rights Watch and others argued that both the Cambodian government and the Lower Sesan 2 Hydropower Company, partly owned by EVNI, failed to adequately consult impacted communities before or during the dam’s construction.¹⁷⁹ The 2016 report of the UN Special Rapporteur stated that some villagers did not fully understand the details of the compensation packages being offered.¹⁸⁰ Further, because most meetings focused on resettlement, communities were not well informed about other project E&S risks and impacts, such as the expected impacts on fisheries and water flow.¹⁸¹

¹⁷⁷ Human Rights Watch, “Underwater, 2021,” p. 3. Earth Rights International: Lower Sesan 2 Dam webpage at <https://bit.ly/3ERVWwE>; Earth Rights International, Panna, “Watering Down the Law: A Legal Analysis of the Proposed Lower Sesan 2 Dam Project,” in *Land, Water, Rights. Voices from the Tibetan Plateau to the Mekong Delta*, 143–144, <https://bit.ly/3S3CIN3>; Baird, *Best Practices in Compensation and Resettlement for Large Dams*, 116–117, <https://bit.ly/3gdRHl8>.

¹⁷⁸ United Nations, “Report of the Special Rapporteur on the Situation of Human Rights in Cambodia,” A/HRC/33/62 (September 5, 2016), para.17, <https://bit.ly/4bmhfmS>.

¹⁷⁹ Human Rights Watch, “Underwater, 2021.”

¹⁸⁰ United Nations, Report of the Special Rapporteur on human rights in Cambodia, (2016), para.17.

¹⁸¹ Share Worrell et al. Not enough info on dam: report, *Phnom Penh Post*, Jan. 25, 2023; Dene-Hern Chen et al., Villagers still in the dark about Lower Sesan Hydropower Dam, *The Cambodia Daily*, Jan.25, 2013; Bridget Di Certo et al., Villagers bemoan scant information on dam project, *Phnom Penh Post*, Nov.29, 2012; Phak Seangly et al., Villagers in limbo as dam starts, *Phnom Penh Post*, Feb. 13, 2014

Consultations with project-affected people, stakeholder engagement, information disclosure, and grievance handling are key aspects of project development and central to IFC’s approach. These elements help ensure that project risks and impacts are avoided and minimized, and residual impacts are addressed, as required by PS1. They are also essential safeguards to provide affected people with knowledge and understanding of how a project could affect them and offer them agency over the required mitigation measures.

CAO further notes that the complainants from Old Kbal Romeas identify as ethnic Bunong, who are recognized Indigenous Peoples in Cambodia and also meet the definition requirements of IFC’s Performance Standard 7 (Indigenous Peoples). Members of Old Srekor identify as members of Cambodia’s Lao ethnic minority and meet some of the PS7 Indigenous Peoples characteristics.¹⁸²

The 2014–2015 protests and public complaints from Indigenous Peoples surrounding the LS2 site called for the project’s suspension and emphasized the strong connection between their culture and the land, the significance of ancestral graves in the area, and their rights as Indigenous Peoples.¹⁸³ The LS2 reservoir completely flooded the Old Kbal Romeas and Old Srekor ancestral villages.¹⁸⁴ Their homes and spiritual and burial grounds were inundated, and the reservoir reduced the boundaries of their communal forest. The sub-project’s lack of an Indigenous Peoples Plan, which PS7 required, meant that no special considerations were made regarding culturally significant places like spirit houses and cemeteries.

CAO finds that communities located in the IFC sub-project’s planned reservoir area were deprived of sufficient information and adequate consultation due to insufficient engagement by the sub-project. IFC supervision of ABBank’s existing sub-projects, as required in the legal agreement, could have potentially reduced, and/or addressed the shortcomings in the LS2 consultation processes. IFC could have supported the sub-client EVNI and the Lower Sesan 2 sub-project with its guidance and experience regarding stakeholder engagement processes in complex situations like this one, following the requirements of PS1, PS5, PS6, PS7, and PS8. From 2011 to 2013, when construction began, and again through 2018, when operations began, IFC had multiple opportunities to help enhance the sub-project’s stakeholder engagement processes. Had IFC

¹⁸² Paragraph 5 and 6 of the 2006 PS7, indicate that “5. In this Performance Standard, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- An indigenous language, often different from the official language of the country or region.

6. Ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this Performance Standard may require technical judgment.”

¹⁸³ Human Rights Watch, “Underwater, 2021,” citing several statements addressed to the National Assembly; Press release and Community Statements: Phnong Ethnic Villagers in Kbal Romeas and Lao villager in Srekor 1 & 2 Village Publicly Announce: “We Refuse to be Resettled by the Lower Sesan 2 Dam,” 29 September 2014. See: Cuddy, A., & Seangly, P., ‘Villagers Refuse Relocation,’ *Phnom Penh Post*, 29 September 2014.

¹⁸⁴ EIA, p.78

done so, it could have potentially helped reduce or minimize the harm to these communities stemming from inadequate stakeholder engagement regarding consultations, disclosure of information, and access to a grievance mechanism.

Image 2: Flooded spirit house in Old Kbal Romeas



(Source: CAO compliance team)

4.2 Villagers from Old Kbal Romeas and Old Srekor who refused to resettle

The complaint submitted to CAO in 2018 states that 59 families in Old Kbal Romeas and 77 families in Old Srekor refused to relocate to the LS2 resettlement sites.¹⁸⁵ A corporate social responsibility (CSR) report on LS2 commissioned by the China Huaneng Group and conducted and published by the Cambodian organization Asian Vision Institute (AVI) in November 2020 suggests that this number subsequently fell to 74 households.¹⁸⁶

Some of these households left their homes when the water level increased and were therefore involuntarily displaced, as acknowledged by EVNI’s 2011 CRP, which includes them among project-affected people.¹⁸⁷ They moved, without resettlement benefits, to smaller areas on a higher hill inside their remaining ancestral land near the newly flooded reservoir area¹⁸⁸ so they

¹⁸⁵ Complaints of Srekor Village and Kbal Romeas Village, June 2018.

¹⁸⁶ In November 2020, an organization called the Asian Vision Institute (AVI) published a Corporate Social Responsibility (CSR) report on LS2 commissioned by the China Huaneng Group Co. Ltd. The China Huaneng Group Co. Ltd is the parent company of Huaneng Lancang River Hydropower, which is the sole owner of Hydrolancang International Energy—the majority shareholder of LS2. See Asian Vision Institute (AVI), *2020 Sustainability Report. Rapid Assessment of Chinese State-Owned Enterprises in Cambodia* (2020), 8, at: <https://bit.ly/48lceeA>; see also, China Huaneng Group, “The Sustainability Report of Chinese Enterprises in Cambodia was Released in Beijing,” *PR Newswire* (November 24, 2020), <https://bit.ly/3YwQwkg>.

¹⁸⁷ Earth Rights International, Pahna, *Watering Down the Law: A Legal Analysis of the Proposed Lower Sesan 2 Dam Project, in Land, Water, Rights. Voices from the Tibetan Plateau to the Mekong Delta*, p. 149–150. <https://bit.ly/3S3CIN3>

¹⁸⁸ Sun Narin, ‘Our Ancestors’ Graves have been Drowned’: Cambodian dam wipes out hill tribe way of life, *VOA*, December 7, 2018. <https://bit.ly/3RSgqLB>

could remain in proximity to their flooded village.

The lack of free, prior, and informed consultation of these Indigenous communities, as well as the impacts on their cultural and traditional practices, has been widely reported by academics, NGOs, and the media since 2009.¹⁸⁹ In terms of the CAO complaint, the main Harm these households experienced relates to the LS2 project ignoring their wish to be resettled on customary land as close as possible to their previous homes. The 2016 report of the UN Special Rapporteur states that the authorities did not consider this option.¹⁹⁰ IFC input to the sub-client’s CRP could have potentially addressed this shortcoming by requiring PS5 alignment, thereby reducing the risk of harm to these households. Additionally, the lack of consultation with these communities also deprived them of their right to opine on alternative options to the LS2 dam, whether that be regarding its design, mitigation measures, location, or the possibility of other potential sources of energy.

In addition to this Harm, the villagers that refused to move to the LS2 resettlement sites have experienced the following adverse impacts from the sub-project’s design and development:

4.2.1 Sociocultural and psychological impacts

Villagers shared with CAO that flooding of their sacred land and ancestral burial sites impacted their spiritual and community life and led to anxiety, distress, and fear due to the displacement of local spirits.¹⁹¹ Old Kbal Romeas villagers also reported that they missed the traditional social activities and ceremonies conducted on their now-flooded rice fields. Additionally, the relocation process led to community and family divisions between villagers who accepted resettlement and those who refused, impacting the communities’ cohesion and cultural identity. During its site visit, CAO observed the enduring connection that communities maintained with their former submerged village, as well as their persistent hope to restore their former community life.

CAO finds that these households were deprived of their right under PS5 to access “technically and economically feasible options for resettlement based on consultation with affected people and assessment of resettlement alternatives.”¹⁹² In turn, they experienced direct economic, social, and psychological Harm from the uncertainty of their past, present, and future circumstances. Additionally, differences of opinion on whether or not to relocate caused

¹⁸⁹ Indigenous People NGO Network, NGO Forum on Cambodia, Asian Indigenous Peoples Pact, “The Rights of Indigenous Peoples in Cambodia, February 2010,” Report submitted to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), p. 14. <https://bit.ly/3T9uhMe>; Baird, *Best Practices in Compensation and Resettlement for Large Dams*, 13–15; Say Tola Sangeetha Amarthalingam, “Cambodians struggle to retain their identity after being displaced by dam,” in *The Third Pole*, June 2021. <https://bit.ly/3D6Gs73>, and John Reed and James Kyngge, “Belt and Road dam in Cambodia branded a ‘disaster’ for local communities,” in *Financial Times*, August 2021. <https://on.ft.com/3TpFU1e>.

¹⁹⁰ United Nations, Report of the Special Rapporteur on human rights in Cambodia, (2016), para.17.

¹⁹¹ Similar reports about these problems in Kbal Romeas Village were also reported by Mahanty, Sango, Sopheak Chann, and Sopsophea Suong. (2023) The emotional life of rupture at Cambodia’s Lower Sesan 2 hydropower dam. Environment and Planning E: Nature and Space.

¹⁹² 2006 Guidance Note 5, Land Acquisition and Involuntary Resettlement, (July 31, 2007), para. G28.

community divisions and ultimately the splintering of Kbal Romeas and Srekor communities.

4.2.2 Indigenous communal land titling

After losing their flooded village to the LS2 project, community members of Old Kbal Romeas who refused to resettle have been engaged in a protracted dispute for their remaining communal land.

In 2012, before the construction of LS2 began, the ethnic Bunong villagers at Old Kbal Romeas applied for an ICLT for their territory,¹⁹³ but this process was discontinued due to the hydropower dam’s development and associated plans to resettle the village. In 2017, the 55 families who refused to relocate to the resettlement site reinitiated the ICLT application process. They were officially recognized as an Indigenous Entity in 2019, but their ICLT application remains pending. The process has stalled because much of the land around the reservoir, which they are claiming, was granted as an economic land concession for plantation development to a private company. The UN Human Rights Committee has expressed concern that Indigenous Peoples’ lands continue to be granted for private use in Cambodia without meaningful consultation with Indigenous Peoples.

¹⁹⁴

4.2.3 Economic impacts on agriculture and fishing practices

The material wealth of villagers from Old Kbal Romeas and Old Srekor who refused to resettle has been negatively impacted by the flooding of their villages. They have had to physically resettle on their own, build new houses without any compensation or assistance, and remain uncertain that they can stay in their current location. In addition to uncompensated physical displacement, they received no in-kind or cash compensation for the loss of productive assets and/or livelihood restoration for economic displacement due to the flooding of their farmland.

Regarding fishing impacts, community members from Old Kbal Romeas and Old Srekor informed CAO that a few years after the dam gates closed, local fish stocks and fisheries declined considerably. This has had a significant impact on their livelihoods and traditional fishing and culinary customs. They explained that most of the fish they currently catch are not migratory but small species with less monetary value. (For more details see annex B.)

¹⁹³ The 2009 Indigenous Communal Land Titling sub-decree aimed to establish guidelines for land registration and grant ownership rights to Indigenous communities and for agricultural purposes. The process involves the initial identification of the village seeking ICLT registration as an Indigenous Entity, followed by the legal entity’s application for an ICLT.

¹⁹⁴ UN Human Rights Committee, “Concluding Observations on the Second Periodic Report of Cambodia” (April 27, 2015), CCPR/C/KHM/CO/2, para. 28, <https://bit.ly/3L6Oq2Y>.

Image 3: Submerged village of Old Srekor



(Source: CAO compliance team)

4.2.4 Retaliation for refusal to relocate

Complainants from Old Kbal Romeas and Old Srekor alleged further harm due to the hydropower company and government using pressure, intimidation, and reprisals on project opponents between 2017 and 2018. Villagers who refused to relocate reportedly experienced the following forms of intimidation aimed at coercing them into moving to the resettlement site.

- Teachers were withdrawn from schools and staff withdrawn from the health center that serves the two villages, as some residents began moving to the resettlement site. This resulted in 80 children of families who remained not attending school between 2018 and 2021.
- During 2017 and 2018, police-monitored roadblocks screened all people using the access roads to the villages. Community members stated that during that time, outsiders, including UN officials, the media, and NGOs, were not allowed to enter the villages and meet with communities.¹⁹⁵ The roadblocks also created obstacles for people seeking access to health services.¹⁹⁶ These testimonies, collected by CAO during community meetings, are supported by numerous media reports from that period.¹⁹⁷
- Community leaders (three from Old Kbal Romeas and seven from Old Srekor) were charged with “incitement,” which, according to multiple UN reports, is a common form of

¹⁹⁵ Phak Seangly and Martin de Bourmont. “UN Officials Blocked from Visiting Villages Near Dam,” *Phnom Penh Post*, July 26, 2017.

¹⁹⁶ Although they eventually managed to cross the roadblocks, they were subjected to searches, intimidation, and had to endure lengthy waits and confrontations in order to leave. Additionally, the government ceased sending ambulances to the affected villages during this period.

¹⁹⁷ M. Sullivan, “I Will Lose My Identity”: Cambodian Villagers Face Displacement by Mekong Dam,” *NPR* (August 26, 2017), <https://bit.ly/4bofPYY>; Sen David., “Second Road to Flooded Dam Commune Blocked,” *Khmer Times* (August 7, 2017); Khy Sovuthy, “Sesan Villagers Call for End to ‘Suffering,’” *Khmer Times* (October 13, 2017); Phak Seangly, “Students Blocked from Dam,” *Phnom Penh Post* (September 11, 2017).

retaliation against human rights and environmental defenders in Cambodia.¹⁹⁸ There is no evidence in IFC supervision documents that IFC provided guidance to ABBank or EVNI on threats and reprisals. This occurred despite the release of IFC’s 2018 Position statement on Retaliation Against Civil Society and Project Stakeholders in the same year that tensions and acts of intimidation increased around the LS2 sub-project.¹⁹⁹

CAO notes that tensions have subsided considerably in recent years for villagers opposed to the dam. For example, the government has resumed providing services to both Old Kbal Romeas and Old Srekor, including providing primary school teachers, and community members indicated to CAO in October 2023 they were not experiencing threats or other forms of intimidation for their positions regarding the LS2 sub-project.

4.2.5 CAO findings

In summary, CAO finds that villagers who refused to move to the project resettlement sites experienced Harm related to IFC’s non-compliances in this case. The main Harm stems from the failure to consider their wish to be resettled within their customary land as close as possible to their ancestral village, or to consider their views on alternatives to LS2. As Indigenous Peoples, the loss of sacred land and ancestral burial sites has had socio-cultural and psychological impacts,²⁰⁰ which were exacerbated by the lack of free, prior, and informed consultation regarding the sub-project, to which they had a right as Indigenous Peoples. In addition to these losses, villagers who refused to move to the LS2 resettlement sites have suffered adverse impacts from physical and economic displacement without compensation or other mitigation measures. On the contrary, for several years, they experienced multiple forms of retaliation for refusing to relocate outside their ancestral lands, resulting in a protracted battle for legal tenure.

CAO finds that these Harms could have been avoided, or at least reduced, had IFC required ABBank to ensure compliance with the Performance Standards of its existing investment in EVNI and the LS2 sub-project. This approach was particularly viable until November 2012, when EVNI

¹⁹⁸ See, for example, Concluding observations on the second periodic report of Cambodia, UN Human Rights Committee, April 27, 2015, CCPR/C/KHM/CO/2, para. 21. <https://bit.ly/3L6Oq2Y>; United Nations, Report of the Special Rapporteur on human rights in Cambodia, (2016), para. 31; Situation of human rights in Cambodia, Report of the Special Rapporteur on the situation of human rights in Cambodia, July 2023, UN Doc. A/HRC/54/75, para. 25; Human Rights Committee, Concluding observations on the third periodic report of Cambodia, 18 May 2022, UN Doc, CCPR/C/KHM/CO/3, para. 34; Cambodia: Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights for the Universal Periodic Review, 22 February 2024, UN Doc A/HRC/WG.6/46/KHM/2, paras. 35–54.

¹⁹⁹ IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders (October 2018), <https://www.ifc.org/content/dam/ifc/doc/2023/201810-ifc-position-statement-on-reprisals-en.pdf>.

²⁰⁰ Psychological impacts from the uncertainty and loss of power and grief for the loss of homes and culturally relevant spaces due to resettlement have been well documented. Thayer Scudder *The Future of Large Dams: Dealing With Social, Environmental, Institutional and Political Costs* (London: Earthscan, 2005); Anthony Oliver-Smith, “Communities after Catastrophe: Reconstructing the Material, Reconstituting the Social,” in *Community Building in the Twenty-First Century*, edited by Stanley E. Hyland (Santa Fe: School of American Research Press, 2005), 45–70, and S. Kedia, “Health Consequences of Dam Construction and Involuntary Resettlement,” in *Development and Dispossession: The Crisis of Forced Displacement and Resettlement*, edited by Anthony Oliver-Smith, (Santa Fe: School for Advanced Research Press, 2010), 97–118.

was the sub-project’s majority owner and developer, and before resettlement commenced.

Guidance from IFC on how to plan and conduct stakeholder engagement and resettlement processes aligned with PS1, PS5, PS6, PS7, and PS8 could have potentially identified the need to consult affected communities and assess the feasibility of their wish to stay within their customary land and near the former river border. Whether this would have resulted in feasible options for all cannot be known with certainty, but it is clear from current circumstances that some community members are able to live on residual community land.

4.3 Villagers who resettled to New Kbal Romeas and New Srekor

According to the 2020 CSR report of LS2 by AVI, 766 of the 840 physically displaced households from six villages moved to the resettlement sites.²⁰¹ Due to security concerns raised by complainants, CAO could only visit Kbal Romeas Village (New Kbal Romeas), located along the road between Stung Treng and Ratanakiri provinces.

Around 160 families live in New Kbal Romeas, some of whom stated that they initially rejected the replacement houses due to the congested resettlement site, the small residential plots, the small size and quality of the houses, and other concerns.

Image 4: Community center in New Kbal Romeas resettlement site



(Source: CAO compliance team)

4.3.1 Layout and infrastructure of the resettlement site

During the 2023 field visit, CAO observed that the resettlement site does not follow the traditional distribution and organization of villages in the area. Instead, it appears congested with houses lining the roads. In addition, the social infrastructure, including water services and community

²⁰¹ AVI, *2020 Sustainability Report* (CSR report), 9. CAO assumes that these 840 households reflect the normal demographic growth of the 515 households from 2010 covered in EVNI's 2011 CRP and the estimate of having 797 households by 2014, resulting in annual growth of 6.4 percent per year.

buildings, are deteriorating. CAO notes that the community center (pictured above) was gifted by NGOs (Non-Timber Forest Products Organization and Mission Alliance) and not established as part of the resettlement program. While shared mechanical water pumps are available for some of the houses, many no longer function, and the sewage system appears to be in disrepair.²⁰²

Image 5: New Kbal Romeas resettlement site



(Source: CAO compliance team)

Image 6: Wooden replacement houses at New Kbal Romeas resettlement site



(Source: CAO compliance team)

4.3.2 Quality of the houses provided as in-kind compensation

In New Kbal Romeas, CAO observed that the concrete and wooden houses are generally of

²⁰² Human Rights Watch studied water samples taken in April 2019 from some of the resettlement sites and determined that “[w]hile more formal testing is needed to reach a conclusive determination about water quality, samples taken in April 2019 were found to contain levels of arsenic just over the limit considered safe by the World Health Organization (WHO)—10 µg/L in drinking-water—and highly elevated levels of iron, at 6,200 to 7,500 µg/L, [...] Continued exposure to arsenic over WHO health limits could result in development of cancers and skin lesions.” Human Rights Watch, “Underwater, 2021,” pp. 85–86.

decent quality, but that the wood might not have dried properly before the houses were constructed because some parts have warped. Community members informed CAO that some houses were built for households that refused to resettle and that subsequently many of these have remained unoccupied and fallen into disrepair if they are not allocated to other people (generally due to household expansion). The villagers who spoke to CAO reported that, to date, they have not been provided with security of tenure over their replacement homes, a key requirement under IFC PS5.²⁰³

4.3.3 Quality of agricultural land provided as in-kind compensation

Each household that moved to the resettlement sites received five hectares of land suitable for lowland rice cultivation. These plots were not allocated based on the quality of residents’ pre-resettlement land but instead on a lottery system. In New Kbal Romeas, those that received plots close to the river are generally of the view that they were able to restore their agricultural livelihoods to pre-displacement levels. However, those allocated land further from the water report that productivity is significantly lower than at their former location. The project operator could have reduced this inequality in land productivity through a basic irrigation scheme, in addition to the main dewatering channels that were provided, but no such system was installed. A common assessment from residents interviewed by CAO was that production on these replacement plots was good for the first couple of years, but has since declined to an average of 500 kg of unhusked rice/ha, amounting to one-third to one-quarter of pre-displacement yields.²⁰⁴ There are no independent studies comparing pre- and post-displacement agricultural livelihoods.

The New Srekor resettlement site for residents of the former Srekor 1 and 2 villages is located north of the Sesan River and east of the Sekong River, while their previous homes were located south of the Sesan River. The maps in EVNI’s 2011 CRP show that all households formerly had lowland paddy land along the river, but their replacement agricultural land is now much further away (see map 4 above), and residents describe the soil as poor and mixed with small stones. To enhance productivity, some have sold part of their farmland to buy water pumps for irrigation. As a result, the households CAO spoke with from Old Srekor, as well as local government authorities and NGOs, suggested that yields from replacement lands are lower than pre-resettlement yields. However, CAO could not visit this resettlement site, did not speak directly to any people living there, and did not find any relevant study to validate this information regarding the conditions of the resettlement site, which was provided by other complainants, local authorities, and organizations.

CAO notes that the 2020 CSR report of LS2 by AVI acknowledges livelihood challenges, highlighting an increase in daily consumption expenses (meat, vegetables, and water) due to the resettlement sites’ location and loss of access to fishing grounds and the forest.²⁰⁵ CAO also

²⁰³ 2006 PS5, objectives and 2006 Guidance Note 5, Land Acquisition and Involuntary Resettlement, (July 31, 2007), para. G 6–8.

²⁰⁴ EIA, pp. 112 and 113.

²⁰⁵ AVI, *2020 Sustainability Report* (CSR report), 11–12.

received testimonies from community members that corroborate these observations.

In New Kbal Romeas, CAO learned that, to cover the higher costs for food, water, and other consumables, as well as to enhance their replacement houses, some households sold parts of their allocated agricultural land. While those that sold their replacement rice farmland in 2018–2019 received US\$700 per ha, prices are now up to US\$1,000 per ha. This figure is low in comparison to the prices for good farmland near the local rivers, which receives annual flooding, but ten times higher than the cash compensation paid by the project in line with its 2011 CRP.

CAO spoke with local governmental authorities who largely confirmed complainant concerns about infrastructure at the resettlement site and the quality of replacement land. These officials indicated that resettlement was planned and implemented by LS2’s subcontractors without their involvement and supervision, and informed CAO that they are trying to enhance the local infrastructure with the help of NGOs and their own limited budget.²⁰⁶ Cambodian government officials at the national level stated that the resettlement process was overseen by a high-level interministerial committee in close consultations with the LS2 company and that financial constraints limited their ability to ensure proper supervision of the process.²⁰⁷

4.3.4 Fishing practices

The New Kbal Romeas resettlement site is located about two to three kilometers away from the LS2 reservoir (see map 4 above). The New Srekor 1 and 2 resettlement sites are about two to four kilometers away from the LS2 reservoir and/or any rivers (depending on the various points in the resettlement site and the reservoir), making it difficult for residents to maintain their pre-displacement fishing livelihoods (see map 4). Initially, as is common with dams that have large reservoirs, fish stock and fisheries increased significantly, but within a few years both had declined considerably.²⁰⁸ The fish catches for resettled villagers are now significantly lower along the Srepok River than before the dam’s construction, indicating adverse impacts to biodiversity and livelihoods. (See annex B for more details on the impacts on fisheries.)

4.3.5 CAO findings

In summary, CAO finds that the available evidence is sufficient to conclude that resettled villagers have suffered Harm from the unmitigated impacts of physical and economic displacement.

- These villagers have been harmed mainly because the resettlement packages were not based on a comprehensive socio-economic survey of pre-displacement assets and thus,

²⁰⁶ Interviews during the CAO compliance investigation site visit.

²⁰⁷ Interviews during the CAO compliance investigation site visit.

²⁰⁸ The increase of fisheries soon after reservoirs are established, followed by a decline after a few years, is well documented. See Chris Barlow, “Dams, Fish and Fisheries in the Mekong River Basin,” *Catch and Culture* 14, no. 2 (2008), 4–7; WCD 2000: Dams and Development.” As Barlow (2008: 6) put it, “Dams do create opportunities for new reservoir fisheries. Yields in new reservoirs are initially quite high as the nutrients are released from the recently inundated land. However, the yields usually decline after five years or so as the nutrient supply is used up, and then stabilize at a lower level.”

they received inadequate compensation packages.

- Villagers were not allowed meaningful participation in the decision-making process for their physical and economic displacement. As a result, they have experienced issues with the layout, infrastructure, and quality of the homes and land provided as in-kind compensation, which have remained unaddressed.
- The project lacks a grievance mechanism, so resettled villagers have no channel to raise these issues with the project.
- Villagers are now living further away from the river, and their substitute agricultural lands are generally less productive than their previous lands. To compensate for the reduced amount of fish catches, community members now buy much of what they used to fish or farm, as well as water. However, they have received no economic compensation or income-restoration program for the impact on their livelihoods.

These Harms could have been addressed, avoided, or significantly reduced had IFC complied with its obligations to supervise ABBank’s application of the Performance Standards to its sub-projects. As stated earlier, IFC had significant opportunity in 2011 to positively impact the LS2 project’s CRP in line with PS5 requirements. CAO finds that IFC’s non-compliance is therefore related to Harm to the complainants.

4.4 Upstream Villages

According to multiple testimonies, upstream villagers first learned about the LS2 project from an NGO in 2008. They state that neither the Lower Sesan 2 Company nor the Cambodian government provided them with any information about the project, its impacts, or access to a grievance mechanism. Between 2012 and 2016, upstream communities repeatedly raised questions and concerns through multiple avenues but were not granted a response, and to this day lack official information regarding the IFC sub-project’s impacts, risks, and mitigation measures.

While not complainants in this case, CAO also received testimonies from other people living upstream and downstream of the LS2 dam along the Sesan and Sekong Rivers. These local stakeholders state that they too had not been consulted about the project and/or its risks and impacts, despite experiencing impacts during the hydropower project’s construction and operation, including spontaneous floods and water pollution.

These testimonies are in line with the 2008 EIA for LS2, which was based on engagement and consultation only with communities located within the area of the planned reservoir. According to the EIA, consultations were conducted in three upstream villages in Kon Mom district that were expected to be partially submerged by the project’s reservoir (see annex A).²⁰⁹ CAO notes,

²⁰⁹ According to the EIA, consultations were conducted in Muoy village, Pii village, and Bei village in Sre Angkrang commune, Kon Mom district. EIA, p. 133; Socio-Economic Report for LS2, Annexed to EIA, pp.4–5.

however, that complainants from these villages did not recall these consultations when they spoke to CAO in October 2023.

Complainants from several upstream villages, including Andong Meas, Kon Mom, Lumphat, Taveng, and Veunsai districts, ²¹⁰ reported to CAO adverse impacts to their livelihood due to changes in river flow and level, including unpredictable flooding of their rice fields and pasture near the river banks. These impacts have worsened since the dam was completed in 2017–18, and most believe the cause is a “significant backing-up effect associated with LS2.”²¹¹ The flooding has disrupted people’s lives significantly, including causing children to miss school because they were unable to cross flooded streams or the school was inundated.

Upstream villagers also reported a decrease in the fish populations they previously caught for consumption and sale. Since the dam was built, they claim that migratory fish that previously composed up to 80 percent of their catches have declined dramatically, significantly impacting both biodiversity and local livelihoods. To complement their fish catches, upstream community members told CAO they now buy much of what they used to fish, vegetables they used to grow, and clean water, thereby increasing their daily expenses. (For more details, see annex B.)

The partial flooding of agricultural lands owned by communities below the 75m asl of the reservoir,²¹² the impacts on fisheries in the Sesan and Srepok, and the associated economic displacement were identified in the 2008 EIA for the hydropower project. However, it was not addressed in the 2011 CRP developed by IFC sub-client EVNI, which was limited to physical displacement issues. CAO found no evidence that upstream villagers affected by economic displacement have been compensated for their loss of livelihoods. To the contrary, all relevant stakeholders confirmed to CAO that these communities have not been compensated for their livelihood losses.

Additionally, it is likely that some water fluctuations experienced by upstream villages, particularly those above the reservoir’s 75m asl, are the result of cumulative impacts from a series of dams in the central highlands of Viet Nam known to have caused downstream impacts on water levels

²¹⁰ The CAO complaint from upstream villagers was filed by: (i) seven villages along the Sesan River: Lom laeng and Malik commune, Andong Meas district; Veang Chan, Seang Say, and Pyang, Taveng Kroam commune, Taveng district; Tiem Leu, Ka Choun commune, Veunsai district; Fang, Pong commune, Veunsai district; and Koh Pang, Taveng Kraom commune, Veunsai district; (ii) eleven villages along the Srepok River: Samkha village, Okan village, Lumpat village, Dey Lo Village and Thmey village, Chey Oudam commune, Lumphat district; Muoy Village, Bei Village and Pii Village, Sre Angkrong commune, Kon Mom district; Sangkum village, Tropaing Chres commune, Kon Mom district; and Srepok Touch village and Srepok Thom village, Serey Mongkul commune, Kon Mom district.

²¹¹ When large amounts of water flow down the Sesan and Srepok rivers, the water backs up when it reaches the reservoir because it cannot as easily or quickly drain out downstream, causing river water levels to rise and flooding in low-lying areas. Field observations and interviews during the CAO compliance investigation site visit.

²¹² The reservoir was located at 75 m amsl. From the available evidence, upstream villages from Lumphat (also spelled Lampait and Rompuot Leu) were located below 75 m amsl, while Taveng, Kon Mom, Andong Meas, Veunsai, and Kalaphouk were above it.

and fluctuations in Cambodia’s Sesan and Srepok rivers.²¹³ The complainant communities living between the upstream dams in Viet Nam and the LS2 dam downstream understandably are not able to distinguish the source of the impacts they are experiencing, in part due to the lack of information and consultation they received from the LS2 sub-project.

CAO’s expert analysis of the available information indicates that complex hydrological interactions are likely occurring between the changes in water flow caused by upstream dams in Viet Nam and the downstream LS2 dam. Communities living upstream of LS2 but near the reservoir may be experiencing unusual water fluctuations from a combination of the influences of the LS2 reservoir and upstream dams, while the water fluctuation experienced by communities living further upstream of LS2 is most likely a result of the upstream dams.

As explained above, a comprehensive cumulative impact assessment has not been done regarding LS2 and the many other dams that have been built in or are planned for the 3S and Mekong River basins. More detailed research is required to fully understand the complex hydrological conditions upstream of the reservoir. To this end, IFC could have guided EVNI and the Lower Sesan 2 Hydropower Company in conducting this research in compliance with PS1 and PS6 requirements for cumulative impacts and impacts on natural resources. This would have been most effective when EVNI was the principal project developer between 2011 and 2012. However, IFC support was also feasible after 2013 when LS2’s potentially significant environmental impacts were becoming clearer to the international community and the World Bank encouraged Cambodia to redesign the project to account for and mitigate such impacts.

4.4.1 CAO findings

CAO notes that some upstream villagers (particularly those in Taveng, Andong Meas, and Veunsai and Lumphat Districts) identify as Kreung, Brao, Tampuan, Lun, Kachak, Bunong, Kavet and Jarai—ethnic groups recognized as Indigenous Peoples in Cambodia. The 2008 EIA for LS2 identified both upstream and downstream villages where government-recognized Indigenous Peoples and ethnic minorities lived as impacted by the project. Yet none of these villagers were included in public consultations about the hydropower dam.²¹⁴

²¹³ See Peter Swift, *Livelihoods in the Srepok River Basin in Cambodia: A Baseline Survey* (Phnom Penh: NGO Forum on Cambodia, 2006); Andrew B. Wyatt and Ian G. Baird, “Transboundary Impact Assessment in the Sesan River Basin: The Case of the Yali Falls Dam,” *International Journal of Water Resources Development* 23, no. 3, 427–42; 3S Rivers Protection Network (3SPN), “Abandoned Villages Along the Sesan River in Ratanakiri Province, Northeastern Cambodia,” 3S Rivers Protection Network, Ban Lung (Ratanakiri, Cambodia, 2007); M. Lerner, “*Dangerous Waters: Violations of International Law and Hydropower Development along the Sesan River*,” unpublished document, Oxfam America, Phnom Penh (2003); NGO Forum on Cambodia, “Down River: The Consequences of Vietnam’s Se San River Dams on Life in Cambodia and Their Meaning in International Law,” 2005 NGO Forum on Cambodia, Phnom Penh (2005).

²¹⁴ Environmental checklist for hydropower development, annexed to EIA, p. 1; Socio-Economic Report for LS2, Annexed to EIA, pp.1,5,21; EIA pp. 84, 102, 113.

While most of the upstream villages were not informed and consulted by the project, some villages that were expected to be directly submerged by the reservoir were included in the EIA.²¹⁵ However, as previously noted regarding the consultations conducted in Kbal Romeas and Srekor villages, the information available to CAO indicates that consultations for the EIA did not provide sufficient information and adequate consultation due to insufficient engagement by the sub-project.

LS2’s development has had significant impacts on local livelihoods, food security, and associated social and cultural life. For communities upstream of the reservoir, impacts on fisheries have made it more difficult to continue cultural practices that rely on catching large quantities of fish over a short period of time. A number of sacred deep-water pools along the Sesan and Srepok rivers important to Indigenous People’s livelihoods and spiritual beliefs²¹⁶ have been compromised because migratory fish are no longer able to reach them.²¹⁷ Decreased fish catches have also contributed to more Indigenous community members changing their activities and working as day laborers, in particular harvesting cassava and cashew nuts for others.

CAO therefore finds that upstream villagers have suffered Harm from dam-related economic impacts on their agricultural practices and fisheries, as well as from the failure to consult and properly inform them about the sub-project. They were economically displaced without any adequate compensation or livelihood restoration assistance and not included in the resettlement program. These harmful impacts could have potentially been avoided or reduced if IFC had supervised ABBank’s equity investment in EVNI in line with Sustainability Policy requirements.

²¹⁵ According to the EIA, consultations were conducted in Muoy village, Pii village and Bei village in Sre Angkrang commune, Kon Mom district. EIA, p. 133; Socio-Economic Report for LS2, Annexed to EIA, pp.4–5.

²¹⁶ In Southeast Asia, deep water pools are often considered to be sacred spaces. See Ian Baird, “Strength in Diversity: Fish Sanctuaries and Deep-Water Pools in Lao PDR,” *Fisheries Management and Ecology* 13, no. 1, (2006), 1–8; A. A. Koning, K. M. Perales, E. Fluet-Chouinard, and P. B. McIntyre, “A Network of Grassroots Reserves Protects Tropical River Fish Diversity,” *Nature* 588 (2020), 631–35.

²¹⁷ Ian G. Baird and Mean Meach, *Sesan River Fisheries Monitoring in Ratanakiri Province, Northeast Cambodia: Before and After the Construction of the Yali Falls Dam in the Central Highlands of Viet Nam* (Ban Lung, Ratanakiri: Sesan Protection Network, 2005).

5. Underlying Causes of Non-Compliance

1. Lack of understanding of client exposure to E&S risks

IFC lacked understanding of ABBank’s portfolio exposure to E&S risks when it approved this investment. A more thorough due diligence of ABBank’s activities would have identified the E&S and reputational risks tied to the FI’s investment in EVNI, in addition to other high-risk investments. During IFC’s E&S due diligence in 2010, EVNI was the main project owner and developer of Lower Sesan 2. However, shortcomings in IFC’s pre-investment review meant that it failed to identify the link between ABBank and LS2 until seven years after approving the investment. This lack of understanding of the E&S risks in ABBank’s portfolio compromised IFC’s ability to: (i) ensure the adequacy of the client’s E&S management system; and (ii) provide the necessary level of support to a client with little prior experience and capacity to develop an ESMS capable of managing high-risk projects under IFC E&S requirements.

2. Lack of supervision of the ESAP and legal commitments

IFC failed to supervise the commitments in the SEMS plan included in its contract with ABBank, as required by paragraph 26 the 2006 Sustainability Policy and paragraph 24 of the 2012 Sustainability Policy. Due to shortcomings in the identification of E&S risks during due diligence, IFC’s supervision of the investment focused on the development of ABBank’s ESMS to ensure it was capable of assessing the E&S risks and impacts of high-risk projects and applying the IFC Performance Standards. This focus, while appropriate, was partial. It meant that IFC did not monitor other elements of the E&S plan as agreed with the client and included in the legal agreement. E&S commitments, including ensuring existing loans and investments comply with IFC E&S requirements, and the requirement to conduct quarterly reputational risk screenings, went unaddressed during the life of the investment. Proper monitoring of these commitments would have given IFC the opportunity to address the significant gaps in the LS2 E&S assessments and plans. It would also have provided IFC with important information regarding the potential E&S and reputational risks of a national bank in which it had owned equity for more than ten years.

3. Insufficient use of leverage to require the client to comply with E&S requirements

Throughout the investment, IFC did not sufficiently use its leverage as a shareholder in ABBank to ensure client compliance with its contractual E&S obligations. During supervision, IFC repeatedly encouraged the client to comply with its commitments and raised the same problems with ABBank’s management of high-risk projects. While the client expressed willingness to improve its processes, the same ESMS deficiencies, including the absence of PS application to high-risk projects, were recurrent throughout IFC supervision. Despite the fact that this cycle repeated itself for more than ten years without tangible change, IFC did not use other forms of influence and leverage it had as a shareholder in ABBank to bring the client into compliance. IFC did not structure its investment so that the key E&S requirements were established as conditions of commitment or disbursement to ensure sufficient leverage to achieve the client’s compliance, nor did it include or consider other measures, such as phased funding rounds or other tools that might have been considered in the context of the Vietnamese financial market in 2010.

Only one condition of commitment was established—the nomination of the E&S officer. Nonetheless, ensuring adequate client E&S capacity was a struggle that outlasted the IFC investment, given the limited number of staff assigned to E&S issues and frequent staff turnover, which were aspects not taken into account in the design of the investment or in the SEMS Plan.²¹⁸ By the same token, the creation of the SEMS policy, an essential tool of IFC’s approach to FI’s management of E&S issues and one the bank did not have prior to IFC’s investment, was not required in the SEMS plan until after disbursement and, as explained above, was never completely fulfilled according to what was agreed (see section 3.2.2 above for more details).

During supervision, IFC did not use other avenues of influence and leverage over the client, such as the shareholders meetings or its nomination of a board director, to bring to attention ABBank’s shortcomings on E&S issues. CAO has found no evidence in project documents that IFC raised such issues during shareholder meetings or as a priority area when nominating its director. In 2017, IFC tried to leverage its new SME loan to ABBank to obtain compliance with the pending E&S issues but again failed to set up these E&S requirements as conditions of commitment or disbursement (see section 3.2.3 above).

IFC’s insufficient use and consideration of how to ensure leverage during the life of the investment, both during its structuring and supervision, impacted its ability to effect change in its client’s practices and compromised IFC’s ability to comply with its Sustainability Policy obligation to only finance activities expected to meet PS requirements within a reasonable period of time.

4. Lack of client understanding and capacity to apply IFC E&S requirements

IFC’s supervision records and CAO’s engagements with the client make it clear that ABBank never gained a comprehensive understanding of the IFC E&S requirements. ABBank’s E&S staff possessed only a basic understanding of these binding requirements. As a result, despite multiple IFC requests during supervision, ABBank continuously miscategorized sub-projects, did not require PS application to its sub-projects, and failed to understand that IFC’s equity shareholding required the application of IFC E&S requirements to its entire portfolio.

IFC’s approach to E&S risk management of FI investments rests on the FI’s capacity to manage the E&S risks of its loans and investments in a similar way to IFC’s management of such risks in its direct project investments. This approach does not work if the FI does not have sufficient capacity, knowledge, or experience in managing E&S risks according to IFC E&S requirements. While it is possible for IFC to enhance a client’s ESMS, based on the experience of this case, IFC

²¹⁸ The SEMS Plan only required the nomination of a SEMS officer, and during the life of the IFC investment, ABBank usually assigned only one person to carry out and oversee the bank’s E&S responsibilities—the exception to this was between 2019 and 2021, when ABBank assigned at least two people for E&S issues: a full time in-house consultant and a part-time E&S coordinator—and mostly without the adequate capacity and expertise. ABBank staff explained to CAO that its credit officers do the initial E&S screening and corresponding assessment for low- and medium-risk projects. Only high-risk projects are referred for further E&S assessment by the E&S officer (approximately one to two per month). The need for greater capacity and experience of the E&S officer became a recurrent issue during IFC’s supervision, particularly due to an absence of knowledge and experience in managing E&S risks according to the Performance Standards. (See more information on the E&S officer in section 3.2.2 above).

should carefully consider approving general purpose investments, such as equity investments in FIs with medium- or high-risk portfolios and minimal existing E&S risk management capacity. Alternatively, IFC should consider requiring an effective ESMS as a condition of commitment or disbursement to ensure that new investments can meet its E&S risk management requirements (2012 SP, para. 37). Approving an investment in an FI that lacks an adequate ESMS risks exposing sub-project-affected people to unassessed and unmitigated E&S impacts and exposes IFC to the risk of contributing to Harm at the sub-project level.

6. Recommendations for IFC’s Management Action Plan

The CAO Policy provides that:

*Where CAO finds non-compliance and related Harm, CAO makes recommendations for IFC/MIGA to consider when developing a Management Action Plan (MAP). Recommendations may relate to the remediation of Project- [...] level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.*²¹⁹

Following this provision, CAO makes the recommendations outlined below to: (i) remediate project-level non-compliances and related harm (project-level recommendations); and (ii) prevent IFC future non-compliances (systemic-level recommendations).

Project-Level Recommendations

Under the CAO Policy, in cases where IFC has exited from its investment, “recommendations will take into account the implications of such an IFC/MIGA Exit.”²²⁰ In this case, IFC exited its equity investment with ABBank on May 22, 2024.²²¹ For this reason, CAO’s project-level recommendations are limited and suggest that IFC engage a range of local stakeholders to explore how it could contribute to the proposed remedial actions.

At the same time, CAO takes into account that IFC failed to consider its policy obligations regarding the Lower Sesan 2 sub-project when examining its responsible exit principles in regard to this investment. As explained above (sub-section 3.2.1), IFC determined that its active exit from ABBank would have no detrimental effect on the CAO case because EVNI and LS2 were not subject to IFC’s E&S requirements, without acknowledging the commitment in the legal agreement that extended the application of IFC E&S requirements to existing investments at the time the contract was signed. By including this commitment in the legal agreement, IFC had a Sustainability Policy obligation to supervise its implementation. Its lack of supervision of this commitment contributed to the harm caused to complainants. Not considering this obligation when deciding to exit the ABBank investment is not consistent with a responsible exit.

Additionally, CAO notes that, in this case, because IFC was a shareholder in ABBank for over 10 years, it indirectly benefited from the proceeds of the LS2 dam. EVNI is a successful ABBank investment that provided dividends to ABBank from profits mostly coming from LS2. IFC should take this into consideration when deciding on remedial actions, together with its broader

²¹⁹ CAO Policy, para. 113. Similarly, paragraph 120 of the CAO Policy establishes that a compliance investigation report will make “[r]ecommendations for IFC/MIGA to consider in the development of a MAP relating to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.”

²²⁰ CAO Policy, para. 120(c).

²²¹ ABBank continues to be an IFC client through its Global Trade Finance Program Guarantee Facility (IFC project #27851).

development mandate.

CAO acknowledges that this case presents a unique and complex set of circumstances. However, CAO considers that IFC’s non-compliances and the related harm experienced by communities due to the LS2 sub-project, merit genuine efforts on the part of IFC to explore and approach a wide range of stakeholders, including affected communities, to contribute to remedy at the sub-project level. CAO’s recommendations have been designed taking IFC’s limitations into account, while remaining mindful of the previously stated considerations and complainants’ requests and comments.

1. Explore with the International Bank for Reconstruction and Development (IBRD) the possibility of incorporating the Old Kbal Romeas community in its Land Allocation for Social and Economic Development Project III (LASED III)²²², which has an ICLT component, to assist the community—with its consent—in completing and obtaining its ICLT.
2. Either through ABBank, EVNI, or by directly approaching LS2, their shareholders, or other relevant local stakeholders, offer assistance to establish a grievance mechanism, in consultation with affected communities, that meets PS1 and PS5 requirements and would allow affected communities, including upstream communities, to submit their questions, concerns, and grievances. Through this mechanism, the project could receive and facilitate the resolution of complaints from affected communities and provide information on project measures.²²³
3. Through IBRD,²²⁴ engage government authorities to offer cooperation and support to undertake a completion audit of the LS2 resettlement and livelihood restoration programs against PS5 requirements.²²⁵ The external auditor should recommend and propose corrective actions for any gaps found. Actions should be consulted with affected communities, have clear timelines, and estimated costs and, to the extent possible, include a determination of the sources of financing for those actions.

²²² See <https://bit.ly/4e8Rlil>.

²²³ Given IFC’s exit, the United Nations Guiding Principles on Business and Human Rights effectiveness criteria for grievance mechanisms could also be used as a benchmark. See, OHCHR Accountability and Remedy Project: Meeting the UNGPs’ Effectiveness Criteria, Summary of ARP III Guidance, 10 December 2021, available here: <https://bit.ly/4eedBN8>.

²²⁴ IFC should explore opportunities through IBRD, which has several projects which could be relevant and operate in the regions of the affected communities. See, for example, the Cambodia Sustainable Livelihood for Indigenous Communities Project (CSLICP) (<https://bit.ly/4e8Rlil>) or the Cambodia Water Security Improvement Project (<https://bit.ly/3Yv33DB>).

²²⁵ IFC’s Guidance note on PS5 indicates that clients may commission an external completion audit of the resettlement once completed to ensure that the resettlement of land scale projects has met the requirements of PS5 and that there are no outstanding issues. The audit should allow for the possibility of corrective actions, if any, recommended by the auditors. A completion audit is a good practice to close the client’s responsibility for resettlement, compensation and livelihood restoration. 2006 PS5, para. 12, and 2006 Guidance Note 5, Land Acquisition and Involuntary Resettlement, (July 31, 2007), para. G24.

4. Explore with IBRD and other relevant stakeholders,²²⁶ including government authorities and in consultation with the affected communities, opportunities to develop and implement a biodiversity action plan for the restoration of riverine habitats and a comprehensive set of mitigation measures to respond to biodiversity losses. The plan should include, as necessary, actions to compensate users from directly and indirectly affected communities whose livelihoods have been impacted due to biodiversity loss, with appropriate attention to differentiated impacts on Indigenous Peoples and women.

CAO recalls its core principle that “people should not be harmed as a result of cooperating in a CAO process,”²²⁷ including upon completion and publication of the compliance investigation report and implementation of the potential MAP. As outlined in IFC’s statement on retaliation against civil society and project stakeholders, “IFC does not tolerate any action by an IFC client that amounts to retaliation—including threats, intimidation, harassment, or violence—against those who voice their opinion regarding the activities of IFC or [its] clients.”²²⁸ CAO urges all parties and stakeholders in this case to use all efforts to safeguard communities and their representatives from threats and reprisals due to their engagement and participation in this case. Consultations and engagements with communities and their representatives should put mechanisms in place to prevent and minimize the risks of reprisals during the MAP development and implementation process.

Institutional-Level Recommendations

To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:

1. Enhance E&S capacity and procedures for FI investments in order to ensure an adequate understanding of E&S risks and the client’s E&S capacity during due diligence and proper monitoring of all E&S commitments during supervision. The capacity should be developed to ensure that IFC has specialized staff in FI E&S risk management with the relevant training, knowledge, and experience to review and monitor FI investments.
2. Develop and disseminate among E&S staff detailed guidance on E&S due diligence requirements for FI clients’ general purpose investments, such as equity investments. This guidance should include, among other things, explicit guidance on:
 - a. How to review a representative sample of high-risk investments, transactions,

²²⁶ IFC should explore opportunities with IBRD, which has active projects such as the Mekong Integrated Water Resources Management Project–Phase III (project #P148647) with relevant government agencies, such as the Inland Fisheries Research and Development Institute of Cambodia (iFred), and other relevant stakeholders and World Bank Group partners such as the Mekong River Commission (see <https://bit.ly/3NTAdaY>), and the IUCN (<https://bit.ly/3YMIEeJ>), or local civil society organizations that work in biodiversity and conservation issues.

²²⁷ CAO. “Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations,” CAO (2018) <https://officecao.org/CAOReprisalsApproach>; see also, CAO Policy, para. 155 and 156.

²²⁸ IFC. 2018. *IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders*, CAO, <https://bit.ly/IFCReprisalsStatement>.

products, and sectors in the FI’s portfolio during due diligence to define the required E&S capacity for the client and to determine costs of the project ESAP and the average annual costs of client ESMS implementation.

- b. How to assess the minimum necessary E&S staff required for the FI based on the E&S risk of the portfolio and the FI’s turnover and capacity to onboard new E&S staff. In this and other cases, CAO has observed that shortcomings in the client’s E&S capacity is often a recurrent problem. IFC should develop tools and parameters for its E&S staff to assess the client’s E&S staff needs in relation to the client’s E&S risk portfolio.
3. Conduct a portfolio review of IFC’s active equity FI investments since 2006 that include an obligation in the legal agreements (ESAP or elsewhere) for the client to apply its ESMS to “existing loans and investments” and ensure that adequate monitoring of the legal commitments is carried out.
4. Update its ESRP to provide more explicit guidance to E&S staff on how to structure investments to best use IFC’s leverage during the life of the investments to ensure a client’s compliance with E&S requirements. As has been recommended in previous cases,²²⁹ this should include explicit guidance on the need to link E&S commitments in the ESAP or legal agreement to investment milestones such as commitment, first disbursement, and subsequent disbursements, to ensure that IFC has sufficient leverage to require their completion.

Next Steps

This report, as dated, has been finalized by CAO and sent to IFC Management and the IFC Board of Executive Directors. In accordance with the CAO Policy, IFC will be required to submit a Management Report to the Board for consideration that will include a Management Action Plan (MAP) for the purpose of addressing CAO’s findings of non-compliance and related harm. The MAP comprises timebound remedial actions proposed by Management. The Management Report should also include a reasoned response to CAO’s findings or recommendations that IFC/MIGA is unable to address in the MAP. Once the IFC Board approves the MAP, CAO publishes this investigation report and IFC’s Management Report. CAO’s role thereafter is to verify, through compliance monitoring, the effective implementation of the actions set out in the MAP.

²²⁹ See CAO Investigation Reports for Myanmar: Myanma Awba Group Company Ltd.-01, <https://bit.ly/40TpKnL>; Kenya: Bridge International Academies-01, <https://bit.ly/4hW0OCb>, and Liberia: Salala Rubber Corporation (SRC)-01/Margibi & Bong Counties, <https://bit.ly/3CzAUnl>.

Annex A. Sub-Project Level Actions and Information

This annex summarizes the information sources on sub-project actions relevant to the complaint allegations. These were gathered by CAO from public sources and stakeholder interviews.

1. Lower Sesan 2 Environmental Impact Assessment

In preparation for LS2, ABBank’s client EVNI commissioned an environmental impact assessment in 2008 that was approved by the Cambodian government in June 2010.

Stakeholder Engagement, Information Disclosure, and Grievance Handling

The EIA reported that “approximately 300,000 people upstream and downstream of the project area” were considered indirectly affected by the project, while approximately 1,052 households would be directly affected.²³⁰ In February 2008, consultations were carried out in five communities that were expected to be completely or partially submerged by the reservoir.²³¹ The EIA states that the five consulted communities were informed about the dam’s planned development and its potential flooding area and impacts and were given details about compensation, allowance, and resettlement. The consultations were attended by 587 participants, 85.1 percent of whom disagreed with the project.²³²

After these meetings, EVNI invited a delegation of provincial authorities and community chiefs to Viet Nam to observe typical resettlement areas, and in April 2008, a survey of households was conducted in four of the five communities requiring resettlement due to LS2.²³³ The EIA reports that, after these meetings “94% (sic), 1,112 of the 1,318 affected people” agreed with the project.²³⁴ Additionally, in May 2008, the results of a project feasibility study were disclosed to 10 chiefs or vice-chiefs of affected communities as well as NGO and private sector

²³⁰ EIA, p. 121. The Ministry of Environment Department of EIA review and monitoring guidelines as well as the EIA’s terms of reference, both annexed to the EIA, included requirements related to public participation that needed to include “opinion of the public towards the developmental project and consultation” and two stages of consultation to share information with “all affected people and local authorities” and receive “opinions about the project (...) impacts, mitigation methods.” EIA report guidelines Ministry of the Environment, unofficial translation by Department of EIA, Annexed to EIA pp. 316 ff., p.2–6 and Terms of Reference for the EIA.

²³¹ According to the EIA, a first public consultation took place on February 1, 2, and 4, 2008, in five affected communities: SreKor, Talat, and Kbal Romeas in Stung Treng Province, which were expected to be completely submerged by the reservoir; Pluk Commune, located just below the planned dam that were to be partly flooded by the reservoir; and Sre Angrong Commune in Kon Mom District, Ratanakiri Province, which was expected at the time to be partially submerged by the project’s reservoir. The purpose of the first consultation was to provide project information to the communities and discuss potential environmental issues. EIA, 94, 133–34.

²³² EIA p. 134.

²³³ The EIA indicates: (i) a delegation, “including the provincial authority head or representative of affected communes and villages” was invited by EVNI to a working visit to some typical resettlement areas in Vietnam; (ii) a policy framework on compensation, allowance, and resettlement was prepared and submitted to the provincial authorities; and (iii) in April 2008, a “survey was conducted with all project affected people from household to household” in four of the five earlier mentioned villages.” EIA, 135.

²³⁴ EIA, p. 135.

representatives.²³⁵

CAO notes that neither the 2008 EIA nor the 2011 CRP include a recommendation for the dam developer and operator to implement a grievance mechanism, as is standard good practice for development projects. Information from stakeholders in the area confirm that the project has no grievance mechanism.

Physical and Economic Displacement

The EIA estimated that the LS2 reservoir would require resettlement of 1,059 families and submerge approximately 83 km² of community forest and forest concessions combined and about 1,291 ha of agricultural land.²³⁶

Regarding physical displacement, the EIA determined that:

- Srekor and Kbal Romeas (whose residents are complainants in the CAO case) would be the most affected villages, with 100 percent and 96 percent of households losing their homes, respectively. Households in Talat and Phluk villages would also be affected.²³⁷
- Two resettlement sites should be selected with a surface area of 7,086 ha,¹⁷⁴ “according with guidance of provincial governor and requests from community.” The Lower Sesan 2 Company would develop all relevant infrastructure including roads, schools, and water supplies.²³⁸ The EIA recommended that the resettlement locations “meet the equivalent or better living conditions to what they have at the present” and not have adverse impacts on natural and social resources.
- A resettlement action plan (RAP) was required, and resettlement activities should be conducted in “discussion” with project-affected people.²³⁹

²³⁵ The results of the feasibility study were disclosed during a public meeting in Stung Treng on May 9, 2008, in Stung Treng, which included 26 government officers, 4 people from land and forest concession companies, 5 people from NGOs, and 10 chiefs or vice-chiefs from the affected communities. According to the EIA report, the chiefs and/or vice-chiefs did not ask any questions or provide any input during this consultation. EIA, 135 and 137.

²³⁶ The EIA indicates that the “reservoir (will) flood an area of 335 km² when the water level in the reservoir reaches 75 m (requiring the resettlement of 1,059 families).” The EIA clarifies that three villages will be completely, and three others partly inundated. It further indicates that 290 km² of the area earmarked for the reservoir was covered by forests and that 83 km² (around 30 percent) of these affected forests were located in agricultural and/or forest concessions. The EIA, p. 66 suggests that the forested area covers 277km². The EIA, p. 101 suggests that the affected forests in forest concessions covers an area of 104km². It further informed that the reservoir inundated the 203 ha Nak-Ta Karakan community forest that belonged to the Srekor Mouy and Srekor Pir communities. Besides these forest areas, 2,990 ha were covered by water (i.e., the existing river basin), 1,291 ha by agricultural land, 219 ha by grassland, 48 ha by soils and rocks, and 47 ha by shrubland. EIA, p. S2, 16, 71, 78.

²³⁷ EIA, p. 102.

²³⁸ EIA, p. 142.

²³⁹ EIA, p. 148. The EIA earmarked US\$53.8 million for the resettlement activities. EIA, p. 312.

alongside an agricultural support program until they attain sustainable livelihoods.²⁴³

- For fisheries losses, an annual compensation plan should be based on the value of lost catch for the families living along the Srepok and Sesan rivers who would be impacted. About 95 percent of this community’s daily protein consumption came from this source, and the EIA recommended compensation in the form of livelihood improvement initiatives by the project owner should continue until considered successful and sustainable by an independent evaluator.

Impacts on Biodiversity and Fish Migration

The Mekong River Basin has a subtropical monsoon climate with water volumes in rivers especially high during the latter part of the rainy season (August and September), followed by very low water volumes at the end of the dry season (March and April). Sometimes, high water volumes in the Mekong River can be over 30 times as much as low volume levels.²⁴⁴ This significant change in habitats between seasons is the principal reason why most fish species in the basin are at least somewhat migratory. Most species (known collectively as “black fish”) migrate shorter distances between seasonally inundated areas such as rice fields, wetlands, and streams and more permanently inundated areas.²⁴⁵ However, many other highly migratory species (typically “white fish”) undertake long-distance migrations for spawning or feeding purposes, sometimes travelling over 1,000 km during a single journey.²⁴⁶ Related to this case, many fish species have historically migrated in and out of the Sesan and Srepok rivers from the mainstream Mekong during different seasons, for both feeding and spawning purposes.²⁴⁷ The 3S River system is known to support at least 240 types of fish, including a number of critically endangered and threatened species.²⁴⁸

Between 1995 and 2009, before IFC conducted its ESDD, studies identified the following relevant fish migrations and species between the 3S river system and the Mekong River:

1. Migrations of small cyprinid fish species, mainly *Henicorhynchus lobatus* (known as *trey riel*), and *Paralaubuca typus*, make up the bulk of the biomass. They migrate upriver with at least 30 other species from Tonle Sap Lake in central Cambodia to the Mekong River, and then up

²⁴³ EIA, 113.

²⁴⁴ Peter Cunningham, “Extending a Co-Management Network to Save the Mekong’s Giants,” *Mekong Fish Catch and Culture* 3, no. 3 (1998), 6–7.

²⁴⁵ Walter J. Rainboth 1996. *Fishes of the Cambodian Mekong Basin*. Rome: Food and Agriculture Organization of the United Nations.

²⁴⁶ Walter J. Rainboth, Chavalit Vidthayanon, and Mai Dinh Yen. 2012. *Fishes of the Greater Mekong Ecosystem with Species List and Photographic Atlas*. (Ann Arbor, MI: Miscellaneous Publications of the University of Michigan Museum of Zoology, 2012), 293.

²⁴⁷ E. Baran, S. Saray, S. J. Teoh, and T. C. Tran, “Fish and Fisheries in the Sesan, Sekong and Srepok River Basins (Mekong Watershed),” in *On Optimizing the Management of Cascades or System of Reservoirs at Catchment Level*, (Hanoi, Vietnam: ICEM, 2014), www.optimisingcascades.org.

²⁴⁸ Tyson R. Roberts and Ian G. Baird, “Traditional Fisheries and Fish Ecology on the Mekong River at Khone Waterfalls in Southern Lao PDR,” *Natural History Bulletin of the Siam Society* 43 (1995): 219–262; Ian G. Baird, Mark S. Flaherty, and Bounpheng Phylavanh, “Rhythms of the River: Lunar Phases and Migrations of Small Carps (Cyprinidae) in the Mekong River,” *Natural History Bulletin of the Siam Society* 51, no. 1 (2003), 5–36.

the Mekong to the Sekong, Sesan, and Srepok rivers or further up the Mekong to Lao PDR and Thailand.²⁴⁹ During peak migrations, they made up over half of the fish biomass caught in parts of the Mekong River, including the Tonle Sap River, providing important sources of food for many other predators, including large fish, birds, reptiles, and Irrawaddy dolphins. They are considered a keystone species since they serve an important ecosystem function.²⁵⁰

2. Medium-sized carps (scaled fish)²⁵¹ migrate between the Sekong, Sesan, and Srepok rivers and the mainstream Mekong River in northeastern Cambodia, southern Lao PDR, and northeastern Thailand.²⁵²
3. The large and medium-sized Pangasid catfish species²⁵³ migrate upriver between April and July. Their larvae are believed to float downstream at the height of the high-water season, after spawning occurs.²⁵⁴ They are now more common in the Mekong River than the 3S basin but were previously recorded as frequently migrating up the Sekong, Sesan, and Srepok rivers.²⁵⁵

Several studies conducted between 2004 and 2012 documented the serious impacts to the people living along the Sesan and Srepok rivers and their tributaries due to the effects of dam development on access to the fish they consume and sell.²⁵⁶

The 2008 EIA commissioned by EVNI identified and determined that the LS2 hydropower project would cause serious impacts to fish and fisheries in the Sesan River, the Mekong River

²⁴⁹ Roberts and Baird, “Traditional Fisheries and Fish Ecology”; Baird, Flaherty, and Phylavanh, “Rhythms of the River”; Baird and Meach, “Sesan River Fisheries Monitoring in Ratanakiri Province”; Baird, *Best Practices in Compensation and Resettlement for Large Dams*; Ian G. Baird and Bruce Shoemaker, “People, Livelihoods and Development in the Xekong River Basin of Lao PDR” (Bangkok: *White Lotus Press*, 2008).

²⁵⁰ Roberts and Baird, “Traditional Fisheries and Fish Ecology.”

²⁵¹ This species include the famous *Mekongina erythrospila* (*trey pa sa-i*), species of fish is highly valued in Cambodia, and previously sometimes offered as a special gift for the king of Cambodia, as the species is not found in any other parts of Cambodia apart from the northeast. Other species with similar migrations include, *Labeo erythropterus* (*trey pa va*), *Incisilabeo behri* (*trey pa va mok pi*), *Scaphognathops bandanensis* (*trey chrakaing* or *trey pa pian*), *Hypsibarbus malcolmi* (*trey chhpin*), *Cirrhinus moliterella* (*trey phkar kor*) and *Gyrinocheilus pennocki*.

²⁵² Terry J. Warren, Greg C. Chapman, and Douangkham Singhanouvong. “The Upstream Dry-Season Migrations of Some Important Fish Species in the Lower Mekong River in Lao PDR.” *Asian Fisheries Science* 11 (1998), 239–51; Ian G. Baird and Mark S. Flaherty, “Beyond National Borders: Important Mekong River Medium Sized Migratory Carps (Cyprinidae) and Fisheries in Lao PDR and Cambodia,” *Asian Fisheries Science* 17, no. 3–4 (2004), 279–98; Baird and Meach, “Sesan River Fisheries Monitoring in Ratanakiri Province”; Baird, “Best Practices in Compensation and Resettlement for Large Dams”; Baird and Bruce Shoemaker, “People, Livelihoods and Development.”

²⁵³ Such as *Pangasius conchophilus* (*trey kae*), *Pangasius larnaudei* (*trey po*), *Pangasius hypophthalmus* (*trey pra*), *Pangasius krempfi* (*trey pra* or *trey bong lao*), *Pangasius bocourti*, *Pangasius macronema* and potentially other species of pangasid catfish.

²⁵⁴ Ian G. Baird, Mark S. Flaherty, and Bounpheng Phylavanh, “Mekong River *Pangasiidae* Catfish Migrations and the Khone Falls Wing Trap Fishery in Southern Lao PDR,” *Natural History Bulletin of the Siam Society* 52, no. 1 (2004), 81–109; Ian G. Baird, Zeb Hogan, Bounpheng Phylavanh, and Peter Moyle. “A Communal Fishery for the Migratory Catfish *Pangasius Macronema* in the Mekong River,” *Asian Fisheries Science* 14 (2001), 25–41; Zeb Hogan, Ian G. Baird, Richard Radtke, and M. Jake Vander Zanden, “Long Distance Migration and Marine Habitation in the Asian Catfish, *Pangasius krempfi*,” *Journal of Fish Biology* 71 (2007), 818–32.

²⁵⁵ Baird and Meach, “Sesan River Fisheries Monitoring in Ratanakiri Province”; Baird, “Best Practices in Compensation and Resettlement for Large Dams”; Baird and Bruce Shoemaker, “People, Livelihoods and Development.”

²⁵⁶ See, among others, Baird and Meach, “Sesan River Fisheries Monitoring in Ratanakiri Province”; Baran et al., “Fish and Fisheries in the Sesan, Sekong and Srepok River Basins”; Ziv et al. “Trading-Off Fish Biodiversity, Food Security, and Hydropower.”

downstream of the dam, the Mekong delta, and Tonle Sap Lake. The EIA estimated that 6,469 families would be impacted by the hydrological changes and resulting disruptions in fish migration patterns. Relevant to the allegations in this case, it identified the specific impacts summarized below.

Impacts on fish migration

The EIA determined that the LS2 dam would block the migration path of around 66 percent of fish species, particularly migratory species.²⁵⁷ It found that the cumulative impact on biodiversity and natural resources caused by dams in the Sesan and Srepok river catchment would affect not only fish migration but also water quality and quantity, people, wildlife, and fish and aquatic resources.

In terms of methodology and results, the EIA included a fisheries study that selected 18 fishers in Sesan and Srepok to record logbooks and conduct surveys of their catch in February and March 2008.²⁵⁸ From February to May, approximately 220 individuals and 140 households from 11 villages situated along the Sesan and Srepok rivers in Stung Treng were surveyed and interviewed. The EIA identified 99 recorded fish types, with the dominant species being the highly migratory *Cypriniformes*.²⁵⁹ Total catch in both rivers was estimated at 244.14 tons per year for 1,530 families, of whom 95 percent were fishing families.

With regard to mitigation measures, the EIA examined the possibility of building: (i) a fish passage; (ii) a fisheries research center to track, produce, and release fish species within the reservoir; and (iii) compensation for fisheries losses to people along both the Sesan and Srepok rivers.²⁶⁰ Of the three options, the EIA did not recommend a fish passage based on scientific literature suggesting their ineffectiveness in tropical countries with diverse migrating species.²⁶¹ For the five endemic, endangered, or vulnerable fish species identified,²⁶² the proposed mitigation was to regenerate the same number of fish through an offset program.

The EIA did not include a baseline for biodiversity, an assessment of critical habitats, or an analysis of ecosystem services. It included the study described above on fisheries resources, the main purpose of which was to determine local dominant fish species and fish catch to define

²⁵⁷ EIA, p. 99.

²⁵⁸ EIA, Fisheries Study, p. 3. The logbook records included information on fish migration, fish species, aquatic resources, inundated forests, and fish characteristics such as population, dry season behavior, and fishery refuge or habitat.

²⁵⁹ EIA, Fisheries Study.

²⁶⁰ EIA, 99–100; The EIA suggests investing US\$1.8 million every year for an agricultural support program for the period of 10 years for the mitigation actions.

²⁶¹ EIA, Fisheries Study, 25.

²⁶² The EIA identified the following five endemic, endangered, or vulnerable species: *Puntius partipentazona* and *Probarbus jullieni* (endemic); *Osphronemus exodon* and *Tenuulosa thibaudeaui* (endangered); and *Wallago leerii* (vulnerable). EIA, Fisheries Study, 21–22.

compensation measures.²⁶³ The fisheries study identified 106 fish species in the project area, of which 32 percent were migratory, but it did not include an assessment of their habitats or categorization under IUCN’s *Red List of Threatened Species*.²⁶⁴

The alternative analysis included two different sites, but the specific impact on fishery resources was not mentioned. While the EIA acknowledged that the impact of the dam could spread across the Mekong system, the fisheries study was only conducted in three communities located in the proposed hydropower basin: Srekor, Kbal Romeas, and Talat, upstream of the reservoir.²⁶⁵

Impacts on Hydrology

The EIA identified three hydrologic factors that the LS2 project could potentially affect: flood timing, flood duration, and flood level. However, the assessment did not include a specific study to determine the extent of impact on each factor. Instead, the potential modification of the water regime was calculated by assessing the water discharge contributed by the Sesan and Srepok rivers to the Mekong mainstream.²⁶⁶ As a result, the EIA reported that there would be a 10 percent modification of water discharge during the short period when the dam reservoir was filled, after which the average downstream discharge was expected to return to normal levels.²⁶⁷

The EIA recommended that the dam operator release an adequate amount of water downstream to maintain a healthy river ecosystem and prevent negative impacts on people, aquatic resources, fauna, and flora.²⁶⁸ In addition, it recommended installing a robust warning system for peak flow

²⁶³ The objective was to determine the dominant species to decide which ones to further study as part of a stock enhancement program to improve fish stocks in Sesan and Srepok River. Also to determine fish catch by local fishers to define compensation measures, to study fish migration in Sesan and Srepok river in relationship with the Mekong, and to determine the impacts of the Sesan 2 HPP Project on Sesan and Srepok River fisheries resources and their consequence on the downstream Mekong, Tonle Sap and Cambodia inland fish production mainstream and Tonle Sap Lake migration and to study the feasibility of a fish pass. EIA, Fisheries Study, p.3.

²⁶⁴ As part of the general environmental assessment process, clients should assess the type and importance of biodiversity present, whether at the genetic, species, or ecosystem level, and consider the potential impacts of project-related activities on it. The assessment of genetic diversity looks at the frequency and diversity of different genes and/or genomes. Species diversity means the frequency and diversity of different species. Projects that are likely to have a significant impact on biodiversity should be subject to more detailed assessment and analysis that considers short-term, long-term and cumulative context of such impacts, along with evaluation of impacts on ecosystem services and natural resources. As part of the consideration of these impacts, the client may need to consult with key stakeholders that for the purpose of Performance Standard 6 include potentially affected communities, public authorities and independent experts. When specific potential significant biodiversity impacts are identified through assessment and analysis, they should be further analyzed through specific studies, undertaken by qualified and experienced professionals using standard sampling programs and tools. In situations where there are recognized to be significant biodiversity issues, a Biodiversity Action Plan should be prepared to identify and handle biodiversity issues in a comprehensive fashion. Such plan should include a baseline study and impact assessment, informed by a combination of international and local expertise on the biological value of poorly known areas (including assessment of the value of biodiversity to local communities, Indigenous Peoples, and other resource dependent peoples). Through these baseline studies clients should identify and prevent impacts on populations of any species recognized as critically endangered or endangered (in accordance with the IUCN Red List, or any national list designated by the host government). 2006 Guidance Note 6, Biodiversity Conservation and Sustainable Natural Resource Management, (July 31, 2007), paras. G3–G9, G20, Annex A (Biodiversity Action Plans), References.

²⁶⁵ EIA, Fisheries Study, p. 3.

²⁶⁶ EIA, Fisheries Study, p. 5–6.

²⁶⁷ EIA, Fisheries Study, p. 24.

²⁶⁸ EIA, p.116.

released water downstream, as well as compensation for local communities to address any disruptions to the flow regime.²⁶⁹ Water quality during the dam’s operation was expected to be impacted for one to three years, and mitigation measures recommended by the EIA included reservoir cleaning, sanitation, and water quality monitoring.²⁷⁰

Cumulative Impacts

The EIA identified wide-ranging cumulative impacts from the 16 dams planned at the time in the Sesan and Srepok rivers, affecting fish migration, water quality and quantity, people, wildlife, and aquatic resources. However, little analysis was done on the specifics of these cumulative impacts, apart from acknowledging the combined impact they represented on changes to the flow regime of the two rivers, the likelihood of increased floods and drought triggered by climate changes resulting from loss of forest cover, deterioration of the water quality of both rivers, and impacts on wildlife and the livelihoods of river-dependent people.

The main mitigation measure recommended in the EIA was coordination between Cambodia and Viet Nam—where most of the upstream dams were located—focused on flow regulation and water quality monitoring. Additional recommendations included the fish resource center described above and forest replantation.

Map 6: Constructed and planned dams, 2010



(Source: World Bank Group, IBRD, June 2024)

CAO’s investigation found no evidence that more concrete plans or programs were developed or implemented based on the EIA’s recommendations to prevent or mitigate LS2’s impacts on fish migration, water and sediment flows, and forests. Local communities and other stakeholders had no knowledge of reforestation plans or flow regulation or water quality monitoring activities. The fish resource center was never implemented, but the project operator and the Cambodian government seem to have implemented other measures in its place (see section 3 below regarding the fishway, the release of the fish fingerlings, and the fishery communities that were created).

²⁶⁹ EIA, p.116.

²⁷⁰ EIA, pp. 116–118.

Impacts on Indigenous Peoples

While Indigenous communities live in 16 of Cambodia’s 25 provinces, the majority reside in the upland forests, plains, and mountains of the northern and northeastern provinces, including Ratanakiri, the Stung Treng province where LS2 is located, and the areas upstream of the dam and reservoir.²⁷¹ The EIA commissioned by IFC sub-client EVNI identified Indigenous Peoples and ethnic minority groups located in the reservoir area and upstream who would be impacted by the project, including the Jarai, Tampuan, Kachak, Bunong, and Lao minorities.²⁷² Of these groups, at the time, the Jarai, Tampuan, Kachak, and Bunong—to which the complainants from Old Kbal Romeas and upstream villages belong—were recognized as Indigenous Peoples under the Land Law of 2001, the first Cambodian legislation to officially recognize Indigenous Peoples.²⁷³ In addition, Lao ethnic minorities living in Old Srekor and upstream of the reservoir were defined by the Cambodian government as ethnic minorities.²⁷⁴

Despite identifying these Indigenous communities as project-affected people, no special measures, Indigenous Peoples Plan, or consideration of their rights was included in the EIA. Specific Indigenous Peoples references in the EIA included the following:

- References to the national law that defines Indigenous Peoples in Cambodia²⁷⁵ but does not contain specific provisions for free, prior, and informed consultations and informed participation in development projects by such groups. The EIA also noted that the ethnic minority groups along the Sesan River tend to be conflated, with no clear distinction between government-recognized Indigenous Peoples and ethnic minorities.²⁷⁶ The EIA included no consideration of their cultural differences and individuality, nor the project’s differentiated impacts on these various communities.
- The conclusion that there were no identified cultural sites in the project area. As a result, the only mitigation measures proposed in the EIA regarding Indigenous Peoples and ethnic groups was for construction workers’ education to respect the cultures and traditions of these peoples.²⁷⁷

²⁷¹ Asian Development Bank (ADB). *Indigenous Peoples/Ethnic minorities and Poverty Reduction, Cambodia. Environment and Social Safeguard Division Regional and Sustainable Development Department* (Manila, Philippines: Asian Development Bank, 2002).

²⁷² EIA, p. 84, 113; Socio-Economic Report, annexed to the EIA, April 2008, p. 1,5,6, 21,23; Environmental checklist for hydropower development, Annexed to the EIA.

²⁷³ Cambodia national report, First cycle of UNHRC Universal Periodic Review in 2009, A/HRC/WG.6/6/KHM/1, p. 24. <https://bit.ly/4ckzTwR>.

²⁷⁴ Sonia Palmieri, *The Hidden Minorities: Representing Ethnic Minorities and Indigenous Peoples in Cambodia* (Inter-Parliamentary Union, UNDP, 2010) 3. <https://bit.ly/4cHCa4N>.

²⁷⁵ Article 23 of the 2001 Land Law of Cambodia: “An indigenous community is a group of people that resides in territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.”

²⁷⁶ EIA, pp. 6, 84, 102, 113; Socio-Economic Report for LS2 Annexed to EIA, p. 1.

²⁷⁷ EIA, p.113.

- Acknowledgment that resettlement of these communities was a “very major issue to be considered in the project preparation and design,” but with no further details provided.²⁷⁸

2. Lower Sesan 2 Compensation and Resettlement Policy

Based on the EIA’s general provisions, between 2010 and 2011, EVNI prepared a compensation and resettlement policy (CRP) for LS2, which projected the need to resettle 797 households by 2014. It is unclear from project documentation available to CAO how the number of affected households decreased from 1,059 households in the EIA to 797 in the CRP.²⁷⁹

A baseline census was conducted in 2010, but the CRP provides no information on the methods employed.²⁸⁰ Likewise, the policy contained no information on community engagement or consultations to determine the compensation package for resettled households.

The 2011 CRP included the following template for compensation. However, it provided no details on how these data were computed and no information on whether these compensation options had been disclosed to, discussed with, or validated by the affected people. CAO also notes that EVNI’s CRP makes no mention of and fails to address the critical fact that the communities facing relocation included several groups of Indigenous Peoples.

Table 3: Compensation in the 2011 EVNI CRP		
Land (AH = affected household)		
<ul style="list-style-type: none"> - Either in-kind compensation for loss of land: 1,000 square meters (m²) per AH for both residential and garden land and 4,000 m² per person (but not greater than 2.5 ha per AH) - Or cash compensation (see right)²⁸¹ - If the affected land is larger than the in-kind replacement land value, the AH will receive additional cash compensation for the surplus portion.²⁸² 	Type of Land	US\$/m²
	Residential land	1.57
	Agricultural land	0.08–0.1
	Slush and burn agricultural land	0.03
	Forest land	0.01–0.015
<ul style="list-style-type: none"> - Crops and trees ranging from US\$0.10 (cotton) to US\$35.20 (sugar palm).²⁸³ 		
Houses/structures ²⁸⁴		
<i>In-kind compensation for house and structures:</i>		

²⁷⁸ EIA p. 102.

²⁷⁹ The CRP starts from 515 households identified in 2010 and projects an increase to 797. It is unclear where the initial 515 households are coming from as the EIA had identified 1,059 households would need to be resettled. EVNI, 2011 CRP, 2–3.

²⁸⁰ EVNI, 2011 CRP, 5.

²⁸¹ EVNI, 2011 CRP, 8.

²⁸² EVNI, 2011 CRP, 18–19.

²⁸³ EVNI, 2011 CRP, 12–13.

²⁸⁴ EVNI, 2011 CRP, 18.

- AH with 1–2 individuals: a house of 40 m ²	
- AH with 3–4 individuals: a house of 55 m ²	
- AH with 5–7 individuals: a house 70 m ²	
- AH with 8 or more individuals: a house 80 m ²	
Or cash compensation ²⁸⁵	
- Wooden houses/structures	US\$10.24–19.87/m ²
- Metal houses/structures	US\$9.98–78.22/m ²
- Tile houses/structures	US\$62.09–156.64/m ²
- Mechanical wells	US\$80–120
- Pumped wells	US\$450
- Toilets	US\$45–60/m ²
- Spirit house	US\$52
- Rural stupa ²⁸⁶	US\$1,500
- Fences	US\$0.20–16/meter
- Brick wall	US\$45/meter
If the affected house/structure is larger than the replacement houses, the AH will receive additional compensation in cash for the surplus portion. ²⁸⁷	
Allowances ²⁸⁸	
- Transport: US\$100/AH for resettlement within Stung Treng province and US\$200/AH for resettlement to another province.	
- Transitional livelihood: AHs who lose more than 50 percent of agricultural land, 20 kg of rice/person/month for 12 months; those losing less than 50 percent, 10 kg per month.	
- Health care allowance: US\$10/AH, single payment to each AH.	
- Lighting: US\$15/AH/month for 12 months, single payment to each AH.	
- Crop cultivation: US\$50 per person in labor and single payment.	
- Incentive: US\$200 to AHs who relocate or vacate their affected properties on schedule.	
- Community and village: Investment, improvement, or construction of new structures to ensure normal production activities and livelihood of local people—US\$5,000/village.	

During its field mission, CAO was informed by local government officials that the resettlement had been planned and implemented by LS2 subcontractors and overseen by a high-level interministerial committee in consultation with the Lower Sesan 2 Hydropower Company. The 2020 CSR report of LS2 by AVI indicated that “a team of inter-governmental and cross-

²⁸⁵ EVNI, 2011 CRP, 9–12.

²⁸⁶ A small commemorative monument.

²⁸⁷ EVNI, 2011 CRP, p. 19.

²⁸⁸ EVNI, 2011 CRP, p. 15.

organization team was created to work on the reparation policy under observation from various NGOs.”²⁸⁹ CAO learned directly from one of these NGOs that this statement is not accurate and that they never collaborated or assisted the project developer with a “reparation policy”. CAO was not provided access to any more information on the work of such a team, nor whether it influenced or modified the CRP that was developed by EVNI in 2011.²⁹⁰

3. Additional Lower Sesan 2 Studies and Information

The information presented in this section covers subsequent studies and actions related to LS2 available through public information, community testimonies, and CAO interviews with stakeholders during the 2023 field visit. Due to limited access to records, and despite CAO’s repeated efforts to engage directly with IFC’s sub-client and the project’s operator (see section 2), a comprehensive review of LS2-specific information was not possible.

Stakeholder Engagement, Information Disclosure, and Grievance Handling

Media reports indicate that, in May 2011, community representatives from Ratanakiri attended a national consultation on the LS2 hydropower project in Phnom Penh with NGOs and the Minister of the Environment, who highlighted project benefits.²⁹¹

Villagers from Old Srekor told CAO that between 2013 and 2015, national government representatives and Chinese staff from the LS2 company, presumably from the majority shareholder, Hydrolancang International Energy of the China Huaneng Group, which took over as project lead from EVNI in 2012, presented compensation and resettlement options to their community.

In November 2020, a Cambodian organization called the Asian Vision Institute (AVI) published a Corporate Social Responsibility (CSR) report on LS2 commissioned by the China Huaneng Group. According to the 2020 CSR report, a research team from AVI held interviews with local authorities and selected households in three project-affected villages (Sraekor, Sre Sranok, and Kbal Romeas).²⁹² However, the report does not include records of these interviews, and in a communication with CAO, one of the NGOs it cites denied participating or collaborating with the project or the China Huaneng Group in any process related to LS2. While stating that the company worked closely with communities to address their complaints over rights to private property and community resources and governance issues, the CSR report provides no details on

²⁸⁹ AVI, *2020 Sustainability Report* (CSR report), 16.

²⁹⁰ A relevant study refers to two additional policy documents: (i) “Mechanisms and Procedures of Compensation and Resettlement Policy of Lower Sesan 2 in Stung Treng,” signed on January 17, 2014, by H. E. Suy Sem Minister of Mines and Energy and the Chief of Inter-Ministries Committee; and (ii) the “Compensation and Solution Policies on Impacts of Lower Sesan 2” prepared by Hydropower Lower Sesan2 Co., Ltd. (NGO Forum on Cambodia 2015: Survey on the compensation policies and market property price, LSS2 dam development project, LSS2 Dam Development Project, Sasan District, Stung Treng). Since CAO has not had access to the project company or ENVI, it is unclear what these documents entail and/or whether they largely reproduce the data and provisions from EVNI’s 2011 CRP.

²⁹¹ Amy Lieberman, “Cambodian Women Speak Up on Dam’s Threat,” *Women’s eNews* (July 4, 2011), <https://bit.ly/3xEco2>.

²⁹² AVI, *2020 Sustainability Report* (CSR report), ii–iii. See also, China Huaneng Group, “The Sustainability Report of Chinese Enterprises in Cambodia was released in Beijing”, November 24, 2020, at: <https://bit.ly/3YwQwkg>.

consultations and stakeholder engagement.²⁹³ It does, however, conclude that the China Huaneng Group and the Cambodian government need to “strengthen the dispute resolution mechanism and close consultation with the local villagers towards a harmonious development.”²⁹⁴ CAO found no evidence that a grievance mechanism or any kind of dispute resolution mechanism was ever implemented for LS2 (see sections 3.2 and 4 in the main body of the report).

Impacts on Biodiversity, Natural Resources, Fisheries, and Livelihoods

NGOs and academics raised significant concerns about the LS2 project’s potential impacts on biodiversity and natural resources, including fish migration, prior to dam construction and flooding of the reservoir. In 2009, a study of 87 villages located upstream and in the reservoir area, and 86 villages in the nearby tributaries, estimated that around 78,000 people would suffer impacts on food security and income losses.²⁹⁵ This impact assessment was commissioned by the Rivers Coalition of Cambodia, an alliance of civil society organizations in Cambodia. Three years later, following IFC’s investment in ABBank, an article in the Proceedings of the National Academy of Sciences concluded that LS2 could cause more impacts on fish and fisheries in the Mekong River Basin than any other planned dam. Specifically, the authors found that LS2 might reduce fish biomass by 9.3 percent in the flood plains of Cambodia and Viet Nam, negatively affecting food security and income for large numbers of people and resulting in serious aquatic biodiversity losses.²⁹⁶

In 2013, after an informal donor meeting of the Mekong River Commission, the World Bank and other international donors called on the Cambodian government to redesign the project, “given the potentially detrimental regional effects of the Lower Sesan 2 dam in its current design (including on fish migration, sediment flow and the resettlement of local communities).” It added: “Development Partners urge the Royal Government of Cambodia to reconsider the project’s design. We also encourage the Royal Government of Cambodia to voluntarily submit the project to Prior Consultation. Development Partners stand ready to support the Royal Government of Cambodia’s efforts to improve the performance and sustainability of this project.”²⁹⁷

Following these studies, and the increasing public pressure to address the LS2 impacts on fish migration, the Lower Sesan 2 Hydropower Company built a 3-km fishway “to protect the fish ecology,” located on the north bank of the Sesan River and dam. Construction began in 2017 and the fishway has been operating since 2019. CAO does not have information on why or how this decision was made, despite the EIA recommendation against a fishway. According to information provided by the company to the media in 2020, the migration of fish is captured by a video tracking

²⁹³ AVI, *2020 Sustainability Report* (CSR report), 8, 23–25.

²⁹⁴ AVI, *2020 Sustainability Report* (CSR report), 41.

²⁹⁵ Baird, *Best Practices in Compensation and Resettlement for Large Dams*.

²⁹⁶ Ziv, Guy, et al. 2012. Trading-off fish biodiversity, food security, and hydropower in the Mekong River Basin. *Proceedings of the National Academy of Sciences* 109(15): 5609–5614.

²⁹⁷ Mekong River Commission, Report of Informal Donor Meeting, 27–28 June 2013, Phnom Penh, Cambodia, p. Dene-Hern Chen, International Donors Call for Redesign of Sesan 2 Hydro Dam, Cambodia Daily, July 2013. <https://bit.ly/3VlqGr6>.

device.²⁹⁸

Image 7: Part of the LS2 fishway, containing very little water and showing no water flow



Image 7. Part of the LS2 fishway (photo taken in June 2023 provided to CAO by confidential third party)

However, CAO found no evidence of studies to assess the infrastructure’s effectiveness and ensure its ability to facilitate the movement of key fish species that migrate along the Sesan and Srepok rivers. Officials at Cambodia’s Ministry of Environment explained to CAO that some fish were able to navigate the LS2 fishway, but many were caught at the top of the fishway by local people. This suggests problems in its monitoring and effectiveness in ensuring fish species can complete their migratory routes. Community members and other local stakeholders informed CAO that, even without people catching the fish as soon as they swim up, the fish passage does not work properly because during the dry season it is mostly dry and no fish are able to migrate up, while in the rainy season there is too much water, making it difficult for many fish to migrate up. The fish passage is also not able to accommodate bottom fish.

As previously noted, the 2008 EIA did not recommend that a fishway or passage be installed due to previous experiences in the Mekong River Basin. Instead, the EIA proposed that a well-funded fisheries center be established near the dam to support the reservoir fisheries.²⁹⁹ However, the fisheries center was never established.

In 2019, the government created a “fishery community” or protected area group within the reservoir for conservation of aquatic species. The scope and extent of the group’s mandate, capacity, and functions in protecting local fish species and biodiversity is unclear to CAO.

²⁹⁸ “Cambodia’s Lower Sesan II Hydropower Project Provides a Better Life for Resettled Villagers,” video published by *Khmer Times* on YouTube (November 2020), <https://bit.ly/45NPm62>; “Fish Passage Successfully Operated in Lower Sesan 2 Hydropower Project,” *Khmer Times* (October 15, 2018), <https://bit.ly/45IBnyl>.

²⁹⁹ EIA, p. 120.

Stakeholder testimonies assert that LS2 has had an impact on the population of dozens of fish species that previously migrated from the Mekong River to the Sekong, Sesan, and Srepok rivers at different times of year. Local fishers interviewed by CAO during the field mission in 2023 reported that small cyprinids, including *Henicorhynchus* spp., and *Paralaubuca typus*, no longer migrate up to their village on the Sesan River. Locals also believe that *Scaphognathops bandanensis* migrations are no longer occurring. Villagers still see a small number of *Mekongina erythrospila*³⁰⁰ and *Morulius* spp., but much fewer than before. Fish catches near Hat Po Village in Voounsai District are estimated to be 20 percent of pre-dam levels. Local NGOs have recorded a noticeable decline in the sale of *Mekongina erythrospila* at Stung Treng market between 2015 and 2022 (see table below).

	2015	2016	2018	2019	2021	2022
<i>Mekongina erythrospila</i>	113.2 kg	62.7 kg	19.4 kg	6.4 kg	26.9k g	7 kg

(Source: Culture and Environment Preservation Association (CEPA) market fish monitoring 2015–2022)

The Cambodian government has tried to mitigate the adverse impacts on fisheries from LS2 by releasing fish fingerlings into the reservoir to increase fish stocks. CAO does not have complete information about this program or when it started but received some details from the Inland Fisheries Research and Development Institute of Cambodia (IFReDI). Fingerlings are selected for release based primarily on what fish larvae are available rather than on biodiversity concerns. However, almost all of the species released are native (see table). The main objective is to increase fish biomass to replace what has been lost in local fish catches due to the dam, but there is no indication that the replacement species were chosen to replace particular species impacted by LS2. In addition, very small quantities of most species of fingerlings were released. There was no indication from IFReDI that any research has been conducted to monitor the impact of these fish releases.

Table 5: Fish released into the LS2 reservoir in 2023

កូនត្រី (Fingerling)	(unit as head)	Fingerling (species)	Unit (head)
កូនត្រីឆ្កិន (កូន)	30,000	<i>Hypsibarbus</i> or <i>Barbodes</i> sp.	30,000
កូនត្រីប្រា (កូន)	30,000	<i>Pangasius conchophilus</i>	30,000
សរុប (total)	60,000	Total	60,000
ត្រីមេពូជ (ភីឡូ)		Breeding fish species	Unit (Kg)
ត្រីច្រកែង	15	<i>Puntioplites</i> sp.	15
ត្រីឆ្កិន	15	<i>Hypsibarbus</i> or <i>Barbodes</i> sp.	15
ត្រីក្រុស	7	<i>Osteochilus lini</i>	7
ត្រីក្រឡង	7	<i>Cirrhinus microlepis</i>	7

³⁰⁰ The *Mekongina erythrospila* (*trey pa sa-i*), fish species is highly valued in Cambodia and representative of the fish population of the northeast of Cambodia. It would sometimes be offered as a special gift for the king of Cambodia because it is not found in any other parts of Cambodia.

ត្រីកាហៃ	10	<i>Barbonymus altus</i>	10
ត្រីក្អែក	9	<i>Hypsibarbus</i> or <i>Barbodes</i> sp.	9
ត្រីព្រួល	7	<i>Cirrhinus microlepis</i>	7
ត្រីរៀល	5	<i>Henicorhynchus</i> sp.	5
ត្រីឆ្កែ	5	<i>Hemibagrus wyckioides</i>	5
ត្រីពោ	10	<i>Pangasius larnaudei</i>	10
ត្រីកំពុងបាយ	5	<i>Cosmochilus harmandi</i>	5
ត្រីព្រាជួង	5	<i>Leptobarbus hoevenii</i>	5
សរុប	100	Total	100 kg

(Source: IFREDI)

Additionally, there are reports that the LS2 majority shareholder Hydrolancang International Energy, developed additional or complementary versions of an EIA for the Lower Sesan 2 hydropower project as well as several internal mitigation and resettlement plans. However, these documents were not shared with impacted communities or civil society groups, and their distribution was otherwise restricted.³⁰¹ CAO has not seen these documents nor was it provided access to them by the LS2 subproject, its shareholders, or any other stakeholder.

³⁰¹ Human Rights Watch, “Underwater, 2021.”

Annex B: Fisheries Impacts Reported by Communities

Village	Reported Past Activity	Reported Current Situation (2023)
Complainants: Old Srekor, Old Kbal Romeas, New Kbal Romeas, and New Srekor		
Old Srekor Village, Sesan District, Stung Treng Province (Ethnic Lao communities; now located in LS2 reservoir area, previously along the Sesan River)	Caught, consumed, and sold fish	<p>Villagers reported that soon after the dam was closed, there were more fish in the reservoir area than before its construction. However, now the amount has declined significantly to about 70 percent of the catch before the dam was built.</p> <p>The species that like flowing river water have disappeared, and declines have been most marked in fish species that previously migrated upstream from below LS2.</p> <p>Most of the species caught now are not migratory, including black fish such as <i>Channa striata</i> and <i>Channa marulius</i> along with some cyprinids that can survive in stagnant waters, such as <i>Hypsibarbus</i> or <i>Barbodes</i> sp. and <i>Puntioplites falcifer</i>. The most expensive fish villagers can still catch regularly is <i>Micronema</i> sp.</p> <p>Old Srekor Village fishermen said local waters now contain a lot of small fish with no real economic value, such as <i>Pristolepis fasciata</i> and <i>Parambassis</i> sp. It is not surprising these fish have proliferated as they are native to the Mekong River Basin and tend to stay in non-flowing waters.</p>
Old Kbal Romeas Village, Sesan District, Stung Treng Province (Bunong Indigenous Peoples; now located in LS2 reservoir area, previously along the Srepok River)	Caught, consumed, and sold fish	<p>Villagers reported an overall decline in fish and especially migratory riverine species.</p> <p>They stated that the situation in their village is similar to that described above for Old Srekor Village.</p>
New Kbal Romeas Resettlement Village, Sesan District, Stung	Caught, consumed,	Villagers reported an initial increase in fish catches from the reservoir after the dam

<p>Treng Province (Bunong Indigenous Peoples; resettled from homes adjacent to Srepok River, now living a few km from LS2 reservoir)</p>	<p>and sold fish</p>	<p>was built.</p> <p>More recently, fish catches in the reservoir have declined significantly to below the levels before LS2 was built. They reported particular declines in species that previously migrated upriver from below LS2.</p>
<p>New Srekor Resettlement Village, Sesan District, Stung Treng Province (resettled from homes adjacent to Sesan River, now living a few km from LS2 reservoir)</p>		<p>Villagers reported an initial increase in fish catches from the reservoir after the dam was built, followed by a significant decline.</p> <p>They report that species that like flowing river water have mostly disappeared and that there has been a decline in fish species that previously migrated upstream from below LS2. They explain that most of the species they catch currently are not migratory, including black fish such as <i>Channa striata</i> and <i>Channa marulius</i>, along with some cyprinids that can survive in stagnant waters, such as <i>Hypsibarbus</i> or <i>Barbodes</i> sp. and <i>Puntioplites falcifer</i>. The most expensive fish that they can still catch regularly is <i>Micronema</i> sp.</p> <p>They have difficulties accessing fishing grounds due to the distance of the resettlement site from the water (2–4 km away) (Villagers, pers. comm., Old Srekor Village, January 29th, 2017).</p>
<p>Complainants: Upstream villagers</p>		
<p>Lom Laeng Village, Malik Commune, Andong Meas District (Jarai Indigenous Peoples living near the Cambodia-Viet Nam border and adjacent to the Sesan River)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers report that important highly migratory fish species have disappeared, including the catfish <i>Pangasius krempfi</i> and <i>Pangasius conchophilus</i>, and the carps <i>Labeo erythropterus</i>, <i>Incisilabeo behri</i>, and <i>Mekongina erythrospila</i>. <i>Henicorhynchus</i> spp. and <i>Paralabuca typus</i> that previously dominated small cyprinid migrations from the Tonle Sap Lake have also disappeared.</p> <p>Villagers state that there are still a small number of <i>Morulius</i> sp., <i>Hypsibarbus</i> sp., and cf. <i>Garra</i> sp. migrating near their village, which they believe may be from the LS2 reservoir (on the grounds that they are fatter than typical river fish of these species).</p>

<p>Seang Say Village, Taveng District, Ratanakiri Province (Brao Indigenous Peoples from the west of Taveng District)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers reported serious declines in migratory fish species reaching their village from below LS2 since the dam was built, leading to heavy declines in fish stocks, fish catches, and fish biodiversity.</p>
<p>Tiem Leu Village, Veunsai District, Ratanakiri Province (Kreung Indigenous Peoples from Veunsai District Center along the upstream Sesan River)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers reported that the only migrating fish they now see are locally migratory species, such as the “black fishes” <i>Channa striata</i> and <i>Clarias</i> sp. They come from tributaries of the Sesan River, not from below LS2.</p> <p>Kreung Indigenous villagers stated that it was harder for them to adapt to these changes than it was for non-indigenous communities because they have less diversified skills. However, more villagers are now reportedly working as day laborers cutting grass and harvesting cassava because river-based livelihoods are less viable.</p>
<p>Fang Village, the capital of Veunsai District, Ratanakiri Province (Ethnic Lao living on the Sesan River far upstream from the LS2 reservoir)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers claim their fisheries have declined to 10 percent of pre-LS2 levels due to the loss of migratory fish that used to migrate upstream from the area below the new dam. The Sesan River has also become shallower, probably as a result of upriver dams in Viet Nam.</p> <p>Villagers reported being short of fish and having to buy most from the market. They also now consume fish in different ways, such as eating fish paste with vegetables instead of whole fish. This decline in fish consumption has especially negatively impacted poor divorced women and widows because neighbors used to give them excess fish, which is now unavailable.</p> <p>Residents have turned to doing more rotational swidden or shifting cultivation in nearby forests, fishing in streams more than before, and are employing more electric shock fishing out of desperation due to the loss of livelihoods from reduced fish in the Sesan River.</p>
<p>Lumphat District Center, Lumphat District, Ratanakiri Province (Ethnic Lao and Khmer, living far</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers report that fisheries have declined significantly since the LS2 dam was built, especially for migratory species such as <i>Mekongina erythrospila</i>, <i>Labeo erythropterus</i>, and <i>Pangasius</i> catfish. The first year after the dam closed, they continued to catch</p>

<p>up the Srepok River from the LS2 reservoir)</p>		<p><i>Henicorhynchus</i> spp. in reasonable quantities, but catches declined significantly in the second year, and by the third year, they caught very few of this species. They reported still catching some <i>Scaphognathops bandanensis</i>, but only 30–35 percent of previous catches.</p> <p>The village’s consumption of fish has suffered significantly. Villagers previously consumed fish three times a day but now do so once a day and sometimes as little as once a week. They also believe that electric fishing is making the problem worse, driven by people desperate because of fish losses due to LS2 and the upstream dams in Viet Nam, which are causing water fluctuations and riverbank erosion. Residents now often buy fish brought to their communities by people riding motorcycles.</p> <p>The end result is a negative impact on income, food security, and nutrition, which in turn contributes to villagers’ increased debt and some people selling their land. To compensate for losses, more people are growing cassava, raising livestock, and working as laborers.</p> <p>Villagers from Lumphat also believe worsening flooding is due to a backing-up effect associated with the LS2 reservoir. However, it seems more likely these impacts are due to dams upstream in Viet Nam. The villagers have received small amounts of rice (25 kg bags) as natural disaster relief from international donors via the Cambodian government.</p> <p>They have reported to provincial officials that they believe that the LS2 reservoir is making flooding worse in their villages, but government officials have responded that they are too far from the LS2 reservoir to be impacted.</p>
<p>Sangkum Village (also called Phum 5 Village), Lumphat District, Ratanakiri Province (Ethnic Khmer, living far up the Srepok River from the LS2 reservoir)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers from Phum 5 also believe flooding has worsened due to a backing-up affect associated with the LS2 reservoir. However, it seems likely these impacts are due to upstream dams in Viet Nam as Phum 5 is very far from the reservoir and like Lumphat villagers, which is the response they have received from government officials.</p> <p>Phum 5 villagers have received some support in the form of 25-kg bags of rice as natural disaster relief from international donors via the Cambodian government.</p>

		<p>Villagers from Phum 5 village reported a significant reduction in catches of migratory fish species, including both dry season and wet season migrating carps and catfishes, which are believed to have been blocked from migrating up the Srepok River from the Mekong River by LS2. This, in turn, has negatively impacted livelihoods by reducing food security and income from selling fish.</p>
<p>Sre Angkrong, Kon Mom District, Ratanakiri Province (Khmer, Lao and small numbers of other Indigenous Peoples including Bunong, Tampuan, Kreung; located about 30 km up the Srepok River from Krabai Chrum Village)</p>	<p>Caught, consumed, and sold fish</p>	<p>Villagers report that fisheries have declined significantly since the LS2 dam was built, especially for migratory fish species including <i>Mekongina erythrospila</i>, <i>Labeo erythropterus</i>, and <i>Pangasius</i> catfish. The first year after LS2 was closed, they caught <i>Henicorhynchus</i> spp. in reasonable quantities, but those catches declined significantly in the second year and to almost none in the third year. The villages report still catching some <i>Scaphognathops bandanensis</i>, but only 30–35 percent of their previous catch.</p> <p>This has significantly impacted their fish consumption, which has dropped from three times a day to once a day and sometimes only once a week. As with villagers from Lumphat, they also believe that electric fishing is making the problem even worse. Residents now often buy fish brought to their communities by people riding motorcycles.</p> <p>The end result is a negative impact on income and food security and nutrition, which in turn contribute to villagers' increased debt and some people selling their land. To compensate for losses, more people are growing cassava, raising livestock, and working as laborers.</p> <p>Villagers reported that rice fields have been abandoned due to regular rainy season flooding related to the LS2 reservoir,³⁰² which has caused them agricultural losses. The community is close enough to the reservoir to be potentially impacted, unlike some areas farther upstream. Ten families claim they lost part of their lowland rice fields, which they reported to the Ratanakiri provincial government, with no response as of yet. More research is needed to evaluate the situation.</p>

³⁰² Villagers believe that the main problem is the backing up of the river due to the LS2 reservoir.

Annex C. Overview of the CAO Investigation Process

*“The purpose of the CAO compliance function is to carry out reviews of IFC/MIGA’s compliance with E&S Policies, assess related Harm, and recommend remedial actions where appropriate.”*³⁰³

The compliance function does not evaluate the adequacy or suitability of E&S policies, nor does it make findings in relation to the compliance of a project, sub-project, client, or sub-client with the IFC Performance Standards.³⁰⁴ However, in carrying out its role, the CAO compliance function will assess IFC/MIGA’s review and supervision of its E&S requirements at the project- or sub-project level, and consider project- or sub-project level E&S performance.³⁰⁵

Notably, CAO has no authority with respect to judicial processes. It is not a court of appeal, a legal enforcement mechanism, or a substitute for international court systems or court systems in host countries.

In line with the transitional arrangements agreed as part of the CAO Policy process in 2021,³⁰⁶ the compliance appraisal and investigation reports were prepared following the CAO Policy. All prior work, including the assessment, were done following CAO’s 2013 Operational Guidelines.

Investigation

A CAO compliance investigation focuses on IFC/MIGA and how it assured itself of a project’s E&S performance. The objective of a compliance investigation is to determine:

- (1) Whether IFC/MIGA has complied with its E&S Policies; and
- (2) Whether there is harm or potential harm related to any IFC/MIGA non-compliance.³⁰⁷

In assessing IFC/MIGA’s E&S performance, it is often necessary for CAO to review the actions of IFC/MIGA’s client and to verify E&S outcomes in the field.

Scope and Methodological Approach³⁰⁸

The scope of a compliance investigation is determined in the investigation terms of reference, published together with CAO’s appraisal report. A compliance investigation is based on information available to CAO from documents, interviews, statements, reports, correspondence, CAO observations of activities and conditions, and other sources that CAO deems relevant. CAO’s investigation report will include the investigation findings with respect to compliance, non-compliance, and any related harm. The report will also include context, evidence, and reasoning

³⁰³ CAO Policy, para. 76.

³⁰⁴ CAO Policy, para. 77.

³⁰⁵ CAO Policy, para. 77.

³⁰⁶ Transitional Arrangements for CAO Cases. Available on CAO’s website: <https://officecao.org/Transition>.

³⁰⁷ CAO Policy, para. 112.

³⁰⁸ CAO Policy, paras. 115, 117, and 118.

to support CAO's findings and conclusions regarding the underlying causes of any non-compliance identified.³⁰⁹

Sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions.³¹⁰ CAO will not make findings and conclusions with the benefit of hindsight.³¹¹ Rather, CAO will assess whether there is evidence that IFC/MIGA applied relevant E&S requirements considering the sources of information available at the time the decisions were made.³¹² Furthermore, while CAO may seek clarifications during the investigation, it will not accept an expansion away from the scope identified in the terms of reference. Should additional issues or concerns emerge during an investigation, these may be subject to a separate appraisal at the discretion of the CAO Director General.

A CAO compliance investigation is not a judicial or legal process.³¹³ CAO follows a non-adversarial model, in which it “systematically and objectively considers facts, circumstances, information, and evidence *as may be available* to it from documents, interviews, statements, reports, correspondence, and other sources as CAO determines relevant” [emphasis added].³¹⁴ CAO's compliance findings and conclusions are based on “sufficient, relevant” evidence as may be available.³¹⁵ Also, as a non-adversarial process, CAO obtains information from several sources; complainants are not required to submit evidence or supporting documentation of their allegations. While complainants may choose to submit evidence,³¹⁶ under the CAO Policy, this is not a requirement to file a complaint or for CAO to reach findings of non-compliance and related harm.

IFC's E&S policies establish the responsibility of IFC and its clients to collect or document information on the project's E&S performance.³¹⁷ In assessing whether there is Harm related to a non-compliance finding, CAO will take into account whether IFC non-compliance contributed to an absence of data or information needed to verify the complainants' allegations of harm. In such circumstances, CAO may find that there are “indications of related Harm,” when it is reasonably likely that the alleged harm raised by complainants occurred or could happen in the future.

In relation to any findings of IFC/MIGA non-compliance and related harm, CAO will make recommendations for IFC/MIGA to consider in the development of a Management Action Plan (MAP) relating to the remediation of project or sub-project level non-compliance and related harm,

³⁰⁹ CAO Policy, para. 120(b).

³¹⁰ CAO Policy, para. 117.

³¹¹ CAO Policy, para. 116.

³¹² CAO Policy, para. 116.

³¹³ CAO Policy, para. 9.

³¹⁴ CAO Policy, paras. 115 and 117.

³¹⁵ CAO Policy, para. 117.

³¹⁶ CAO Policy, paras. 32 and 34(d).

³¹⁷ See, for example, IFC Sustainability Policy 2006, paras. 15 and 26; 2006 PS1 9, 14, 16, 21, 22, 24, 25, 26; IFC Sustainability Policy 2012, paras. 28, 45; 2012 PS1, paras. 7, 14, 23, 24, 30, and 34. See also, CAO Policy, para. 114 regarding CAO's need to assess IFC's review and supervision of its E&S requirements at the project and sub-project level when considering findings of Harm.

and/or steps needed to prevent future non-compliance, as relevant in the circumstances.³¹⁸ Recommendations will take into account the implications of any IFC/MIGA exit.³¹⁹

Findings of Harm

The standard applied in CAO's compliance investigation for assessing related "Harm" is stipulated in the CAO Policy. It defines "Harm" as "any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future." References to "harm" that are not capitalized should be read in accordance with the ordinary and customary meaning given to such term.³²⁰

Following a finding of IFC/MIGA non-compliance, a CAO compliance investigation report will make one of the following assessments of related Harm:

- There has been Harm to complainants. This conclusion is reached where there is sufficient, relevant evidence to afford a reasonable basis for CAO's compliance conclusion.
- There are indications of Harm to complainants. This conclusion is reached based on available evidence that would indicate a likelihood that Harm is actual or reasonably likely to have occurred or can occur in the future. When an IFC/MIGA non-compliance contributed to an absence of data or information needed to verify the complainants' allegations of harm, CAO may find that there are "indications of related harm" when it is reasonably likely that the alleged harm raised by complainants occurred or could happen in the future.
- There is insufficient evidence to reach a conclusion on Harm to complainants.

Investigation Report Finalization

Upon receiving comments on the draft investigation report from IFC/MIGA and the complainants, CAO will finalize its investigation report. Once the final investigation report is officially submitted to IFC/MIGA Management and circulated to the Board, CAO's website will notify the public of the investigation's completion.³²¹

Upon CAO's official submission of the compliance investigation report to IFC/MIGA, IFC/MIGA Management has 50 business days to submit a management report to the Board for consideration. The management report must include a MAP for Board approval. A MAP outlines actions that IFC/MIGA proposes in response to CAO's investigation findings. IFC/MIGA must consult with complainants and the client during its MAP preparation process.³²²

At the same time that IFC/MIGA presents the MAP for Board approval, CAO will submit comments

³¹⁸ CAO Policy, para. 120(c).

³¹⁹ CAO Policy, para. 120(c).

³²⁰ CAO Policy, Glossary and footnote 2 in the CAO Policy.

³²¹ CAO Policy, para. 128.

³²² CAO Policy, paras. 130–131 and 134.

on the proposed MAP to the Board. Upon the Board's approval of the MAP, the compliance investigation report, management report, and MAP will be published on CAO's website.³²³

³²³ CAO Policy, paras. 135 and 138.

Annex D: CAO Non-Compliance Findings, Related Harm, and Recommendations

In accordance with the CAO Policy, in response to this compliance investigation, IFC Management is required to prepare a Management Report.³²⁴ For the purposes of addressing CAO findings of non-compliance and related harm, if any, the Management Report will include, for Board approval, a Management Action Plan (MAP) comprising time-bound remedial actions proposed by Management.³²⁵ Alternatively, the Management Report should include a reasoned response to CAO's findings or recommendations regarding non-compliance or related Harm that IFC is unable to address in the MAP.³²⁶ If the Board approves a MAP, CAO's monitoring will verify effective implementation of the actions set out in the MAP.³²⁷ CAO compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.³²⁸

In table D.1, the first column presents CAO compliance findings and assessment of related harm. The second column will be completed by CAO during its compliance monitoring of this case based on IFC's Board-approved Management Action Plan.

In table D.2,³²⁹ in order to address CAO's findings of non-compliance and related harm, and in accordance with the CAO Policy, CAO makes the following recommendations for IFC to consider when developing its Management Action Plan. These recommendations relate to remediation of project-level non-compliance and related Harm, as well as steps needed to prevent future non-compliance.

³²⁴ CAO Policy, para 130.

³²⁵ CAO Policy, para. 131.

³²⁶ CAO Policy, para. 132.

³²⁷ CAO Policy, para. 140.

³²⁸ CAO Policy, para. 141.

³²⁹ CAO Policy, para. 113.

Table D.1. CAO Findings of Non-Compliance and Related Harm and Corresponding IFC Remedial Actions or Justification for Not Pursuing Remedial Actions

CAO finds IFC’s pre-investment review and supervision of ABBank’s operations to be materially non-compliant with its responsibilities under the Sustainability Framework.

In relation to the complaint brought to CAO by communities affected by the Lower Sesan 2 sub-project, IFC’s review and supervision of ABBank’s operations fell short in the areas summarized below. The table below summarizes CAO’s findings regarding IFC’s compliance with its E&S policies and the complainants’ allegations of Harm related to IFC’s non-compliances.

CAO Findings of Non-Compliance and Related Harm	IFC Remedial Action(s) or IFC Justification for Not Pursuing Remedial Measures
IFC Due Diligence	
<p>IFC failed to conduct an adequate ESDD before its investment in ABBank as required by the 2006 Sustainability Policy (para. 28).</p> <p>Project documents demonstrate that IFC was aware that ABBank was involved in hydropower projects, which have significant known E&S impacts and risks. However, IFC did not review the portfolio of the FI for E&S risks through its Environmental and Social Review Procedures (ESRP), as required by the Sustainability Policy. Specifically, IFC did not identify ABBank’s business activities with potential E&S impact and their applicable performance requirements, nor did it review whether ABBank’s sub-projects met the relevant requirements of the IFC Performance Standards in addition to relevant national laws and regulations.</p> <p>This omission created a significant blind spot in IFC’s due diligence. As a result, IFC’s Management and Board approved the investment without an understanding of the E&S risks in its prospective client’s portfolio, including hydropower investments such as LS2. Additionally, while IFC Management informed</p>	

the Board that ABBank's E&S risk management framework had "room for improvement," IFC had no real basis upon which to improve the client's E&S framework because the client had no environmental and social management system (ESMS), E&S policy, or E&S staff in place until after IFC's investment, and IFC did not have an understanding of the portfolio's E&S risks, which would be needed to improve a client's ESMS.

Moreover, at the time of IFC's investment in ABBank, the World Bank Group was seeking to address the risks of hydropower projects, particularly those involving large dams. In this context, IFC should have strengthened its due diligence to identify the E&S risks of a client bank that it knew: (a) had hydropower investments; (b) had never had an ESMS or an E&S officer; and (c) had no experience examining E&S risks of its financial investments.

Given the context in which this investment was made and ABBank's reported lack of experience and E&S capacity, IFC's pre-investment review could have been an opportunity for IFC to identify ABBank's exposure to LS2 and possibly enhance the sub-project's E&S safeguards while the client was a main LS2 financier of the project. Improvements could have been sought on relevant issues, including stakeholder engagement, grievance mechanisms, involuntary resettlement, biodiversity and cumulative impact assessments, and impacts on vulnerable populations and Indigenous Peoples.

IFC Supervision

IFC did not monitor the E&S commitments in its legal agreement with ABBank, as required by the Sustainability Policy (2006 SP, para. 26; 2012 SP, para. 24).

IFC and ABBank's legal agreement included a social and environmental action plan (called a SEMS Plan) under which the client would ensure compliance of its existing loans and investments with IFC E&S requirements, including the Performance Standards. Yet, at no point during supervision did IFC require ABBank to apply the PS to its existing investments, including EVNI and the LS2. Over the life of the investment, IFC failed to adequately monitor its client's E&S performance against SEMS Plan

commitments, as follows:

- In 2011, the client missed SEMS Plan milestones to establish an effective E&S management system, which was in turn missed by IFC who did not undertake any supervision activities that year.
- Between 2011 and 2016, IFC's supervision failed to effectively review ABBank's E&S due diligence for its investments in high-risk sectors. This lack of supervision contributed to the client's failure to develop an E&S management system capable of ensuring PS compliance for high-risk projects, as required by the Sustainability Policy.
- Until 2017, IFC did not thoroughly review the E&S information submitted by ABBank, and thus did not adequately supervise the client's E&S performance and PS application to its sub-projects. IFC took no immediate action upon learning that ABBank was categorizing large hydropower projects as investments with no E&S risks, applying only national E&S regulations and using the Performance Standards only as recommendations. This persistent problem was a key reason for IFC downgrading the FI's E&S performance in 2020, nine years after first becoming aware of the SEMS Plan shortcomings.
- In 2017, IFC first identified that ABBank's portfolio included loans to high-risk sectors such as hydropower projects and that ABBank's SEMS was not adequate to manage such issues. From then until 2024, IFC consistently encouraged the client to come back into compliance. However, IFC failed to sufficiently use its leverage and influence as a shareholder to ensure such compliance, by not conditioning key E&S requirements, such as the SEMS implementation, to the commitment or disbursement and not using other tools or methods of influence over the client, such as shareholder meetings or the prioritization of E&S issues in its nomination of a board director, to raise awareness of ABBank's shortcomings in E&S compliance.
- Finally, while IFC's supervision improved after 2017, IFC continued to narrowly focus its SEMS Plan supervision on implementation and the hiring of E&S staff and did not require ABBank to

comply with all of the plan's time-bound commitments, as required by the Sustainability Policy and ESRP.

Because of the above, at no point during supervision did IFC satisfy itself that ABBank's monitoring of EVNI and, in turn, the Lower Sesan 2 sub-project met the requirements of the 2006 Performance Standards.

CAO finds that IFC's inadequate supervision led to missed opportunities to positively influence LS2's design, planning, construction, and implementation, namely:

- Between 2011 and 2012, when EVNI was LS2's majority owner and developer, IFC and ABBank had opportunity to align the hydropower plant's design and early planning with PS requirements. Instead, no action was taken to address shortcomings in EVNI's 2011 Compensation and Resettlement Policy related to the requirements of PS1 (Social and Environmental Assessment and Management System) and PS5 (Land Acquisition and Involuntary Resettlement). These deficiencies remain unaddressed.
- After EVNI became a minority shareholder in LS2 in November 2012, requiring PS application became more challenging. However, through EVNI's continued seat on the operating company's board, IFC still had some opportunity to positively influence LS2 planning, construction, and implementation. IFC's non-financial additionality, and one of the key purposes of IFC's E&S supervision, is precisely for IFC to provide guidance and advice to clients on how to address E&S risk issues and to identify opportunities for improvement and good practices that could be applied to similar projects. However, CAO has found little evidence that IFC advised or provided guidance to ABBank or EVNI on the application of PS requirements during this time.

Related Harm

CAO finds there was Harm to complainants related to IFC's non-compliances during due diligence and supervision of ABBank's legal commitment to apply its SEMS Plan, and consequently the Performance Standards, to its existing investment in EVNI and Lower Sesan 2 sub-project. As described above, IFC missed opportunities to avoid, reduce, and/or address the Harm experienced by communities due to a sub-project developed without proper identification and mitigation of E&S risks and impacts to affected people.

In reference to each of the complainant groups, CAO finds:

1. The villagers who refused to resettle have been harmed due to: lack of consideration of their wish to be resettled within their customary land or of their views on alternatives to LS2; the loss of sacred and ancestral lands and the culturally significant rituals tied to them; the lack of free, prior, and informed consultation, as most are Indigenous Peoples; the absence of compensation for physical and economic displacement; and intimidation and retaliation during 2017–2018 as the dam's construction ended and operations began. Currently residing on customary lands, these communities continue to lack security of land tenure.
2. The villagers who resettled have been harmed because the resettlement packages were not based on an asset inventory and comprehensive socio-economic survey of pre-displacement assets and thus their compensation was inadequate. They were not able to meaningfully participate in resettlement decision-making processes, including the Bunong Indigenous People from Old Kbal Romeas, and have experienced ongoing issues with the resettlement site's layout, infrastructure, and quality, which have remained unaddressed. The project lacks a grievance mechanism, limiting their ability to raise these issues with the dam operator. The resettled communities are located several kilometers from the river, limiting fishing activity, and their substitute agricultural plots are not as productive as their former lands. To compensate for this decrease in fish catch and agricultural yields, they now buy much of what they used to fish or

farm, in addition to water. They have not received livelihood restoration assistance to rehabilitate their livelihoods to pre-project levels.

3. Most of the upstream villagers have never been consulted by the project (only three of the eighteen complainant upstream villages were consulted during the EIA process). They have experienced adverse livelihood impacts due to declining migratory fish populations and changes in river flow, forcing them to buy food and water in the marketplace. They have received no compensation for these impacts, nor any acknowledgment that they are project-affected people.

Table D.2. CAO Project-Level and Systemic Recommendations

Project-Level Recommendations
<ol style="list-style-type: none"><li data-bbox="260 350 1894 493">1. Explore with the International Bank for Reconstruction and Development (IBRD) the possibility of incorporating the Old Kbal Romeas community in its Land Allocation for Social and Economic Development Project III (LASED III), which has an Indigenous Communal Land Title (ICLT) component, to assist the community—with its consent—in completing and obtaining its ICLT.<li data-bbox="260 537 1894 721">2. Either through ABBank, EVNI, or by directly approaching LS2, their shareholders or other relevant local stakeholders, offer assistance to establish a grievance mechanism, in consultation with affected communities, that meets PS1 and PS5 requirements and would allow affected communities, including upstream communities, to submit their questions, concerns, and grievances. Through this mechanism, the project could receive and facilitate the resolution of complaints from affected communities and provide information on project measures.<li data-bbox="260 764 1894 909">3. Through IBRD, engage government authorities to offer cooperation and support to undertake a completion audit of the LS2 resettlement and livelihood restoration programs against PS5 requirements. The external auditor should recommend and propose corrective actions for any gaps found. Actions should be consulted with affected communities, have clear timelines and estimated costs, and, to the extent possible, include a determination of the sources of financing for those actions.<li data-bbox="260 953 1894 1135">4. Explore with IBRD and other relevant stakeholders, including government authorities and in consultation with the affected communities, opportunities to develop and implement a biodiversity action plan for the restoration of riverine habitats and a comprehensive set of mitigation measures to respond to biodiversity losses. The plan should include, as necessary, actions to compensate users from directly and indirectly affected communities whose livelihoods have been impacted due to biodiversity loss, with appropriate attention to differentiated impacts on Indigenous Peoples and women.
Systemic Recommendations
<ol style="list-style-type: none"><li data-bbox="260 1260 1894 1364">1. Enhance E&S capacity and procedures for FI investments in order to ensure an adequate understanding of E&S risks and the client's E&S capacity during due diligence and proper monitoring of all E&S commitments during supervision. The capacity should be developed to ensure that IFC has specialized staff in FI E&S risk management with relevant training,

knowledge, and experience to review and monitor FI investments.

2. Develop and disseminate among E&S staff detailed guidance on E&S due diligence requirements for FI clients' general purpose investments, such as equity investments. This guidance should include, among other things, explicit guidance on:
 - a. How to review a representative sample of high-risk investments, transactions, products, and sectors in the FI's portfolio during due diligence to define the required E&S capacity for the client and to determine costs of the project Environmental and Social Action Plan (ESAP) and the average annual costs of client ESMS implementation.
 - b. How to assess the minimum necessary E&S staff required for the FI based on the E&S risk of the portfolio and the FI's turnover and capacity to onboard new E&S staff. In this and other cases, CAO has observed that shortcomings in the client's E&S capacity is often a recurrent problem. IFC should develop tools and parameters for its E&S staff to assess the client's E&S staff needs in relation to the client's E&S risk portfolio.
3. Conduct a portfolio review of IFC's active equity FI investments since 2006 that include an obligation in the legal agreements (ESAP or elsewhere) for the client to apply its ESMS to "existing loans and investments" and ensure that adequate monitoring of the legal commitments is carried out.
4. Update its ESRP to provide more explicit guidance to E&S staff on how to structure investments to best use IFC's leverage during the life of the investments to ensure a client's compliance with E&S requirements. As has been recommended in previous cases, this should include explicit guidance on the need to link E&S commitments in the ESAP or legal agreement to investment milestones such as commitment, first disbursement, and subsequent disbursements, to ensure that IFC has sufficient leverage to require their completion.