



August 12, 2016  
Office of the Compliance Advisor Ombudsman (CAO)

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## COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

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*IFC Investment in CIFI – Hidro Santa Cruz (IFC Project #26031)  
Guatemala*

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Corporación Interamericana para el Financiamiento de Infraestructura, S.A. (hereafter “CIFI” or “the client”) was established in 2001 as a non-banking financial institution to provide financing to small and medium infrastructure projects (up to US\$100 million) across Latin America and the Caribbean.

In June 2008, IFC committed to a US\$10 million equity and US\$20 million loan investment in the client. Additionally, IFC arranged a US\$48.5 million syndicated loan for the client. The purpose of IFC’s investment was to implement client’s business plan, including expected asset growth and operational consolidation, as well as access to long-term funding through the international capital markets. IFC sought to contribute to the implementation of the business plan through the transfer of industry knowledge, structuring skills, and best international practices.

In June 2010, Hidro Santa Cruz, S.A (HSC) hired CIFI as financial advisor to structure and finance the development of a 5 megawatts (MW) run-of-river hydropower plant (Canbalam I or “the project”) located in the Municipality of Santa Cruz Barillas, Department of Huehuetenango, Guatemala. In December 2011, CIFI made a debt and quasi-equity investment in HSC to support the development of the hydropower plant.

In July 2015, a group of community representatives filed a complaint to CAO on behalf of themselves and other community members in the Municipality of Santa Cruz Barillas. The complainants have raised concerns about several environmental and social (E&S) issues. These include: IFC’s due diligence, the dissemination and disclosure of project information, lack of consultation, and potential impacts of the project on indigenous populations. The complainants assert that when they decided to oppose the project, their community was subject to violence, persecution, threats and intimidation. The complainants further allege that a worker from the security company hired by the project was involved in the murder of a member of the community in May 2012. They report that this incident enraged the Barillas community who reacted violently resulting in the national government responding by declaring a state of emergency. They further allege that nineteen community members were detained, of which nine were sent to jail for nine months.

The company developing the project, Ecoener, asserts that this project poses limited environmental risks and has been granted the necessary environmental licenses. In relation to the alleged murder, the company notes that the accused has been absolved of the charges against him. IFC’s client asserts that prior to making its investment in the project, they verified the project’s compliance with the relevant environmental and social requirements. After learning about social problems with the project site in February 2012, the client notes that they commissioned a social study and thereafter decided to halt further disbursements to the project. From the client’s perspective, despite multiple efforts by creditors to solve the problems related to the project, a satisfactory resolution was never reached. The client reports that as of November 3, 2015, they have ended their financial relationship with HSC.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In determining whether to initiate an investigation, CAO weighs a number of factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions concerning the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants raise a range of environmental and social issues in relation to the Hidro Santa Cruz project. Despite the client having exited the investment after the complaint was filed, CAO's Operational Guidelines require CAO to consider whether the issues in the complaint raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. While CAO takes no position on the merits or the veracity of the allegations set out in the complaint, CAO considers the allegations to be substantial in nature.

After a review of IFC's documentation and preliminary discussions with the IFC team, CAO has identified questions as to: (a) whether IFC's pre-investment E&S review of the client was commensurate to risk; (b) the adequacy of IFC's approach to the management of E&S risks in relation to this investment; and (c) the adequacy of IFC's supervision of E&S risks related to the client, in particular following the 2012 incident at the HSC site.

As a result, CAO will conduct a compliance investigation in response to this complaint. The scope of the investigation will be defined in terms of reference in accordance with the CAO Operational Guidelines.



## **About the CAO**

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

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

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)



## Table of Contents

|  |           |
|--|-----------|
| About the CAO .....  | 3         |
| <b>I. Background .....</b>   | <b>7</b>  |
| Investment .....   | 7         |
| Complaint and CAO Assessment.....  | 7         |
| <b>II. Analysis .....</b>  | <b>9</b>  |
| IFC's Pre-Investment Due Diligence .....   | 9         |
| Requirements.....  | 9         |
| IFC's E&S Appraisal of the client.....   | 10        |
| IFC's Supervision of the Investment and Review of the Hidro Santa Cruz Project ..... | 10        |
| Requirements.....  | 10        |
| General Supervision of the client.....   | 10        |
| Supervision in relation to the Hidro Santa Cruz Project .....                        | 10        |
| <b>III. CAO Decision .....</b>   | <b>11</b> |

## Acronyms

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| AEPR    | Annual Environmental Performance Report                                    |
| CAO     | Office of the Compliance Advisor Ombudsman (IFC and MIGA)                  |
| CIFI    | Corporación Interamericana para el Financiamiento de Infraestructura, S.A. |
| E&S     | Environmental and Social   |
| EP      | Equator Principles   |
| ESMS    | Environmental and Social Management System                                 |
| ESRP    | Environmental and Social Review Procedures                                 |
| ESRR    | Environmental and Social Risk Rating                                       |
| FI      | Financial Intermediary   |
| HSC     | Hidro Santa Cruz, S.A.   |
| IFC     | International Finance Corporation  |
| NGO     | Non-Governmental Organization  |
| Norfund | Norwegian Investment Fund for Developing Countries                         |
| PS      | Performance Standards (IFC)  |
| SEMS    | Social and Environmental Management System                                 |
| SPI     | Summary of Proposed Investment   |

## Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to CAO's compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO Vice President, IFC/MIGA management, or the President of the World Bank Group.

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

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## I. Background

### Investment

Corporación Interamericana para el Financiamiento de Infraestructura, S.A. (hereafter “CIFI” or “the client”) was established in 2001 as a non-banking financial institution to provide financing to small and medium infrastructure projects (up to US\$100 million) across Latin America and the Caribbean.<sup>1</sup>

In June 2008, IFC committed to a US\$10 million equity and US\$20 million loan investment in the client.<sup>2</sup> IFC’s equity investment involved the purchase of shares from existing shareholders with the objective of consolidating the shareholding structure. Additionally, IFC arranged a US\$48.5 million syndicated loan for the client.<sup>3</sup>

The purpose of IFC’s investment was to implement the client’s business plan, including expected asset growth and operational consolidation, as well as access to long-term funding through the international capital markets.<sup>4</sup> IFC sought to contribute to the implementation of the business plan through the transfer of industry knowledge, structuring skills, and best international practices.<sup>5</sup>

In June 2010, Hidro Santa Cruz, S.A. (HSC) hired the client as financial advisor to structure and finance the development of a 5-megawatts (MW) run-of-river hydropower plant (Canbalam I or “the project”) located in the Municipality of Santa Cruz Barillas, Department of Huehuetenango, Guatemala.<sup>6</sup> Ecoener and Desarrollo Hidroeléctrico Centroamericano were developing the project. In December 2011, CIFI and Norfund finalized a debt and quasi-equity investment for US\$10.6 million to support the development of the hydropower plant.<sup>7, 8</sup>

According to Ecoener (“the company”), the project would construct a facility for clean electricity generation, for which part of the river flow needs to be diverted and channeled through a pipe to a powerhouse where it will go through a turbine before being restored in full to the river.<sup>9</sup>

### Complaint and CAO Assessment

In July 2015, a group of community representatives filed a complaint on behalf of themselves and other community members in the Municipality of Santa Cruz Barillas. The complainants have raised concerns about several environmental and social issues. These include: IFC’s due diligence, the dissemination and disclosure of project information, lack of consultation, and potential impacts of the project on indigenous populations. The potential for project related displacement and impacts on local water resources are also raised. The complainants assert that when they decided to oppose the project, their community was subject to violence, persecution, threats and intimidation. The

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<sup>1</sup> CIFI website. <http://www.cifidc.com/> (accessed June 14, 2016).

<sup>2</sup> CIFI news announcement, July 2008. Available at <http://goo.gl/Tktrj8> (accessed June 14, 2016).

<sup>3</sup> IFC Disclosure, Summary of Proposed Investment (SPI); project number 26031. Available at <http://goo.gl/VQleNA> (accessed June 14, 2016). CIFI website announcement <http://goo.gl/SII3T9> (accessed August 11, 2016).

<sup>4</sup> IFC Disclosure, SPI.

<sup>5</sup> IFC Disclosure, SPI.

<sup>6</sup> CIFI news announcement, June 2010. Available at <http://goo.gl/nUQKHv> and <http://goo.gl/bgFhfd> (accessed June 14, 2016).

<sup>7</sup> Norfund Investment Summary, available at <http://goo.gl/7mT7DL>; Norfund Report on Operations 2011: <http://goo.gl/iYNamr>

<sup>8</sup> CAO Assessment Report. <http://goo.gl/MR2NBB>. Accessed June 14, 2016).

<sup>9</sup> CAO Assessment Report.

complainants further allege that a worker from the security company hired by the project was involved in the murder of a member of the community in May 2012 (“the 2012 incident”). As a result, they allege that violence erupted within the community and the national government declared a state of emergency leading to the mobilization of police and military and allegedly the detainment of 19 community members.<sup>10</sup>

As set out in CAO’s Assessment Report (May 2016) in relation to the complaint, the company asserts that this project poses limited environmental risks and has been granted the necessary environmental licenses. While the company acknowledges that initial consultation with communities was limited, following a series of consultations with the Municipality, community representatives and community meetings, the company asserts that it was in a position to sign a cooperation agreement with representatives of all the communities in December 2011. This was not signed, the company claims, due to a radical minority group resorting to violence and boycotting the agreement. As explained by the company, the community division and violence stem from politically motivated NGOs supported by European cooperation agencies. In relation to the alleged murder of a community member, the company notes that the accused has been absolved of the charges against him.<sup>11</sup>

A full presentation of the complainants’ and the company’s perspectives on the issues is included in Annex A.

The client’s perspective on the issues raised in the complaint is also summarized in CAO’s May 2016 Assessment Report:

*CIFI says that prior to the approval and disbursement of the loan, it hired the services of a prestigious consulting firm with expertise in environmental and social issues, in order to assess the HSC Project. The assessment provided a satisfactory evaluation. On December 6, 2011, CIFI and the Norwegian Investment Fund for Developing Countries (“Norfund”) as creditors subscribed a loan facility of up to US\$10.6 million with HSC as borrower. Having verified compliance with the corresponding environmental and social requirements, among others, creditors made an initial disbursement of US\$3.5 million. The remaining US\$7.1 million were never disbursed since HSC was not able to successfully settle the social conflicts in the HSC project area that emerged after having made the first disbursement effective.*

*CIFI reported that at the time the first disbursement was made, they did not have information about social opposition to the project. In February 2012, as a result of the problems the project was facing, CIFI commissioned a specific social risk study. The results confirmed the need to halt further disbursements indefinitely until social conflicts were resolved. CIFI remarked that, as a result, the creditors sent a letter to HSC asking that they come to agreement on a strategy to settle the issues, to seek and obtain the support from the community, and to share benefits with them. CIFI emphasizes that given the scarce progress made in the construction phase, the environmental impact has been limited.*

*From CIFI’s perspective, despite multiple efforts by creditors to solve problems, a satisfactory resolution was never reached. Therefore, CIFI reported that as of November 3, 2015, HSC and the creditors terminated their credit relationship. Lenders took considerable financial losses related to the investment made. Since then, CIFI bears no contractual relationship with HSC regarding the project.<sup>12</sup>*

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<sup>10</sup> Complaint to CAO and CAO Assessment Report available at <http://goo.gl/ZZkm0q> (accessed July 28, 2016).

<sup>11</sup> CAO Assessment Report.

<sup>12</sup> CAO Assessment Report, p.12.

Following CAO's assessment, the complainants decided not to pursue a CAO-facilitated dispute resolution process, and accordingly, the complaint was transferred to CAO's compliance function for appraisal in May 2016.

## II. Analysis

This compliance appraisal focuses on IFC's pre-investment review and supervision of its investment in the client, and the identification and management of E&S risks related to the client's sub-projects, in particular Hidro Santa Cruz's Canbalam I project. The relevant IFC requirements include its 2006 Policy on Environmental and Social Sustainability ("the Sustainability Policy"), the 2006 Performance Standards (PS) and 2006 Policy on Disclosure of Information ("Disclosure Policy") - together referred to as the Sustainability Framework. As revised from time to time, the Environmental and Social Review Procedures (ESRP) provide guidance to IFC staff in implementing the Sustainability Framework.

### IFC's Pre-Investment Due Diligence

#### *Requirements*

The key question for CAO at pre-commitment phase of the project cycle is whether IFC exercised the required due diligence in its review of the E&S risks of the investment. As a general principle, IFC is committed to a pre-investment E&S review that is "commensurate with the level of social and environmental risks and impacts".<sup>13</sup> Accordingly, questions arise in relation to the adequacy of: (a) IFC's review of the potential E&S risks attached to the business of its FI client; (b) IFC's approach to the assessment of the client's capacity to manage and mitigate these risks; and (c) the measures that IFC required the client to implement to ensure appropriate management of E&S risks.

At appraisal, IFC is required to review "the business of its FI clients to identify activities where the FI could be exposed to social and environmental risk as a result of its investments." IFC's E&S requirements are expected to be "proportional to the level of potential risk."<sup>14</sup> Based on the above, IFC requires its clients to "establish and maintain a social and environmental management system (SEMS)<sup>15</sup> to ensure that its investments meet IFC's requirements."<sup>16</sup> As part of the appraisal process, IFC reviews "the client's SEMS, considering its adequacy to implement the applicable performance requirements." Specifically, IFC reviews the client's capacity to implement IFC's requirements and its track record to date in SEMS implementation. Where gaps are identified, these are captured in an Action Plan agreed with the client and incorporated into IFC's legal agreement with the client.<sup>17</sup>

Prior to approval, IFC discloses a Summary of Proposed Investment (SPI). Through this disclosure, IFC outlines the purpose of the investment, the client's E&S requirements as part of IFC's investment and a summary of key enhancements to be made to the client's SEMS.<sup>18</sup>

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<sup>13</sup> IFC Sustainability Policy, 2006, para. 13.

<sup>14</sup> IFC Sustainability Policy, 2006, para 28.

<sup>15</sup> The acronym SEMS is used in this document to reflect the terminology used at the time of the investment. It is synonymous to Environmental and Social Management System (ESMS) which is current at the time of writing.

<sup>16</sup> IFC Sustainability Policy, 2006, para 29.

<sup>17</sup> ESRP, 2007, para. 7.2.16–17.

<sup>18</sup> IFC Disclosure Policy, 2006, para. 14.

### ***IFC's E&S Appraisal of the client***

In disclosing a summary of its appraisal, IFC noted that it analyzed the client's existing SEMS along with its plans for future activities. IFC's view at appraisal was that "CIFI's SEMS is generally comprehensive and satisfactory, with a few areas needing revision to comply with IFC requirements."<sup>19</sup> IFC noted that the client would be required to revise its SEMS to ensure that investments supported by IFC's financing would comply with IFC's Performance Standards.<sup>20</sup>

An initial review of IFC's appraisal documentation raises questions as to the extent to which IFC reviewed its client's capacity to implement IFC's E&S requirements including its track record of SEMS implementation. Further, CAO has questions regarding the adequacy of risk mitigation measures incorporated into the investment.

IFC's investment in the client was approved by the IFC Board in May 2008.

### **IFC's Supervision of the Investment and Review of the Hidro Santa Cruz Project**

#### ***Requirements***

During supervision, IFC monitors an "FI's performance on the basis of the Management System [SEMS]."<sup>21</sup> Specifically, IFC is required to determine whether "there is sufficient evidence that the client is operating the SEMS as envisaged at the time of appraisal" and "there is sufficient evidence that the client has applied the applicable performance requirements to their sub-projects."<sup>22</sup>

IFC's supervision is based on a review of the client's Annual Environmental Performance Report (AEPR) and, where IFC considers it necessary, a supervision visit to the client.

#### ***General Supervision of the client***

IFC processed its first disbursement to the client on August 20, 2008.<sup>23</sup> IFC supervision documentation notes that the client revised its SEMS to incorporate IFC Performance Standards for sub-project assessment prior to disbursement.

Since disbursement, IFC has reviewed AEPRs submitted by the client on an annual basis.<sup>24</sup> IFC's supervision documentation notes challenges related to receipt of sub-project E&S information and inconsistent implementation of the client's SEMS. As a result, IFC raised concerns with the client on its E&S performance through to 2014. Thereafter, IFC recognized improvements in the client's approach to E&S risk management.

CAO also notes that the client reports updating its SEMS during 2012 and 2013 to "fully align with the updated" IFC Performance Standards (2012) and Equator Principles III (2013).<sup>25</sup>

#### ***Supervision in relation to the Hidro Santa Cruz Project***

The client announced an intention to help raise financing for the HSC project in July 2010 and invested in the project in December 2011.<sup>26</sup> This was reported to IFC in the client's 2011 AEPR

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<sup>19</sup> IFC Disclosure, SPI.

<sup>20</sup> IFC Disclosure, SPI.

<sup>21</sup> IFC Sustainability Policy, 2006, para. 29.

<sup>22</sup> ESRP 2007, para. 10.2.7.

<sup>23</sup> IFC Disclosure, SPI.

<sup>24</sup> Shortened versions of CIFI's AEPRs are available at <http://goo.gl/iOSe8X> (accessed June 14, 2016).

<sup>25</sup> CIFI's website: E&S reporting. For further details, see <http://goo.gl/iOSe8X> (accessed June 14, 2016).

<sup>26</sup> CIFI's website: BN America news announcement, see <http://goo.gl/gTMp2o> (accessed July 20, 2016).

(submitted July 2012).<sup>27</sup> The client classified the project as Category B, indicating that the project had “potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.”<sup>28</sup>

While client publishes summaries of its AEPRs, more detailed information regarding client’s E&S due diligence (ESDD) and supervision of the HSC project are included in versions provided to IFC.

Consistent with the position outlined in the CAO Assessment Report (see above), client’s reporting to IFC from 2012 onward indicates that construction of the project was suspended and disbursements stopped as a consequence of the social conflict around the project. As a result of the ongoing impasse in relation to the issue of community support for the project, client reports that HSC and the creditors (including the client) terminated their credit relationship with the lenders taking considerable financial losses related to the investment made.<sup>29</sup>

IFC’s supervision documentation notes concerns in relation to the HSC subproject. However, beyond suspension of disbursement by CIFI to HSC, IFC’s supervision documentation does not describe any specific measures taken by the client or recommendations made by IFC for the client to address the issues raised by the complainants. In light of the seriousness of the allegations raised, CAO has questions as to the adequacy of IFC’s response.

### III. CAO Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In determining whether to initiate an investigation, CAO weighs a number of factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions concerning the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants raise a range of environmental and social issues in relation to the Hidro Santa Cruz project. Despite the client having exited the investment, CAO’s mandate requires CAO to consider whether the issues in the complaint raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. While CAO takes no position on the merits or the veracity of the allegations set out in the complaint, CAO considers the allegations to be substantial in nature.

After a review of IFC’s documentation and preliminary discussions with the IFC team, CAO has identified questions as to: (a) whether IFC’s pre-investment E&S review of the client was commensurate to risk; (b) the adequacy of IFC’s approach to the management of E&S risks in relation to the client; and (c) the adequacy of IFC’s supervision of E&S risks related to the client, in particular following the 2012 incident at the HSC site.

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<sup>27</sup> CIFI AEPR 2011, available at <http://goo.gl/izCVAG> (accessed June 14, 2016).

<sup>28</sup> CIFI AEPR 2011, p. 1: “Under CIFI’s ESMS, all projects are categorized in accordance with the EP [Equator Principles]/IFC project categorization scheme, which assigns all projects a Category A, B, or C designation based on likely environmental and related effects.” Hidro Santa Cruz categorization detailed in clients AEPR 2011, p. 9.

<sup>29</sup> CAO Assessment Report.



As a result, CAO will conduct a compliance investigation in response to this complaint. The scope of the investigation will be defined in terms of reference in accordance with the CAO Operational Guidelines.

**Annex A: Perspectives about issues raised in complaint (from CAO Assessment Report).**

|   | <p align="center"><b>Complainants and civil society organizations supporting the complaint</b></p>   | <p align="center"><b>Ecoener S.A.</b></p>   |
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| <p align="center"><b>Environmental Impact</b></p> | <p>Complainants indicate that this is a small-scale project and should therefore not pose a significant environmental risk. However, they draw attention to the fact that since this would be the first of two consecutive projects to be implemented on the same river, environmental impacts should be assessed cumulatively. They are also concerned that the concession contract to build a hydroelectric plant may be a way to later request a mining license contract in the area, with considerably greater potential impact. In addition, the complainants contend that the river has three waterfalls that are considered sacred by the indigenous communities and serve touristic and recreational purposes.</p> | <p>Ecoener points out that a 5MW project poses very low environmental risks and that relevant authorities have granted the Environmental License. They also indicate that, at some point and only using maps, they transparently explored the possibility of developing a second project downstream, but dismissed the idea due to the existing unrest. As for the condition of the river, Ecoener signals that it is extremely polluted as it gets the wastewater discharge from the urban area of the Municipality of Santa Cruz Barillas and therefore cannot be used as a touristic resource.</p> <p>Ecoener states it works solely on renewable energy generation and that it holds no link or connection to any mining activities that could support rumors of this being a mining project.</p> |

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| <b>Social Impact</b> | <p>The complainants indicate that all the <i>q'anjob'al</i> territory is threatened by businesses that do not consult the communities, but rather divide them, prosecute their leaders, and resort to violence to impose their projects on them. They believe that, in line with this pattern, the project has brought about division in the Barillas community, now stigmatized as a violent municipality. They see that the conflict around the project has affected the organization of local communities—and even that of the local families—which now gather and join in opposing factions, either opposing or supporting the project.</p> <p>They also contend that the lands for the project were bought through a front man with a lack of transparency about what the lands would be used for.</p> <p>The complainants also point out that the company's decision to hire armed guards and custodians brought back memories of the 1980s, when the police and the military abused human rights. According to complainants, the contract with the security company was cancelled after an enraged community mobilized in a protest that included the burning of machinery.</p> <p>The complainants report that since they decided to show their opposition to the project, the community at large has been victim to violence, persecution, threats and intimidation. They say that they have been repressed by police forces and their leaders judicially prosecuted and condemned without due process, by the issuing of arrest warrants that hinder their free movement, limit their ability to look after their families, and cut short their income-generation capacity. They maintain that the women in the community have been driven to take up the role of men.</p> <p>The complainants specifically accuse a worker from the security company hired by the project of having murdered a member of their community in May 2012. They report that the enraged Barillas community reacted violently</p> | <p>According to the company, the project should be beneficial for the neighboring communities in terms of job creation and community development projects. The company also informs that the available documentation and testimonies from the sellers prove that the lands were bought on the company's own behalf and not through intermediaries, with transparency about their purposes.</p> <p>The company expresses concern since it claims that the individuals opposing the project are a minority that resort to violence to intimidate the workers and those supporting the project, while occupying the project's lands and setting fire to its machinery on several occasions. The company's representatives believe that the community division and violence stem from politically motivated NGOs supported by European cooperation agencies. According to Ecoener, there is some indication that money was distributed in the communities to push their mobilization against the project.</p> <p>The company said that initially, following standard practice in the country and due legal requirements, they hired a security company with armed guards who were detained by detractors opposing the project, doused with fuel, and deprived of their weapons. Upon the intervention of the local justice of peace, the detractors returned the weapons and the company substituted the security service with another one to control and protect access to the project site without the need for armed personnel.</p> <p>Ecoener said that one of the individuals accused of murdering a member of the community had worked for the security company that control and protect access to the project site. They remarked that the circumstances in which the killing occurred are unclear, but that the ruling of one of the</p> |
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|  | <p>and that the national government responded by declaring a state of emergency. Along with the mobilization of police forces and the military in Barillas, nineteen individuals were detained and nine were sent to jail for nine months. Complainants maintain that the way in which events have unfolded points to an alliance between the company and the national government.</p> <p>Complainants recount that United Nations representatives questioned the detentions and arrests as arbitrary and irregular.</p> | <p>most prestigious judges in Guatemala absolved the accused party of the charges against him.</p> |
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| <b>Benefit Distribution</b> | <p>The complainants remark that the communities do not benefit adequately from the utilization of their resources. They believe that the project benefits powerful foreign groups and that it does not take into account the engagement of the local communities and does not provide long-term, significant development opportunities. They also say that the communities must bear the social and environmental costs without getting any electricity or paying very high fees for the service.</p> <p>They state that the path used by the project had been initially opened by the communities. They chose to block it if it will not be used for the benefit of the community.</p> | <p>Ecoener maintains that the Cooperation Agreement they were looking forward to signing with the communities after a long-awaited process of information exchange and consultation would have created beneficial projects for the development of the communities, alongside job creation for construction purposes. However, they regret that those opposing the project boycotted its signature. They agree with the complainants that it would be convenient to offer electricity to the community, but Guatemalan law does not allow this type of agreement.</p> |
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| <p><b>Consultation Process</b></p> | <p>Complainants indicate that in 2007, before the project kicked off, the communities of the Municipality of Santa Cruz Barillas held a community consultation in good faith, which concluded with an overwhelming majority of votes against mining activities and in favor of defending natural resources. They maintain that this consultation was not respected by the project sponsor.</p> <p>The complainants question the way in which the project sponsor carried out their own consultation process. They said that very little information was disclosed to second-level organizations in micro-regions, their leaders were co-opted, and Ecoener did not engage in dialogue with the communities seeking agreement. As a result, mistrust arose among people, the project site was occupied, workers were asked to leave the project site, and machinery was burned.</p> <p>Complainants said that the company reached an agreement with the Municipality in order to sign a covenant authorizing them to perform works in exchange for 1.2 million quetzales (US\$156,000) per year, but this covenant was rejected by the representatives of the 305 COCODES (Communal Development Councils), the most local level of elected representation recognized by Guatemalan law, because they had not been duly informed and—therefore—felt they were being deceived.</p> <p>The complainants indicate that the Presidency promoted a dialogue process in 2013 with the mediation of Bishop Monsignor Ramazzini, but agreements were not reached and the process was used to identify the leaders of organizations opposing the project and issue arrest warrants against them.</p> | <p>Ecoener considers that documents elaborated by the complainants prove that the community-led consultation was exclusively focused on mining. However, it does acknowledge that their first approach to the communities was limited. They state that they made their first contact with the mayor, who, in turn, recommended that they should contact second-level COCODES in 16 micro-regions in Barillas. They made contact with them and shared information on the project while they processed their corresponding authorizations with the Municipality and the Ministries of Energy and the Environment. They remark that only after the permits had been obtained and after having shared the information on the project with the aforementioned COCODES did they decide to initiate the project. Yet, numerous community members that were not aware of the project halted it, burned the machines, and beat workers who had been sub-contracted to initiate work. At that point, the project entered a stand-by stage for them to seek advice and counseling, and since then, they have exerted efforts to approach and engage each of the communities with specific meetings that have been documented and properly kept in minutes. Per their records, around two thousand (2,000) members of the communities were taken to visit the hydroelectric facilities in Zunil in the hope that they would visualize what the project would look like once completed. At the same time, they claim to have started a negotiation process with the Municipality and the representatives of all the communities to sign a cooperation agreement by which the company would support projects during the life-span of the project—40 years. According to the company, these efforts reversed the situation of social resistance and opposition and an agreement was ready to be signed in December 2011. However, they claim that a radical minority group that</p> |
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|  |  | <p>had not been democratically elected resorted to violence and boycotted the signature of the agreement.</p> <p>Ecoener said it participated in good faith in the dialogue process mediated by Monsignor Ramazzini and convened by the Presidency under the United Nations system to initiate talks with the complainants. Yet, they stated that efforts failed due to negative responses from complainants.</p> |
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| <b>Dispute Resolution Approaches</b> | <p>Complainants express that Ecoener, with support of government administrations, and judicial and security authorities, have only left sorrow and fear and that, in their belief, the only way to restore peace and tranquility in Barillas is if the project is dropped and the company leaves the area. To this end, they have expressed their hope that IFC withdraws its funding from the project, even though they understand that this request exceeds CAO's mandate.</p> <p>Several complainants clarified that they are not against every single hydroelectric project, but only against those that do not propose a distribution of benefits aimed at helping the communities fight against poverty, and that do not engage the community in proper consultation.</p> | <p>Ecoener expressed that despite the various failed opportunities to engage in dialogue and the violence exerted on their workers and facilities, it is willing to try again under CAO's auspices, seeking to reach agreements that may bring about peace and development in Barillas.</p> |
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