



CAO ASSESSMENT REPORT

**Complaint Regarding IFC's investments in Banco Financiera Comercial Hondureña
S.A. (Projects # 26394, 27341, 29257)
Tela, Honduras**

October 2016

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

About the CAO

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

For more information, including an overview of CAO's compliance and dispute resolution work see www.cao-ombudsman.org

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LIST OF ACRONYMS

AMC	Asset Management Company
CAO	Office of the Compliance Advisor Ombudsman
DTBT	Tela Bay Touristic Development
FICOHSA	Banco Financiera Comercial Hondureña S.A.
GTFP	Global Trade Finance Program
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
OFRANEH	Fraternal Black Organization of Honduras
SME	Small and medium sized enterprise

1. OVERVIEW

In October 2015, four Indigenous Garífuna communities lodged a complaint with CAO with the support of a local organization, Fraternal Black Organization of Honduras (OFRANEH)¹. The complaint raised concerns about negative impacts of a tourism development project (INDURA), which was financed by Banco Financiera Comercial Hondureña S.A. (FICOHSA).

CAO determined that the complaint met its three eligibility criteria in October 2015, and initiated an assessment of the complaint. CAO's assessment concluded with complainants' decision for the complaint to be referred to CAO's Compliance function for an appraisal of IFC's environmental and social due diligence of the project. This report provides an overview of the CAO assessment process, including a description of the project, the complaint, the views of the parties, findings and next steps.

2. BACKGROUND

2.1 The Project

As part of the Tela Tourism Project, Banco Financiera Comercial Hondureña S.A. (FICOHSA), among other financiers, provided more than US\$20 million towards the development of boutique hotels, vacation homes and condominiums in Honduras. The tourism project includes the Indura Beach and Golf Resort (INDURA) which was built and is operated by Tela Bay Touristic Development (DTBT or project operator) on the Honduran Atlantic Coast. DTBT is a public-private partnership entered into by the Honduran Institute of Tourism² (49%) and the Honduran Fund for Touristic Investment (51%).

IFC has several active projects with FICOHSA. IFC first invested in FICOHSA in May 2008. This investment was an initial loan of US\$20 million to support FICOHSA's small and medium sized enterprise (SME) and middle to low income mortgage portfolio (project # 26394), combined with an IFC Advisory Services project. In July 2008, IFC approved FICOHSA's inclusion in the Global Trade Finance Program (GTFP) with an initial credit line of US\$15 million which was subsequently increased to US\$35 million (project # 27341) intended to support the Bank's international business and country trade activities. In October 2011, the AMC subscribed 10 percent equity (US\$32 million) and provided a subordinated debt (US\$38 million) investment (project # 29257)³. Further in 2014, according to IFC, the AMC increased its participation by US\$5.5 million through the exercise of its pre-emptive rights to support FICOHSA's capitalization to finance the acquisition of the Citibank assets.

¹ OFRANEH was created in 1978 as a federation of Garífuna people in Honduras working together for the defense of their cultural rights, with the aim of surviving as a separate culture. See <https://ofraneh.wordpress.com/about/>

² See <http://www.iht.hn/>

³ IFC's press release. See: <http://ifcext.ifc.org/IFCExt/Pressroom/IFCPressRoom.nsf/0/2691C491EFE4E6378525791B006038D1> Accessed 8.29.2016

2.2 The Complaint

In October 2015, four Indigenous Garífuna communities lodged a complaint with CAO with the support of OFRANEH. The complaint alleges a number of issues arising from the INDURA project, including land grabbing, community displacement, lack of economic benefits and environmental degradation. During the assessment, complainants alleged that job opportunities created by the project have not been made sufficiently available to Garífuna community members as originally promised and agreed. Other concerns were raised about restrictions to access to fishing areas, to trees used to build the community's traditional houses, and to fruits the people sell for a living.

3. ASSESSMENT PROCESS

3.1 Methodology

The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how the project operator and other stakeholders see the situation, and to determine whether the complainants and the project operator would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or whether the complaint should be referred to CAO Compliance for appraisal of IFC's performance (see Annex A for CAO's complaint handling process). CAO does not gather information during assessment to make a judgment on the merits of the complaint.

In this case, CAO's assessment of the complaint comprised:

- a desk review of project documentation;
- three trips to Honduras to meet and follow up with different local and national stakeholders;
- meetings with:
 - four communities: Barra Vieja, Tornabé, San Juan and Triunfo de la Cruz;
 - IFC's project team;
 - representatives of FICOHSA;
 - DTBT representatives;
 - government representatives – Ministry of Tourism and the National Agrarian Institute;
- boat-trip on the Los Micos Lagoon.

3.2 Summary of Views

Communities' perspective

Members of the communities of Tornabé, Barra Vieja, San Juan and Triunfo de la Cruz and OFRANEH have expressed concerns about what they consider to be negative impacts of the INDURA project.

They claim that in 2009 the Government of Honduras promised to Garífuna communities to give them seven percent of equity in the boundaries of Tela but no further information has been made available to the communities about this. They also indicate that job opportunities created by the project have not been made sufficiently available to Garífuna community members as originally promised and agreed, even after some of them have taken capacity-building workshops and received, in their view, training to be skilled up for job opportunities they thought the project would offer. Communities have stated that armed guards chase them away if they attempt to sell coconut bread or fresh fish to INDURA's tourists on the beach.

They also claim that the project has brought access restrictions. Allegedly, they can no longer cross freely through the beach in front of the project, making it a longer walk for those in

Tornabé, San Juan or Triunfo de la Cruz who are used to fishing in the area of Miami and Los Micos lagoon. In their view, the restricted access also represents a problem for children who walk from Barra Vieja to Tornabé to go to school every day. The project area is still rich in plants that Garifuna's have long used to build their traditional houses or extract fruits they eat and sell for a living. According to community members, access to the area and use of these plants is now strictly forbidden, even if DTBT does not use them for any purpose.

Overall, OFRANEH and members of the communities see the project as yet another manifestation of a plan by government and private sector, with support from international finance institutions, to gradually displace the Garifuna communities from the area, through land-grabbing, fishing restrictions, creation of protected areas on their territories, livelihood reduction, and community division. San Juan and Triunfo de la Cruz have taken their cases to the Inter-American System of Human Rights Protection.

The Tornabé and Barra Vieja communities, which are adjacent to the project, raise additional concerns specific to their current situation. Members of Barra Vieja allege that they have been prosecuted for allegedly invading public lands in 2006 and the community has experienced two attempts of forced eviction by police and military forces. In their view, they have been able to resist these attempts and local courts have ruled in their favour. They believe any future plans for extension of the project will require additional land and fear new eviction attempts will occur. They resent being abandoned by state institutions and discriminated against by DTBT regarding job opportunities and community development projects.

Members of Tornabé recognize they have benefited from infrastructure investment—drinking water, sewage systems, pavement on main roads—in their community as a result of the INDURA project. However, soon after the project was built, Tornabé suffered the first big flood in their history. They believe the project altered how water drained during heavy storms. They also believe part of their lands were illegally obtained through threat and deception by the Honduran Institute of Tourism.

In addition, the complaint also raised concerns regarding environmental impacts of the INDURA project. In their document, complainants argue that the project has used an important section of the Los Micos Lagoon, destroyed wetlands and affected coral reefs to build their golf course, and occupied 120 of the 351 hectares—roughly 35 percent—of the Jeanette Kawas National Park. The complaint argues these changes have affected the marine ecology, protected species and Garifuna livelihoods.

Company's perspective

Representatives of DTBT believe most of the issues raised in the complaint are political and should be discussed with government authorities.

According to them, the Honduran Institute of Tourism carried out a thorough two-year consultation process. Needs expressed by the Garifuna communities were later taken up as investment requirements by DTBT.

Through infrastructure investment and job opportunities, DTBT claims to have improved the lives of community members of Tornabé with whom they believe they have a good relationship. It is their view that in close consultation and coordination with the community, they built a new road that connects Miami and Tornabé; they paved the access and central street of Tornabé; they have built the water and sewage systems for the community. They also take care of garbage collection. They are now in conversation with Tornabé to determine what may have caused the flooding and find ways to prevent floods. DTBT indicates that each household pays for garbage collection, so that they take responsibility for their own generation of solid waste. DTBT specifies that it pays for the transportation of the collected garbage to the local crematorium, in order to prevent accumulation of garbage inside the community.

In Miami, they set up the electricity network and sewage system. They were also bringing water to the community but work was disrupted by Barra Vieja's community members who claimed they deserved the same treatment. DTBT does not consider Barra Vieja a legitimate Garifuna community and claims the people settled there in 2006 to grab state-owned lands. The company indicates not to be interested in acquiring additional land for the project, as the 311 hectares they currently own are sufficient to develop the second phase of their project. They believe the situation with Barra Vieja needs to be addressed by the government. They also stated that the community of Triunfo de la Cruz is not in the impact area of the project.

DTBT views income generation opportunities for the community both a priority and a challenge. While expectations are higher than what a 60-room hotel could deliver, the construction of phase 2 and full-operation of the project in six to eight years should provide a new opportunity to employ more people. They are concerned that not many community members completed the training workshops that were offered to them, even if sessions were held in their communities. As for income generation opportunities, DTBT had planned to build a small market where Garifuna communities could sell their typical food and crafts but they stopped the efforts due to lack of interest from the community. DTBT has said they will keep trying, and that they are considering setting up a space so that they can sell their crafts.

Regarding the seven percent equity for the communities, DTBT clarified the promise was made by the government in 2009 and that it would come from the State's share in the project. DTBT believes this is an important issue that needs to be addressed by the new government administration.

DTBT denies that community members can no longer cross freely through the beach in front of the project. DTBT also claims to provide discretionary access for community members to cut tree branches (caña brava) when a formal request is submitted. But they cannot provide unrestricted access where the trees are located within INDURA because they've suffered damages and things have gone missing.

Regarding environmental impacts alleged in the complaint, the company states that the project is located in the buffer zone of the Jeanette Kawas National Park and occupies only 311 hectares of a total surface of 78,145.65 hectares (0.4%). They also claim that coral reefs were not affected because the sand required to build the golf course was taken by excavating the inland lakes and canals (generating a mass balance) following all legal requirements. They indicate that the area where the project was executed included wetlands (some areas were covered in water only at certain periods of the year). They acknowledge that the project altered the ecosystem within the project area in order to make the land buildable. There were multiples species of wetland trees on those lands, but no mangroves (those are located on the banks of the Los Micos and Quemada lagoons, not within the project's area). The areas located at a lower level are considered as protected areas and will not be touched in the future; this represents 12.14% of the total project area (37.85 hectares). They claim they have ceded some land to conserve a mangrove area and have actually created additional wetlands – lakes and canals - in the golf course, which are now inhabited by various species.

Although they have a different perspective on many of the points raised by community members, they are, in principle, willing to dialogue to exchange information about the project.

4. FINDINGS AND NEXT STEPS

The project operator indicated its willingness to participate in a CAO-convened meeting to exchange information about the project and impacts to the Garifuna community from the Tela Bay area. The complainants informed CAO that they would like to see the complaint being addressed through CAO's Compliance function. Therefore, given the voluntary principle that

guides CAO's dispute resolution processes and in accordance with CAO's Operational Guidelines, the complaint will be handled by CAO's Compliance function for appraisal of the environmental and social performance of IFC at the project level.

Annex A. CAO Complaint Handling Process

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

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

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a CAO Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

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

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected⁵.

OR

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

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

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case closure**