



CAO ASSESSMENT REPORT

**Regarding concerns in relation to
IFC's investment in Reventazón HPP – 01 (Project # 31383)
in Costa Rica**

March 2017

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

About CAO

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

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

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LIST OF ACRONYMS

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

1. OVERVIEW

In September 2016, a family and two partners who are land owners (“the complainants”) lodged a complaint with CAO raising concerns about the impacts of the Reventazón Hydropower Project (PHR or “the project”) in Siquirres, Costa Rica. The project is operated by the Costa Rican Electricity Institute (ICE, per its Spanish acronym, or “project sponsor”). That same month, CAO determined that the complaint met the three eligibility criteria and conducted an assessment of the issues raised in the complaint.

CAO’s assessment concluded with the project sponsor’s decision that the complaint be referred to CAO’s Compliance function for an appraisal of IFC’s performance on the environmental and social due diligence of the project. This CAO Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

The complaint was also filed with the Inter-American Development Bank’s (IDB) Independent Consultation and Investigation Mechanism (MICI, per its Spanish acronym) and the Complaint Mechanism for the European Investment Bank (CM-EIB). CAO, MICI, and CM-EIB coordinated their activities during the assessment phase to avoid duplicating efforts or overburdening the complainants and the project sponsor.

2. BACKGROUND

2.1 The Project

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

IFC indicated that the project is developed through a special purpose vehicle (a Costa Rican trust, Fideicomiso Reventazón or “the trust”). It was established on contractual terms that the trust would lease the project duly built (plant) to ICE beginning on November 15, 2016, supplying electricity to all of Costa Rica. ICE is a wholly state-owned company dedicated to the provision of power and telecom services in Costa Rica, with more than 65 years of experience in study, design, financing, construction, operation, and maintenance of electrical infrastructure.

The project design, according to IFC, includes the construction of a 130-meter-high dam, a 6.9 km² reservoir with a volume of 118 million m³, two 700-meter-long diversion tunnels, and hydroelectric generation facilities. In addition, project construction also requires about 20 km of new internal access roads, a 1.8-km-long transmission line, waste and construction material extraction sites, and a campsite. Project construction started in 2009, and the first unit started operation in March 2016.²

¹ See: <https://disclosures.ifc.org/#/projectDetail/ESRS/31383> Accessed on March 21, 2017.

² See: <http://presidencia.go.cr/comunicados/2016/09/ice-entrega-a-los-costarricenses-planta-hidroelectrica-reventazon/> Accessed on March 21, 2017.

2.2 The Complaint

In September 2016, CAO received a complaint filed by a family and two partners who are land owners (“the complainants”) neighboring the project. The complainants constitute a group of owners of the six different farms that constituted the Lancaster Lagoons Farm located near the project and also are partners in two companies with operations within the farms. The Lancaster Lagoons Farm is considered as one sole property with four bodies of water; two of these water bodies, which each cover about five hectares, were declared wetlands by the Government of Costa Rica in 1994. The complainants raised concerns about impacts on biodiversity and the environment, natural habitats, project due diligence, and ultimately whether the environmental impacts were appropriately considered during project development. The complainants substantiated their concerns with research conducted at their request³ by an academic from the Department of Biology at the University of Costa Rica, as well as geologists, environmentalists, environmental economists, and other professionals. The issues raised during the assessment are described in more detail below.

3. ASSESSMENT PROCESS

3.1 Methodology

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

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

- a desk review of project documentation;
- a field visit to the area of the Reventazón River, the complainants’ land, and Lancaster Lagoons Farm;
- a meeting with the complainants;
- a meeting with representatives of the project sponsor, ICE;
- meetings with IFC’s project team;
- a meeting with several academics from the University of Costa Rica and the academic responsible for producing the technical document requested by the complainants; and
- a meeting with additional community members.

3.2 Summary of Views

CAO heard divergent opinions from the complainants and the project sponsor about the concerns raised in the complaint regarding construction and operation of the project. However, both parties recognized that the complainants’ property is located in an area that suffers from erosion, landslides, and forest fragmentation. Additionally, both the complainants and the project sponsor noted that they have limited information about the steps taken by the other party to raise and address concerns, for example about areas for expropriation and permits for excavation, and others described below.

³ The complainants commissioned Dr. Allan Astorga Gättgens to conduct research on the risk of potential landslides in the Lancaster Wetland as a result of project construction, leading to the report: “*Dictamen técnico de peritaje sobre el riesgo de deslizamiento del Humedal Lancaster como producto de la construcción del PH Reventazón, Siquirres, Limón, Costa Rica – September 2016.*”

CAO understood from the parties that there had been previous attempts to discuss the issues of concern through a facilitator hired by the IDB, in consultation with the IFC. Discussions did not progress after August 2016, as the parties weren't able to agree on a common agenda for discussion.

Complainants' perspective

- The complainants expressed frustration with the lack of acknowledgment by ICE of the legitimacy of their concerns about the biological and environmental value of the Lancaster Lagoons Farm, as a habitat for species in danger of extinction, as a migratory route for species of the Barbilla-Destierro Biological Sub-Corridor, and as the only biological unit in the critical "tail" of the reservoir. Additionally, they believe there is a lack of accountability on the part of the project sponsor and the financial institutions ("the lenders"). They questioned whether IFC's Performance Standards and Sustainability Framework had been complied with, particularly Performance Standards 1, 3, 4, 5, and 6,⁴ and expressed concern about how supervision was conducted and what happens and who is responsible if oversight is not adequate and damage is caused. Moreover, they stated that it was difficult for them to access the geological studies that were conducted by the project sponsor to determine areas of impact and areas that needed to be expropriated. Given the importance of the project to the country, they also felt it was unacceptable that they have had to activate requirements through the courts to access relevant technical information that is, from their perspective, public in nature. They felt the lack of transparency has caused them to significantly mistrust the project sponsor and the lenders. The complainants said they would be open to dialogue with the project sponsor at any time. As expressed by them, as long as four basic principles were in place:
 1. respect;
 2. a level playing field;
 3. a willingness to talk about the problems and possible solutions; and
 4. transparency.
- The complainants stated that they had limited access to information and this has created difficulties. From their perspective, the lack of transparency on the part of the project sponsor has prevented them from accessing the project file, which, in accordance with Costa Rican law, is public. They contend that, to date, there is relevant geological information from ICE and the financial institutions to which they have been denied access.
- The complainants maintained that the risk of landslides on their property has increased in recent years, due to illegal excavation conducted by the project sponsor, with potential impacts to the Lancaster lagoon wetland. Moreover, the complainants maintained that the project sponsor extracted material from the slopes, leaving holes on the right margin of the riverbank; according to the studies the complainants commissioned from an expert at the University of Costa Rica, this has exacerbated and expedited the risk of landslides. They noted that when the river overflowed and filled the holes left by material extraction, there were numerous landslides in the different farms along the right margin of the riverbank. Specifically, the complainants were concerned about the potential collapse of the Lancaster lagoon and the potential for approximately nine-to-20-million cubic meters of water and sediment to fall into the reservoir. From the complainants' perspective, ICE and

⁴ See Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts; Performance Standard 3: Resource Efficiency and Pollution Prevention; Performance Standard 4: Community Health, Safety, and Security; Performance Standard 5: Land Acquisition and Involuntary Resettlement; and Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources at http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES

relevant financial institutions must comply with all the obligations assumed in the loan contracts and in the Environmental Impact Assessment (EIA) and other technical studies completed by ICE and the financial institutions. The complainants asked that damage caused by the illegal extraction of material be corrected and imminent risk of landslides and environmental disaster avoided. The EIA discusses the stabilization of all slopes in danger of landslide, and these obligations must be enforced. The complainants also alleged that the financial institutions did not carry out the monitoring or actions that were necessary to avoid these problems when the complainants first filed a complaint with the IDB in early 2016.

- The complainants expressed concern about impacts due to greenhouse gases and growth of lilies in the riverbank area. They noted that, although the EIA established the need for extraction or removal of vegetation in the area to be flooded and from the riverbanks before the reservoir was filled with water, this did not happen. They argued that extensive studies have proven that rotting vegetation in water bodies, especially in tropical environments, produces high amounts of carbon dioxide (CO²) and methane gas, which are the main causes of global warming. Based on the EIA, they believe that there are approximately 100,000 trees submerged in the area of the reservoir. Additionally, they noted that the EIA indicated that accumulated biomass in the reservoir was to be removed, and that has not happened either. According to the complainants, the increase in water lilies is creating additional biomass that needs to be removed. The complainants assert that the removal of trees and plant material, prior to the filling of the dam, is not only a mandate of the EIA, but also appears as one of the conditions of the loan agreements. The complainants claim that they submitted a complaint to the IDB in early 2016 about the non-withdrawal of organic matter before the reservoir was filled, but they contend no action was taken.
- According to the complainants, the project sponsor has not conducted or completed the reforestation required by the EIA. The complainants claim that when they purchased the farm in 1996, the land displayed the same problems as other areas around the Reventazón river, including deforestation, erosion, landslides, and forest fragmentation. After purchasing the farm, they started to reforest the slopes and gradually connect the two main areas of primary forest. Twenty years later, they noted, the farm is almost completely reforested (approximately 170 hectares) and serves as a sanctuary for flora and fauna. They maintain that the area is a habitat for species of interest and in danger of extinction, as can be seen by the different monitoring done by Panthera Organization, ICE, and independent biologists. The complainants believe that there are many discrepancies between the reality, the EIA, and what, according to them, the lenders promised the project would do.
- The complainants believe that the erection of fences on the expropriated land and around the entire reservoir has increased fragmentation and damaged habitat for the different species that live in the area. They contend that fences are not needed to protect the jaguars or other animals that transit within the Centro American biological corridor and in the Barbilla-Destierro Biological Sub-Corridor. In their view, the fences present a physical obstacle that can impede the free movement of animals and should therefore be removed. They indicated that the fences divided the biological unit of the Lancaster Lagoons Farm that serves as a habitat for species. They added that there are other land delineation practices that seem more suitable, such as the use of markers similar to those used on national borders, which is a methodology that allows movement of species and cuts down the cost of fences. In addition, they indicated that the placement of fences has caused a loss of trees and landslides within the property, as ICE staff had to make paths in the forest for the placement of the fences. The complainants indicate that the total removal of the fences placed in the middle of the primary forest and in any forest is essential. They claim that, according to all technical studies for the project, including the EIA and additional studies, the tail area of the reservoir is the most critical area for the Barbilla-Destierro

Biological Sub-Corridor and for the establishment of new migratory routes. From their perspective, it is in this area where ICE was supposed to make its greatest efforts in reforestation and in establishing a favorable environment for the new migratory routes disrupted by the project. The complainants state that the area is highly fragmented and there are no forest areas greater than five hectares. This is why the solution suggested by the complainants is that their land be declared a Natural Reserve, to be managed by those who can ensure preservation of biological unity, restoration of the migratory routes that the project severed, and protection of the wetlands that contain more than 250 species of birds and more than 85 species of animals, many of them in danger of extinction.

- The complainants claim that the expropriation process is ongoing, because ICE is not willing to enter into land price negotiation with the complainants. Further, from complainants' perspective, ICE did not take into account real market values in the expropriation process. The complainants feel that they have not been part of a fair expropriation process, since they have lists of neighboring properties purchased for the same purpose, where prices are up to 10 times higher than that offered by ICE to the complainants. In addition, they added that other important items, such as the biological environmental value and damage to the rest of the farm (for example, lack of access to water sources), were not taken into account. They believe their land is not being valued properly, given the 20 years of work they have put into preserving the biodiversity of the area that now serves as a flora and fauna sanctuary. The complainants indicated that the expropriated areas are precisely where the commercial activity of the farm is concentrated, and that consequently they cannot continue maintaining and preserving the reforested forest with proceeds from the commercial forestry portion of the farm. They contend that IFC's Performance Standards have not been respected, since the standards require that those expropriated be in equal or better economic conditions post expropriation, and this is not what has happened to them.
- The complainants contend that, on many occasions, they asked both ICE and the financial institutions to provide technical criteria for determining the areas to be expropriated. The complainants believe that no technical criteria exist and requested information about the rationale for how the expropriation line was drawn.

Project sponsor's perspective

- ICE expressed that they have conducted studies which refute all the issues raised by the complainants in the complaint, and offered opinions of competent authorities at the national level rejecting all the arguments presented in the complaint.
- ICE indicated that during the construction period they complied with all environmental and social commitments, not only from the Costa Rican Technical Environmental Secretariat (SETENA), but also the international financial institutions. They state that they complied with every requirement of the safeguards of the financial institutions, per their contractual agreement, and that they have been constantly monitored by specialized consultants hired by the lenders, including IDB, Inter-American Investment Corporation, IFC, Central American Bank for Economic Integration, EIB, and four local state banks. As an example, they highlighted the group of subject matter experts who were hired to provide independent accountability to the banks on specific issues, including challenges related to biodiversity and the EIA, among others.
- In their view, the project has presented numerous challenges during the construction phase, in terms of logistics, the environment, and financially.

- For the construction of the project, the project sponsor indicated they had to acquire 1,900 hectares of land. According to them, they completed 1,238 procurement procedures with an approximate value of US\$430 million.
- According to ICE, a land acquisition plan was established to buy 137 properties that belonged to 62 owners; 90 percent of the owners accepted the price offered by ICE and 10 percent of the owners did not. The national courts are in the process of ruling on those cases.
- ICE explained that there was a complex set of regulations they had to follow for the execution of the land acquisition plan, including the Political Constitution; the Law on Acquisition, Expropriation, and Easements; the Expropriation Law; the project sponsor's own environmental policies and environmental guidelines for the energy sector; and compensation measures established in the project's EIA. Moreover, the project sponsor indicated that they had to align their resettlement policies with the operational policies of the IDB and IFC (Performance Standard 5: Land Acquisition and Involuntary Resettlement). They conducted an individual analysis of each impacted family to understand better their level of vulnerability and, as a result of this analysis, determined that the complainants were not vulnerable, as they did not use the land for productive purposes, or used it occasionally but did not economically depend on it. The complainants do not reside in the area, and they have additional income from other economic activities.
- The project sponsor indicated that there is no material evidence or visual indication supporting the complainants' allegations regarding illegal excavation. The project sponsor contends that the material extraction from the riverbed took place in accordance with the concession given to them by the authorities. Furthermore, from their perspective, the material extraction has had no impact on the lagoon. They indicate that the instability in the area and the risk of landslides are due to steep slopes, intensive weathering processes in a tropical humid climate, intensive rainfall events, and the effect of the riverbed itself on the slopes and transport of material by running rainwater. They maintain that the complainants' concerns regarding landslides on their property predated the project's construction. According to ICE, they have a photographic record of several decades before the beginning of the construction of the project where this condition is observed.
- The project sponsor indicated that, as requested by the lenders, they looked into the issue of landslides, which was raised by the complainants. They hired an external expert and, in addition, an independent expert was hired by the lenders to provide an opinion. Both of these experts concluded that the erosion processes are not influenced by the oscillation of the reservoir's water level, and the risk is not elevated by the project.
- Regarding impacted communities, the project sponsor indicated that they mapped 15 communities as being directly affected by the project, and several community infrastructure projects were developed to provide specific benefits for these communities.
- According to the project sponsor, archaeological works took place on 1,000 hectares, and 284,000 animals were rescued as part of their flora and fauna rescue program. They also indicated that they provided training on local development to 1,119 participants from impacted communities.
- The project sponsor states that, with the support and coordination of the financial institutions and local organizations, they developed and established at a contractual level an environmental and social action plan that included: 1) an environmental and social management plan for the construction phase, 2) an adaptive management plan for the operation of the project, 3) a living conditions restoration plan for five impacted families, 4) a plan to mitigate the barrier effect caused by the reservoir on the Barbilla-Destierro

Biological Sub-Corridor, and 5) an environmental offset project for river ecosystems. This plan was developed so that, in the case of any minimal breach by the project sponsor, the financial institutions would have a contractual basis to suspend disbursements during the construction phase, a situation that was never necessary.

- They noted that the financial structure created for the project was innovative (the project was developed through a special purpose vehicle, a Costa Rican trust named Fideicomiso Reventazón). Through this structure, the project sponsor received direct loans (from the IDB with state guarantee and from the Central American Bank for Economic Integration and the EIB) and loans to the trust (Inter-American Investment Corporation as part of IDB, IFC, and four other state banks), and ICE's own funds were used. They also indicated that ICE, as the institution that built the plant, always fulfilled all contractually agreed commitments and was under a constant and permanent program of monitoring and accountability by the financial institutions and advisors in various disciplines. They emphasized that, given ICE's fulfillment of all commitments (in terms of cost and quality of the work for the project), it was possible to start the period of commercial operation of the plant on November 15, 2016, under the leasing contract.
- From their perspective, ICE has complied with all contractually required environmental and social due diligence and commitments. ICE also contends that it has done more than what was required and that this is reflected in the ample legal and contractual documentation that formed part of their accountability to the financial institutions and their independent consultants. They stated that the project has received international recognition for due diligence. In their view, some examples of the unique efforts undertaken include contracting the services of: 1) a panel of consultants/experts to help during the construction phase and to advise on impacts regarding biodiversity, 2) construction and environmental supervisors, and 3) an independent engineer.

4. NEXT STEPS

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

ANNEX A. CAO COMPLAINT HANDLING PROCESS

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

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

As per CAO's Operational Guidelines,⁵ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgment** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating Settlement:** If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed dispute-resolution approaches, leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.⁶

OR

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

⁵ 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

⁶ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

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

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

Step 6: **Conclusion/Case Closure.**