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Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Reventazón HPP (IFC Project # 31383)
Costa Rica*

Complaints 01 and 02

Executive Summary

The Reventazón Hydropower Project (PHR, or “the project”) comprises the construction and operation of a dam and a 305.5 MW hydroelectric power plant on the Reventazón river, located 8 kilometers southwest of the city of Siquirres in Costa Rica. The PHR is the third hydroelectric dam project the Instituto Costarricense de Electricidad (ICE) constructed in the Reventazón river and is expected to be the hydroelectric project with the highest energy production in Costa Rica. The total project cost is expected to be around US\$1.4 billion. As per IFC’s disclosure, the IFC investment consists of a US\$100 million A Loan and was approved by the IFC Board in November 2012. The remaining debt financing for the project was expected to be provided by the Inter-American Development Bank (IDB) and a group of international institutional investors, including a €61 million allocation from the European Investment Bank (EIB) through the Central American Bank for Economic Integration (CABEI).

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

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.

CAO has identified a number of compliance questions relating to the adequacy of IFC’s application of Performance Standard 5 (PS5) which are relevant to the issues raised by the complainants and the project’s land acquisition process more generally. More specifically, CAO has questions as to whether the full replacement cost and livelihoods restoration requirements of PS5 were properly applied to the project. The provision of compensation at full replacement cost and the commitment to livelihood restoration are important requirements of PS5, which if not properly implemented generate substantial concerns regarding E&S outcomes. As such, CAO finds that a compliance investigation in relation to these aspects of the complaint is required.

While recognizing the importance of issues related to biodiversity, landslides and GHG emissions as raised in the complaint, these are not the primary areas of alleged adverse impact on the complainants. CAO acknowledges measures taken by IFC at appraisal and during supervision to ensure project compliance with its E&S requirements in relation to these issues. CAO also notes that these issues will be subject to independent assessment as part of the EIB-CM compliance investigation of the project. Should EIB-CM make significant findings related to the project's environmental impacts, that are not addressed in ongoing supervision, it would be open to CAO to raise these issues with IFC at a later point.

In these circumstances, CAO's compliance investigation will be limited in scope to IFC's review and supervision of the client's land acquisition and resettlement process as relevant to the issues raised by the complainants.

Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

About CAO

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

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

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

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Acronyms

Acronym	Definition
BAG	Biodiversity Advisory Group
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIB	European Investment Bank
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
GHG	Greenhouse Gases
IAM	Independent Accountability Mechanism
IDB	Inter-American Development Bank
ICE	Instituto Costarricense de Electricidad
IESC	Independent Environmental and Social Consultant
IFC	International Finance Corporation
LRP	Livelihood Restoration Plan
MICI	Independent Consultation and Investigation Mechanism of the IDB
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
PHR	Proyecto Hidroeléctrico Reventazón
PS	Performance Standards (IFC)
SBBD	Barbilla Destierro Biological Sub Corridor
SII	Summary of Investment Information
CBVC-T	Volanica Central Talamanca Biological Corridor

I. Overview of the Compliance Appraisal Process

The CAO compliance function assesses how IFC/MIGA assured itself 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 relevant policy provisions. The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's/MIGA's business activities, including the real sector, financial markets and advisory. In assessing the performance of a project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it may also be necessary for CAO to review the actions of the client and verify outcomes in the field.

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 the CAO compliance function for 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.

While CAO does not place prescriptive limits to a compliance appraisal, CAO applies several basic criteria to guide the process. 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 of the performance of the project, how IFC/MIGA assured itself of compliance with these criteria, how IFC/MIGA assured itself that these provisions provided an adequate level of protection and, generally, whether a compliance investigation is the appropriate response.

A summary of appraisal results is made public. If CAO decides to initiate a compliance investigation, CAO will prepare terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

The Project

The Investment

The Reventazón Hydropower Project (PHR, or “the project”) comprises the construction and operation of a dam and a 305.5 MW hydroelectric power plant on the Reventazón river, located 8 kilometers southwest of the city of Siquirres in Costa Rica. The Project design includes the construction of a 130-meter high dam, a 6.9 km² reservoir, a 700-meter long diversion tunnel, and hydroelectric generation facilities. In addition, the construction of the PHR requires about 20 km of new internal access roads, a 1.8 km long transmission line, spoils disposal and construction materials extraction sites, and a construction camp.¹ Project construction started in 2009 and the PHR has been operational since 2016.

The PHR is the third hydroelectric dam project the Instituto Costarricense de Electricidad (“ICE” or “the client”) constructed in the Reventazón river and is expected to be the hydroelectric project with the highest energy production in Costa Rica.

The total project cost is expected to be around US\$1.4 billion. As per IFC’s disclosure, the IFC investment consists of a US\$100 million A Loan and was approved by the IFC Board in November 2012.² The remaining debt financing for the project was expected to be provided by the Inter-American Development Bank (IDB) and a group of international institutional investors, including a €61 million allocation from the European Investment Bank (EIB) through the Central American Bank for Economic Integration (CABEI).

Environmental and Social Considerations

The project was categorized A³ by IFC because of potential significant and irreversible impacts on the Mesoamerican Biological Corridor, which is considered critical habitat, on the ecological integrity of the Reventazón River, and on the complex and ecologically sensitive downstream Reventazón – Parismina – Tortuguero hydro-biological system.⁴

Biodiversity issues were considered by the lenders’ due diligence to represent a major challenge for this project. As noted in IFC’s project documentation, the project is located within the Volcanica Central Talamanca Biological Corridor (CBVC-T), one of the most important areas for ecological connectivity in Mesoamerica. Within the CBVC-T lies the Barbilla Destierro Biological Sub Corridor–Path of the Jaguar (SBBD), an important corridor for movement and genetic flow of jaguar between the protected areas. As part of IFC’s due diligence, a critical/natural habitat assessment of the area was carried out, and concluded that (a) the terrestrial corridor area (CBVC-T and SBBD) qualifies as critical habitat per criterion 5 of para. 16 of PS6;⁵ and (b) the aquatic environment qualifies as natural habitat per para. 13 of PS6.⁶

The lenders required the client to develop a Biodiversity Action Plan, which would contain actions to ensure net positive gain in critical habitat over time, as well as to design and implement an

¹ IFC, Summary of Investment Information, Reventazón HPP, June 2012 - <https://goo.gl/dNbkZd>

² *Ibid.*

³ Per IFC’s 2012 Sustainability Policy, a project is categorized A when it involves “business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.” (para. 40)

⁴ IFC, Environmental and Social Review Summary, Reventazón HPP, June 2012 - <https://goo.gl/g4W5AP>

⁵ PS6, para. 16, criterion 5 states that “areas associated with key evolutionary processes” qualify as critical habitat.

⁶ PS6, para. 13: “Natural habitats are areas composed of viable assemblages of plant and/or animal species of largely native origin, and/or where human activity has not essentially modified an area’s primary ecological functions and species composition.”

aquatic offset to assure no-net biodiversity loss in natural habitat. Subsequent monitoring of the client's implementation of the BAP has been an important focus of the lenders' supervision of the project.

The project also involves a large land acquisition and resettlement program, requiring the acquisition of 136 properties covering approximately 2,000 hectares of land. Land acquired included a buffer zone that was deemed necessary for the implementation of the BAP in relation to the terrestrial corridor, and to better manage the reservoir's geological risks.

Complaints and CAO Assessments

Reventazón-01 Case

In September 2016, CAO received a complaint ("the Reventazón-01 complaint") filed by a family and two business partners who are land owners neighboring the project (referred to as "the Reventazón-01 complainants" in this report). The complainants form a group of owners of the six different farms that constituted the Lancaster Lagoons Farm located near the project. Land belonging to the Lancaster Lagoons Farm was partially expropriated to be part of the future buffer zone for the project. Two water bodies, which each cover about five hectares of the Lancaster Lagoons Farm, were declared wetlands by the Government of Costa Rica in 1994. The map below shows the location of the Lancaster Lagoons and the project's footprint.

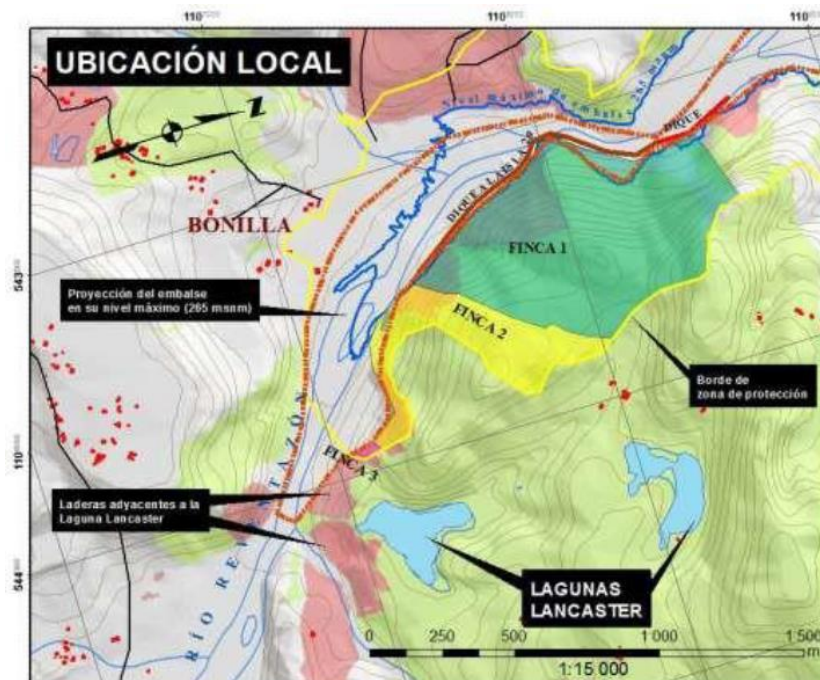


Figure 1 – Limit of the PHR concession (red line), maximum operation level of the reservoir (blue line) and location of slopes endangered by landslides (source Fichtner 2016).

The complainants' concerns can be summarized as follows:

- **Land acquisition and expropriation process**: the complainants claim that the sponsor was not willing to enter into land price negotiations, which led to an expropriation process. They allege that the company did not consider real market values in the land acquisition process, and that the biological and environmental value of their land and potential damage to the rest of their property were not taken into account.

- Impacts on biodiversity: the complainants claim that their property, as 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 at the critical “tail” of the reservoir, will be negatively impacted by the project. They further allege that once the company expropriated their properties, it proceeded to fence them, which hinders or limits movements for migratory species. They claim that such action goes against the purpose of the expropriation of their land, which was to create an environmental buffer zone and reestablish migratory routes for in-transit species.
- Risks of landslides: the complainants claim that the risks of landslides on their property have increased in recent years, due to alleged illegal excavation conducted by the client, with potential impacts to the Lancaster Lagoons.
- Greenhouse gases (GHG) emissions: the complainants express concern about impacts due to GHG emissions from the project reservoir. They allege that the commitment in the project Environmental and Social Impact Assessment (ESIA) to remove vegetation in the area to be flooded was not met.

The complainants substantiated their concerns with research conducted at their request by a Doctor in Natural Sciences from the Department of Biology at the University of Costa Rica, with the contribution of geologists, environmentalists, environmental economists, and other professionals.

Reventazón-02 Case

CAO received a second complaint regarding the project in December 2016 (“the Reventazón-02 complaint”) from a family which owns land neighboring the project that was partially expropriated by the company (referred to as “the Reventazón-02 complainants” in this report). The concerns raised in the complaint are broadly similar to those raised in the Reventazón-01 complaint. Namely, these concerns relate to the land acquisition process, particularly the value paid during expropriation, and impacts to water sources on the non-expropriated portion of their property. The complainants also raise concerns about environmental impacts, including increased risk of landslides in the area and GHG emissions resulting from vegetation that was not cleared before filling of the reservoir.

According to CAO’s June 2017 Assessment Report,⁷ the complainants’ main claim is that when their land was partially expropriated, they were prevented from accessing water springs that were previously part of their land, and on which they depended to raise cattle and carry out small-scale dairy production. According to the complainants, they had installed a system to pump water and irrigate their land, and this system was impacted by the expropriation, leaving them with no access to water and diminished livelihood opportunities.

Company’s Perspective

As noted in CAO’s Assessment Reports,⁸ in response to the complaints, ICE expressed that they have conducted studies which refute all the issues raised by the complainants, and offered opinions of competent authorities at the national level rejecting all the arguments presented in the complaints.

According to ICE, 90 percent of the land owners accepted the price offered by the company and 10 percent of the owners did not. The national courts are in the process of ruling on those cases. The company noted that it 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

⁷ CAO Assessment Report, Reventazón-02, June 2017 - <https://goo.gl/Q1NrYR>

⁸ CAO Assessment Report, Reventazón-01, March 2017 (<https://goo.gl/Ji4zvS>) and Reventazón-02, June 2017 (<https://goo.gl/Q1NrYR>)

were not vulnerable, as they did not use the land for productive purposes, or used it occasionally but did not economically depend on it.

From the company's perspective, the project has complied with all contractually required environmental and social due diligence and commitments, including compliance with the lenders' E&S standards. ICE 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 (a) a panel of consultants/experts to help during the construction phase and to advise on impacts regarding biodiversity, (b) construction and environmental supervisors, and (c) an independent engineer.

Complaints to Other Development Banks

CAO notes that similar complaints were sent by the Reventazón-01 complainants to MICI and the EIB-CM, the independent accountability mechanisms ("IAMs") of the IDB and the EIB, respectively. The Reventazón-02 complainants also sent a complaint to MICI.

In responding to the first complaint, MICI concluded that a compliance investigation was warranted in relation to the issues raised by the complainants, excluding those related to land acquisition, as they were under judicial review in the national courts.⁹ However, the Board of the IDB determined that no compliance investigation should be conducted. With this decision, the MICI process in relation to the Reventazón-01 complaint ended and the case was closed.

In responding to the EIB complaint, EIB-CM concluded that the complainant's allegations concerning the assessment of risks of environmental damage required technical assessment, in the context of a compliance investigation.¹⁰ The EIB-CM's compliance investigation is ongoing.

III. Analysis

This section outlines the IFC E&S policies and procedures as they apply to the project. It then analyses IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainants.

IFC Policy Framework and General Requirements

IFC's investment was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards" (para. 7). The Sustainability Policy also notes that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" (para. 9).

A central principle of the Sustainability Policy is that "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable

⁹ MICI, Recommendation for Compliance Review and Terms of Reference, MICI-BID-CR-2016-110, February 2017 – <https://goo.gl/BNKrKB>

¹⁰ EIB-CM, CA CCFL Reventazón Hydropower – <https://goo.gl/jYEHfA>

period of time” (para. 22).

IFC is required to monitor its client’s E&S performance throughout the life of the investment. As set out in IFC’s Environmental and Social Review Procedures (ESRP), “the purpose of supervision is to obtain information to assess the status of project’s compliance with the PS and other specific E&S requirements agreed at commitment; to assess the current level of E&S risk; to provide advice to clients on how to address critical E&S issues.”¹¹

If the client fails to comply with its E&S commitments, IFC is required to “work with the client to bring it back into compliance, and if the client fails to reestablish compliance, IFC [is required to] exercise its rights and remedies, as appropriate” (Sustainability Policy, para. 24).

IFC’s General E&S Appraisal of the Project

Requirements

The key question for CAO at pre-commitment phase of the project cycle is whether IFC exercised 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 nature, scale, and ... level of environmental and social risks and impacts” of the project (Sustainability Policy, para. 26).

For projects with potential significant E&S impacts, PS1 requires the client to carry out “a comprehensive Environmental and Social Impact Assessment, including an examination of alternatives, where appropriate” (para. 7, fn. 11). It further requires that “E&S risks and impacts will be identified in the context of the project’s area of influence” (para. 8). The assessment should present an “adequate, accurate and objective evaluation and presentation [of the issues], prepared by competent professionals” (para. 19).

IFC’s review is expected to identify any gaps in the client’s practices and propose additional measures and actions to resolve those gaps. To ensure the business activity meets the Performance Standards, IFC is expected to capture those supplemental actions in an E&S Action Plan (ESAP), and incorporate them as necessary conditions of IFC’s investment (Sustainability Policy, para. 28).

IFC’s Pre-Investment E&S Review

IFC first considered investing in the project in 2011, and initiated its appraisal in early 2012. Throughout the E&S review process, IFC worked in collaboration with the IDB to agree on actions required from the client that were aimed at fulfilling both IFC and IDB policies and standards.

In March 2012, IFC disclosed several assessments and management plans which had been completed as part of the project ESIA,¹² as per the requirements of IFC’s Access to Information Policy (AIP) on early disclosure.¹³ These documents included the project’s original Environmental Impact Assessment (EIA) prepared by the client in 2008, and complementary environmental studies prepared by a consortium of international consultants at the request of the IDB.

IFC and IDB developed a draft ESAP that had to be implemented by the client, including a number of actions to be completed prior to IFC presenting the project to the IFC Board for approval.

¹¹ ESRP 6.1, version 7, April 2013

¹² IFC, Early Disclosure, Reventazón HPP, March 2012 - <https://goo.gl/9xP2kT>

¹³ IFC Access to Information Policy, para. 36: “For projects or investments with potential significant adverse environmental or social risks and/or impacts, disclosure of the ESIA should occur early in the environmental and social assessment process. For these projects, IFC will also endeavor to provide access to the draft ESIA prepared by the client even before IFC has completed, or in some cases even started, the review of its investment.”

According to the Environmental and Social Review Summary (ESRS) disclosed by IFC in June 2012,¹⁴ IFC's appraisal included a review of the project's ESIA documents and process, and additional studies prepared by the client to complement the ESIA. IFC conducted visits in March and April 2012 to the project site and area of influence. The ESRS notes that IFC interviewed property owners affected by existing HPPs operated by the client in the upper Reventazón watershed, communities located in the project's direct area of influence, communities located downstream of the project, families directly affected by land acquisition, as well as tourist operators, and local public officials.

The ESRS states that the client developed a comprehensive ESIA, substantially aligned with good international industry practice (GIIP) and PS1. Complementary studies provided detailed actions the company needed to implement regarding biodiversity-related issues; strengthened the client's land acquisition and involuntary resettlement framework to comply with IDB's and IFC's resettlement standards and policies; assessed and developed a protocol to determine GHG emissions from the reservoir.

Along with the ESRS, IFC disclosed a finalized version of the ESAP, consistent with actions and deadlines described above.

In November 2012, the project was presented to the IFC Board and approved. As per the ESAP, a number of E&S actions were to be completed by the client as conditions of first disbursement.

In December 2013, the client contracted an Independent Environmental and Social Consultant (IESC) in charge of monitoring the project's E&S performance. The scope of work of the IESC included (a) assessing the project's compliance status with all applicable environmental, social, and health and safety requirements; (b) assessing the status of implementation of the ESAP; (c) assessing whether there are any existing environmental, social, and health and safety related impacts, risks or liabilities which have not been properly mitigated or controlled; and (d) proposing corrective action for any non-compliance identified together with a timeframe and evidence of implementation. The IESC was expected to complete a quarterly review of the project's performance, and to coordinate any recommendation with the client and the lenders. While it was contracted by the client, the IESC was expected to report directly to the lenders.

IFC signed a loan agreement in December 2013. The agreement specified that compliance with ESAP items was a condition of disbursement. A first disbursement was approved by IFC in February 2014.

Land Acquisition and Resettlement

The primary area of alleged adverse impact of the project on the complainants relates to land acquisition. In particular, the complainants allege that the value of their lands was not evaluated in accordance with the requirements of Performance Standard 5 (PS5: Land Acquisition and Involuntary Resettlement), and that the project negatively impacted their livelihoods. This section provides a preliminary analysis of IFC's performance against the requirements of PS5.

Requirements

In relation to land acquisition and economic displacement, PS5 requires that "When displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods..." (para. 9). More specifically, PS5 provides that "In cases where land acquisition or restrictions on land use affect commercial structures, affected business owners

¹⁴ IFC, Environmental and Social Review Summary, Reventazón HPP, June 2012 - <https://goo.gl/g4W5AP>

will be compensated for the cost of reestablishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery, or other equipment” (para. 27). PS5 also notes that “economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living” (para. 28).

PS5 further requires that “in cases where affected persons reject compensation offers that meet the requirements of [PS5] and, as a result, expropriation or other legal procedures are initiated, the client will explore opportunities to collaborate with the responsible government agency” (para. 13).

Acknowledging that there may be differences between how land acquisition is conducted by national authorities and the IFC framework, PS5 requires the client to assess the government approach and prepare a supplementary plan that addresses gaps against the IFC requirements (paras 30 & 31).

To deal with disputes over the land acquisition process, PS5 provides for a grievance mechanism “including a recourse mechanism designed to resolve disputes in an impartial manner” (para. 11).

IFC’s Pre-Investment E&S Review

IFC’s June 2012 ESRS notes that the project required the acquisition of approximately 2,000 ha of land belonging to 56 land owners. IFC noted that while the client favored negotiated settlement, it had to request the expropriation of a few plots of land due to disagreements regarding property valuation.

IFC’s E&S review identified implementation discrepancies vis-a-vis IFC and IDB standards in this initial land acquisition process. To address these gaps, the lenders requested that the client halt acquisitions until a land acquisition and resettlement framework compliant with the lenders’ requirements was in place. This became a condition for IFC’s Board approval.

The client developed a Preliminary Land Acquisition and Involuntary Resettlement Framework prior to IFC’s Board approval. This was deemed acceptable to the lenders and disclosed as part of the ESRS. The Framework notes some gaps between national and international standards, as under national law transaction costs are not covered, and valuations are limited to the land acquired rather than the affected properties and livelihoods.

The ESAP required that prior to IFC’s first disbursement, the Land Acquisition and Involuntary Resettlement Framework be further validated and negotiated through consultations with the affected communities, and that resulting actions be documented in a time-bound Livelihood Restoration Plan (LRP). The LRP was to include provisions for ongoing monitoring and an ex-post Resettlement Completion Audit demonstrating compliance with the lenders’ resettlement standards or, if necessary, identifying any remaining gaps and corresponding corrective actions.

A project-level Grievance Mechanism (GM) was put in place in January 2013. The GM framework provides for the possibility to bring community members to the decision-making process, and/or involve a third party if complainants disagree with the process or the initial investigation conducted by ICE in response to a complaint. However, CAO notes that community members and/or third parties are not involved in the eligibility screening process of complaints.

IFC’s Supervision

After a site visit in January 2014, IFC noted that a preliminary LRP was submitted to the lenders before IFC’s first disbursement. However, this had to be amended to reflect additional land acquisition required, as a larger buffer zone was deemed necessary to manage the reservoir’s geological risks.

To bridge the gaps identified in the Land Acquisition and Involuntary Resettlement Framework, the LRP outlines measures to assure (a) that the compensation offered meets replacement value standards, and (b) that the client verifies that the remaining property of partly affected properties is sufficient to maintain affected livelihoods. CAO notes that the LRP was not publicly available on the client or lenders' websites.

In June 2015, IFC noted that the client initiated a number of expropriation processes of private properties, whose owners did not accept the prices offered by the client. Subsequently, IFC requested the client to expedite negotiations and resolve legal issues in order to take possession of properties prior to filling the reservoir. In November 2015, all lands in the reservoir area required for the project were acquired. At this point, remaining land to be acquired was located in the buffer zone.

The Reventazón-01 complainants sent a letter to the IDB in February 2016, which was shared with IFC, outlining their concerns in relation to negative impacts of the project on their properties and concerns regarding the expropriation process. In relation to the complainants' letter, the IESC noted that the client had not previously informed the lenders and IESC about this grievance, although the client was already aware of the issues raised by the complainants. The IESC also noted that two reports on land acquisition submitted by the client in the second semester of 2015 did not mention this landowner and his property as part of the list of properties undergoing expropriation. The IESC subsequently recommended that the client provide (a) technical assessment of alleged damages in all private properties associated to reservoir filling and riverbed works; and (b) full records of grievance management and responses to complaints.

In response to the complainants' letter, the lenders visited the Lancaster farms in April 2016. Subsequently, the lenders required the company to submit a number of documents as additional conditions for final disbursement, including data and records about the complainants' case, evidence of initial effort towards resolution of the case, and a framework for future management plan for the buffer zone, which includes the complainants' properties.

After the client partially submitted the requested information in May 2016, the lenders asked the IESC to review several related issues prior to approving a final disbursement. This included whether the extension of the buffer zone was considered as part of the SBBDD management plan, and whether grievances from the complainants and interactions with them were documented as part of the project-level grievance mechanism.

The IESC issued a certificate of compliance in May 2016 that included several recommendations. In particular, the IESC recommended that the client and the complainants coordinate a meeting to discuss environmental matters in the area of the complainants' property; and the client submit to the lenders and the IESC a Biodiversity Management Plan for the buffer zone that includes the Lancaster Lagoons. Subsequently, IFC proceeded to a final disbursement.

While supervising the client's response to the complainants' concerns, the lenders hired a facilitator in May 2016 to meet with the complainants and try to find a resolution to the conflict between the client and the complainants. A diagnosis report was prepared by the facilitator in July 2016 and proposed a set of actions be taken by the client to address the complainants' concerns. However, after the client notified the complainants that it was not willing to engage in this dialogue process as an expropriation process was ongoing, the complainants notified the lenders that they were therefore withdrawing from the mediation. Subsequently, the Reventazón-01 complaint was filed with CAO in September 2016.

The Reventazón-02 complaint was filed with CAO in December 2016, raising issues similar to those from the first complaint. Additionally, the Reventazón-02 complaint claims that the

complainants' access to water has been significantly restricted by the expropriation of some of their land. On this additional issue, the lenders sent a request for information to the client, asking for further information on the status of the negotiation process with the Reventazón-02 complainants and corrective actions taken or contemplated to restore access to water resources on their property. After investigating the issue, the client reported to the lenders that the land owners had a water source in their property close to the reservoir, but that it was not in use for productive purposes, and appeared to have been installed after the expropriation process was initiated. The Reventazón-02 complainants, on the other hand, claim that their property always had its own water source, through a pumping system which extracted water from the lower part of the farm –now expropriated– to the upper part of the property.

In January 2017, responding to a request from the lenders, the IESC provided advice about what would constitute best practice as per PS5 in relation to land acquisition issues around the project.

IFC reported to CAO that valuation of land at full replacement value, as per the requirement of PS5, had been a challenge in the project area, as there is no history of prices in that area. According to IFC, this is why it was important to have a functioning grievance mechanism in place. IFC noted that it considered the project grievance mechanism to be effective as many land-related grievances were resolved through this mechanism. IFC further noted that the focus of its supervision was on vulnerable groups, and whether their livelihoods were affected by land acquisition. The complainants were not considered vulnerable.

In September 2017, an independent consultant completed a draft Resettlement Completion Audit of the project's resettlement activities. At the time of writing, the Audit had not been completed or publicly disclosed.

Preliminary Assessment of IFC's Performance

CAO acknowledges IFC's request to halt land acquisitions until a Land Acquisition and Involuntary Resettlement Framework compliant with the requirements of PS5 was developed. IFC's decision to require a full LRP as a condition of disbursement was consistent with the requirements of the Sustainability Framework, as was the ESAP requirement for the company to perform an ex-post Resettlement Completion Audit. CAO also acknowledges IFC's efforts to facilitate a dialogue between the complainants and the client.

However, based on information reviewed in the context of this compliance appraisal, CAO has questions as to whether IFC had sufficient information to assess the status of project's compliance with the requirements of PS5. In particular, CAO has questions as to whether IFC had assurance that the requirement for compensation at full replacement cost was met. CAO also has questions as to whether IFC had assurance that the client's grievance handling system met the requirement of PS5 for providing a recourse in an impartial manner.

The presence of questions as to whether compensation paid for land acquired by the project met PS5 requirements raises substantial concerns regarding E&S outcomes of the project, both for the complainants and for those whose land was acquired more generally. Ensuring correct application of PS5 to expropriation cases is also of systemic importance to IFC as project-related land acquisition is a source of potential significant social impact on households and communities. As a result, CAO finds that an investigation of IFC's application of PS5 to this project is required.

Additional Issues Raised in the Complaints

While the primary area of alleged adverse impact of the project on the complainants relates to the land acquisition and resettlement process, the complainants also raise allegations as to project impacts on biodiversity, risks of landslides and subsequent impacts on wetlands, and project-

related GHG emissions. This section presents a preliminary analysis of IFC's actions in relation to these additional issues against the requirements of the Sustainability Framework.

Impacts on Biodiversity

Requirements

Performance Standard 6 (PS6) sets out IFC's client requirements in relation to Biodiversity Conservation and Sustainable Management of Living Natural Resources. In particular, PS6 requires that "where [Natural Habitat¹⁵ is] applicable, the client will retain competent professionals to assist in conducting the risks and impacts identification process. Where [Critical Habitat¹⁶ is] applicable, the client should retain external experts with appropriate regional experience to assist in the development of a mitigation hierarchy that complies with this Performance Standard and to verify the implementation of those measures" (para. 8). PS6 further notes that "for the protection and conservation of biodiversity, the mitigation hierarchy includes biodiversity offsets, which may be considered only after appropriate avoidance, minimization, and restoration measures have been applied" (para. 10).

Analysis

The issues raised by the complainants relate to fencing of their expropriated property, which is alleged to hinder or limit migratory movements within the SBBD corridor.

IFC's first visit to the project area in March 2012 focused on project impacts on biodiversity and the application of PS6. Following this visit, IFC carried out an initial critical/natural habitat assessment of the area, and concluded that (a) the terrestrial corridor area (CBVC-T and SBBD) qualifies as critical habitat per criterion 5 of PS6, para. 16 (areas associated with key evolutionary processes). IFC noted that several actions were to be added to the existing Biodiversity Action Plan (BAP) to satisfy requirements of PS6, such as conducting a full critical habitat assessment, engaging with conservation organizations, and developing metrics to demonstrate net positive gain for criterion 5 regarding critical habitat.

IFC's June 2012 ESRS notes that the development of a BAP was a requirement for first disbursement and was expected to include:

- (a) Rapid Biodiversity Assessment;
- (b) Coordinated work between the client and the NGO Panthera on jaguar movement monitoring and photographic trapping in the SBBD corridor;
- (c) Measures to maintain and enhance the structural and functional connectivity of the biological corridor;
- (d) Selection of indicators to monitor net positive gain in critical habitat over time.

The BAP was finalized in September 2013. Subsequently, the lenders reviewed, approved it, and put together an advisory group of international experts to assist the client meet the lenders requirements on key biodiversity issues. After the appointment of this Biodiversity Advisory Group (BAG), the lenders visited the project area with the BAG. IFC acknowledged the client's work

¹⁵ Per PS6, para. 13, "Natural habitats are areas composed of viable assemblages of plant and/or animal species of largely native origin, and/or where human activity has not essentially modified an area's primary ecological functions and species composition."

¹⁶ Per PS6, para. 16, "Critical habitats are areas with high biodiversity value, including (i) habitat of significant importance to Critically Endangered and/or Endangered species; (ii) habitat of significant importance to endemic and/or restricted-range species; (iii) habitat supporting globally significant concentrations of migratory species and/or congregatory species; (iv) highly threatened and/or unique ecosystems; and/or (v) areas associated with key evolutionary processes."

undertaken at that stage, but noted that a detailed plan for the SBBB corridor needed to be developed by May 2014, which was the expected start date of reservoir filling at the time.

Following a January 2014 supervision visit, IFC noted that together with the BAG, the lenders had continued working with the client on the implementation of the BAP, and more specifically on the implementation of metrics to measure net biodiversity gain in the SBBB corridor. CAO notes that the client also entered in a partnership with Panthera, a global NGO on feline conservation which is active in jaguar conservation in Costa Rica. Panthera was expected to provide advice to the client regarding the implementation of BAP actions related to the SBBB corridor.

In October 2015, IFC and the IESC conducted a supervision visit to further assess the client's implementation of pending ESAP items prior to the filling of the reservoir. IFC observed that the client presented excellent results on the SBBB corridor initiative.

In relation to the issues raised by the complainants, IDB and IFC reported that the fencing of the reservoir protection area was required by law prior to filling of the reservoir. The lenders noted that fencing has been designed with the support of Panthera experts to minimize adverse impacts on fauna and therefore allow jaguar movements within the SBBB corridor. CAO also notes that the company and Panthera have been working together on camera traps captures, as well as individual tracking of jaguar movements along the SBBB corridor in the area affected by the project.

Subsequent monitoring reports from the IESC in 2016 and 2017 concluded that the client was compliant with PS6 in its implementation of actions related to the SBBB corridor.

Risks of Landslides and Impacts on the Lancaster Lagoons

Requirements

Performance Standard 4 on Community Health, Safety, and Security notes that “the project's direct impacts on priority ecosystem services may result in adverse health and safety risks and impacts to Affected Communities ... land use changes or the loss of natural buffer areas such as wetlands, mangroves, and upland forests that mitigate the effects of natural hazards such as flooding, landslides, and fire, may result in increased vulnerability and community safety-related risks and impacts” (para. 8). PS4 requires that such “adverse impacts should be avoided, and if these impacts are unavoidable, the client will implement mitigation measures in accordance with [the mitigation hierarchy]” (*ibid*).

Performance Standard 1 further requires that “Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate impacts, the ESMS will establish and maintain an emergency preparedness and response system” (para. 20).

Analysis

Relevant to the issues raised in the complaints regarding risks of landslides, IFC's June 2012 ESRS notes that the client will closely monitor all the potential emergency situations, including (a) landslides, (b) earthquakes, (c) volcanic eruption, and (d) heavy rains and flooding. The ESRS further notes that the project's Environmental Management Program includes measures in relation to erosion control. The ESRS indicates that the company was developing an early warning system, and when possible, immediate and middle term response measures.

In 2013, the client completed an additional study on the Geotechnical Stability Risk of Reservoir Slopes, which identified 96 sites with precedent geological risks and areas highly susceptible to landslides. The study recommended the purchase of 300 additional hectares aimed at constituting a “buffer zone” to prevent impacts on people and properties around the reservoir, and to ensure proper management of identified geological risks of the reservoir.

In October 2016, after the Reventazón-01 complaint was filed with CAO, IFC commissioned an Independent Engineer to complete a review of *Landslide Potential in Lancaster*. The review concluded that the project does not increase the risks of landslides for the Lancaster Lagoons. CAO notes that IFC did not disclose this review.

The complainants have also commissioned an expert opinion on the risks of landslides around the Lancaster Lagoons as a result of the construction of the project.¹⁷ Dated August 2016, their review concluded that:

- The geological characteristics of the Lancaster Lagoons and its immediate environment makes it an area of very high geological and environmental vulnerability, particularly because of its very high vulnerability to landslide and erosion processes, due to the absence of protection such as forest cover.
- The area between the Lancaster Lagoons and the Reventazón river is an extremely unstable slope that is subject to intense processes of erosion that puts at risk the entire slope including the lagoon itself and all the ecosystems it contains.
- Comparative analysis of satellite images between 2010 and 2016 shows that during this period, erosion and hillside instability processes intensified.

In December 2016, MICI (the IDB's independent accountability mechanism) commissioned a geological study of the Lancaster Lagoons.¹⁸ The objective of the report was to assess whether the Lancaster Lagoons stability may have been affected and/or jeopardized by the extraction of gravel and sand from the Reventazón river. The report concluded that:

- The Lancaster Lagoon is partially surrounded by unstable terrains, and the Reventazón river right margin had numerous active landslides before the Reventazón HPP construction works started.
- It was not possible to identify any indication that the quarry operations for the project in the vicinity of the lagoon could trigger a mass movement of such magnitude that would destabilize part or all the potentially unstable mass in the area of the lagoon.
- The Lancaster Lagoon could collapse due to the natural evolution of one of the existing spoon-shaped failure surfaces detected in the ridge located between the Reventazón river and the Lagoon. However, the lagoon collapse risk was not increased by the project.
- The maximum reservoir elevation is at 265 m above sea level, and the head of the reservoir would be 330 meters downstream from the Lancaster area slopes. Consequently, the Lancaster area slopes will not be affected by the operations of the project.
- Additional studies to get a deeper knowledge of the area's geological, geotechnical and hydrogeological characteristics, as well as a monitoring program, are needed.

In March 2017, the Costa Rican national environmental office (SETENA – Secretaria Técnica Nacional Ambiental) released a resolution concluding that the construction of the project or any extraction of materials from the riverbed, did not influence the stability of slopes protecting the Lancaster Lagoons.

Greenhouse Gases Emissions

Requirements

As relevant to the issues raised in the complaints, Performance Standard 3 (Resource Efficiency and Pollution Prevention) requires that IFC's clients "consider alternatives and implement technically and financially feasible and cost-effective options to reduce project-related GHG

¹⁷ *Dictamen técnico de peritaje sobre el riesgo de deslizamiento del Humedal Lancaster como producto de la construcción del PH Reventazón*, Siquirres, Limón, Costa Rica, August 2016 – <https://goo.gl/wRn5r5>

¹⁸ Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016 – <https://goo.gl/UFuHST>

emissions during the design and operation of the project” (para. 7). Additionally, PS3 requires that “for projects that are expected to ... produce more than 25,000 tonnes of CO₂-equivalent [teq CO₂] annually, the client will quantify direct emissions from the facilities owned or controlled within the physical project boundary, as well as indirect emissions associated with the off-site production of energy used by the project. Quantification of GHG emissions will be conducted by the client annually in accordance with internationally recognized methodologies and good practice.” (para. 8)

Analysis

IFC reported to CAO that from IFC’s perspective, PS3 para. 8 is not applicable to the project, as hydropower projects are considered climate neutral. In other words, while gross GHG emissions from the project’s reservoir were estimated to be around 400,000 teqCO₂ per year, the project is expected to be neutral from the perspective of net GHG emissions, i.e. not to increase or decrease in any significant way the average GHG emissions intensity of the electrical grid in Costa-Rica.

However, as noted in the June 2012 ESRS, given GHG emissions from reservoirs is a controversial issue, the client agreed with IFC to monitor the reservoir’s GHG emissions and to include it as an ESAP item. The ESRS further notes that prior to flooding the reservoir, the client will selectively remove any forest cover for valued timber, improve access, navigation, and for aesthetic purposes. In addition, the client has agreed to confirm preliminary estimations through actual measurements of GHG emissions during project operation, i.e. after filling of the reservoir.

After IFC’s January 2014 supervision visit, the ESAP requirement to design a GHG Emissions Monitoring Program was postponed to June 2016 (from March 2014 in the original ESAP). The rationale for extending this deadline was that it was based on the expected timeline for filling of the reservoir, which was delayed and occurred in late 2015. In June 2015, IFC required the client to share the GHG Emissions Monitoring Program with the lenders and the IESC. The Program, along with an implementation design plan, was subsequently sent to the lenders and deemed satisfactory before filling of the reservoir started in November 2015.

Early 2017, the IESC noted that a first annual report on monitoring of GHG emissions and water quality was completed for 2016, and considered satisfactory.

Preliminary Assessment of IFC’s Performance

With regards to biodiversity, risks of landslides and GHG emissions, CAO finds that the issues raised in the complaint are potentially significant in nature. As noted in the EIB-CM Initial Assessment Report,¹⁹ assessment of the merits of the complainants’ concerns regarding these issues will be a technically complex exercise.

However, a number of factors lead to the conclusion that a compliance investigation in relation to these issues is not required. First, CAO notes that the primary area of alleged adverse impact of the project on the complainants relates to land acquisition, rather than the above issues. Second, CAO notes a range of positive measures that IFC has taken to ensure compliance with its E&S requirements as outlined in this report. Third, CAO notes the decision of the EIB-CM to conduct an investigation into the environmental aspects of the complaints. Given similarities between IFC’s E&S requirements and those of EIB, CAO expects that IFC would take findings made by EIB-CM into account in its ongoing supervision of the project. Should EIB-CM make significant findings related to the project’s environmental impacts, that are not addressed in ongoing supervision, it would be open to CAO to raise these issues with IFC at a later point.

¹⁹ EIB-CM, Initial Assessment Report, Complaint SG/E/2016/18, May 2017 – <https://goo.gl/iQ9EMW>

IV. 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 deciding whether to initiate an investigation, CAO weighs 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 as to 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 raised concerns regarding the project's land acquisition and resettlement process, impacts on biodiversity and ecosystem services, risks of landslides, and GHG emissions.

As reported to CAO, the primary area of alleged adverse impact of the project on the complainants relates to the land acquisition and resettlement process. In particular, the complainants allege that they were not adequately compensated for their land, and therefore that their livelihoods were negatively impacted by the project. CAO's appraisal has identified a number of compliance questions regarding the adequacy of IFC's application of PS5 to the project that require a compliance investigation. CAO has questions as to whether the full replacement cost and livelihoods restoration requirements of PS5 were properly applied to the project, and whether IFC had assurance that the client's grievance handling system met the PS5 requirement for providing a recourse in an impartial manner.

While recognizing the importance of issues related to biodiversity, landslides and GHG emissions as raised in the complaint, these are not the primary areas of alleged adverse impact on the complainants. CAO acknowledges measures taken by IFC at appraisal and during supervision to ensure project compliance with its E&S requirements in relation to these issues. CAO also notes that these issues will be subject to independent assessment as part of the EIB-CM compliance investigation of the project.

In these circumstances, CAO's compliance investigation will be limited in scope to IFC's review and supervision of the client's land acquisition and resettlement process as relevant to the issues raised by the complainants.

Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.