

CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to IFC's Investments in the Postal Savings Bank of
China (IFC Project #35461) and Issues Raised in Cambodia**

May 2024

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

About the CAO

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

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

About CAO Assessments

Any person who believes they may be harmed by an IFC or MIGA project can lodge a complaint to CAO. We apply three simple eligibility criteria to accept a complaint. For eligible complaints, we assess the concerns with the complainant(s), project sponsor, and other relevant stakeholders.

Once a complaint is determined to be eligible, we review the concerns raised in it. This assessment is conducted in consultation with the complainant, the IFC and MIGA client and project teams, and other relevant stakeholders.

Purpose

The objective of the CAO assessment process is to develop a thorough understanding of the issues the complaint raises, work to understand all perspectives, engage with all key stakeholders to the complaint, consult with them to determine the process they choose to address the complaint, and consider the status of other grievance resolution efforts made to resolve the issues raised.

CONTENTS

CONTENTSIII

ACRONYMS IV

1. OVERVIEW1

2. BACKGROUND.....1

 2.1 The Project1

 2.2 The Complaint2

3. ASSESSMENT SUMMARY2

 3.1 Methodology.....2

 3.2 Summary of Views.....3

4. ASSESSMENT CONCLUSION6

APPENDIX A. CAO COMPLAINT-HANDLING PROCESS.....7

ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
E&S	Environment and Social
FI	Financial intermediary
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PRC	People's Republic of China
PSBC	Postal Savings Bank of China

1. OVERVIEW

In August 2023, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint in relation to social and environmental impacts of the Lower Sesan 2 Hydropower project (“Lower Sesan 2 Project”) in Cambodia. The complaint alleges that IFC is exposed to the Lower Sesan 2 Project through its investment in the Postal Savings Bank of China (PSBC).

In November 2023, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint.¹ In March 2024, in accordance with Paragraph 56 (2) of the CAO Policy, CAO Management granted an extension of the assessment deadline until May 23, 2024.

During the assessment, the complainants expressed their interest in engaging in a facilitated dialogue with the Lower Sesan 2 Project owner. PSBC expressed their disagreement with CAO’s eligibility decision and asserted that the requirements of Article 41 (a) of the CAO Policy² were not met. At the same time, they explained they would not be opposed to CAO facilitating a dialogue process aiming to resolve the complaint issues. They indicated that they would not be the right counterpart for this but were not opposed to CAO reaching out to the project owner to explore their possible interest in participating in such a process with the complainants. CAO made several attempts to contact Huaneng Lancang River International Energy, the alleged majority shareholder of the Lower Sesan 2 Project (“Project Owner”), but these proved unsuccessful. Consequently, and according to CAO Policy, the case will proceed to a compliance appraisal that will determine whether the complaint merits a compliance investigation or whether CAO can close the case.

This assessment report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, views of the complainants and PSBC, and next steps.

2. BACKGROUND

2.1 The Project

According to IFC Disclosures, IFC made an equity investment in PSBC of US\$286 million, representing a 0.69 percent shareholding, in December 2015, when PSBC launched a pre-initial public offering (“IPO”) private placement of shares to a shortlist of international and domestic strategic investors - including IFC. IFC and PSBC also entered into a Strategic Cooperation Agreement, which identified the areas in which IFC would provide advisory services to PSBC.³

PSBC is the fifth-largest People’s Republic of China (PRC) commercial bank in terms of total assets and the fifth-largest in terms of total deposits as of December 2023. As of December 31, 2023, PSBC had a total of 39,364 business outlets covering all cities and 99% of counties in China and had a retail client base of over 660 million.

In December 2023, IFC completely exited from PSBC following continuous implementation of a pre-approved sales plan.

¹ The complaint was deemed eligible because CAO found that (1) the issues raised in the complaint pertained to CAO’s mandate to address environmental and social impacts of IFC/MIGA projects, (2) the complainants may be affected by the harm raised in the complaint and (3) the complaint related to an active IFC project. Since the eligibility determination was made, PSBC has provided additional documentation to CAO in relation to its financial exposure to the Lower Sesan 2 Project. It is outside of CAO Assessment team’s mandate to further assess financial linkages between IFC, PSBC and the Lower Sesan 2 Project. These documents and any further documentation that may be shared with the CAO will be further assessed during the CAO Compliance Appraisal stage.

² See CAO Policy here: <https://www.cao-ombudsman.org/sites/default/files/documents/CAO%20Policy/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>

³ <https://disclosures.ifc.org/project-detail/SII/35461/psbc-equity>

2.2 The Complaint

The complaint was filed in August 2023 by three NGOs – International Rivers, Mekong Watch, and International Accountability Project – on behalf of the complainants and with their consent. Complainants include:

- villagers living in “Old” Sre Kor and “Old” Kbal Romeas villages, who remain near the reservoir and have refused to move to the project resettlement sites;
- communities living in the Sesan and Srepok communities upstream of the Lower Sesan 2 Project reservoir in Lumphat village, Chey Oudom Commune, and Lomlang village, Malik commune; and
- community members living in the project resettlement sites.

(hereinafter referred to as “the Complainants”).

The Complainants requested CAO to keep their identities confidential out of fear of reprisals.

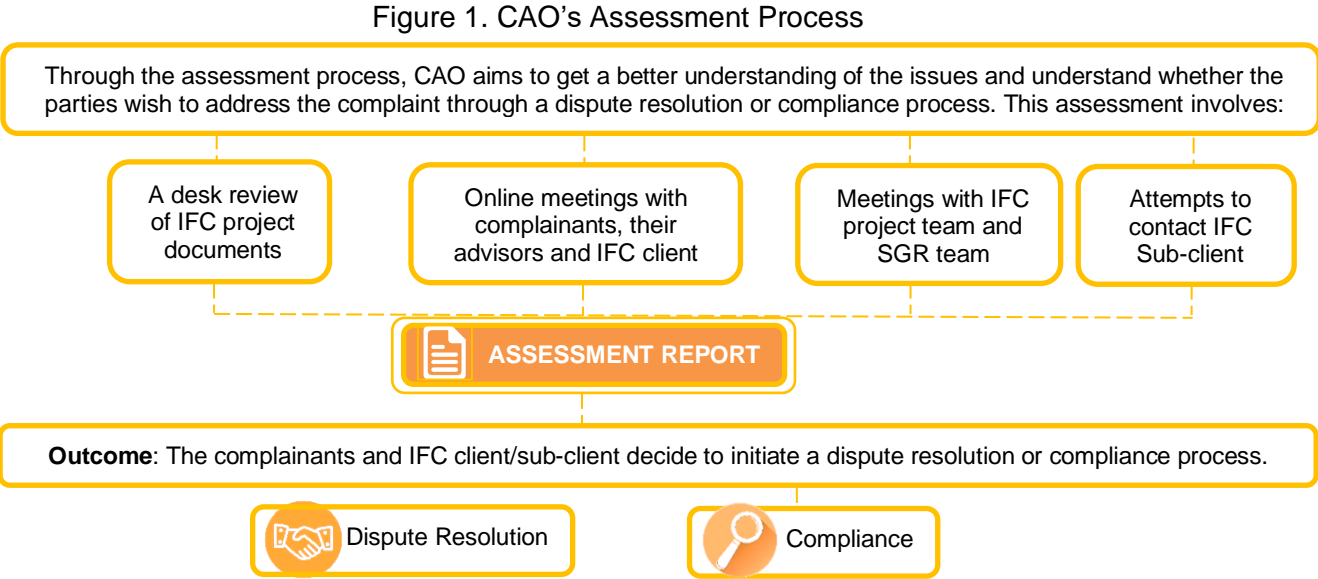
The complaint raises concerns in relation to a range of social and environmental impacts regarding the Lower Sesan 2 Project, which are further described below.

This is the second complaint that CAO receives from the same communities in relation to the Lower Sesan 2 Project. The first complaint related to IFC’s investment in ABBank and Vietinbank, and is currently under compliance investigation.⁴

3. ASSESSMENT SUMMARY

3.1 Methodology

Figure 1 below shows the approach and methodology to be applied in CAO’s assessment process.



⁴ See more information about that case here: <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-01-03>. That complaint relates to the same sub-project - Lower Sesan 2 Project -, but to different IFC clients and projects.

The process does not entail a judgement on the merits of the complaint; rather, it seeks to understand the facts and assist those involved to make informed decisions on how to address the issues raised.

3.2 Summary of Views

Complainants' perspective

IFC's alleged indirect exposure to the Lower Sesan 2 Project

The complaint alleges that PSBC, an IFC client, is exposed to the Lower Sesan 2 Project through financial links – including loans – with Huaneng Lancang River Hydropower and its ultimate parent company, the China Huaneng Group Co., Ltd. According to the complaint, the Lower Sesan 2 Project is 51% owned by Huaneng Lancang River International Energy, which is wholly owned by Huaneng Lancang River Hydropower. The complaint further alleges that China Huaneng Group and its subsidiaries provided additional financing and guarantees for the project.

According to the complaint, IFC failed to comply with its obligations to adequately review the environmental and social risks associated with PSBC's business activities prior to making its investment, or to monitor PSBC's compliance with its environmental and social (E&S) requirements.

Lack of proper consultation

According to the complaint, the construction of the Lower Sesan 2 Project's reservoir resulted in the relocation of approximately 5,000 people, many of whom are indigenous and ethnic minority people. The Complainants allege that they were not meaningfully consulted during the planning and development process of the project and that their Free Prior and Informed Consent was never sought.

Environmental and social concerns related to the Lower Sesan 2 Project

The complaint indicates that the Complainants originally filed a complaint with the CAO in June 2018⁵ in relation to IFC's FI investments in An Binh Commercial Joint Stock Bank and VietinBank, and that such complaint is currently in a compliance investigation process. The Complainants requested to incorporate the environmental and social harms, concerns, and requests of communities provided in the original 2018 complaint into their current complaint.

The Complainants further explained that the construction of the Lower Sesan 2 Project led to hundreds of families moving to designated resettlement sites, while over a hundred families in three villages (Srekor 1 and 2 and Kbal Romeas) refused to accept the project compensation and relocation. The Complainant group includes individuals living in communities upstream of the Project, in resettlement sites, and in the villages that refused to be resettled.

The Complainants expressed that they have faced serious environmental, social, and economic impacts since operation of the Lower Sesan 2 Project began, including:

⁵ See the CAO case webpage here: <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-01-03>

- Limitations on fishing activities: The Complainants indicated having experienced difficulty carrying out fishing activities, due to a decrease in fish populations, reduced access to the river as a result of relocation; and increased competition with incoming fishers who sometimes conduct illegal fishing in the reservoir. According to the Complainants, decreased fish catch is not only affecting their income, but also threatening their food security.
- Flooding: According to the complaint, villagers further upstream in Ratanakiri Province are concerned about the frequency and severity of flooding. The complaint notes that, when the community is flooded, villagers need to temporarily relocate in tents, leaving the elderly, pregnant women, and children vulnerable to health and physical hazards. Moreover, according to the complaint, the floods damage rice fields and traditional varieties of seeds affecting Complainants' livelihoods and daily subsistence.
- Deterioration of water supply and quality: The Complainants said that they have found it difficult to access clean water since the Lower Sesan 2 Project began operating. Aside from a fluctuating water supply, the Complainants observed that the water has become murky and does not look clean or safe for consumption. In addition, the Complainants noted that in resettlement sites, they have to buy water, increasing costs and adding to hardships.
- Land issues: The Complainants living in old Kbal Romeas emphasized that they needed a collective piece of land, and explained that the individual titling system was not in line with their traditional way of life. They also indicated that they had requested communal land title from the authorities but had not received a response. At the resettlement sites, Complainants claimed that incidents had happened where outsiders came to their land to build huts, under pretext of having bought the land.
- Access to water, electricity, and land titles: The families still living at the old site indicated that they would like to have improved access to water and electricity, as well as to land security.

Additionally, the Complainants expressed concerns because of reports that more dams are planned to be built on the Srpok and Sesan rivers, and they are worried about the cumulative impacts of the various construction projects.

Overall, the Complainants expressed that, despite their efforts and those of the supporting NGOs in the past few years to raise awareness about their concerns, the situation has not improved, and they continue to suffer from the impacts of the Lower Sesan 2 Project.

The Complainants expressed an interest in participating in a CAO-facilitated dispute resolution process with the Project Owner, in order to share their concerns directly and discuss possible solutions to address them.

Project Owner's perspective

CAO attempted to contact Huaneng Lancang River International Energy – the alleged Project Owner – by email, phone, fax, and post⁶ to include their views in this report and explore their willingness to participate in a dispute resolution process with the Complainants, but these attempts proved unsuccessful.

⁶ In March and April 2024, CAO sent emails to five different email addresses; as well as letters to three different addresses for Huaneng Lancang River International Energy Co. Ltd and Huaneng Group headquarters. The letters were also faxed to two different fax numbers. CAO also tried to contact the Huaneng Group via phone on several occasions. None of these attempts were successful. Additionally, CAO reached out to several stakeholders to request their support in engaging with Huaneng, without success.

PSBC's perspective

PSBC expressed the view that this case did not meet CAO's eligibility criteria as articulated in Article 41 of the CAO Policy,⁷ for the following reasons:

1. There is no evidence that the Lower Sesan 2 Project qualifies as an "FI Sub-Project"
 - PSBC pointed out that CAO's Policy defined an "FI Sub-Project" as "a *business operation of a Sub-Client within the use of proceeds requirements in IFC's finance or investment documents or MIGA's contract of guarantee*",⁸ and that CAO had found in prior cases⁹ that: "In deciding whether the business activity subject to a CAO complaint qualifies as a 'business operation' of an IFC Sub-Client, and thus a sub-project, CAO considers both the Sub-Client's involvement in and leverage over the operations of the business activity, and the importance of the business activity to the Sub-Client."
 - According to PSBC, the Lower Sesan 2 Project is not "*within the use of proceeds requirements in IFC's finance or investment documents*", because the proceeds of the two loans provided by PSBC to Huaneng Lancang River Hydropower Co., Ltd. ("Huaneng") were to be used exclusively for the construction of the Huangdeng Hydropower Station Project and Miaowei Hydropower Station Project in mainland China, as clearly indicated in the loan agreements.¹⁰
 - According to PSBC, CAO's eligibility decision is baseless and questionable, as it was made on the basis of presumptions, without any information about Huaneng's "*involvement in and leverage over*" the operations of the "sub-client". PSBC noted that they did not find any relevant content in the complaint that was shared with them by CAO, nor were they provided with any information regarding this issue by the CAO.
2. There is no evidence that Huaneng is an "active" "Sub-Client" of IFC

PSBC claimed that the fact that they provided loans to Huaneng Lancang River Hydropower did not mean that Huaneng Lancang River Hydropower (or its wholly owned subsidiary Huaneng Lancang River International Energy) qualified as an "active" Sub-Client of IFC, which they understood to be a requirement under Article 41 of the CAO Policy.

According to PSBC, CAO made no effort to gather information on this issue. PSBC pointed out that CAO did not contact them to inquire about this issue during the eligibility process. PSBC expressed their confusion and disappointment about CAO's practice of not having direct contact with IFC clients during the eligibility screening process and only working through the

⁷ CAO Policy: <https://www.cao-ombudsman.org/sites/default/files/documents/CAO%20Policy/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>

⁸ See CAO Policy, Glossary: <https://www.cao-ombudsman.org/sites/default/files/documents/CAO%20Policy/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>

⁹ See CAO Compliance Appraisal of a Complaint Regarding IFC's Exposure to the Dairi Prima Mineral Mine in Indonesia Through an Investment in Postal Savings Bank of China (PSBC), July 6, 2022, p. 29: https://www.cao-ombudsman.org/sites/default/files/downloads/CAO_Compliance_Appraisal%20Report_PSBC_Indonesia_July_2022_EN.pdf and CAO Compliance Appraisal of Complaints Regarding IFC's Exposure to the Lower Sesan 2 Hydropower Project in Cambodia through ABBank and Vietinbank, November 18, 2022, p16: https://www.cao-ombudsman.org/sites/default/files/downloads/CAO_Compliance%20Appraisal%20Report_Cambodia%20FI%201-3_December%202022_EN.pdf

¹⁰ Since the eligibility determination was made, PSBC has provided copies of redacted loan agreements between PSBC and Huaneng Lancang River Hydropower to CAO. It is outside of CAO Assessment team's mandate to further assess financial linkages between IFC, PSBC and the Lower Sesan 2 Project. These documents and any further documentation that may be shared with the CAO will be further assessed during the CAO Compliance Appraisal stage.

IFC. They added that they felt CAO made eligibility decisions based on presumptions, rather than actual information.

3. There is no evidence indicating that the “link between the FI Client and its active Sub-Client” is “material”

According to PSBC, CAO collected very limited information about the financial links alleged by the Complainants, and in such a case, CAO shall not determine that the link between the FI client and the sub-client is “material”, which is a requirement under Article 41 of the CAO Policy. According to PSBC, such practice is contrary to the spirit and the letter of Article 41 of the CAO Policy and the recommendations of the report on the *External Review of IFC’s / MIGA’s E&S Accountability including CAO’s Role and Effectiveness: Report and Recommendations*, issued on June 9, 2020.¹¹

PSBC pointed out that the External Review Report emphasized that “*the share, type, and tenor of the FI investment in the sub-project make the investment material*”, and claimed that CAO Policy seemed to have adopted this suggestion in its Article 41, which specifically considers the eligibility of complaints involving financial intermediaries. However, according to PSBC, the provisions of Article 41 were not adequately applied here, given that in their view, CAO presumed that all criteria were met, even though the information regarding the “material” nature of the financial link was limited and no further analysis or discussion was conducted.

Additionally, while PSBC expressed their concerns about the issues raised by the Complainants, they explained that they lacked the necessary leverage to facilitate their resolution, given that the loans provided by PSBC to Huaneng Lancang River Hydropower for other purposes were already fully repaid. They also pointed out that IFC completely divested from PSBC in December 2023 and thus, could not hold any leverage through PSBC over the operation of the Lower Sesan 2 Project.

Finally, PSBC noted that there was an existing CAO case in Compliance investigation regarding the Lower Sesan 2 Project,¹² and expressed their views that such case was sufficient to achieve CAO’s objective of helping to resolve issues raised about “*the environmental and/or social impacts of Projects and/or Sub-Projects*” and seek accountability from IFC. They also specified that they had not received the complaint letter submitted by the Complainants in 2018, and therefore, were unable to opine on some of the content in the “Complainants’ perspective” section, which refers to such complaint.

4. ASSESSMENT CONCLUSION

During the assessment process, the Complainants expressed an interest in engaging in a CAO-facilitated dispute resolution process with the Project Owner to resolve the issues raised in the complaint. PSBC indicated that they did not have any objections to CAO facilitating a dialogue between the Complainants and the Lower Sesan 2 Project Owner. CAO made several attempts to contact Huaneng Lancang River International Energy – the alleged Project Owner – but these attempts proved unsuccessful.

Consequently and in accordance with the CAO Policy, the case will now be transferred to CAO’s Compliance function. The alleged IFC’s exposure to the Lower Sesan 2 Project through PSBC and related compliance issues will be further reviewed as relevant in the context of CAO’s compliance appraisal, but this is beyond the scope of CAO’s assessment process.

¹¹ <https://www.worldbank.org/en/about/leadership/brief/external-review-of-ifc-miga-es-accountability>

¹² <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-01-03>

APPENDIX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out 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; (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 the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,¹³ 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 CAO (no more than 15 business days).
- Step 3: **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 90 business days, with the possibility of extension for a maximum of 30 additional business days if after the 90-business day period (1) the parties confirm that resolution of the complaint is likely; or (2) either party expresses interest in dispute resolution, and there is potential that the other party will agree.
- 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 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.¹⁴

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one must provide explicit consent for the transfer, unless CAO is aware of concerns about threats and reprisals. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending by 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth

¹³ For more details on the role and work of CAO, please refer to the IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy>

¹⁴ 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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of noncompliance and related harm. Third, in cases where noncompliance and related harm are found, CAO will monitor the effective implementation of the action plan.

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

Step 6: **Conclusion/Case Closure**