

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT REPORT AND MANAGEMENT ACTION PLAN
IN RELATION TO THE**

CAO COMPLIANCE INVESTIGATION REPORT

ON

**PANAMA ELECTRICITY
TRANSMISSION LINE 4 (PL IV)**

(PROJECT #602084)

TRANSACTION ADVISORY SERVICES

PANAMA – LATIN AMERICA AND THE CARIBBEAN

May 10, 2022

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ABBREVIATIONS AND ACRONYMS

AS	Advisory Services
CAO	Office of the Compliance Advisor Ombudsman
CIEL	Center for International Environmental Law
E&S	Environmental and Social
ESIA	Environmental and Social Impact Assessment
ESRP	Environmental and Social Review Procedures
ETESA	Empresa de Transmisión Eléctrica S.A.
FASA	Financial Advisory Service Agreement
FPIC	Free, Prior, and Informed Consent
ICP	Informed Consultation and Participation
IFC	International Finance Corporation
IPs	Indigenous Peoples
MAP	Management Action Plan
MODETEAB	Movement for the Defense of the Territories and Ecosystems of Bocas del Toro
PLIV	Panama Transmission Line IV
PPP	Public-Private Partnership
PSs	Performance Standards
TORs	Terms of Reference

EXECUTIVE SUMMARY

- i. In June 2018, the Compliance Advisor Ombudsman (CAO) received a complaint on behalf of Indigenous Peoples (IPs) in Panama who claim to have been excluded from consultations for the Transmission Line IV, an Advisory Services (AS) project in which IFC is acting as transaction advisor to *Empresa de Transmisión Eléctrica S.A.* (ETESA or the “Client”), a state-owned enterprise in charge of the national electricity transmission grid.
- ii. The following entities filed the complaint with CAO on behalf of IPs inside the recognized IP territory known as Comarca Ngöbe-Buglé (the “Comarca”), as well as IP settlements in the Norte de Santa Fé region and in Chiriquí Grande¹ in the province of Bocas del Toro (the “Complainants”):
 - a. Ngöbe, Buglé, and Campesina Territorial Organization of the Northern Region of Santa Fé de Veraguas.
 - b. The Movement for the Defense of the Territories and Ecosystems of Bocas del Toro (MODETEAB).

The Complainants received the support of the Alliance for Conservation and Development located in Panama City, and the Center for International Environmental Law (CIEL), based in Washington, D.C.

- iii. The Transmission Line IV Project involves the design, construction, financing, and operations and maintenance to be carried out by a private entity following a tender process (the Project). The expected cost for the transmission line is approximately US\$700 million and represents the first public-private partnership (PPP) for ETESA and thus for the electricity transmission sector in Panama, which is managed by ETESA. Some components of the 330-kilometer (km) Project cross biologically diverse natural habitats and IP lands.
- iv. The Project was initially tendered in 2019 but not awarded as the bids received did not satisfy the bidding requirements and a re-tendering process is ongoing. IFC was transaction advisor to ETESA in 2017-2018 in preparing for the first tender and was hired again by the new administration in May 2021 for the second tender. At the time IFC was hired, the CAO process was still in the investigation stage.
- v. The complaint raised the following concerns as related to the first tender process: (a) the process established for obtaining Free, Prior, and Informed Consent (FPIC) from affected IPs for the Project fell short of national law and IFC’s Performance Standards (PSs); (b) there was a lack of access to written information about the Project, including the route of the transmission line and potential Project impacts; (c) consultations did not comply with IFC commitments to foster the equal participation of women; and (d) there was an overall concern that Complainants would not receive benefits from the Project, based on past experiences with other energy projects in Panama.
- vi. CAO’s February 28, 2022 Final Investigation Report (“CAO Investigation Report”) made two non-compliance findings: (a) IFC did not provide advice consistent with the PSs in relation to

¹ During the Factual Review with CAO, the Complainants clarified that they also represented a third IP group located in the district of Chiriquí Grande, outside the Comarca to the northwest.

the need for stakeholder analysis and engagement before ETESA started the preliminary FPIC process; and, (b) IFC's advice in relation to the primary FPIC process, as contained in the terms of reference for the Project's Environmental and Social Impact Assessment (ESIA), prepared by IFC, was not fully consistent with the PSs. Management agrees with the two overarching findings.

vii. On the first finding, CAO refers to ETESA's consultations with the Comarca IPs, which began in December 2017, to obtain their approval to access their land to undertake Project-related activities. ETESA sought to lay the groundwork for the Project's ESIA and to show potential investors that it was possible to reach agreement with the Comarca. At the time ETESA started its engagement in the Comarca, IFC was initiating its due diligence activities, and the engagement with the Comarca IPs was not part of IFC's terms of reference. As such, IFC did not provide advice to ETESA at this early stage. Nonetheless, IFC recognizes that it should have done more to advise ETESA at this stage regarding the relevant PSs.

viii. On the second finding, CAO states that IFC's advice in relation to the primary FPIC process, as contained in the terms of reference for the ESIA, which were prepared by IFC, was not fully consistent with the PSs. Management agrees with this finding in that IFC's advice to the Client should have been more specific in light of a complex socio-political context. As the CAO Investigation Report notes, tensions between communities and levels of decision-making, parallel vertical structures, and traditional authorities of IPs (formally recognized and not) presented challenges for consultations, which would have benefitted from a more detailed analysis to ensure greater alignment with the PSs.

ix. The CAO Investigation Report also includes recommendations at the project and system levels. Management agrees with all three of CAO's recommendations at the project level, which are closely aligned with IFC's Management Action Plan (MAP) (*see* Section VII). IFC's MAP was finalized after consultations with ETESA and the Complainants to help the Client prevent the potential adverse impacts described in CAO's report, namely the: (a) exclusion of the IPs outside the Comarca, (b) exclusion of traditional authorities in the Comarca; and (c) lack of culturally appropriate and gender-inclusive consultations.

x. IFC also agrees with the two CAO's systemic recommendations, which are already being addressed through IFC corporate-wide initiatives. These include: (a) providing guidance to staff on the scope of IFC's role when a client implements project development activities with environmental and social (E&S) risks or impacts (such as FPIC or land acquisition) during an Advisory Services (AS) engagement; and (b) Incorporate the need for contextual risk analysis for Advisory Services projects in IFC's E&S Review Procedures.

xi. Management appreciates CAO's constructive engagement in this project and the detailed assessment in CAO's Investigation Report - the first CAO full investigation under the new CAO policy - particularly regarding the contextual analysis involving formally and non-formally recognized IPs in Panama. IFC continues to improve its advice to ETESA in the ongoing mandate, which will benefit from CAO recommendations, particularly in relation to PS1 and PS7, recognizing the implications of timely advice and engagement in transaction advisory projects.

I. INTRODUCTION

1. In June 2018, a complaint was submitted to the Compliance Advisor Ombudsman (CAO) on behalf of members of Indigenous Peoples (IPs) in Panama who claim to have been excluded from consultations regarding the Transmission Line IV project, in which IFC is acting as transaction advisor to the national electricity company in Panama.²

2. This Management Report presents IFC's response to CAO's findings and recommendations and includes a proposed Management Action Plan (MAP) to be implemented during the ongoing second mandate of IFC's advisory services to the Client (see paragraph 13). Section II of this Report describes the Project. Section III includes a summary of the complaint and CAO processes and recommendations. Section IV describes IFC's role and key environmental and social (E&S) activities. Section V is divided into two sub-sections, which include IFC's response to each non-compliance finding and its response to CAO's recommendations (*see also* tabulated matrix in Annex A). Section VI contains a summary of the consultations with the Client and the entities that lodged the complaint. Section VII includes the MAP. Finally, Section VIII offers the conclusions.

II. THE PROJECT

3. The Advisory Services (AS) project supports *Empresa de Transmisión Eléctrica S.A.* (ETESA) (the "Client"), a state-owned enterprise in charge of the national electricity transmission grid and responsible for the Transmission Line IV (the "Project"). The Project involves the design, construction, financing and operations and maintenance of a 330-km, double-circuit, 500-kV transmission line, to be carried out by a private entity. Some components of the Project cross biologically diverse natural habitats and IP lands, including the formally recognized IP territory known as Comarca Ngöbe-Buglé (the "Comarca") and the Norte de Santa Fé area where IP communities are located (*see* Transmission Line IV map below; IPs in the Norte de Santa Fé area are located in the green area designated as Reverendo Padre Hector Gallego National Park).

4. The purpose of this IFC AS Project was, and is, to help structure and tender a public-private partnership (PPP) for the financing, construction, and operation of the Transmission Line IV. The expected cost of the transmission line is approximately US\$700 million. It is expected to increase the reliability of the electricity system and expand transmission capacity to incorporate additional power generation, including renewable energy.

5. This will be Panama's first 500-kV transmission line, a high priority for the country. In addition, this will be the first PPP for ETESA and the first to be tendered under the country's new legal and institutional framework for PPPs, which was implemented in 2019.

² CAO Compliance Investigation Report-Advisory Services to ETESA, Panama, pgs.7 and 50 (February 28, 2022).

Figure 1. Transmission Line IV Map



III. CAO CASE

6. In June 2018, the following entities filed a complaint with CAO on behalf of IPs inside and outside the Comarca, including IP settlements in the Norte de Santa Fé region of the province of Veraguas, and a group located in the province of Bocas del Toro³ (the “Complainants”):

- a. Ngöbe, Buglé, and Campesina Territorial Organization of the Northern Region of Santa Fé de Veraguas.
- b. The Movement for the Defense of the Territories and Ecosystems of Bocas del Toro (MODETEAB).

The Complainants received the support of the Alliance for Conservation and Development located in Panama City, and the Center for International Environmental Law (CIEL), based in Washington, D.C.

7. The complaint identified the following issues: (a) the process established for obtaining the Free, Prior, and Informed Consent (FPIC) of the affected IPs for the Project fell short of national law and IFC’s Performance Standards (PSs); (b) there was a lack of access to written information about the Project, including the route of the transmission line and potential Project impacts; (c) consultations did not comply with IFC commitments to foster the equal participation of women; and (d) there was an overall concern that Complainants would not receive benefits from the Project, based on past experiences with other energy projects.⁴

³ During the Factual Review with the CAO, the Complainants clarified that they also represented a third IP group located in the district of Chiriquí Grande, outside the Comarca to the northwest.

⁴ CAO Compliance Investigation Report-Advisory Services to ETESA, Panama, pg.18 (February 28, 2022).

Summary of CAO Process

8. CAO determined that the complaint was eligible in July 2018 and issued an Assessment Report in April 2019.⁵ In its January 2020 Compliance Appraisal Report, CAO specifically noted that its investigation would be limited in scope to IFC's advice to ETESA for the Project, per the standards for AS projects.⁶ In particular, the investigation would consider whether IFC's advice in relation to E&S issues was consistent with the requirements of PS1, as related to stakeholder engagement and consultation, and PS7, as related to IPs.⁷

9. CAO released its final Compliance Investigation Report to IFC on February 28, 2022 (the "CAO Investigation Report"), which divided its compliance analysis into three areas: (a) pre-approval review of the IFC AS Project; (b) AS implementation – preparation stage; and (c) AS implementation – procurement stage.

10. CAO issued two findings of non-compliance related to the following: (a) IFC did not provide advice consistent with the PSs in relation to the need for stakeholder analysis and engagement planning before ETESA started the preliminary FPIC process; and (b) IFC's advice in relation to the primary FPIC process, as contained in the terms of reference (TORs) for the Project Environmental and Social Impact Assessment (ESIA) prepared by IFC, was not fully consistent with PS requirements. The CAO Investigation Report also includes recommendations,⁸ as discussed in section V.B. of this report.

IV. IFC ROLE & KEY E&S ACTIVITIES

11. IFC's role in the Project was and is as transaction advisor, advising ETESA on the structuring, promotion, and tendering of a PPP for the development of the Project through the selection of a private sector partner. As such, IFC did and does provide advice to ETESA on several aspects of the transaction (e.g., technical, financial, legal, environmental, social, and communications), which are defined in the Financial Advisory Service Agreement (FASA or "Mandate"). ETESA, as owner of the Project, retains full and final decision-making authority over the transaction.

12. Per IFC's Sustainability Policy⁹, IFC's transaction advisory services to a client should be consistent with its Performance Standards (PSs). In contrast to IFC's investment interventions, transaction advisory interventions occur at earlier stages before project financing, with pre-feasibility activities that comprise a substantial amount of work before a project is presented to the market. The agreement signed with ETESA permits IFC to terminate the mandate in case, as a

⁵ ETESA had declined the dispute resolution option available under CAO, indicating that IPs outside the Comarca would be consulted during the preparation of the ESIA.

⁶ CAO Compliance Investigation Report-Advisory Services to ETESA, Panama, pg.21 (February 28, 2022).

⁷ CAO Terms of Reference for Compliance Investigation of IFC, January 2020. Annex A of Appraisal Report. Available at: <https://bit.ly/PLIV-01>.

⁸ CAO Compliance Investigation Report-Advisory Services to ETESA, Panama, pgs.54-58 (February 28, 2022).

⁹ https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/

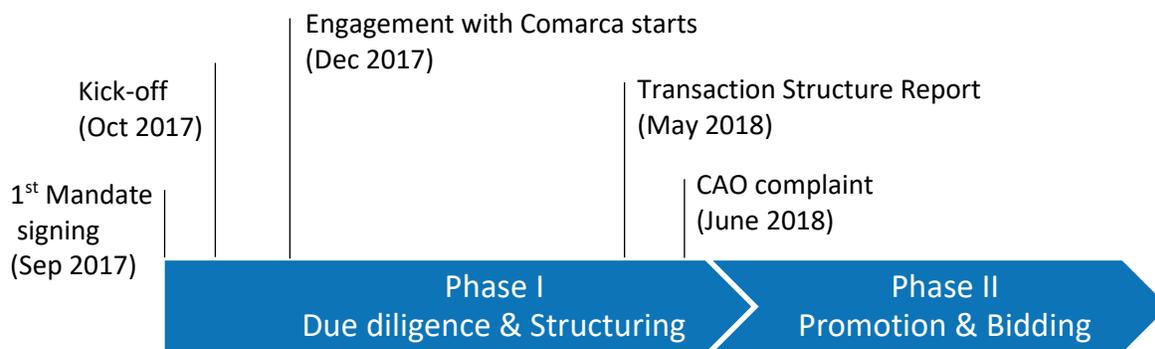
result of any action or decision by the client, IFC cannot continue providing its advice in a manner “materially consistent” with the IFC’s Sustainability Policy and the PSs.

13. IFC has acted as ETESA’s transaction advisor under two separate mandates to structure and bid out the Project. The first mandate was from 2017-18 (“1st Mandate”), during which the CAO complaint was filed (June 2018) and communicated to IFC (July 2018). The second mandate began in May 2021 (“2nd Mandate”) and is currently ongoing as of the date of this Management Report. Each mandate is described in detail below.¹⁰

First Bidding Process

14. **The 1st Mandate included two phases.** During Phase I, IFC conducted full due diligence in a number of areas such as technical, financial, regulatory, legal, E&S and communications. After completing this due diligence, IFC submitted its proposed transaction structure, recommendations, and actions to be approved by the Client. It was during Phase I that the complaint was submitted to CAO about ETESA’s consultations in the Comarca to obtain the Comarca IPs’ approval to access their land and undertake activities related to the ESIA (“Pre-ESIA Activities”).¹¹ Generally, consultations with affected communities are conducted during the ESIA, once project impacts are identified. IFC’s advisory role was to prepare the TORs for the ESIA, which was to be carried out by a private entity.

Figure 2. 1st Mandate: Main events during Phase I



15. Phase II of the 1st Mandate included IFC’s drafting of the bidding documents and the PPP contract and assisting in the pre-qualification and bidding processes up to commercial closing (signing of the PPP contract with selected bidder). The Project was tendered in April 2019,

¹⁰ FASA is a contract with the Government of Panama; both FASAs (1st and 2nd) can be requested from Panama’s Comptroller Office through its website at: <https://www.contraloria.gob.pa/Sicowebconsultas/>.

¹¹ The Client independently initiated consultations with the Ño-Kribo Regional Congress in order to satisfy the requirements of Panama Law 37 of 2016, entitled, “Establishing the right of prior, free, and informed consultation and consent of Panama’s original peoples.”

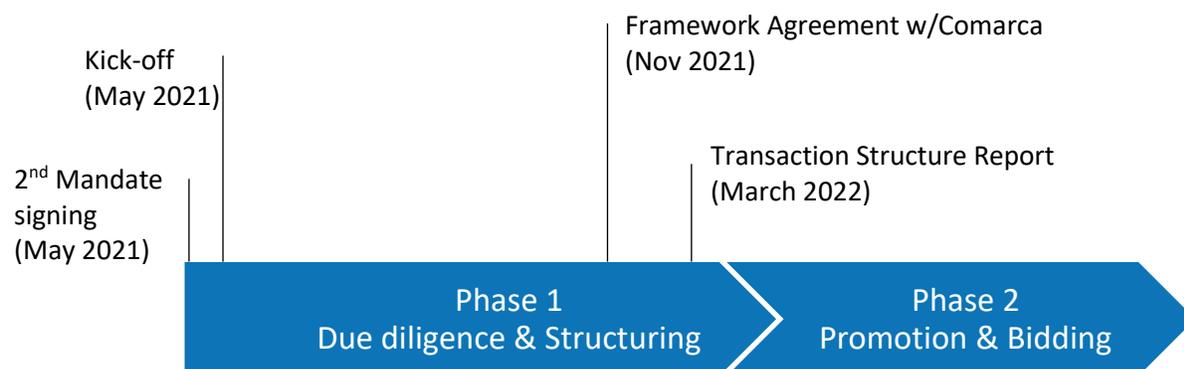
however, ETESA determined that the bids received did not satisfy the bidding requirements and terminated the bidding process, and therefore, the Project was not implemented under the 1st Mandate.

16. In May 2019, a new national administration was elected, introducing a revised legal and institutional framework to implement an ambitious PPP program, with World Bank Group support. Following a government-requested independent review of the technical and economic merits of the Project carried out by Deloitte (during which time the Project was on hold), the new administration contacted IFC to confirm its interest in IFC providing transaction advisory services to re-tender the Project.

Second Bidding Process

17. **The 2nd Mandate**, which also includes two phases, was signed in May 2021 and is currently ongoing under the new PPP legal and institutional framework adopted in Panama in 2019. In contrast with the 1st Mandate, ETESA will now prepare the ESIA with the assistance of a qualified E&S consultant, currently under selection.¹² As of this report, the Project under the 2nd Mandate is still in Phase 1, and IFC is carrying out its due diligence and structuring. IFC expects Phase II to begin by the third quarter of 2022.

Figure 3. 2nd Mandate: Main events during Phase I



Key Contextual Considerations & E&S Activities

18. Among the key contextual considerations related to the Project is the ongoing debate in Panama relating to the demarcation and/or recognition process of IP land. According to the 2010 census, IPs represent approximately 12 percent of the total population. According to the World Bank, 47 percent of IPs live in the Comarca.¹³ The remaining 53 percent have migrated to urban areas or live in indigenous communities located in non-Comarca indigenous areas or territories, with varying levels of legal recognition and autonomy. Some IPs living outside formally recognized territories dispute the demarcation and/or recognition process. Formal recognition by the government of IPs thus forms part of a larger ongoing debate in the country.

¹² In the 1st Mandate, the ESIA was to be prepared by the private entity/partner.

¹³ World Bank Project Appraisal Document- Support for the National IPDP Project, (February 15, 2018)

19. Given the complexity of implementing the Project in this context, IFC put together a group of specialized consultants in several areas: technical, financial, legal, E&S, and communications. IFC's E&S work was organized and agreed with ETESA around two main activities: (a) E&S due diligence and (b) development of the TORs for the ESIA, which was to be implemented by a future private partner. While IFC was initiating its due diligence under the 1st Mandate, ETESA began consultations with the Comarca IPs in December 2017, shortly after the 1st Mandate's signing and launch of IFC's engagement. ETESA communicated its intention to IFC to obtain the Comarca IPs' approval to access their land to undertake activities which could help lay the groundwork for the Project's ESIA. Through this process, ETESA sought to show potential investors that it was possible to reach agreement with the Comarca.

20. ETESA's consultations with the Comarca IPs were not included in IFC's 1st Mandate with ETESA, as IFC's TORs were focused on identifying key E&S risks and suggesting mitigating measures, as opposed to supporting the implementation of stakeholder engagement actions. Nonetheless, IFC's opinion at that time was that ETESA's decision to begin consultations with the Comarca IPs was reasonable, given national laws and the IP context mentioned above (paragraph 18). Once informed of these consultations, IFC agreed to participate in three meetings between January and April 2018. IFC provided limited advice relative to the way these consultations were conducted with the Ño-Kribo Regional Congress of the Comarca. ETESA's consultations were documented in the minutes of the respective events.

21. As ETESA reported to IFC, ETESA partnered with the Vice-Ministry for Indigenous Affairs¹⁴ and the Ministry of Environment to conduct the Pre-ESIA consultations, following local regulations and agreements with the Comarca. ETESA interacted with the Plenary of the Ño-Kribo Regional Congress of the Comarca. The Ño-Kribo Regional Congress, which is made up of delegates, elected representatives, and community leaders, is the highest formal body of decision-making of the Ngöbe-Buglé people for projects in the Ño-Kribo region. The Plenary of the Ño-Kribo Regional Congress nominated a 15-member technical committee to work with ETESA to study the Project's viability and coordinate the access to the Comarca. Members of these committees, together with ETESA, visited the sites of the Project. IFC was informed by ETESA that 42 events, with multiple site visits to remote villages, were conducted to obtain the Comarca IPs' approval to access land to conduct the ESIA. The events included Project-related audio-visual materials in local languages and the participation of IP translators in some meetings.

22. Although initial discussions in 2017-18 focused on obtaining the Ño-Kribo Regional Congress's permission to access the Comarca to conduct the ESIA, these engagements evolved into discussions on potential compensation to the Comarca IPs as a whole, based on collective land rights and to individual groups who would be identified after the ESIA.¹⁵ The Ño-Kribo Regional Congress of the Comarca granted the Project access to its land in February 2019 with the objective of conducting the ESIA.

¹⁴ At the request of ETESA who sought validation about the process, the Vice-Ministry of Indigenous Affairs affirmed that the consultation process undertaken with the Comarca conformed with the laws of Panama related to IPs.

¹⁵ The discussions covered eligibility for in-kind payments to affected collective land users, and an unspecified social compensation amount to be invested in community development projects, such as roads, schools, water projects, etc. These discussions were not reflected in a formal agreement but served as the basis for later discussion and agreement in 2021.

23. The 2nd Mandate (currently in effect) includes provisions related to IFC’s advice on: (i) engagements with IPs inside and outside the Comarca, (ii) revised TORs for the ESIA (improved version of the TORs from the 1st Mandate) to be developed by ETESA’s E&S consultant, and (iii) the PPP contract obligations related to E&S aspects, which have to be consistent with IFC’s PSs, particularly PS5, PS6, and PS7. ETESA continues to build on its consultation process with the Comarca IPs. According to ETESA, a number of additional events were held in 2021 in communities within the Comarca. As a result, a framework agreement between ETESA and the Comarca was signed in November 2021. In addition, during the 2nd Mandate, IFC proposed and ETESA agreed to initiate engagements with IPs outside the Comarca, in particular those from Norte of Santa Fé, before the start of the baseline studies that are part of the ESIA process. Additional communities outside the Comarca will be engaged/informed after a stakeholder mapping process is completed. As part of the ESIA, detailed studies will be conducted to determine the potential impact on all communities, inside and outside the Comarca, and to define, per PS7, for which communities FPIC is required.

V. MANAGEMENT RESPONSE TO CAO FINDINGS

24. **Management expresses its gratitude to CAO** for its detailed analysis in regard to the findings, and recognition that IFC’s advice helped to move the development of the Project toward alignment with the PS requirements for consultation with IPs (CAO Investigation Report, pgs.7 and 50). Among the overall findings, CAO also acknowledges the “positive contributions of the AS project,” such as encouraging ETESA to start engagement early in the Project’s development, and the preparation of the TORs for the ESIA and “...associated plans that were generally aligned with PS requirements for stakeholder engagement and benefit sharing.”¹⁶

A. IFC Responses to Cao Findings

CAO Finding 1 (CAO Investigation Report, pgs.51-52)

- IFC did not provide advice consistent with the Performance Standards in relation to the need for stakeholder analysis and engagement planning before ETESA started the preliminary FPIC process.

25. **Management agrees with the overarching finding that IFC did not advise ETESA to undertake a stakeholder mapping and analysis ahead of its engagement with the Comarca.** At the time ETESA started the engagement, IFC was commencing its due diligence activities and had not contemplated advice to ETESA on this early stage of engagement. While IFC did respond to ETESA’s engagement by attending three meetings with the Comarca, it recognizes that more should have been done in that time period to provide relevant advice to ETESA, specifically with regard to IFC’s PSs.

26. **Management acknowledges that IPs outside the Comarca were not included in the engagement process which ETESA began during its Pre-ESIA Activities.** IFC should have advised ETESA that all IPs potentially affected by the Project needed to be part of an engagement process after a stakeholder mapping and analysis had been conducted. With regard to an FPIC

¹⁶ CAO Compliance Investigation Report-Advisory Services to ETESA, Panama, pg.8 (February 28, 2022).

process for IPs outside the Comarca, given that IFC was starting its due diligence, IFC was not in a position to make a conclusive decision on the FPIC trigger for IPs outside the Comarca without a proper assessment of impacts, which would have been part of the ESIA process, and the process to finalize the transmission line alignment.

27. **Management agrees, with caveats, that the Pre-ESIA consultations excluded some of the affected communities and traditional indigenous authorities since they were conducted with government-recognized representatives of the Comarca.** While IFC recognizes that these preliminary consultations should have been more robust and inclusive, it also notes that these engagements included multiple meetings open to all traditional and customary IP leaders and affected communities, which were then documented.¹⁷ Throughout the ESIA process, which will be carried out by ETESA’s E&S consultant and is scheduled to begin in the 2nd semester of 2022, studies will be conducted to determine the nature and magnitude of the impacts of the Project on the communities and the environment, during which additional consultations will be conducted.

28. **Management agrees, with caveats, that the Pre-ESIA Activities were not conducted in a culturally appropriate manner, including disclosure of information in indigenous languages.** Management agrees that IFC should have done more to advise ETESA on gender inclusion and other measures for a more culturally appropriate process to allow for informed consent by IPs. IFC recognizes that while it did not provide specific advice on this issue, ETESA engaged indigenous language translators who participated in some Pre-ESIA meetings, which were conducted under local laws/regulations.

CAO Finding 2 (CAO Investigation Report, pg.52-53)

- IFC’s advice in relation to the primary FPIC process, as contained in the terms of reference for the PLIV project ESIA, prepared by IFC, was not fully consistent with Performance Standards requirements.

29. **Management agrees with this finding in that IFC’s advice to the Client should have been more specific in light of the socio-political context.** While the PPP contract and annexes required the Client to follow IFC’s PSs, including PS1 and PS7 requirements, as the CAO Investigation Report notes, the tensions between communities and levels of decision-making, parallel vertical structures, and traditional authorities of IPs (formally recognized and not) presented a complex context for consultations, which would have benefitted from a more detailed analysis to ensure greater alignment with the PSs.

30. Management does not concur with CAO’s view that “IFC non-compliance with the Sustainability Policy (...) has contributed to harm to project-affected people, including the complainants”. The CAO investigation report does not provide an analysis of how IFC non-compliances would have contributed to actual or potential harm. Management recognizes that IFC advice was incomplete and that potential, future harm might occur as a result of project development and implementation by ETESA, irrespective of IFC advice. IFC advice, with the

¹⁷ These included public announcements in coordination with the Comarca, using their communication mechanisms to reach community members. IFC recommended ETESA to plan and facilitate the logistics to promote participation.

implementation of the actions proposed in the MAP, may actually contribute to future, potential harm being less likely to occur.

B. IFC Responses to CAO Recommendations

31. The CAO Investigation Report includes **Project-level** and **System-level** recommendations (see Annex B of the CAO Investigation Report, pg.59) for the development of IFC's MAP. This sub-section provides IFC's responses to CAO's Recommendations.

Project-level CAO Recommendations & IFC Responses

CAO Recommendation 1: Advise ETESA on corrective actions needed to address shortcomings in the FPIC consultations conducted to date, considering the requirements of the Performance Standards. Key areas requiring attention include:

- a. Initiating consultations to obtain the Free, Prior, and Informed Consent (FPIC) of impacted Indigenous communities outside the Comarca, in particular those of the Norte de Santa Fé region and the Annex Areas in Bocas del Toro province, as relevant;
- b. Stakeholder analysis, including identification of potentially affected Indigenous communities (both in and outside Comarca Ngöbe-Buglé) in the project's area of influence, considering potential impacts on land as well as natural and cultural resources under traditional ownership or customary use;
- c. Development of a stakeholder engagement plan that reflects the results of the stakeholder analysis and takes into account both formal and customary governance structures and decision-making processes, as well as measures for inclusive and culturally appropriate consultation processes;
- d. Revisiting the agreements already made with Comarca representatives during the preliminary FPIC process as necessary, based on the outcomes of the consultation process outlined in (c) above.

32. IFC agrees with this recommendation and will advise ETESA on measures to align the ongoing stakeholder engagement process to specifically address PS1 and PS7 requirements regarding stakeholder engagement/consultations. This advice will focus on a methodology for a comprehensive stakeholder identification and analysis, effective information disclosure, and inclusive consultation. In addition, the advice will focus on: (a) identifying all potentially affected IP communities inside and outside the Comarca; (b) facilitating inclusion of traditional and community leaders/elders and gender-inclusive participation; and (c) promoting the use of indigenous language and culturally appropriate communication methods. IFC will advise ETESA to document: (i) the mutually accepted process between ETESA and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as to the outcome of the negotiations.

CAO Recommendation 2: Revise the TORs for the ESIA and the associated stakeholder engagement, community development, and compensation plans prepared by IFC to ensure full consistency with the requirements for FPIC under national law, as well as for PS1 and PS7, considering the concerns raised by the complainants as identified in this report.

33. IFC agrees with this recommendation. As mentioned, ETESA is already in the procurement process for the ESIA consultant; therefore, the TORs cannot be revised. However, the TORs being used by ETESA were previously reviewed by IFC and improved (as compared to the 2018 version), but requires additional details to address CAO's recommendation. To overcome this limitation and address the recommendation, IFC has agreed with ETESA to hold a 2-day workshop to clarify in detail the requirements of IFC's PSs, to both the Client and its selected E&S consultant. The workshop will cover the requirements of all eight PSs, and will include, among other issues, a discussion of: (a) a bottom-up approach to stakeholder consultations and decision-making, especially in the context of IP communities living inside and outside the Comarca; (b) the importance of gender-inclusive assessment and consultations covering the Project's area of influence; and (c) the need for information disclosure in local indigenous languages, while recognizing the socio-political and cultural context. Implementation of the workshop and conclusions will be documented and key outcomes of the workshop will be included in ETESA's E&S consultant workplan for the ESIA, which will be reviewed by IFC.

CAO Recommendation 3: Provide ongoing advice to ETESA during the ESIA, including stakeholder engagement and implementation of the primary FPIC process, consistent with national law as well as PS1 and PS7.

34. While IFC agrees with this recommendation, no further action is needed as IFC's Mandate (2nd Mandate) already includes support for the ESIA consistent with IFC's PSs and national law. After IFC's Mandate is completed per the PPP contract, an independent entity or consulting firm will monitor compliance with these obligations.

System-level CAO Recommendations & IFC Responses

35. In response to CAO's two **System-level** recommendations, **with which IFC agrees, corporate-wide initiatives have already begun, as noted below.**

CAO Recommendation 4: Provide guidance to staff on the scope of IFC's role when a client implements project development activities with E&S risks or impacts (such as FPIC or land acquisition) during the Advisory Services engagement. This guidance should include monitoring and reviewing of ongoing client project development activities for consistency with the Performance Standards to provide timely and accurate advice to the client on aligning such project development activities with the Performance Standards.

36. IFC agrees with this recommendation. In the context of its response to the External Review Panel recommendations, IFC is currently revising the E&S Review Procedures (ESRP). The finalized version and related guidance material, including staff training, will further clarify IFC's

role when a PPP AS client is implementing activities with E&S risks or impacts, including IFC's timely provision of advice to the client on such activities in a manner consistent with IFC PSs.

CAO Recommendation 5: Incorporate the need for contextual risk analysis for Advisory Services projects in IFC's E&S Review Procedures. IFC currently has guidance on the need for contextual risk analysis in draft form; however, it would be advantageous to formalize this for use in future Advisory Services projects.

37. IFC agrees with this recommendation and is already incorporating contextual risk screening in PPP AS projects. Contextual risk has been an evolving practice area in IFC in recent years, including the development of the Contextual Risk Framework, which is comprised of 9 dimensions and 33 indicators to flag broader country risks. The Framework helps project teams screen for high-risk issues that may manifest as E&S considerations, which can be followed up in project development and implementation. IFC will formalize the current practice in PPP AS projects and include contextual risk analysis in the updated ESRP among the E&S risks and impacts to be reviewed when screening potential PPP AS projects. ESRP guidance material and staff training will provide further operational support on this to staff.

VI. RESULTS OF CONSULTATIONS WITH CLIENT & COMPLAINANTS

38. Per the CAO policy, IFC conducted consultations with ETESA and the Complainants listed in Section III of this Management Report to present IFC's proposed MAP and obtain their feedback.

39. Regarding consultations with the Complainants, the following issues were discussed:

- IFC organized two meetings with the Complainants in coordination with CIEL, which were conducted in Spanish. MODETEAB and CIEL participated in those meetings, but not the other complainant organizations (Ngöbe, Buglé, and Campesina Territorial Organization of the Northern Region of Santa Fé de Veraguas).
- The Complainants expressed their concern that IP communities inside and outside the Comarca should not only be consulted in a more gender-inclusive and culturally appropriate manner but that ETESA should also consider the direct and indirect impacts on all IPs as well as on biodiversity values. IFC explained that the ESIA will consider all impacts and follow the hierarchy to first avoid and then define mitigants or compensate impacts which cannot be avoided.
- IFC took note of the specific request of the Complainants who participated in the consultations for ETESA to use translators from the areas and female consultants to improve engagement with indigenous women. This request was shared and agreed with ETESA. Given that the procurement process and implementation of some of the actions in the MAP are already underway, IFC took special care to explain to the Complainants that as activities are being advanced by ETESA, IFC will advise the Client on the importance of meeting the PSs, particularly PS1 and PS7, as referenced in CAO's findings.

- The Complainants also expressed concerns about the actual implementation of the ESIA given past experiences of similar projects in Panama. IFC explained its role as a transaction advisor which includes reviewing the work of E&S consultants hired by ETESA. IFC also explained that after the bidding process, when IFC concludes its Mandate, there will be an independent supervisor who will monitor the Project's compliance with IFC PS requirements in the PPP agreement. IFC also explained that CAO will monitor the implementation of the Board-approved MAP.
- The Complainants sent suggestions for the implementation of the MAP prior to its submission to the Board, which IFC is analyzing, and requested that IFC maintain an ongoing dialogue with them after the Management Report and MAP are approved, to which IFC agreed while pointing out that ETESA remains the decision-maker regarding Project implementation and the Complainants should also consult with ETESA.

40. IFC has also actively engaged with ETESA since the reception of CAO's Draft Compliance Investigation Report. IFC followed up through additional consultations with ETESA's senior management and specialized E&S staff on the proposed MAP and issues raised by the Complainants. ETESA has agreed with IFC's proposed MAP in general terms and looks forward to receiving more details during its implementation.

VII. MANAGEMENT ACTION PLAN (MAP)

41. IFC has proposed specific actions in the MAP, which take into account the results of consultations with the Client and Complainants. The MAP seeks to address the CAO findings in ways that are feasible and timely, particularly given the ongoing 2nd Mandate with ETESA and the future tender process. The MAP's overall objective seeks to: (a) enhance IFC's advice on consultation processes with IPs inside and outside the Comarca, in line with the PSs; and (b) enhance IFC's advice on development of the ESIA, again in line with the PSs (see MAP in Annex B).

VIII. CONCLUSION

42. Management appreciates the detailed assessment in the CAO Investigation Report, particularly regarding the contextual analysis involving formally and non-formally recognized IP communities in Panama. IFC continues to improve its advice to ETESA, particularly in relation to PS1 and PS7 requirements, recognizing the relevance and implications of such advice.

43. IFC generally agrees with CAO's five recommendations. In terms of the project-level recommendations, and as detailed in the MAP, IFC will provide written advice to ETESA to align the ongoing stakeholder engagement process with the PSs and initiate engagements with IPs outside the Comarca. IFC will also hold a 2-day workshop with ETESA and its E&S consultant to clarify in detail the requirements of IFC's PSs, which will become part of the ESIA consultant's workplan. In terms of CAO's systemic recommendations, IFC is already addressing these through corporate-wide initiatives that fall under IFC's response to the External Review Panel. IFC is currently revising the ESRP, which will further clarify IFC's role when a PPP AS client is implementing activities with E&S risks or impacts, including IFC's timely provision of advice to

the client in a manner consistent with the PSs. The updated ESRP will also formalize the current practice of conducting contextual risk screening on PPP AS projects.

44. Finally, IFC's efforts to advise ETESA, a state-owned enterprise, will also be supported by the Government of Panama, which continues to expand its own efforts for the protection of IPs' rights more generally.¹⁸

¹⁸ At a recent session of the Inter-American Commission on Human Rights of the Organization of American States, held in Panama, the Government of Panama highlighted some institutional initiatives which reflect its commitment to IPs, including the following: (a) March 10, 2020: Panama became a State Party to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America & the Caribbean (*Acuerdo de Escazu*); (b) December 7, 2020: Adoption of the Charter for a Specialized Prosecutor's Office in charge of Environmental Crimes; and (c) February 24, 2022: Law 287 passed to protect the Environment, the Rights related to it and Government Actions to Comply. <http://www.oas.org/es/cidh/sesiones/audiencias.asp#prettyPhoto/16/>

ANNEX A
TABLE SUMMARIZING MANAGEMENT RESPONSES TO
CAO FINDINGS & RECOMMENDATIONS

No.	CAO Non-Compliance Findings	IFC Response
1	IFC did not provide consistent advice with the Performance Standards in relation to the need for stakeholder analysis and engagement planning before ETESA started the preliminary FPIC process.	<i>Management agrees with this finding and has developed an action to address it as described in the MAP (see paragraph 25 in the Management Report and actions A.1 and A.2 in the MAP).</i>
2	IFC's advice in relation to the primary FPIC process as contained in the terms of reference for the PLIV project ESIA, as prepared by IFC, was not fully consistent with PS requirements.	<i>Management agrees with this finding and has developed an action to address it as described in the MAP (see paragraph 29 in the Management Report and action B.1 in the MAP).</i>
No.	CAO Recommendations	IFC Response with Actions Taken or Proposed
Project Level Recommendations		
1	<p>Advise ETESA on corrective actions needed to address shortcomings in the FPIC consultations conducted to date, considering the requirements of the Performance Standards. Key areas requiring attention include:</p> <p>a. <i>Stakeholder analysis including identification of potentially affected Indigenous communities (both in and outside Comarca Ngöbe-Buglé) in the project's area of influence, considering potential impacts on land as well as natural and cultural resources under traditional ownership or customary use;</i></p> <p>b. <i>Development of a stakeholder engagement plan that reflects the results of the stakeholder analysis</i></p>	<i>Management agrees with this recommendation and has developed a related action as described in the MAP (see paragraph 32 in the Management Report and actions A.1 and A.2 in the MAP).</i>

	<p><i>and takes into account both formal and customary governance structures and decision-making processes, as well as measures for inclusive and culturally appropriate consultation processes;</i></p> <p><i>c. Revisiting the agreements already made with Comarca representatives during the preliminary FPIC process as necessary, based on the outcomes of the consultation process outlined in (b) above; and</i></p> <p><i>d. Initiating FPIC consultations with all potentially impacted Indigenous communities outside the Comarca, in particular, those of the Norte de Santa Fé region.</i></p>	
2	<p>Revise the TORs for the ESIA and the associated stakeholder engagement, community development, and compensation plans prepared by IFC to ensure full consistency with the requirements for FPIC as well as for PS1 and PS7, as identified in this report.</p>	<p><i>Management agrees with this recommendation and has developed a related action, with some operational adjustments, as described in the MAP (see paragraph 33 in the Management Report and action B1 in the MAP).</i></p>
3	<p>Provide ongoing advice to ETESA during the ESIA, including stakeholder engagement and implementation of the primary FPIC process, consistent with national law as well as PS1 and PS7.</p>	<p><i>Management agrees with this recommendation; no additional action is necessary (see paragraph 34 in the Management Report).</i></p>
<p>Systemic Recommendations</p>		
4	<p>Provide guidance to staff on the scope of IFC's role when a client implements project development activities with E&S risks or impacts (such as FPIC or land acquisition) during the Advisory Services engagement. This guidance should include monitoring and reviewing of</p>	<p><i>Management agrees with this recommendation. As part of corporate wide initiatives that were underway prior to CAO's investigation report, IFC is already taking action that addresses this recommendation (see paragraph 36 for more details).</i></p>

	ongoing client project development activities for consistency with the Performance Standards to provide timely and accurate advice to the client on aligning such project development activities with the Performance Standards.	
5	Incorporate the need for contextual risk analysis for Advisory Services projects in IFC's E&S Review Procedures. IFC currently has guidance on the need for contextual risk analysis in draft form; however, it would be advantageous to formalize this for use in future Advisory Services projects.	<i>Management agrees with this recommendation. As part of corporate wide initiatives that were underway prior to CAO's investigation report, IFC is already taking action that addresses this recommendation (see paragraph 37 for more details).</i>

**ANNEX B
MANAGEMENT ACTION PLAN (MAP)**

IFC has proposed actions in relation to the CAO findings in the MAP below.

The MAP specifies actions which IFC, working with ETESA and others as required, will implement to address CAO's findings.

Per CAO policy, in determining these actions, IFC held consultations with the Client and the Complainants.

Area of Improvement	Action / activity	Responsibility	Deliverable / expected outcome	Timeframe	Status
A. Enhance the advice on the consultation process with IPs inside and outside the Comarca in line with IFC PSs	<p>A.1 IFC will advise ETESA on measures to be undertaken to align the ongoing stakeholder engagement process with PS1 and PS7 requirements.</p> <p>This advice will focus on a methodology for comprehensive stakeholder identification and analysis, effective information disclosure, and inclusive consultation. On inclusive consultation, the advice will cover: (a) identifying all potentially affected IP communities inside and outside the Comarca; (b) facilitating inclusion of traditional and community leaders/elders and gender-inclusive participation; and (c) promoting the use of indigenous language and culturally appropriate communication methods. IFC will also advise ETESA to use translators from the IP region and contract female consultants to improve engagement with indigenous women.</p>	IFC	1. Letter to ETESA's Chief Executive Officer with IFC recommendations	1. As soon as MAP is approved by the Board	

Area of Improvement	Action / activity	Responsibility	Deliverable / expected outcome	Timeframe	Status
	<p>A.2 IFC will advise ETESA to undertake an engagement process with IPs outside the Comarca consistent with IFC PS. IFC will advise ETESA to undertake an engagement process with IPs outside the Comarca consistent with IFC PS, in particular PS1 and PS7 requirements including Informed Consultation and Participation (ICP). If circumstances requiring FPIC are confirmed, then IFC will also advise ETESA to build on the ICP process toward reaching a consent based on good faith negotiations with IPs outside the Comarca. IFC will also advise ETESA to document: (i) the mutually accepted process between ETESA and Affected Communities of Indigenous Peoples, and (ii) provide evidence of agreement between the parties to reflect the outcome of the negotiations.</p>	IFC	2. Letter to ETESA’s Chief Executive Officer with IFC recommendations	2. As soon as MAP is approved by the Board	
B. Enhance the advice on the development of the ESIA to be in line with IFC PS	<p>B.1 IFC will hold a 2-day workshop with ETESA and its selected E&S consultant to explain in more detail the requirements of PSs to be used in the ESIA. The workshop will cover the requirements of the 8 IFC PSs, and will include, among other points, a discussion of: (a) a bottom-up approach to stakeholder consultations and decision-making, especially in the context of IP communities living inside and outside the Comarca; (b) the importance of gender-inclusive assessment and consultations</p>	IFC	1. 2-day workshop with ETESA and its E&S consultant. To include key outcomes of workshop in ETESA’s E&S consultant workplan for the ESIA. 2. Minutes of workshop and acceptance of	1. First month after ETESA’s E&S consultant is selected, expected by Q3 2022.	

Area of Improvement	Action / activity	Responsibility	Deliverable / expected outcome	Timeframe	Status
	<p>covering the Project's area of influence; and (c) the need for information disclosure in local indigenous languages.</p> <p>The workshop will be documented through minutes, including list of all participants, presentations made and agreed next steps. Key outcomes of the workshop will be included in ETESA's E&S consultant workplan for the ESIA, which will be reviewed by IFC.</p>		workshop outcomes by ETESA.		

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The IFC Management Response is provided in response to the Investigation Report of the Office of the Compliance Advisor Ombudsman (CAO) relating to complaints of alleged non-compliance by IFC with its Performance Standards on Environmental and Social Sustainability in a project supported by IFC finance or investment.

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