



October 20, 2015
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

*Real LRIF (IFC Project # 31458)
Guatemala*

Complaint 01

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).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

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

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

Background to the investment

Latin Renewables Infrastructure Fund, L.P. ("the Fund" or "the client") is a \$100 million 10-year closed-end private equity fund set up to invest in infrastructure projects in the renewable power and energy sectors in Latin America and the Caribbean. The Fund is managed by Real Infrastructure Capital Partners ("Real"), a New York-based fund manager established in 2010. In 2012, IFC committed to a \$15 million equity investment in the Fund. In 2013, the Fund invested in the Santa Rita Hydroelectric Power Plant ("Santa Rita" or "the project"), a 23 MW run-of-the-river hydroelectric power plant located on the Icbolay River in Alta Verapaz, Guatemala.

At the time of writing these ToR, the project was suspended due to environmental and social concerns in the project area.

The complaint

In October 2014, CAO received a complaint from two Guatemalan organizations, on behalf of several community members living upstream and downstream of the project site. Complainants raise concerns regarding a range of environmental and social issues related to disclosure and consultation, security, indigenous people, displacement, and potential impacts on local water sources. In particular, the complainants assert that the project does not meet IFC requirements for free, prior and informed consent (FPIC) and that it has disturbed the peace and social cohesion of their communities. Further, the complainants assert that their opposition to the project has met with violence, repression and criminalization of community leaders.

Scope of the compliance investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investment in Real LRIF in relation to the issues raised in the complaint.

The Compliance Investigation will consider whether IFC's investment in Real LRIF was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's outstanding questions in relation to the investment include:

1. whether IFC's pre-investment review of its client was commensurate to risk;
2. whether IFC's approach to the management of E&S risks in relation to this investment met relevant requirements adequate; and
3. whether IFC's supervision of the Fund in relation to the Santa Rita project, both at the ESDD phase and thereafter, met relevant requirements.

Compliance Investigation Process and Preliminary Timeline

CAO aims to have a draft compliance investigation report completed by March 2015.

The draft Investigation Report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in the assessment and management of risks around land acquisition, indigenous people, conflict, security and human rights in private sector projects in Central America, particularly in hydro projects.
- Knowledge of IFC's E&S policies, standards and procedures.
- Experience and knowledge relevant to the conduct of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
- Expertise in relation to stakeholder engagement and consultation.