



January 3, 2017
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

CIFI–Hidro Santa Cruz (IFC Project #26031)
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

Corporación Interamericana para el Financiamiento de Infraestructura, S.A. (hereafter “CIFI” or “the client”) was established in 2001 as a non-banking financial institution to provide financing to small and medium infrastructure projects across Latin America and the Caribbean.¹

In June 2008, IFC committed to a US\$10 million equity and US\$20 million loan investment in the client. Additionally, IFC arranged a US\$48.5 million syndicated loan for the client. The purpose of IFC’s investment was to implement client’s business plan, including expected asset growth and operational consolidation, as well as access to long-term funding through the international capital markets. IFC sought to contribute to the implementation of the business plan through the transfer of industry knowledge, structuring skills, and best international practices.²

In June 2010, Hidro Santa Cruz, S.A (HSC) hired CIFI as financial advisor to structure and finance the development of a 5 megawatts (MW) run-of-river hydropower plant (Canbalam I or “the project”) located in the Municipality of Santa Cruz Barillas, Department of Huehuetenango, Guatemala. In December 2011, CIFI made a debt and quasi-equity investment in HSC to support the development of the hydropower plant.³

The complaint

In July 2015, a group of community representatives filed a complaint to CAO on behalf of themselves and other community members in the Municipality of Santa Cruz Barillas. The complainants have raised concerns on several environmental and social (E&S) issues. These include: IFC’s due diligence, the dissemination and disclosure of project information, lack of consultation, and potential impacts of the project on indigenous populations. The complainants assert that when they decided to oppose the project, their community was subject to violence, persecution, threats and intimidation. The complainants further allege that a worker from the security company hired by the project was involved in the murder of a member of the community in May 2012. They report that this incident enraged the Barillas community who reacted violently resulting in the national government responding by declaring a state of emergency. They further allege that nineteen community members were detained, of which nine were sent to jail for nine months⁴.

The complaint was transferred to CAO’s compliance function for appraisal in May 2016. Based on a preliminary review of IFC’s documentation and discussions with the IFC team, CAO decided to trigger an investigation into this investment.⁵

¹ IFC Summary of Propose Investment in CIFI - <https://goo.gl/78YmjP>

² IFC Summary of Propose Investment in CIFI - <https://goo.gl/78YmjP>

³ CAO Appraisal, available at <https://goo.gl/kWNwX8>

⁴ Complaint to CAO available at <https://goo.gl/kWNwX8>

⁵ CAO Appraisal available at <https://goo.gl/kWNwX8>

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 CIFI in relation to the issues raised in the complaint.

The Compliance Investigation will consider whether IFC's investment in CIFI 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 E&S review of the client was commensurate to risk;
2. adequacy of IFC's approach to the management of E&S risks in relation to this investment;
3. adequacy of IFC's supervision of E&S risks related to the client; and
4. adequacy of IFC's response and support to the client in relation to the issues at the Hidro Santa Cruz site.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by June 2017.

A 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 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:

1. Significant expertise in evaluating and implementing Financial Intermediary E&S risk management systems
2. Knowledge of IFC's E&S policies, standards and procedures.
3. Experience and knowledge relevant to the conducting reviews of FI E&S risk management systems
4. Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
5. Regional knowledge of Financial Intermediary E&S practices in the region
6. Fluency in Spanish