

CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investments in ABBank (#29745, #40081) and VietinBank (#28509, #31300,
#34124) and Issues Raised in Cambodia**

June 2022

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

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the IFC and MIGA Boards of Executive Directors. CAO's mandate is to facilitate the resolution of complaints from people who may be affected by IFC and MIGA projects in a manner that is fair, objective, and constructive; enhance the environmental and social outcomes of projects; and foster public accountability and learning to enhance the environmental and social performance of IFC/MIGA and reduce the risk of harm to people and the environment.

For more information, see www.cao-ombudsman.org

CONTENTS

- 1. SUMMARY.....1
- 2. BACKGROUND.....1
 - 2.1 The Projects1
 - 2.2 The Complaint.....2
- 3. ASSESSMENT SUMMARY.....3
 - 3.1 Methodology.....3
 - 3.2 Summary of Views3
- 4. ASSESSMENT OUTCOME AND NEXT STEPS.....5
- ANNEX A. CAO COMPLAINT-HANDLING PROCESS.....1

ACRONYMS

ABBank	An Binh Commercial Joint Stock Bank
CAO	Office of the Compliance Advisor Ombudsman
EVN	Vietnam Electricity
EVNI	EVN International Joint Stock Company
FI	financial intermediary
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
SMEs	small and medium enterprises
VietinBank	Vietnam Joint Stock Commercial Bank for Industry and Trade

1. SUMMARY

In June 2018, CAO received three separate complaints filed on behalf of communities (the “Complainants”) located in Stung Treng and Ratanakiri Provinces, Cambodia. The complaints relate to the 400-megawatt (MW) Lower Sesan 2 hydropower project on the Sesan River in Steung Treng Province. The company operating the project (“project operator”) is a joint venture of the Chinese firm, Hydrolancang International Energy Co. Ltd.; the Cambodian conglomerate, Royal Group; and EVN International Joint Stock Company (EVNI), an affiliate of the Vietnamese utility company Vietnam Electricity (EVN), which owns 10 percent of the project company.

The complaint raised a range of environmental and social impacts related to the Lower Sesan 2 project, including related to community resettlement, impacts on livelihoods, threats against community members opposing the project, damage to socioculturally significant sites such as ancestral graves and spiritual forests, and impacts on the fish population of the Mekong, Sesan, and Srepok Basins. The Complainants asserted that the International Finance Corporation (IFC) was exposed to the project through financial intermediary (FI) investments in ABBank and VietinBank. In July 2018, CAO found the complaint eligible in relation to IFC’s investments in these two FIs and their indirect exposure to the dam via ABBank’s minority investment in EVNI and VietinBank’s financing to EVN. ABBank and VietinBank disagree with CAO’s eligibility decision in accepting the complaint for assessment and assert that they have no exposure to the Lower Sesan Dam 2 project. The complaints also alleged that IFC was exposed to the project via a third banking client. However, CAO determined that the nature of IFC’s investment in that client could not have provided exposure to the project.

Given the overlap of issues between the three complaints, CAO conducted a single assessment process with the agreement of the Complainants. During the assessment, the Complainants indicated their preference to engage in a dispute resolution process to seek mutually acceptable solutions to their concerns. However, the Lower Sesan 2 project operator communicated that, in their view, the environmental and social aspects of the project are a government concern, and accordingly they declined to participate in the dispute resolution process. In accordance with CAO’s Operational Guidelines and the transitional arrangements under the new CAO Policy, the complaint is being referred to CAO’s Compliance function for an appraisal of IFC’s environmental and social performance.¹

2. BACKGROUND

2.1 The Projects

IFC has an active equity investment in ABBank, a commercial bank in Vietnam, comprising an equivalent in Vietnamese dong (D) of US\$40.6 million quasi-equity and a \$28.5 million A loan (Project Nos. 29745 and 40081, respectively). The investment proposed to forge a long-term partnership between IFC and the bank by providing long-term financing to grow its loan

¹ This CAO assessment was conducted under the 2013 Operational Guidelines and pursuant to Section 2.3, which states: “Following a CAO assessment process, if there is no agreement to undertake CAO-facilitated dispute resolution, the complaint will proceed to the CAO Compliance role.” On July 1, 2021, the IFC and MIGA Boards of Executive Directors adopted a new [IFC/MIGA Independent Accountability Mechanism \(CAO\) Policy](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf) (“CAO Policy”), which responded to the recommendations of the 2020 *External Review of IFC/MIGA’s Accountability, including CAO’s Role and Effectiveness* (External Review). The implementation of the new CAO Policy includes transitional arrangements for CAO cases that predate the Policy. For more information, please refer to: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf>. Paragraph 59 of the new CAO Policy also states that “If both Parties agree to undertake dispute resolution, CAO will facilitate this process. If there is no agreement, the complaint will proceed to CAO’s Compliance function.”

portfolio with a focus on small and medium enterprises (SMEs) and women-owned SMEs, and allow the bank to maintain a healthy capital adequacy ratio.

IFC, jointly with the IFC Capitalization (Equity) Fund and IFC Capitalization (Sub-debt) Fund (together the “Cap Fund”), also had an equity investment in state-owned VietinBank of up to the equivalent in Vietnamese dong of \$169.6 million (Project Nos. 28509, 31300, and 34124),² of which IFC’s account amount was \$55.6 million. At the same time, the Cap Fund provided a subordinated debt of \$125 million to the bank. This investment was expected to help enable the bank to emerge as the country’s premier SME and retail bank, as well as support the government of Vietnam’s privatization plan for the institution. Both IFC and the Cap Fund fully exited this investment in May 2021, and currently hold no shares of VietinBank.

Based on information available to CAO and CAO’s eligibility criteria for complaints related to IFC financial intermediary investments³, CAO found IFC to be indirectly exposed to the Lower Sesan 2 Dam project via its investments in the two banks, specifically via ABBank’s minority investment in EVNI and VietinBank’s financing to EVN. However, both banks and IFC assert that they have no exposure to the project and disagree with CAO’s eligibility decision.

2.2 The Complaint

The three complaints received by CAO in June 2018 were filed by three separate groups of villagers, raising environmental and social concerns regarding the Lower Sesan 2 Dam project. The complaints were submitted to CAO by three international NGOs—International Rivers, International Accountability Project, and Mekong Watch—with the Complainants’ consent. The Complainants requested that CAO keep their identities confidential.

The complaints raised distinct sets of concerns related to each of the three affected communities by the Lower Sesan 2 Dam project. The Complainants, who were resettled because of the project, claimed to have faced significant social impacts, including in relation to lack of adequate consultation and compensation, as well as poor-quality infrastructure and lack of access to livelihoods at the provided relocation sites. As a result of being relocated away from their homes, they also claim to have lost access to their spiritual and sacred sites, which are an integral part of their traditional lifestyle. The Complainants who refused to relocate claim that their land security and livelihoods were negatively impacted by the project due to the lack of compensation for the loss of their land and homes, which were submerged after the operation of the dam. Furthermore, the complaint mentions upstream impacts on the fish population in the Sesan, Srepok, and Mekong Basins, loss of livelihoods, increased vulnerability to flooding, and intimidation against the community members opposing the project.

In July 2018, CAO found the complaints eligible⁴ and initiated an assessment. While the complaints met CAO’s eligibility criteria, CAO does not make a judgment on the merits of the issues raised in the complaints during the eligibility or assessment phases nor does the

² IFC Project Nos. 31300 and 34124 are equity rights issues. IFC does not typically disclose follow-on investments made with the same purpose.

³ See CAO Policy, 41a, <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>

⁴ In finding the complaints eligible, CAO reviewed: (1) IFC’s exposure to each FI; and (2) the FIs’ exposure to the Lower Sesan 2 project. Based on information available to CAO, in relation to (1), IFC’s equity investments in ABBank and VietinBank provided IFC general exposure to the entire portfolio of each FI. In relation to (2), ABBank’s investment in EVNI indicates exposure to the project beginning in September 2007, when ABBank participated as a founding minority shareholder of EVNI. It should be noted that VietinBank has informed CAO that it has not provided any financing to EVNI, and that all its financings to EVN were limited to projects located in Vietnam.

assessment of the complaints imply any wrongdoing on the part of IFC and its clients or sub-clients.

The issues raised by the Complainants and IFC's clients/sub-clients (the "Parties") during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1 Methodology

CAO's assessment aims to gain a better understanding of the issues and concerns raised in the complaint through discussions with the Complainants, IFC client and/or sub-clients, and other relevant stakeholders. CAO explains the options available to the Parties and helps them determine whether they wish to initiate a CAO dispute resolution or compliance process to address the complaint.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and in-person meetings with the Complainants and the nongovernmental organizations (NGOs) supporting them;
- telephone conversations with representatives of the IFC client banks;
- correspondence and in-person meetings with government representatives in Cambodia; and
- telephone conversations and in-person meetings with IFC's project teams.

After initiating the assessment in 2018, CAO extended the assessment period in January 2019 given the need to establish contact with the Lower Sesan 2 company and government counterparts, whose views were deemed relevant. Due to the COVID-19 pandemic and restriction of travel after March 2020, CAO extended the assessment period again until January 2021. At the request of the Complainants, CAO further extended the assessment period through January 2022 in the interest of ensuring that the potential for dispute resolution was fully explored with all Parties concerned.

3.2 Summary of Views

This section presents a broad overview of the issues and perspectives expressed by the Parties during CAO's assessment.

Complainants' perspective

The complaints highlight impacts on three separate groups of villagers residing downstream and upstream of the Lower Sesan 2 Dam project. Many members of these groups identify as Indigenous people or ethnic minorities. Due to concerns about reprisals for speaking up about

the project, the three communities requested that their members' identities not be disclosed by CAO.⁵ With respect to their request, the communities prefer to be referred to as:

- a. Villagers resettled from Old Kbal Romeas Village;
- b. Villagers from Old Kbal Romeas and Old Srekor; and
- c. Villagers from Taveng, Lumpath, Kounmom, Angdong Meas, and Veun Sai Districts, Ratanakiri Province, located along Sesan and Srepok Rivers upstream of the Lower Sesan 2.

The villagers resettled from Old Kbal Romeas Village were permanently relocated due to the project and explained to CAO that they felt that the infrastructure provided to the people at the relocation site is inadequate. They said living conditions at the resettlement site are challenging and not in accordance with prior verbal promises made by local government officials. Concerns related to the poor infrastructure of the relocation site include materials of allegedly low quality used for the housing units, which makes them prone to structural instability and damage, and lack of a properly working sewage system. Furthermore, the Complainants cite insufficient availability of clean water found in the wells provided at the site, especially in the dry season, and the poor quality of the water, which makes it unsuitable for drinking and cooking. They also allege that the health centers at the relocation site do not have enough capacity to provide quality care to the sick, especially in the case of serious illness. They further claim that they were not provided livelihood restoration programs and support, including for irrigation and plowing of farmland, and that the available farmland does not include planted trees or space to raise animals. They expressed additional concerns to CAO about the lack of transparency and participation in decision-making regarding the land allocation.

The villagers from Old Kbal Romeas and Old Srekor comprise a group who had refused to resettle and leave their homes and livelihoods due to the project. The Old Kbal Romeas villagers identify as Indigenous people and seek to protect their cultural identity and sacred sites. The Old Srekor villagers complain that they lack basic infrastructure and sufficient land to farm as a result of flooding, which they attribute to the project and for which they would like to claim compensation. These communities explained to CAO that they had observed a significant decline in the fish population in the area, which is a major natural resource they rely upon for their livelihoods. They use the fish both for personal consumption and for income generation by selling it at the local markets along with agricultural and other nontimber forest products.

The villagers from Taveng, Lumpath, Kounmom, Angdong Meas, and Veun Sai Districts, Ratanakiri Province, located along Sesan and Srepok Rivers upstream of the Lower Sesan 2 explained to CAO that the project has caused water fluctuations that have decreased the fish population in the Sesan and Srepok Rivers, which constitutes a source of nutrition and livelihood for the communities. These villagers also reported that their agricultural production, riverbank gardening, boats, and livestock have been adversely affected by the water fluctuations.

All three groups sought to engage in a dispute resolution process facilitated by CAO to find mutually acceptable solutions to resolve their concerns. The members of the Old Kbal Romeas Village that were resettled hoped to find solutions relating to conditions at their resettlement site, including access to clean water and electricity, and support in transitioning to new livelihoods. The members of Old Kbal Romeas and Old Srekor Villages, which refused relocation, hoped to engage with the project operator and relevant government agents in a

⁵ In response to the allegations of threats and reprisals raised by the Complainants, CAO conducted its assessment in accordance with the principles of the CAO's *Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations*. See www.cao-ombudsman.org/about-us/approach-reprisals. CAO concluded that the risk of threats and reprisals existed and consulted with the Complainants to discuss appropriate measures to protect their identities and mitigate the risk in the context of CAO's assessment.

collaborative process to seek solutions related to their traditional livelihoods, and their safety both living on, and using, the land near their village and the dam project. The villages along Sesan and Srepok Rivers upstream of the Lower Sesan 2 project located in Taveng, Lumpath, Kounmom, Angdong Meas, and Veun Sai Districts, Ratanakiri Province want to receive more information about possible environmental and social impacts of the project and its emergency response plan should something adverse happen at the project site. They also hope to be compensated for their livelihood loss due to declining fish stocks.

Notwithstanding the request for confidentiality, the Complainants expressed strong interest in engaging with the project operator in a dispute resolution process facilitated by CAO to try and resolve their issues.

Clients/Sub-clients' perspective

IFC and its FI clients have contested their exposure to the Lower Sesan 2 Dam project. ABBank asserted that its minority equity exposure to EVNI predates IFC's investment in the bank. VietinBank contested CAO's determination that it was exposed to the Lower Sesan 2 project at the time the complaint was received, affirming that it does not provide financing to EVN outside the territory of Vietnam.

During the assessment, CAO had conversations with both of IFC's FI clients, as well as with their sub-client, EVN. With the facilitation of EVNI, CAO was informed that, from the perspective of the Lower Sesan 2 project operator, the Cambodian government is better placed to deal with the environmental and social impacts of the project in the context of a CAO dispute resolution process. Despite multiple attempts to contact the Lower Sesan 2 project operator, CAO was not able to have a conversation with them about the complaint. As CAO did not receive any indication from IFC's FI clients or the Cambodian government of their interest in engaging in dialogue with the Complainants, CAO determined that the necessary consensus among the relevant Parties to initiate a dispute resolution process was not reached in this case.

4. ASSESSMENT OUTCOME AND NEXT STEPS

The outcome of a CAO assessment determines whether a complaint is transferred to CAO's Dispute Resolution or Compliance function. While the Complainants sought to engage in a dispute resolution process convened by CAO, neither the IFC clients nor the project operator wished to be involved in the process. As there was no consensus by the Parties to participate voluntarily in a dispute resolution process, the case is being referred to CAO's Compliance function in accordance with CAO's Policy. The Compliance appraisal will determine whether further investigation of IFC's performance is warranted or whether CAO closes the case. The annex provides additional information clarifying the different steps of the compliance process.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. 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; and (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,¹ 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.²

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 Complainant 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

¹ 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>

² 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.

whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth 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**

