



CAO ASSESSMENT REPORT

Complaint regarding IFC investment in Real LRIF (Project #31458)

Cobán, Guatemala

June 2015

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

About the 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), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

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

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
COCODES	Concejos Comunitarios de Desarrollo (Community Development Councils)
EIA	Environmental Impact Assessment
EPC	Engineering, Procurement and Construction
ESAP	Environmental and Social Action Plan
FMO	Development Finance Institution of Holland
HSR	Hidroeléctrica Santa Rita S.A.
IFC	International Finance Corporation
LRIF	Latin Renewables Infrastructure Fund, L.P.
MIGA	Multilateral Investment Guarantee Agency
SEMS	Social and Environmental Management System

1. OVERVIEW

In October 2014, CAO received a complaint from several community groups residing in close proximity to a proposed hydropower project in Coban, Guatemala. The Santa Rita project (the “project”) is financed by an IFC-backed private equity fund. CAO’s assessment concluded with the complainants’ decision that the complaint be handled by CAO’s Compliance function for appraisal of the environmental and social performance of IFC at the project level. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the perspectives, outcomes and next steps.

2. BACKGROUND

2.1 The Project

According to IFC, IFC has an active investment in Latin Renewables Infrastructure Fund, L.P. (LRIF or the “fund”), a ten-year closed-end private equity fund set up to invest in eight to twelve infrastructure projects in the renewable power and energy efficiency sectors of Latin America and the Caribbean. LRIF was seeking to raise up to US\$150 million and IFC’s investment is in the form of a \$15 million equity, which was approved and invested in mid-2012. The fund is managed by Real Infrastructure Capital Partners, a New York-based fund manager that was established in 2010.

As stated in IFC’s disclosure webpage, the Fund has invested in the Santa Rita Hydroelectric Power Plant located on the Icbolay River in Alta Verapaz, which will be operated by Hidroeléctrica Santa Rita S.A. (HSR or the “company”).¹ As described by IFC, the project is a 23 megawatt (MW) run-of-the-river hydroelectric power plant.

The project, according to LRIF and HSR, is a small-scale project located on private land that is not suitable for housing or agriculture. As stated by LRIF and HSR the project has an estimated nominal electrical generating capacity of 23.2 MW consistent with IFC information as well as the project’s environmental license. Hydroelectric projects are optimized in final design and construction to maximize the production capability within the limits of the basic design and permits. The basic design is fixed, therefore the exact maximum instantaneous electrical output of the project has no correlation with any environmental or social concern.

As indicated by LRIF almost 50% of the equity of HSR is owned by the Development Finance Institution of Holland (FMO) and they have been involved in providing guidance on environmental and social issues.

¹See:

<http://ifcextapps.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/9fe5b2aa8d02b3cf852579d006ad393?opendocument>. Accessed 3.27.2015

2.2 The Complaint

The complaint was submitted by two Guatemalan organizations, Colectivo Madre Selva and the Consejo de Pueblos de Tezulutlan, on behalf of several community members downstream and upstream of the project. The complaint raises concerns regarding a range of environmental and social issues related to IFC's due diligence, project information disclosure and consultation, potential impacts to local water sources, displacement, indigenous people, and security concerns. The complainants have requested that their individual names remain confidential.

3. ASSESSMENT PROCESS

3.1 Methodology

The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how relevant stakeholders see the situation, and to determine whether the complainants, the fund and the company would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or whether the complaint should be handled by CAO Compliance for appraisal of IFC's performance (see Annex A for CAO's complaint handling process). CAO does not gather information during assessment to make a judgment on the merits of the complaint.

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

- A review of IFC project documentation, as well as documentation presented by the fund, the company and the complainants;
- Meetings with the community members that filed the complaint and their leaders;
- Meetings with local and national NGOs that support the complainants;
- Meetings with representatives of the Fund as well as with the company;
- Meetings with community members that support the project and their leaders;
- Discussions with the IFC project team; and
- Visits to several communities living in the project area.

3.2 Summary of Perspectives

As a result of a series of meetings and review of documentation, the CAO found divergent views about environmental and social impacts of the project, benefit sharing, consultation process, and structural issues. These views are summarized in the table below.

PERSPECTIVES ABOUT ISSUES RAISED IN COMPLAINT

	Complainants and civil society supporting the complaint	LRIF/HSR	Community representatives supporting the project
Environmental Impacts	<p>The complainants fear the following impacts from the project: (1) Contamination of local waters because of human waste, and grease/oils from machinery resulting in health impacts; (2) drying up of the river; and (3) general concerns about impacts to the environment (landscape, flora, fauna).</p> <p>Additionally, the NGOs state that the project includes a dam and a reservoir and will thus have bigger impacts on water availability than those described in the EIA for construction and operation phases. They also indicate information is lacking about the size of the project, and its technical feasibility, and that the EIA relies heavily on company information and resources due to constrained capacity on the government side. They express concern about the cumulative impact of the project when considered along other hydropower developments in the same river system.</p>	<p>From the LRIF and HSR's point of view, Santa Rita is a small-scale run-of-river project located on private land that has minimal environmental impacts and potential for significant community benefits. Impacts will be temporary, can be mitigated, and will happen mostly during the construction phase. According to LRIF and HSR studies indicate that the project would have no material impact on: 1) potable and bathing water supply; 2) transportation (the river is not used for transportation); 3) irrigation (irrigation is extremely limited); or 4) recreation.</p> <p>LRIF and HRS believe that they have operated rigorously under the guidance of IFC's Performance Standard 1 with respect to both environmental and social risk assessment and management. They indicate that the Environmental and Social Action Plan (ESAP) of the project as well as HRS's Social and Environmental Management System reflect that. They also believe that they have met Performance Standard 3, since national laws and permitting requirements were carefully followed and in their view additional effort was made far and beyond the Guatemalan requirements.</p> <p>LRIF and HRS state that the project has no known negative impacts on biodiversity, and Performance Standard 6 has been fully followed by the project. They state that the reforestation and preservation project on land near the project is a major benefit to biodiversity. They argue that the damage to the area has been done by outsiders due to indiscriminate cutting of trees and burning of vegetation.</p>	<p>They claim to have received project information directly from the company, gathered additional data from independent sources, and visited other projects. They believe it will not have severe environmental impacts, like water contamination or biodiversity loss. They observe that those who lead the opposition to the project are located upstream from the project site while most of the communities who live downstream and would be negatively impacted are not concerned.</p>

PERSPECTIVES ABOUT ISSUES RAISED IN COMPLAINT

	Complainants and civil society supporting the complaint	LRIF/HSR	Community representatives supporting the project
Social Impacts	<p>The complainants perceive the project as one that has created sharp divisions in communities that were not at odds with each other and has created an atmosphere of distrust. They also report that their opposition to the project has been met with violence, repression by police forces, and criminalization of their leaders, particularly through the issuance of arrest warrants that make it hard for them to move around freely, and have access to health, economic income or other resources.</p> <p>They highlighted violent incidents that resulted in deaths of two men and two children in Monte Olivo and accuse HSR and a landowner who sold part of his land to the project of playing a significant role in these incidents.</p> <p>The NGOs indicate the negative impacts outbalance the positive benefits. They state jobs created during construction time will be lost as soon as operation begins and do not compensate for the lack of respect and prior free and informed consultation, community division and violence described by the complainants.</p>	<p>LRIF and HSR believe the project will be beneficial for communities in terms of job creation and community development projects. HSR has committed to fund a foundation for economic and social development projects in the communities for a decade to come. They state community division and violence have been generated and exacerbated by national and international NGOs that are foreign to the area and who have a political agenda to block hydroelectric projects in Guatemala, regardless of the needs and safety of the communities. They report that other similar projects are facing the same kind of opposition as a result of their campaigns. According to LRIF and HSR, these groups actively play a role in threatening those who support the project, blocking access or passage to other community members and company representatives, and inciting acts of violence. With regards to the death of the two children in Monte Olivo, they affirm their companies were not involved, the person who community members claim is responsible was captured and killed by community members, and that this event is currently under investigation by Guatemalan authorities.</p> <p>LRIF and HSR indicate that project has no negative impact on Indigenous People as indigenous communities and traditional ways of life are not impacted by the project. The private land where the project is to be built is a flood area which is naturally underwater most of the year. Hence, no productive land would be impacted nor displacement of people would take place.</p> <p>The companies state that they have followed Performance Standard 2, and all workers have been fully and properly paid, and no incident has been provoked by the workers. They believe that interviews with the more than 100 community members who had jobs with the contractor would demonstrate this.</p> <p>LRIF and HSR indicate that both Performance Standard 4 and 5 have been followed. They believe that the ESAP and the Social and Environmental Management System (SEMS) as well as annexes of the Engineering, Procurement and Construction (EPC) agreement would reflect how they paid close attention to community health, safety and security aspects of the project. Regarding Performance Standard 5 they indicate that nobody has been or would be displaced physically or economically by the project.</p>	<p>They indicate community divisions have been fuelled by external organisations that mislead and use a small minority of community members, even bringing people who are not from the community nor from the region. According to them, these groups use coercive or violent actions against those who favour the project, blocking roads or access to resources, impeding them from selling their crops, issuing death threats, and harassing them. They express that they and their families live in a state of fear and repression. They say that the leaders from these organizations call themselves defenders of indigenous people to access international grants that only benefit their organizations.</p>

PERSPECTIVES ABOUT ISSUES RAISED IN COMPLAINT

	Complainants and civil society supporting the complaint	LRIF/HSR	Community representatives supporting the project
Benefit Sharing	<p>The complainants couch their concerns in terms of not benefitting adequately from the use of their land, water and environment. They portray the project as one that benefits wealthy, external actors and does not contemplate significant development opportunities for or participation of the local communities. Several community members expressed not being against the project per se, but they do not believe they are benefitting or being included appropriately.</p> <p>The NGOs characterize the project as part of a pattern of capitalism, discrimination and exclusion in Guatemala. According to them, Guatemala's demand for energy is covered and hydroelectric projects are forced on communities only to export electricity for the benefit of the private sector and politicians. They indicate this will leave most Guatemalan water resources in the private hands of a few, following the trends seen with land. NGOs express that communities are left with the burden of social and environmental impacts and do not receive electricity, because legislation does not allow for generating companies to play a role in electricity distribution, nor they receive long term benefits.</p>	<p>LRIF and HSR state the agreement signed with community representatives responds to long-term priorities defined by the communities and offers twice the amount of benefits than other hydroelectric projects in relation to project size. Since community needs exceed the benefits the project can provide, they state they have started talks to leverage funding from other development cooperation institutions. However, this has been interrupted due to the violence instigated by external groups. They agree that it would be good to be able to provide electricity to the community but Guatemalan law does not allow this kind of arrangement.</p>	<p>They support the project because they believe it will bring concrete and important benefits to the communities they have not been able to get from public institutions or NGOs, such as jobs, road improvements, better drinking water, community projects, improvements in local education and health infrastructure and facilities. They state these commitments are enshrined in the agreements signed with the company freely and in representation of the majority of the communities. They are concerned all these benefits will be lost if the project does not materialize and say external organizations opposing the project will not fill the void or take care of the communities' needs.</p>

PERSPECTIVES ABOUT ISSUES RAISED IN COMPLAINT

	Complainants and civil society supporting the complaint	LRIF/HSR	Community representatives supporting the project
Consultation Process	<p>The complainants indicate that the government or company should have obtained the communities' consent prior to project operations and contend that consultation and information sharing were not adequate from the beginning of the project. They believe that the local organization hired by the original project proponent resorted to non-transparent, patronizing, and divisive tactics to win the favour of community leaders. They report that a decision to reject the project was made by the communities in July 2010 and communicated to the government, the company and the local organization.</p> <p>The complainants also question the company's interactions and agreement with the communities' Community Development Councils representatives (COCODES) - they are the most local level of elected representation recognized by Guatemalan law. The complainants believe that the COCODES were artificially set up, do not represent the entire community and have been bought off.</p> <p>The NGOs expressed that in their view the government and the company are trying to impose the project on the community. They emphasize the consultation process was inadequate from the beginning and resulted in the communities' July 2010 decision to reject the project. They argue that the company's negotiation with the COCODES falls into a known and widely-used strategy to divide communities by disregarding the truly legitimate and representative indigenous authorities. The NGOs also express concern about the COCODES that were vested one month before signing of the agreement and the openness and credibility of the dialogue process established by the Government.</p>	<p>LRIF and HSR state that they have done a lot of work in avoiding and preventing violence, and that they have provided all possible opportunities in their view for those opposing the project to be consulted and to participate, and according to LRIF and HSR, they have chosen not to engage.</p> <p>LRIF and HSR indicated that when they invested in the project in 2012, they chose to engage directly with the elected and legally constituted local community representatives - the COCODES (rather than through a local community relations organization).</p> <p>They report that an intensive documented process of community outreach was carried out beginning in 2009 and continuing until the present day. Meetings were held, social programs were conducted (including the construction of a school and other such projects). Until 2013 these meetings took place in the communities, and all citizens had access. After 2013 due to violence against the COCODES the meetings were moved to the city of Coban, in spite of the huge burden for the people to make the trip to Coban, the meetings attract the leadership of 14-16 of the 18 communities on a weekly basis.</p> <p>LRIF and HSR reported that the agreement they reached with the COCODES was a result of a dialogue process under the auspices of the President of Guatemala and with participation of the Ministries of Energy and Government. They contend, however, these efforts have been severely hampered by the ongoing security situation and externally driven opposition to the project, which has obstructed access to the area to provide information about the project to the community at large.</p>	<p>They say that initial consultations by original project proponents did not generate trust in the project and among the community members. According to them, LRIF/HSR resumed talks in 2013 in a more respectful and transparent manner, under the auspices of the highest levels of government. They say these talks were held outside of the area because of the fear of retaliation from opposition groups but they kept their constituencies informed about progress. As a result of this dialogue process, the COCODES say they entered freely into an agreement where the project invests in community development projects that will address long-term needs.</p> <p>They express that they would like these organizations to leave the communities because they bring misinformation, confusion, and they say to defend the rights' of indigenous people, without effectively protecting the rights' of the indigenous communities.</p>

PERSPECTIVES ABOUT ISSUES RAISED IN COMPLAINT

	Complainants and civil society supporting the complaint	LRIF/HSR	Community representatives supporting the project
Resolution to the concerns	<p>Most community members expressed their desire for peace, a change in the current situation, or a resolution of the current problems. Many expressed a desire for IFC project financing to stop but understood that stopping financing is not within CAO's mandate. After all the violent events including the loss of lives, they do not deem it possible to engage in dialogue with HSR. They believe dialogue should happen with government authorities to which they assign responsibility for creating this conflict. They decided to request the complaint be addressed by CAO's Compliance function.</p> <p>Although NGOs indicate it is difficult to create conditions for a dialogue process with LRIF/HSR, they state they will support whatever decision the complainants make regarding CAO.</p>	<p>LRIF and HSR report having made several attempts to hold meetings with opposing groups to share information about the project and discuss their concerns but these invitations have never been accepted by the opposing groups to participate on the weekly meetings between the company and community representatives.</p> <p>They would like to have a chance to present the project to them, listen to their concerns, ask what needs they may have, and engage in a conversation to address them.</p>	<p>They would like to hold conversations with those who oppose the project to understand what they want and find ways to come to an agreement for the project to proceed.</p>

3.3 Outcome and Next Steps

LRIF and HSR indicated their willingness to participate in a CAO-convened dispute resolution process, with an idea that the details of the process would be discussed and agreed jointly. After internal deliberation, the complainants informed CAO that they would like to see the complaint being addressed through CAO's Compliance function. Therefore, given the voluntary principle that guides CAO's dispute resolution processes and in accordance with CAO's Operational Guidelines, the complaint will be handled by CAO's Compliance function for appraisal of the environmental and social performance of IFC at the project level.

Annex A. CAO Complaints Handling Process

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) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; 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.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** Assessment of the issues and provide 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 120 working days.

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 or initiated by a Memorandum of Understanding and/or a 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 goal. 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 affected³.

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ 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 closed the complaint and transferred it to CAO Compliance for appraisal.

and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion**/Case closure