



May 11, 2018  
Office of the Compliance Advisor Ombudsman (CAO)

---

## COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Alto Maipo, Chile (IFC Project #31632)*

*Complaints 01 and 02*

---

The Alto Maipo project involves the construction of a 531 MW hydroelectric project with an estimated output of 2,100 GWh per year. The project is located approximately 50 km southeast of Santiago, Chile, in the Maipo River Basin area. Underground infrastructure includes powerhouses, siphons, access tunnels and water conveyance systems, including a total of 67 km of tunnels. Surface infrastructure includes intakes, delivery canals, forebay structures, a new electrical substation, new bridges, access roads and 17 km of transmission lines. Construction of the project was expected to take five years.

IFC approved a loan of up to US\$150 million to Alto Maipo SpA, the project developer. Alto Maipo SpA is a subsidiary of AES Gener S.A., the second largest electricity generator in Chile. The loan is part of a US\$1.2 billion debt package with parallel financing provided by a syndicate of multilateral and bilateral development banks (Inter-American Development Bank (IADB), Overseas Private Investment Corporation (OPIC), and KfW) and commercial banks (Banco de Credito e Inversiones, Banco del Estado de Chile, DNB, and Itaú). A restructuring of the loan was negotiated in 2017 as project cost projections increased to \$2.5 billion.<sup>1</sup>

In January 2017, CAO received a complaint from two non-governmental organizations (NGOs), the *Coordinadora Ciudadana No Alto Maipo* and *Ecosistemas* on behalf of community members in the Municipality of San José de Maipo (the “Alto Maipo-01 complaint”). The complainants allege adverse E&S impacts and increased risks of such impacts from the project on community health, safety, livelihoods, environment and cultural heritage, principally due to tunnel works and water diversion. The complainants claim that the client failed to adequately assess project impacts in accordance with IFC requirements, including those on disclosure and consultation.

A second complaint in relation to the project was filed by an individual in June 2017 (the “Alto Maipo-02 complaint”). The Alto Maipo-02 complainant worked with the AES Gener Foundation from 2008 to 2017. The AES Gener Foundation is a not-for-profit organization established by AES Gener to support community development activities. The Alto Maipo-02 complainant alleges that she was sexually harassed by a colleague from AES Gener, and unfairly dismissed in March 2017 after she lodged complaints through the company’s internal grievance mechanisms.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs

---

<sup>1</sup> See La Tercera, “AES Gener sella fondos para Alto Maipo y costo sube a US\$ 2.500 mills” - <https://goo.gl/E8D9qt>; and AES Gener, Reporting to the *Superintendencia de Valores y Seguros* (Chilean Financial Markets Supervision Authority), March 17, 2017 - <https://goo.gl/wzG7sP>

factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

This appraisal outlines IFC's approach to environmental and social review and supervision of the project. CAO acknowledges measures taken by IFC at appraisal and during supervision to ensure project compliance with its E&S requirements. This included review by IFC staff, collaboration with the other lenders, and work with a third-party consultancy responsible for reviewing and monitoring the client's compliance with the ESAP and other lender requirements.

While acknowledging the work of IFC and the other lenders in reviewing and supervising E&S aspects of the project, CAO finds that a compliance investigation is warranted in relation to the Alto Maipo-01 complaint. In reaching this conclusion, CAO has considered a number of issues. Firstly, CAO notes that this is a category A project, which by definition has potential significant environmental and social risks and impacts. Secondly, CAO notes that the complaint raises a range of issues regarding project impacts that are serious in nature, and require further expert review. Thirdly, CAO notes that, as part of the regulatory supervision process in Chile, the national environmental authority has raised a number of concerns about project impacts that are aligned with those raised by the complainants.

CAO notes, that the signatories of the complaint do not include workers employed by the client or contractors of the project. Therefore, CAO has decided to exclude issues raised in the Alto Maipo-01 complaint regarding labor and working conditions.

Relevant to the Alto Maipo-02 complaint, CAO has generally not initiated compliance investigations in response to individual employment related disputes. In this case, however, IFC project documentation indicates concerns regarding other allegations of sexual harassment, at the level of the company and contractors, in addition those brought by the complainant. While IFC has raised the issue of how to handle these allegations with the client, CAO is unclear as to the adequacy of the advice provided. In particular, CAO has questions as to IFC's application of requirements that the "client will take measures to prevent and address harassment, intimidation, and/or exploitation, especially in regard to women" (PS2, para. 15). Given the issues raised by the complainant, CAO also has questions as to the application of PS2 requirements regarding the handling of worker grievances (para. 20). As a result, CAO will conduct a compliance investigation in relation to the issues raised in the Alto Maipo-02 complaint.

Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

## About CAO

The Office of the Compliance Advisor Ombudsman (CAO) 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 lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social performance of IFC and MIGA. CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

### About CAO's Compliance Function

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving environmental and social (E&S) performance of the institutions. The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management. Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.<sup>2</sup>

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

---

<sup>2</sup> CAO Operational Guidelines, 2013, para. 4.4.6

## Table of Contents

Acronyms .....	5
I. Overview of the Compliance Appraisal Process.....	6
II. Background .....	7
Investment.....	7
Complaints and Company's Perspective.....	7
III. IFC's Pre-Investment Review and Supervision of the Project .....	9
IFC Policy Framework and General Requirements.....	9
Pre-investment environmental and social review .....	9
Project supervision .....	12
IV. CAO Decision .....	14
Annex 1 – Project Timeline .....	16
Annex 2 – Summary of complaint issues: Alto Maipo-01.....	18

## Acronyms

Acronym	Definition
BCS	Broad Community Support
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
EPRP	Emergency Preparedness and Response Plan
ERM	Environmental Resources Management, Inc.
ESAP	Environmental and Social Action Plan
ESHS	Environmental, Social, Health and Safety
ESIA	Environmental and Social Impact Assessment
ESRS	Environmental and Social Review Summary
GWh	Gigawatt-hour
IADB	Inter-American Development Bank
IAM	Independent Accountability Mechanism
IFC	International Finance Corporation
MICI	Independent Mechanism for Consultation and Investigation
MIGA	Multilateral Investment Guarantee Agency
MW	Megawatt
NGO	Non-Governmental Organization
OPIC	Overseas Private Investment Corporation
PHAM	Alto Maipo Hydroelectric Project
SMA	Chilean Environmental Authority

## I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. 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.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### Investment

On October 24, 2013, the Board of Directors of the International Finance Corporation (IFC) approved a loan of up to US\$150 million to Alto Maipo SpA (“the client”), a subsidiary of AES Gener S.A, the second largest electricity generator in Chile (“the project sponsor”).

The loan proceeds were expected be used to construct the 531MW Alto Maipo hydroelectric project with an estimated output of 2,100GWh per year. It is comprised of two integrated run-of-the-river power plants: (i) Alfalfal II (264MW) and (ii) Las Lajas (267MW) and related interconnection assets and transmission lines (collectively referred to as “the project” or “Alto Maipo”). The project is located approximately 50km southeast of Santiago in the Maipo River Basin area.<sup>3</sup>

Underground facilities will include powerhouses, siphons, access tunnels and water conveyance systems, including a total of 67km of tunnels. Surface infrastructure will include intakes, delivery canals, forebay structures, a new electrical substation, new bridges, access roads and 17km of transmission lines. Construction of the project was expected to take five years.<sup>4</sup>

The loan is part of a US\$1.2 billion debt package with parallel financing provided by a syndicate of multilateral and bilateral development banks (Inter-American Development Bank (IADB), Overseas Private Investment Corporation (OPIC), and KfW) and commercial banks (Banco de Credito e Inversiones, Banco del Estado de Chile, DNB, and Itaú).<sup>5</sup> In late 2016, the company notified the lenders that the project was experiencing large cost overrun as a result of ongoing construction difficulties. A restructuring of the loan was negotiated in 2017 as cost projections were raised to \$2.5 billion.<sup>6</sup> IFC’s latest disbursement was carried out in March 2017.

### Complaints and Company’s Perspective

#### ***Alto Maipo-01 complaint***

In January 2017, CAO received a complaint submitted by two non-governmental organizations (NGOs), the *Coordinadora Ciudadana No Alto Maipo* and *Ecosistemas* on behalf of community members in the Municipality of San José de Maipo (the “Alto Maipo-01 complaint”).<sup>7</sup> The signatories to the complaint are community members living in the area of influence of the project. CAO’s Assessment team has met with the signatories, as well as other community members who claimed to be impacted by the project, during a field visit in 2017. The complainants allege breaches of IFC Performance Standards 1, 2, 3, 4, 5, 6 and 8. They allege adverse E&S impacts and increased risks of such impacts from the project on community health, safety, livelihoods, environment and cultural heritage, principally due to tunnel works and water diversion. In addition, the complainants claim that the client failed to adequately evaluate the full set of project impacts in accordance with IFC policy and ensure adequate disclosure and stakeholder engagement. The complaint provides significant detail in relation to each of the issues raised. A summary of the issues is presented in Annex 2.

---

<sup>3</sup> IFC Summary of Investment Information, Alto Maipo, Project #31632 - <https://goo.gl/nrYmk2>

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> See La Tercera, “AES Gener sella fondos para Alto Maipo y costo sube a US\$ 2.500 mills” - <https://goo.gl/E8D9qt>; and AES Gener, Reporting to the *Superintendencia de Valores y Seguros* (Chilean Financial Markets Supervision Authority), March 17, 2017 - <https://goo.gl/wzG7sP>

<sup>7</sup> The complainants also received support from international NGOs: the Center for International Environmental Law (CIEL), International Rivers (IR), Natural Resources Defense Council (NRDC) and Patagonia Inc.

### ***Alto Maipo-02 complaint***

A second complaint in relation to IFC's investment in Alto Maipo was filed by an individual in June 2017 (the "Alto Maipo-02 complaint"). The complainant worked with the AES Gener Foundation from 2008 to 2017, a not-for-profit organization established by AES Gener.<sup>8</sup> She indicates that her work for the Foundation related to development and implementation of community development programs for the Alto Maipo project. The complainant alleges that from 2013 to 2015, she was sexually harassed by an employee of AES Gener. She explained that when she decided to report these issues to the company in December 2016, an internal investigation was conducted, but concluded that the perpetrator of alleged harassment would not be dismissed, for reasons that she believes were inappropriate.

The complainant alleges that in retaliation to her complaint, AES Gener fired her in March 2017. She also alleges that the company awarded a contract her father bid for through a tender process to another company, by way of retaliation. The complainant alleges that the responses from AES Gener and Alto Maipo SpA to her complaints were inappropriate. As such she raises concerns regarding the functioning of these complaint mechanisms.

The Alto Maipo-01 and -02 complaints have been merged for the purposes of this compliance appraisal.

### ***Company's perspective***

According to CAO's Assessment Report of the Alto Maipo-01 complaint,<sup>9</sup> the company states that it conducted both a detailed environmental assessment, and a constructive process of dialogue with the local community of San José de Maipo. As a result, the company points to the signing of a Social Agreement in 2009 between the company, the Municipality of San José de Maipo, and the Community Union of Neighborhood Boards. The company indicated that the agreement was reached with a very wide base of local support. In August of 2010, the Rules of Procedure for this agreement were signed, establishing two beneficial programs for the community: (i) a program to promote local employment and the contracting of local suppliers and (ii) a social program to support existing organizations and provide scholarships to support students of academic excellence from vulnerable families. The company adds that it created a program for participatory monitoring covering topics, based on community feedback, including: water and environment, local employment and suppliers, highway safety and social welfare commitments. CAO's Assessment Report documents in further details the company's perspective on technical issues raised by the complainants.

CAO's Assessment Report in relation to the Alto Maipo-02 complaint<sup>10</sup> notes the client's perspective that an internal investigation was completed in relation to this case, and relevant measures were adopted. Additionally, the client emphasized that CAO should not have jurisdiction regarding this claim because the Alto Maipo-02 complainant was employed by a foundation affiliated with the client, AES Gener, and not the recipient of the IFC loan Alto Maipo SpA. The client further contends that it terminated the complainant's employment in March of 2017 due to

---

<sup>8</sup> The AES Gener Foundation, formerly known as Fundación Maitenes, was established in 1993 to develop education and training programs for the community of San Jose de Maipo. With the construction of the Alto Maipo hydroelectric project, the foundation has diversified its activities and focused on community development programs related to the development of the hydroelectric project. The objective of the foundation is to strengthen the elaboration and implementation of the social programs of AES Gener; it focuses on the design and execution of programs aimed at three areas: Education, community infrastructure and employability. In addition, the institution develops other programs focused on sports, oral health and culture. The AES Gener Foundation has a General Counsel composed of senior officers and staff of the Company that watch over the fulfillment of its objectives, as well as the correct administration of resources. See AES Gener, Annual Report 2016 - <https://goo.gl/ZZKk3j>

<sup>9</sup> CAO Assessment Report, Alto Maipo-01, October 2017 - <https://goo.gl/KoGZpM>

<sup>10</sup> CAO Assessment Report, Alto Maipo-02, December 2017 - <https://goo.gl/yRrw25>



the reorganization of the Foundation where she worked, and not because of her sexual harassment claims.

CAO notes that the Alto Maipo-02 complaint was deemed eligible for consideration by CAO, on the basis that the complainant was working for an organization established by the project sponsor and directly involved in activities related to the Alto Maipo project. Regardless of the contractual relationships governing the complainant's employment, CAO considers that the allegations relate to the IFC project and thus fall within the scope of this compliance appraisal.

### ***Complaints to Other Development Banks***

CAO notes that a similar complaint was sent by the Alto Maipo-01 complainants to MICI, the independent accountability mechanism (IAM) of the Interamerican Development Bank (IDB).<sup>11</sup>

In responding to this complaint, MICI concluded that a compliance investigation was warranted in relation to the issues raised by the complainants. At the time of writing this compliance appraisal, MICI's recommendation for an investigation was under consideration by the Board of the IDB.<sup>12</sup>

## **III. IFC's Pre-Investment Review and Supervision of the Project**

This section outlines the IFC E&S policies and procedures as they apply to the project. It then provides a preliminary analysis of IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainants.

### **IFC Policy Framework and General Requirements**

IFC's investment was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards" (para. 7). The Sustainability Policy also notes that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" (para. 9).

A central principle of the Sustainability Policy is that "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time" (para. 22).

### **Pre-investment environmental and social review**

#### ***Requirements***

The key question for CAO at pre-commitment phase of the project cycle is whether IFC exercised due diligence in its review of the E&S risks of the investment. As a general principle, IFC is committed to a pre-investment E&S review that is "commensurate with the nature, scale, and ... level of environmental and social risks and impacts" of the project (Sustainability Policy, para. 26).

For projects with potential significant E&S impacts, PS1 requires the client to carry out "a comprehensive Environmental and Social Impact Assessment, including an examination of alternatives, where appropriate" (para. 7, fn. 11). It further requires that "E&S risks and impacts

---

<sup>11</sup> See case MICI-BID-CH-2017-0115 – <https://www.iadb.org/en/mici>

<sup>12</sup> *Ibid.*

will be identified in the context of the project's area of influence" (para. 8). The assessment should present an "adequate, accurate and objective evaluation and presentation [of the issues], prepared by competent professionals" (para. 19). To this end, IFC commits not to fund projects unless they can be expected to meet the requirements of the Performance Standards "within a reasonable period of time."<sup>13</sup>

IFC's review is required to identify any gaps in the client's practices and propose additional measures and actions to resolve those gaps. IFC captures supplemental actions in an E&S Action Plan (ESAP), and incorporates them as conditions of IFC's investment (Sustainability Policy, para. 28).

### **IFC's Pre-Investment E&S Review**

IFC's Environmental and Social Review Summary (ESRS) for the Alto Maipo project was disclosed in July 2013.<sup>14</sup> The ESRS was conducted on the basis of two field appraisal missions, in April and October 2012, and an extensive review of documentation conducted jointly with other international lenders (IADB and OPIC), with the assistance of a third-party consulting firm, Environmental Resources Management, Inc (ERM). Based on the results of this review, IFC classified the project as Category A, considering that it had potential significant adverse E&S risks and impacts.<sup>15</sup> The ESRS notes this was due to "implications on natural resources" including, inter alia, "potential significant hydrological changes in over 100 km of streams and rivers, as well as relevant implications affecting the natural landscape of a touristic area of the Andes Mountains."<sup>16</sup>

The ESRS describes IFC's review of information received by key stakeholders<sup>17</sup> in relation to potential E&S impacts. The ESRS states that the client prepared a series of studies to ensure that the scope, content, and quality of the assessment of risks and impacts was consistent with international good practice and took into consideration the concerns of potentially affected stakeholders. Relevant to the issues raised by the complainants, these studies, completed between May 2012 and June 2013, included:

- Alternatives Analysis Study Report;
- Cumulative Impact Assessment Report;
- Identification and Assessment of Potential Impacts on Water Uses and Establishment of a Management/Compensation Plan;
- Identification and Assessment of Potential Impacts on Riverbed Sediments and Establishment of a Management/Compensation Plan;
- Identification and Assessment of the Conversion or Degradation of Aquatic Habitats and Establishment of an Ecological Flow Management Strategy;
- Identification and Assessment of Impacts from Land and Right of Way Acquisition and Establishment of a Land and Right of Way Acquisition Report;

---

<sup>13</sup> IFC Policy on Environmental and Social Sustainability, January 2012, para. 22.

<sup>14</sup> IFC Environmental and Social Review Summary, Alto Maipo, Project #31632 - <https://goo.gl/qMR85n>

<sup>15</sup> Per IFC's 2012 Sustainability Policy, a project is categorized A when it involves "business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented." (para. 40)

<sup>16</sup> IFC Environmental and Social Review Summary, Alto Maipo, Project #31632 - <https://goo.gl/qMR85n>

<sup>17</sup> According to the ESRS, stakeholders included representatives of 16 of the 28 communities represented by the *Union Comunal* of San José de Maipo, who are located in the project's direct area of influence, and representatives of those that publicly expressed opposition to the Project at the time of the appraisal visit in April 2012 (i.e. *Coordinadora Ciudadana Rios del Maipo*, *Asociacion de Canalistas del Rio Maipo*, *Comunidad de Agua de Riego* from the Community of Manzano, *Junta de Vigilancia del Rio Maipo*. The visit also included interviews with families located along the access road to the Volcan area.

- Identification and Assessment of Impacts to Legally Protected and Internationally Recognized Areas;
- Stakeholder Engagement Strategy, Stakeholder Mapping and documentation of additional consultation and disclosure activities; and
- Impacts of Climate Change on the Hydrologic Resources of the Alto Maipo Hydroelectric Power Project.

The ESRS notes that these studies were developed in close consultation with the independent consultants, and representatives from IFC and other multilateral banks.

Relevant to the issues raised regarding potential impacts of the project on cultural heritage, the ESRS states that the project will not affect any known archeological, cultural heritage or paleontological sites.

According to the ESRS, IFC established there to be broad community support (BCS) for the project. In documentation elaborating on its determination of BCS, IFC noted that:

- The Company initiated the consultation for the EIA process in a timely manner. Although there has been a period with no significant consultation between 2009 and 2013, reengagement was initiated in January 2013.
- Key stakeholders have been identified adequately through the EIA process, through subsequent impact assessments and stakeholder mapping exercises.
- Although the community engagement strategy is solid, it will take more time to see the full impact of this effort in engaging on the full amount of projects design details and mitigation measures and building trust with communities.
- The consultation process has been conducted without external manipulation or coercion. The polarization between the minority group of opponents to the project and the remaining community has led to concerns expressed by some community members due to the methods used to manifest opposition (posters, graffiti and disruptive protest marches).
- The consultation process is well documented and has informed changes in project design and the definition of mitigation measures.

IFC further noted that continuation of this level of support would be dependent on (i) a continuous high-quality engagement process; (ii) managing expectations regarding local employment; (iii) effective contractor management; (iv) effective influx management; and (v) participatory monitoring.

Along with the ESRS, IFC disclosed an Environmental and Social Action Plan (ESAP), which sets out actions to be undertaken by the client during construction and operation of the project. Relevant to the issues raised in the complaints, the client was expected to:

- Ensure adequate monitoring of implementation of contractor management plans to verify that contractors and sub-contractors engaged on the construction phase comply with IFC requirements with regard to occupational health and safety, labor conditions, environmental performance and community engagement (deadline December 2013).
- Harmonize the existing Emergency Preparedness and Response Plans (EPRP) into a discrete, comprehensive, EPRP document (deadline November 2013 for the construction phase).
- Develop and implement a human resources policy and grievance mechanism consistent with IFC's requirements and national labor laws (deadline December 2013).
- Develop management plans for storm water, tunnel production wastewater, and waste rock drainage (deadline December 2013).

- Complement the existing Noise and Vibration Monitoring Program to include a clear notification protocol to alert communities when blasting will occur and, if necessary, assist in preparing communities at risk to respond to emergencies (deadline November 2013).
- Complement to the Ecological Flow Management Plan by continuing to gather baseline information as well as hydrological information, and develop specific mitigation measures for habitat conservation, compensation, and adaptive management measures (deadline December 2013).
- In consultation with relevant stakeholders, propose complementary mitigation and management measures as part of the Recreational Water Use Management Program (deadline December 2015).
- As an extension of the planned multi-stakeholder process to implement the social monitoring program, prepare and implement detailed participative monitoring programs to monitor, in cooperation with recognized representatives of potentially affected stakeholders (deadline for framework in December 2013, detailed plans in March 2014).
- Develop and implement an ecosystem services management program to address identified cumulative impacts on ecosystem services in the project direct and indirect area of influence (deadline for framework in December 2013)

In October 2013, the project was presented to the IFC Board and approved.

IFC signed a loan agreement in December 2013, and a first disbursement was approved in March 2014.

At the time of first disbursement, a number of ESAP items which were initially anticipated to be completed before disbursement were pending. As noted further in this report, most items were later completed, as project construction started. Regarding actions to be taken in anticipation of the project's operational phase, anticipated completion dates were updated as the project experienced delays.

## **Project supervision**

### ***Requirements***

Following approval and investment, IFC monitors the project to ensure compliance with the conditions in the investment agreements and applicable IFC policies and standards.

As set out in the ESRP, "The purpose of supervision is to obtain information to assess the status of project's compliance with the PS and other specific E&S requirements agreed at commitment; to assess the current level of E&S risk; to provide advice to clients on how to address critical E&S issues; and to identify opportunities for improvement and good practices that could be applied to similar projects."<sup>18</sup>

The 2012 Sustainability Policy further states that "if the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents, IFC will work with the client to bring it back into compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate" (para. 24).

### ***IFC's Supervision***

IFC's supervision of the project commenced in 2014, and is documented in IFC's supervision site visits back-to-office reports, and IFC's reviews of the client's annual reporting on the project's E&S performance. IFC's supervision was further informed by quarterly reports by ERM, acting as an independent E&S monitoring consultant.

---

<sup>18</sup> ESRP 6, para.1, version 7, April 15, 2013.

IFC conducted its first supervision visit to the project in March 2014, after first disbursement and as project construction was starting. The focus of the first supervision visit was on contractor management and the project Environmental and Social Management System (ESMS). Following this visit, IFC acknowledged a number of systems and frameworks that were put in place by the client, and further identified actions to be completed as per the requirements of the ESAP, including a Joint Emergency Preparedness and Response Plan, which was expected to involve Alto Maipo, the contractors, relevant authorities, and affected communities. Several technical studies were also expected to be finalized.

In December 2014, IFC noted an improved capacity of the project's social management team and progress made in contractors' management. IFC reported that the construction phase had been significantly delayed, and the progress developing the E&S management plans was fully aligned with the status of the construction phase. IFC further required the client to increase its monitoring of traffic, noise, vibration and dust emissions to ensure full compliance with the ESAP.

On the basis of quarterly reports from ERM, and IFC's two supervision visits in March and December 2014, IFC concluded that the project was compliant with the majority of ESAP requirements and with the lenders' broader requirements. One non-compliance was reported, as noted above, which is related to the exceedances in noise levels and dust. IFC further noted that close supervision of the organized opposition to the project was necessary to manage reputation risks and potential stoppages and delays in project schedule.

In July 2015, the *Coordinadora Ciudadana Ríos del Maipo* and *Ecosistemas* (Alto Maipo-01 complainants) sent a letter to the lenders raising concerns about the E&S risks and impacts of the Alto Maipo project. In response to this letter, in August 2015, the lenders and ERM prepared a point-by-point assessment of the concerns raised, noting that these concerns had been previously identified as potential project impacts or raised by stakeholders, and had been investigated and analyzed in detail. The response further notes that specific meetings were held with the *Coordinadora Ciudadana Ríos del Maipo* as well as with directly affected stakeholders in the project area to obtain a better understanding of the issues raised. Moreover, it outlines specific technical studies that were conducted by the client as well as by members of the *Coordinadora*, all of which were reviewed independently on behalf of the lenders. In particular, it addresses concerns related to the following issues, citing the assessments which were conducted:

- Impacts on glaciers and desertification;
- Impacts on access to water/water rights;
- Impacts on riverbed erosion;
- Impacts on underground water;
- Impacts on tourism and protected areas;
- Impacts from increased traffic;
- Stakeholder engagement and consultation for the preparation of the 2008 EIA and associated approval process.

IFC's review of the client's 2015 reporting found that the client was in compliance with IFC's E&S requirements. Issues flagged for future supervision included managing organized opposition to the project and implementation of several studies, procedures and recommendations provided by the client's E&S consultant. On the basis of ERM's monitoring, however, IFC concluded that the client was mostly compliant with ESAP requirements considering the status of project construction. Acknowledging continued opposition to the project and protests by certain groups as a concern that could cause delays in construction, IFC noted that the client had designated a Project-level Director of Security, increased communication between security personnel, the Project Director and Environmental and Community Relations Managers, and established emergency response protocols with the local police force.

Relevant to the issues raised in the Alto Maipo-02 complaint, in its review of the client's reporting for 2016, IFC noted that several cases of sexual harassment in the workplace had been reported by project employees. The client also identified allegations of sexual harassment at the project which were not reported through the Grievance Mechanism. IFC noted that the client had committed to conduct a pro-active investigation of sexual harassment on the worksites.

In January 2017, the client advised the lenders that Chile's Environmental Authority (*Superintendencia del Medio Ambiente*) had initiated administrative procedures against the project related to a list of 14 alleged non-compliances. These alleged non-compliances were the result of several audit processes carried out by the SMA over a period of four years, and related to the terms and conditions of the Environmental Approval Resolution of the project. The client noted that it disagreed with several charges and that several others had already been resolved, however, it agreed to file a compliance plan with the SMA to avoid further proceedings. CAO notes that the client's compliance plan was approved by the SMA in April 2018. The plan, which was negotiated between the client and the SMA, consists of 66 actions and includes a plan for continuous monitoring.<sup>19</sup>

In March 2017, IFC noted that the client had developed adequate corrective actions to address these claims, which raised similar concerns to those previously received from opposition groups. Corrective actions proposed in the compliance plan were, however, pending approval by the authorities.

IFC drew similar conclusions following a supervision visit in June 2017, finding that the E&S management of the project was overall in compliance with IFC standards and at-approval ESAP requirements.

#### **IV. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the Alto Maipo-01 complainants raise a broad range of concerns regarding the project's current and potential future impacts related to environmental, social, labor, security, health and safety, and cultural heritage issues. The Alto Maipo-02 complainant alleges that she was sexually harassed, that her complaints were not properly handled by her employer, and that she was then unfairly dismissed.

This appraisal report has outlined IFC's approach to environmental and social review and supervision of the project. CAO acknowledges measures taken by IFC at appraisal and during supervision to ensure project compliance with its E&S requirements. This included review by IFC staff, collaboration with the other lenders, and work with a third-party consultancy responsible for reviewing and monitoring the client's compliance with the ESAP and other lender requirements.

---

<sup>19</sup> See Alto Maipo, News, April 11, 2018 - <https://goo.gl/4c91ZC>

While acknowledging the work of IFC and the other lenders in review and supervising E&S aspects of the project, CAO finds that a compliance investigation is warranted in response to the issues of environmental and social impact raised by the Alto Maipo-01 complaint. In reaching this conclusion, CAO has considered a number of issues. Firstly, CAO notes that this is a category A project, which by definition has potential significant environmental and social risks and impacts. Secondly, CAO notes that the complaint raises a range of issues regarding project impacts that are serious in nature, and require further expert review in order to provide assurance of compliance with IFC requirements. Thirdly, CAO notes that the national environmental authority has raised a number of concerns about project impacts that are aligned with those raised by the complainants.

CAO notes, however, that the signatories to the complaint do not include workers employed by the client or by contractors of the project. Therefore, CAO has decided to exclude issues raised in the Alto Maipo-01 complaint regarding labor and working conditions.

Relevant to the Alto Maipo-02 complaint, CAO has generally not initiated compliance investigations in response to individual employment related disputes. In this case, however, IFC project documentation indicates concerns regarding other allegations of sexual harassment, at the level of the company and contractors, in addition those brought by the complainant. While IFC has raised the issue of how to handle these allegations with the client, CAO is unclear as to the adequacy of the advice provided in relation to this issue. In particular, CAO has questions as to IFC's application of requirements that the "client will take measures to prevent and address harassment, intimidation, and/or exploitation, especially in regard to women" (PS2, para. 15). Given the issues raised by the complainant, CAO also has questions as to the application of PS2 requirements regarding the handling of worker grievances (para. 20). As a result, CAO will conduct a compliance investigation in response to the Alto Maipo-02 complaint. Given CAO's mandate, it is important to emphasize that this will focus on IFC's review and supervision of project related workplace sexual harassment risks.

Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

## Annex 1 – Project Timeline

Date	Milestones, Events, and Documents
<b>2006</b>	
	Preliminary consultation and disclosure activities begin, including a series of 40 meetings with government authorities, 70 with communities and community representatives within the areas of influence, and with key civil society stakeholders
<b>2007</b>	
	First submission of the ESIA to environmental authorities
<b>2008</b>	
	PHAM establishes a community relations office in San Jose de Maipo
Apr	Alto Maipo-02 complainant commences work for AES Gener Foundation
May	ESIA completed
<b>2009</b>	
Mar	Chilean government issues an Environmental Authorization (Resolucion de Calificacion Ambiental-RCA)
<b>2011</b>	
Nov	IFC Concept Review Meeting
<b>2012</b>	
	ESIA of the 17-km transmission line completed
Apr	IFC's first field appraisal
May	Early IFC disclosure of project information
Oct	IFC's second field appraisal
Nov	IFC Investment Review Meeting
<b>2013</b>	
	Alto Maipo-02 complainant's colleague allegedly begins making sexual innuendos, severity of which increases over time
Jul	IFC Disclosure (project #31362) – SPI and ESRS
Sep	IFC field activities determine BCS
Oct	IFC Board Approval
Dec	IFC commits a US\$150M Senior Loan to the Project
<b>2014</b>	
Mar	IFC site supervision visit
Mar	IFC 1 <sup>st</sup> Disbursement



Dec	IFC Supervision Site Visit
<b>2015</b>	
29 Jan	IFC 2 <sup>nd</sup> Disbursement
May	IFC and other senior lenders conduct a site supervision visit to the Project to understand the causes for the ongoing construction delays
22 Jul	IFC 3 <sup>rd</sup> Disbursement
18 Nov	IFC 4 <sup>th</sup> disbursement
<b>2016</b>	
6 Apr	IFC 5 <sup>th</sup> disbursement
22 Jun	IFC 6 <sup>th</sup> disbursement
Aug	Lenders notified that the Project will experience large cost overrun
5 Dec	Alto Maipo-02 complainant files a complaint regarding sexual harassment with AES Gener in Chile
<b>2017</b>	
19 Jan	Alto Maipo-02 complainant is informed that the AES Gener investigation has concluded and AES Gener decides not to disassociate themselves with the alleged perpetrator
24 Jan	CAO complaint filed by <i>La Coordinadora Ciudadana No Alto Maipo</i> and <i>Ecosistemas</i> on behalf of local community members (Alto Maipo-01)
Mar	IFC site supervision visit
31 Mar	Alto Maipo-02 complainant is fired by AES Gener and files sexual harassment complaint with Community Management Office in San Jose de Maipo
12 Apr	IFC 7 <sup>th</sup> disbursement
Jun	IFC site supervision visit
30 Jun	CAO Alto Maipo-02 complaint submitted
Oct	CAO assessment report published regarding Alto Maipo-01 complaint
<b>2018</b>	
Jan	CAO assessment report published regarding Alto Maipo-02 complaint

## Annex 2 – Summary of complaint issues: Alto Maipo-01

The table below summarizes the allegations raised in the Alto Maipo-01 complaint:

<b>Environmental and Social Assessment and Management</b>	
Environmental Impact Assessment (EIA)	<p>The EIA is inadequate and incomplete. It fails to:</p> <ul style="list-style-type: none"> <li>• Use recent environmental and social baseline.</li> <li>• Categorize the project according to its design (It should not be designated as a run-of-the-river, because the amount of water that will be diverted through tunnels is equivalent to reservoirs);</li> <li>• Establish a comprehensive area of influence;</li> <li>• Assess alternatives to the project, including the “no project” alternative;</li> <li>• New constructions are not adequately permitted</li> </ul> <p>The EIA did not consider:</p> <ol style="list-style-type: none"> <li>1. Climate change and desertification;</li> <li>2. Ten consecutive years of drought in the watershed where the project will be operating;</li> <li>3. Flows of the rivers after construction;</li> <li>4. Sedimentology of river;</li> <li>5. Glaciers and underground water;</li> <li>6. Hydrogeological impacts resulting from the construction of the tunnels;</li> <li>7. Quality of water of the river prior to construction;</li> <li>8. Limitation on access to water;</li> <li>9. Impacts on habitats of some species such as the duck (<i>Merganetta armata</i>) and condor (<i>Vultur Gryphus</i>);</li> <li>10. Cut of native trees;</li> <li>11. Social, economic, cultural, archeological and paleontological impacts on sites in the project’s area;</li> <li>12. Modifications in the construction of the tunnels and management of contaminated water;</li> <li>13. Impacts on mountain wetlands, which will be affected by explosions;</li> <li>14. Cumulative impact assessment.</li> </ol>
Compensation Measures	Compensation measures is not adequate considering the investment, profitability and impacts of the project. It is not compliant with national legislation.
<b>Community Engagement, Consultation and Access to Information</b>	
Lack of Meaningful Consultation	Lack of effective grievance mechanism (complainants did not receive adequate responses when they presented grievances);

	Complainants provided comments and questions to the EIA, however, the client did not respond/address them properly.
Division of Communities	Communities are divided due to their opinion regarding to the project. The client pays compensation to some community members, and signaled that those who receive it cannot oppose the project.
Public Opposition	Between 2013 and 2016 massive demonstrations (over 25 thousand participants) against the project have occurred in Santiago. There are 14 complaints filed at the environmental agency against the project.
Access to Information	Complainants find difficult to access information related to the project, specifically on the project's web page.
<b><i>Labor and Working Conditions</i></b>	
Freedom of Association	Contractors responsible for the construction intimidate workers and do not respect their right to strike.
Retaliation	Contractors dismissed 30 percent of the workforce in retaliation of strikes, and cut water and power at camps. Workers carry out strikes to claim for better salaries, conditions of living at the camps and safety at work, especially at tunneling work.
Occupational Health and Safety	Working conditions are precarious (poor hygiene and security). There is no supervision to ensure a healthy and safe work environment. Camps are overcrowding and have poor conditions of living. Workers do not wear protective gear during tunneling work. A fatal accident with a truck driver occurred in 2016.
Security	There are around 60-armed security guards on the project site. There are conflicts and insecurity on the workplace.
Discrimination	Discrimination in relation local hiring and treatment of workers on the ground.
<b><i>Pollution Prevention and Energy Efficiency</i></b>	
Energy Efficiency	Production of energy is overestimated. Reduction in tributary flows will be higher than projected.
Contamination, nuisance	Air, water (including irrigation water) and land contamination with heavy metals found in rocks removed during tunnel construction (air and water contamination affecting the community of El Alfalfal). Excessive noise and vibrations due to trucks traffic (particularly in El Alfalfal and Los Maitenes)
<b><i>Community Health and Safety</i></b>	
Water Access	The project will increase the risk of water scarcity because the flow of tributaries will be significantly reduced during operation.
Labor Influx	The project will have 2,500 workers including construction and operation. This will increase risks of prostitution and drug trafficking, among others.

Erosion/impacts on infrastructures	Erosion in the watershed will diminish the sediments in the Maipo river. This will impact infrastructures that are located at the river's bed and channels, especially public and private infrastructure at San Jose de Maipo and la Ruta 5, including sources of drinking water and irrigation, bridges and other waterways.
Emergency Preparedness and Response	The emergence plan developed, which consists of the construction of a secondary channel in case of unforeseen discharges of water, was not approved by any competent authority in Chile.
Safety	Transportation of explosives are being carried out improperly and at improper times (e.g. during school's release). Trucks transiting drive in high speed, which poses risks of accidents involving community members. Community is not duly informed or alerted about detonations in the area when blasting is carried out.
<b>Land Acquisition</b>	
Economic Displacement	The construction of a wall at Alfafal village, to mitigate the noise and soil contamination, restricts access to land and natural resources. The project will impact some of the main forms of employment and economic sources in the region (tourism, agriculture and arid extraction). There was an increase in rents in the area, resulting in residents leaving Cajón del Maipo.
<b>Biodiversity</b>	
Desertification	Chile has experienced a record of droughts. Authorities consider that these droughts are a process of desertification. As a result, the flow of rivers of the Maipo watershed has decreased by 37 percent. This circumstance were not considered in the assessment of the project.
Glaciers	The impacts of explosions and dust on glaciers were not assessed, especially considering that the glaciers have been melting progressively since the 1960s, losing 30 percent of their area since then.
<b>Cultural Heritage</b>	
Culture, Traditional Activities	The EIA did not assess project impacts on traditional activities (such as the muleteers' activities) and culture of those who live in its the area of influence.
Protected Heritage Sites	There are several protected heritage areas (such as old buildings and the Valley de las Arenas) where the impact of the project was not evaluated. There are are still many archeological and paleontological sites to be discovered in the area. Sites are being blasted due to the construction of the project.