



The Independent Accountability Mechanism for IFC & MIGA

Compliance Appraisal of Complaints Regarding IFC's Exposure to the Lower Sesan 2 Hydropower Project in Cambodia through ABBank and Vietinbank

IFC Projects with ABBank and Vietinbank (29745, 40081, 28509, 31300, 34124)

November 18, 2022

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:

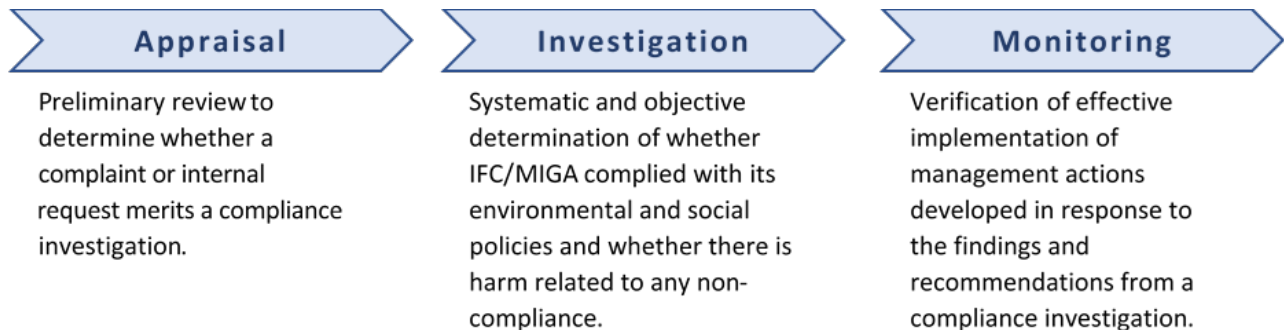


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Acronyms

Acronym	Definition
ABBank	An Binh Commercial Joint Stock Bank
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EIA	Environmental Impact Assessment
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
EVN	Vietnam Electricity
EVNGENCO1	Vietnam Electricity Power Generation Corporation 1
EVNI	Electricity Vietnam International Joint Stock Company
FI	Financial Intermediary
IFC	International Finance Corporation
LSS2	Lower Sesan 2
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
SEMS	Social and Environmental Management System
SPI	Summary of Proposed Investment
ToR	Terms of Reference
Vietinbank	Vietnam Joint Stock Commercial Bank for Industry and Trade
VND	Vietnamese Dong

Executive Summary

This compliance appraisal documents CAO’s preliminary review of three complaints from local communities regarding Cambodia’s largest hydropower dam, the Lower Sesan 2 project. The project began operating in 2017 and the complainants allege it has adversely affected their living conditions, livelihoods, cultural sites, and safety. The complainants claim that IFC is exposed to the hydropower project through investments in two Vietnamese banks, ABBank and Vietinbank. For the reasons summarized below, CAO concludes that the complaints merit a compliance investigation in relation to IFC’s investment in ABBank, but not in relation to IFC’s investment in Vietinbank.

Context and Investments

Construction of the Lower Sesan 2 hydropower project on the Sesan river in northern Cambodia began in 2014. Operations started three years later, with the 400-megawatt dam generating nearly 20% of Cambodia’s domestic electricity in 2020. The hydropower project was originally planned as a joint venture, with Electricity Vietnam International Joint Stock Company (EVNI) owning 51% of the project. EVNI invested about US\$10 million in the hydropower project’s planning and early-stage development, including an Environmental Impact Assessment (EIA) in 2008. In 2012, following a restructure, EVNI’s ownership was reduced from 51% to 10%.

IFC has an exposure to the Lower Sesan 2 hydropower project through An Binh Commercial Joint Stock Bank (ABBank) and its sub-client EVNI. In December 2010, IFC made an investment in ABBank that was initially subscribed as a bond and converted to equity in April 2013. IFC currently has an 8.2% shareholding in ABBank, which in turn has a 10.31% shareholding in EVNI. ABBank purchased its shareholding in two tranches, in September 2007 and November 2010, shortly before IFC’s December 2010 investment in ABBank. (For a detailed timeline of the financial relationship between IFC and ABBank and the development of the Lower Sesan 2 hydropower project, see Appendix 1.)

In addition, IFC also made investments in Vietinbank, a second financial intermediary (FI) in Vietnam, which has a long-standing financial relationship with Vietnam Electricity (EVN), EVNI’s parent company. IFC and the IFC Capitalization Fund (the “Cap Fund”), held an equity investment in Vietinbank from March 2011 until May 2021, when they fully sold their shares. However, upon review, CAO has not found sufficient basis to conclude that IFC has or had an exposure to the Lower Sesan 2 hydropower project, through this relationship, such that would provide a basis for a compliance investigation of IFC’s investment in Vietinbank.

The Complaint

In June 2018, CAO received complaints alleging widespread negative environmental and social (E&S) impacts from three separate groups of people affected by the hydropower project’s operations. These included: (1) resettled villagers; (2) villagers who refused to resettle; and (3) upstream villagers.

Resettled villagers: allege that their new living conditions are challenging and inadequate and that they were not provided livelihood restoration programs or support. They also claim that they were not able to participate in decisions about land allocation, which lacked transparency.

Villagers who refused to resettle: claim that their livelihoods have been affected by a significant decline in local fish stocks. Most now live in a communal forest outside their former villages. Some identify as indigenous peoples and seek to protect their cultural identity and sacred sites. Others allege they lack basic infrastructure and sufficient land to farm due to dam-related flooding.

Upstream villagers: allege harms to their livelihoods, due to changing water levels and fewer fish in the Sesan and Srepok Rivers. They also claim they were never informed or consulted about the hydropower project or its compensation policies.

All three groups stated that they do not feel safe to voice their concerns and asked that their identities be kept confidential.

IFC Response

CAO received IFC's Management Response to the complaints in July 2022 (see Appendix 2). IFC argues there is no link between IFC's investments and the Lower Sesan 2 hydropower project, and that therefore IFC's environmental and social requirements do not apply to the hydropower project. IFC makes this argument on the grounds that: a) ABBank's investments in EVNI predated IFC's 2010 investment in ABBank, and b) Vietinbank's exposure to EVN, the parent company of EVNI, is limited to loans for projects and operations in Vietnam only and not in Cambodia. IFC's clients, ABBank and Vietinbank, elected not to submit formal responses to the complaints as part of the CAO appraisal process.

For reasons discussed below, CAO concludes that ABBank was required to apply IFC's environmental and social requirements to its investment in EVNI and consequently to the Lower Sesan 2 hydropower project. However, CAO did not find sufficient evidence of IFC exposure to the hydropower project through Vietinbank to merit a compliance investigation.

CAO Analysis

According to the CAO Policy, the purpose of a CAO compliance appraisal is to determine whether a complaint merits an investigation by applying the following criteria: a) whether there are preliminary indications of harm or potential harm; b) whether there are preliminary indications that IFC may not have complied with its environmental and social (E&S) Policies; and c) whether the alleged harm is plausibly linked to the potential non-compliance.

Based on an initial review of available information, CAO's appraisal concludes that the complaint meets these three criteria in relation to IFC's 2010 investment in ABBank:

a) There are preliminary indications of harm related to the Lower Sesan 2 project, regarding the following allegations raised in the complaints:

- Lack of appropriate consultation, transparency, and disclosure of information.
- Lack of consultation with affected indigenous communities, and lack of consideration of their communal land rights, cultural identity, and sacred sites.
- Impacts on livelihoods, education, and health due to flooding and changing water levels.
- Impacts on livelihoods due to changes in fish migration.
- Inadequate resettlement and compensation packages.
- Lack of access to clean water.
- Social and safety impacts for communities and threats and intimidation due to their opposition to the hydropower project.

CAO concludes that there are preliminary indications of harm as raised by the complainants, based on the following considerations. First, local communities have consistently raised serious environmental and social concerns regarding the Lower Sesan 2 hydropower project since at least 2008. Second, there is a significant amount of publicly available information from civil society, academic, and media sources that is consistent with the complainants' allegations of harm. Third, a large hydropower project such as Lower Sesan 2 carries significant environmental and social risks with potential impacts of the types identified by the complainants, particularly when not assessed and mitigated following good practice E&S standards such as the IFC's Performance Standards. Finally, CAO does not have clear information contradicting the complainants' claims or indicating that the environmental and social risks of the project have been assessed and mitigated following IFC's Performance Standards.

b) There are preliminary indications that IFC may not have complied with its environmental and social policies, specifically its responsibility to:

- (i) Carry out a pre-investment review of the investment that adequately considered the E&S risks associated with the client's business activities; and
- (ii) Monitor the E&S commitments contained in IFC's legal agreement with ABBank, as required by IFC's Sustainability Policy, in particular ABBank's commitment to ensure its existing investments complied with IFC's E&S requirements.

c) The alleged harms to the complainants are plausibly linked to IFC's potential non-compliance: EVNI was the majority owner of the hydropower project during critical periods of its design phase up until 2012, and at present still maintains a significant ownership stake. In this context, CAO concludes that potential shortcomings in IFC's review and monitoring of its 2010 investment in ABBank are plausibly linked to the harms alleged by complainants. CAO has reached this conclusion by considering: (a) the ownership relationship between ABBank, EVNI, and the hydropower project; (b) ABBank's legally binding agreement to apply IFC's E&S standards to its existing investments; (c) potential shortcomings in IFC's application of its E&S requirements to

ABBank; and (d) the nature of the impacts of the hydropower project raised by complainants, which are relevant to the application of IFC's E&S standards.

Next Steps

As the appraisal criteria are met, CAO will proceed to conduct a compliance investigation of IFC's investment in ABBank as it relates to the issues raised in the complaint. Terms of Reference for the investigation following the CAO Policy can be found in Appendix 4 of this report, and the IFC's Management Response in Appendix 2. The draft compliance investigation report should be completed by November 2023.

This appraisal report will be published on the CAO website and shared with the Board, IFC management, the clients, and the complainants.

1. Introduction

This section provides an overview of the Lower Sesan 2 hydropower project in Cambodia (“the hydropower project”), as well as IFC investments in two Vietnamese financial intermediaries, ABBank and Vietinbank, that are the subject of the complaint. It then describes the scope and methodology for CAO’s compliance appraisal as covered in this report.

a) Overview of the Lower Sesan 2 Hydropower Project¹

The Lower Sesan 2 project is the largest hydropower dam in Cambodia. It is located in Stung Treng Province, on the Sesan River in northern Cambodia, below the confluence of the major Sesan and Srepok tributaries and about 25km from the Mekong River. Construction of the 400-megawatt project began in 2014 and it commenced operations in 2017.² The dam was built under a 45-year Build-Operate-Transfer agreement. At the end of this period, ownership will transfer to Cambodia’s electricity utility, Electricite du Cambodge.

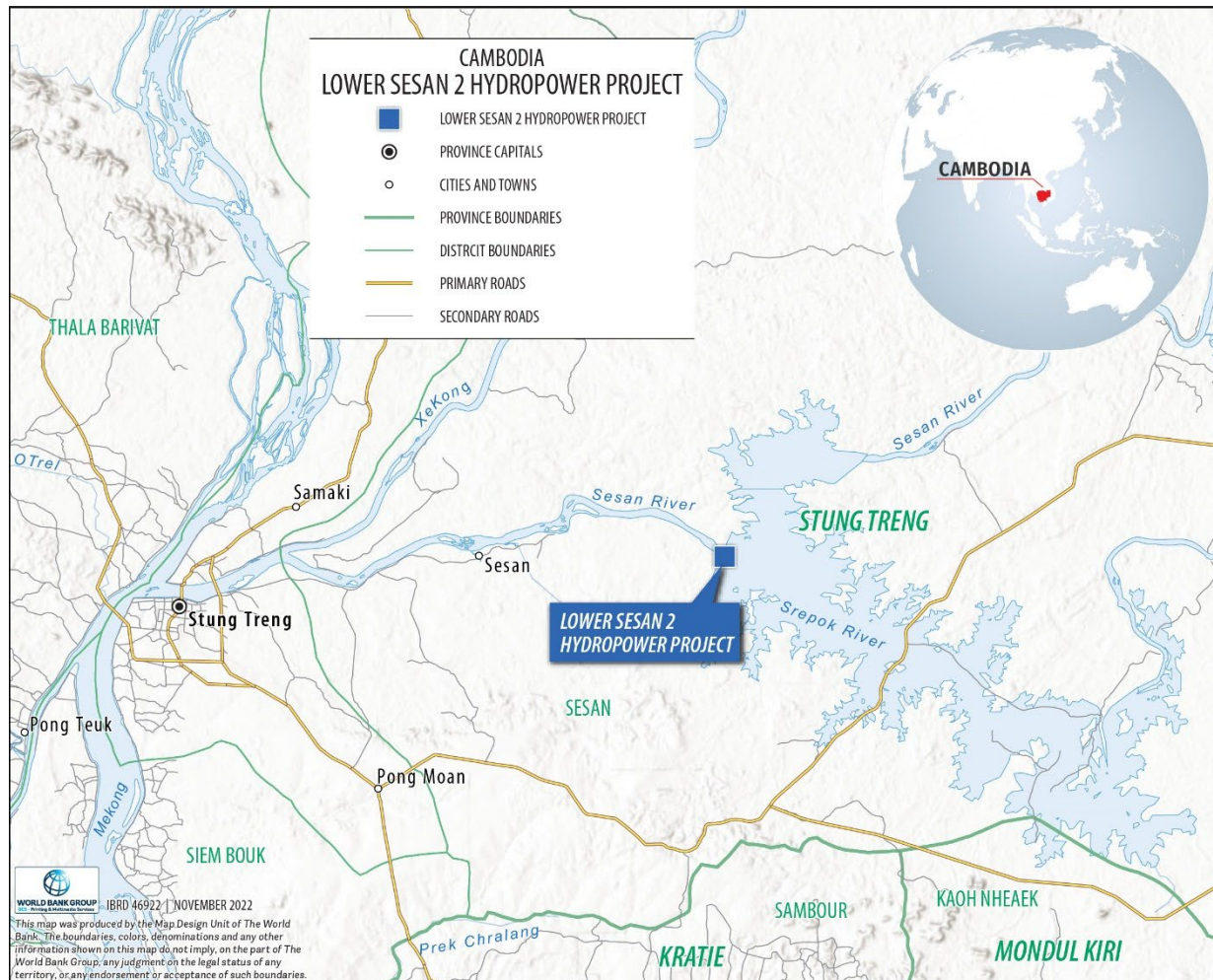
The Lower Sesan 2 hydropower project was originally planned as a joint venture between Electricity Vietnam International Joint Stock Company³ (EVNI) and The Royal Group, a Cambodian conglomerate, owning 51% and 49% of the project respectively. EVNI invested approximately US\$10 million in project planning and early-stage development, including feasibility studies and an environmental impact assessment (EIA). In September 2012, EVNI’s stake in the project decreased from 51% to 10%, with the remaining 90% held by The Royal Group (39%) and Hydrolancang International Energy Co. Ltd (51%), a subsidiary of the China Huaneng Group, one of the top five power-generating companies in China. These equity holdings have not changed since 2012. EVNI is not involved in the hydropower project’s daily management. However, it’s 10% shareholding gives it the right to appoint a director to the Board of Directors of the joint venture company – the Hydropower Lower Sesan 2 Company Ltd.

¹ For an overview of the Lower Sesan 2 hydropower project development see timeline in Appendix 1.

² Royal Group’s Lower Sesan 2 website page: <https://bit.ly/3UNcFX8>

³ EVNI was originally created as EVN Cambodia Joint Stock Company, an EVN subsidiary tasked with investing in energy projects in Cambodia and Laos. See EVNI’s website page at: <https://bit.ly/3EfStGE>

Map 1.1: Location of the Lower Sesan 2 Hydropower Project



Source: World Bank Group, IBRD 46922, November 2022.

b) IFC Exposure to the Hydropower Project

The complaint alleges that IFC is exposed to the Lower Sesan 2 hydropower project through its financial intermediary investments in An Binh Bank (ABBank) and Vietinbank. These Vietnamese banks have financial relationships with Vietnam Electricity (EVN), EVN's parent company, and in the case of ABBank, also directly with EVNI, as explained below.

IFC has an active equity investment in ABBank of approximately US\$ 40.6 million, and currently holds 8.2% of its shares (IFC project #29745).⁴ IFC's investment was initially subscribed as a mandatory convertible bond in December 2010, which converted to equity in April 2013. IFC's investment was designed to create a long-term partnership between IFC and ABBank that would

⁴ In April 2013, when the bond converted to equity, IFC's equity represented 10% of ABBank's shareholding but it was diluted to 8.2% when IFC decided not to participate in ABBank's 2021 rights issue.

allow ABBank to maintain a healthy capital adequacy ratio while growing its loan portfolio, supporting climate change initiatives, and enhancing finance for eligible energy efficiency projects. IFC's investment in ABBank created a general exposure to ABBank's operations. Additionally, in October 2017, IFC provided a US\$ 28.5 million loan (IFC project #40081) to ABBank to provide long-term financing to grow the latter's loan portfolio with a focus on micro, small, and medium enterprises (MSMEs) and women-owned SMEs. ABBank agreed to use the funds from IFC's 2017 loan only to support MSMEs in Vietnam.

ABBank has a 10.31% shareholding in EVNI, which it purchased in two tranches in September 2007 and November 2010, both prior to IFC's investment in ABBank. In addition, ABBank has several investments in EVN, its largest client.⁵ In turn, EVN has a 26.05%⁶ shareholding in EVNI via the Power Generation Corporation 1 (EVNGENCO1), a wholly owned subsidiary of EVN.⁷

Regarding Vietinbank, in March 2011 IFC and the IFC Capitalization Fund (the "Cap Fund") made a joint equity investment in newly issued shares of the state-owned Vietinbank, worth approximately US\$ 169.6 million at the time (IFC project #28509). This represented a 10% stake and created a general exposure to Vietinbank's operations. IFC's investment was designed to support Vietinbank's privatization and emergence as the country's premier SME and retail bank. In addition, the Cap Fund provided Vietinbank with a 10-year subordinated debt instrument of US\$ 125 million. Subsequently, as a result of Vietinbank's capital increases, IFC invested about US\$ 5.2 million in December 2011, and US\$ 5.7 million in October 2013, through rights issues (IFC projects #31300 and #34124).

In May 2013, the combined ownership by IFC and the Cap Fund was diluted to 8.03% after the entry of another strategic investor, Bank of Tokyo Mitsubishi.⁸ IFC and the Cap Fund held these shares until their exit from the project, which started in late 2019 and was completed in May 2021. The subordinated debt provided by the Cap Fund was fully prepaid in October 2020. Neither IFC nor the Cap Fund currently have a financial relationship with Vietinbank.

Vietinbank has had a financial relationship with EVN since at least 2005. CAO received representations from Vietinbank, through IFC, that it has not provided general purpose loans, guarantees and/or working capital finance to EVN. Instead, IFC explained that Vietinbank has only provided EVN with financing for specific projects in Vietnam. In 2018, when communities filed the complaints regarding the Lower Sesan 2 hydropower project with CAO, Vietinbank had six active loans for five projects in Vietnam, granted between 2005 and 2015.

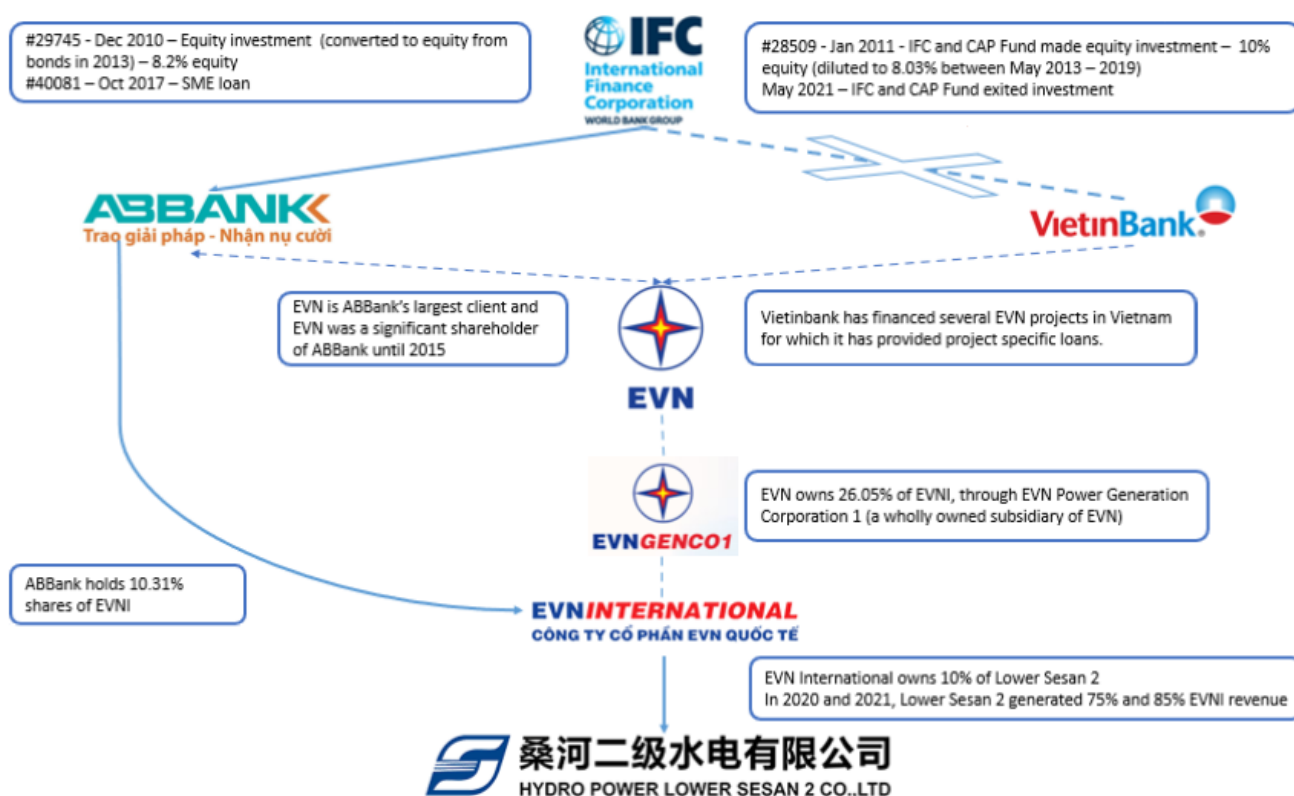
⁵ EVN also was a significant shareholder of ABBank until at least 2015.

⁶ EVNI's 2021 Annual Report, section 7.2.1, p. 16, available at: <https://bit.ly/3s4hej5>.

⁷ Power Generation Corporation 1 (EVNGENCO1) was established as a one-member limited liability company under Vietnam Electricity (EVN) on June 1, 2012 (<https://bit.ly/3yRrCia>). EVNI is described as one of its affiliates. EVNGENCO1 2018 Annual Report, p. 9, available at: <https://bit.ly/3VC37iH>, and EVN 2021 Annual Report on p. 6, available at: <https://bit.ly/3MEZvbl>.

⁸ In May 2013, IFC and the Cap Fund decided not to exercise their pre-emptive rights, which resulted in a dilution of their stake in Vietinbank to 8.03%. In October 2013, however, they did exercise full subscription to the rights issue, at the time of capital increase, in order to keep their combined shareholding at 8.03%.

Figure 1.1: Financial relationships between IFC, ABBank, Vietinbank and the Lower Sesan 2 hydropower project



Source: CAO Analysis

c) Compliance Appraisal Scope and Methodology

The scope of this CAO compliance appraisal is limited to issues raised in the complaints and CAO's assessment report.⁹ CAO has made the appraisal decision based on the appraisal criteria and other relevant considerations contained in the CAO Policy. The appraisal involved a preliminary review of the following information:

- Documentation related to the three complaints, CAO's Assessment Report, and the response from IFC Management to the complaints;
- IFC and client documentation on the implementation of the project's environmental and social (E&S) requirements;
- Information gathered through interviews with the complainants and IFC project teams; and
- Relevant media and other publicly available documentation, including academic literature.

⁹ CAO Policy, para. 88.

CAO extends its appreciation to all parties mentioned in this report who shared their perspectives, knowledge, and time.

2. Concerns Raised by Complainants

In June 2018, CAO received complaints from three groups of villagers alleging widespread negative environmental and social impacts from the Lower Sesan 2 hydropower project. Submitted on behalf of these communities by three international NGOs – International Rivers, International Accountability Project, and Mekong Watch – the three complaints allege IFC is linked to the hydropower project through its investments in ABBank and Vietinbank,¹⁰

The complainants, who requested that CAO keep their identities confidential, included:

- a) Villagers permanently resettled from Old Kbal Romeas village due to the hydropower project;
 - b) Villagers from Old Kbal Romeas and Old Srekor who refused to resettle; and
 - c) Villagers from Taveng, Lumpath, Kounmom, Angdong Meas, and Veun Sai Districts in Ratanakiri Province, located along the Sesan and Srepok rivers upstream of the dam.
- a) The resettled villagers allege that living conditions and infrastructure at their relocation site are inadequate. Specifically, they claim:
 - Living conditions are not in accordance with verbal promises made by local government officials. Their concerns include insufficient availability of clean well water, lack of capacity at health centers, low quality housing, the flooding of new farmlands, and the lack of a properly working sewage system. Villagers also expressed health and safety concerns because the resettlement site is surrounded by dam workers' homes, restaurants, karaoke bars, and brothels.
 - They were not provided with livelihood restoration programs and support, including for irrigation and to plow farmland, and claim that available farmland does not include planted trees or space to raise animals.
 - They were not consulted or invited to participate in decision-making regarding land allocation, and the different circumstances of each family group were not taken into account.
 - They do not feel safe to express their concerns as some were told they would lose their resettlement land and homes if they complained.
 - b) The villagers who refused to resettle are about 136 families who did not want to leave their homes and livelihoods.
 - The villagers from Old Kbal Romeas identify as Indigenous peoples and seek to protect their cultural identity and sacred sites. They have indicated that they are willing to sacrifice their lives to protect their land and ancestral graves. The reservoir has flooded their old village and rice fields, and they allege that no clear

¹⁰ The complaints also alleged that IFC was exposed to the hydropower project via a third FI client. However, CAO determined that the nature of IFC's investment in that client could not have provided exposure to the project.

boundary has been established for the logging concession given to the company in the reservoir area. This affects their communal forest, and when they have tried to stop the loggers, they have received threats from workers, who are armed.

- The villagers from Old Srekor complain that they lack basic infrastructure and sufficient land to farm as a result of flooding, which they attribute to the hydropower project and for which they want to claim compensation.
 - Both allege there has been a significant decline in the local fish population, affecting both their diet and income.
- c) The upstream complainants are about 800 families in seven villages above the Lower Sesan 2 hydropower dam and 1,300 families in 11 villages along the Srepok River, who jointly allege a series of harms to their sources of livelihood.
- The villagers are ethnic Lao and Khmer and indigenous Tampuan, Jarai, Krajoh, and Tampuan. They allege that they were not informed or consulted about the hydropower project or its compensation policies, and that their only source of information was a local non-governmental organization.
 - They claim that changing and fluctuating water levels have decreased fish stocks in the Sesan and Srepok rivers, affecting their communities' nutrition and livelihoods, as well as causing adverse effects on crop production, riverbank gardening, boats, and livestock.

Further details of the three complaints are provided in CAO's analysis below.¹¹

In July 2018, CAO found the complaints eligible for an assessment in relation to IFC's investments in ABBank and Vietinbank. The complainants subsequently sought to engage in a dispute resolution process convened by CAO. However, neither the IFC clients nor the hydropower project operator wished to be involved in the process. Since there was no consensus to enter into a CAO supported dispute resolution process, and with the complainants' consent, the case was transferred to CAO's compliance function on July 5, 2022 to conduct a compliance appraisal.¹²

3. Summary of IFC Response

IFC's Management Response to the complaint¹³ asserts that there is no link between IFC and the Lower Sesan 2 hydropower project which would require the project apply IFC's environmental and social requirements. IFC Management makes this argument on the following basis:

- a) ABBank's investments in EVNI (made in September 2007 and November 2010) predated IFC's general purpose investment in ABBank. IFC subscribed to a convertible bond issued

¹¹ Complainants requested that their full written complaints and identities remain confidential.

¹² 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, available at: <https://bit.ly/3CH9uZu>.

¹³ See Appendix 2. IFC's Management Response (July 2022). Neither client provided a response to CAO.

by ABBank on December 28, 2010 and became a shareholder after exercising the conversion option of the bond, on April 18, 2013. IFC funds were therefore not used to finance ABBank's investment in EVNI, and ABBank's investments in EVN were not subject to the E&S requirements under IFC's Sustainability Policy. IFC further argues that its 2017 loan to ABBank had no connection with EVNI, or the hydropower project, since all proceeds from this loan were earmarked to finance small and medium enterprises in Vietnam.

- b) Vietinbank confirmed that it had not provided any financing to, or invested equity in, EVNI. Vietinbank's exposure to the Vietnam Electricity Group (EVN), EVNI's parent company, is limited to loans for projects and operations in Vietnam only. In IFC's view, there is therefore no material link between Vietinbank and the hydropower project, and as a result no plausible link between the harms alleged by complainants and any potential non-compliance by IFC.

Further details of IFC's Management Response are provided in CAO's analysis below. For the full response, see Appendix 2.

4. CAO Appraisal Analysis

This section summarizes CAO's analysis of the complaint based on research, document review, and interviews conducted between July and October 2022. To best explain the issues, this section: (a) analyzes the relationship between IFC's financial intermediaries and the hydropower project; (b) describes the relevant IFC policy framework and performance standards applicable to these complaints; and (c) presents analyses of the three appraisal criteria required for CAO to determine whether to initiate a compliance investigation, namely:

- a. Whether there are preliminary indications that IFC or MIGA may not have complied with its E&S Policies;
- b. Whether there are preliminary indications of harm or potential harm; and
- c. Whether the alleged harm is plausibly linked to the potential non-compliance.¹⁴

Based on the analysis below, CAO finds that the complaints meet the criteria for a compliance investigation regarding IFC's 2010 general purpose investment in ABBank. However, the complaints do not meet the criteria required for a compliance investigation regarding the IFC's SME loan to ABBank or its equity investment in Vietinbank.

a) Relationships between IFC Financial Intermediaries and the Hydropower Project

Before considering the formal appraisal criteria in this case, it is necessary to examine the relationship between IFC's FI clients, ABBank and Vietinbank and the hydropower project. This is important because the CAO Policy defines the purpose of CAO's compliance function as to "assess, as relevant, IFC/MIGA's review and supervision of its E&S Requirements at the *project or sub-project-level* and consider *project or sub-project-level* E&S performance."¹⁵ In addition, the

¹⁴ CAO Policy, para. 91.

¹⁵ CAO Policy, paras. 77.

CAO Policy defines “Harm” as “any material adverse environmental and social effect on people or the environment *resulting directly or indirectly from a project or sub-project*” (emphasis added).¹⁶ Thus, CAO must determine at the outset whether the Lower Sesan 2 dam is an IFC sub-project. If not, to align with CAO Policy the complaint should close at appraisal.

The CAO Policy defines a sub-project as “a business operation of a sub-client within the use of proceeds requirements in IFC’s finance or investment documents or MIGA’s contract of guarantee.” The term sub-client is defined as “a business directly supported by an FI client that is within the use of proceeds requirements in IFC’s finance or investment documents or MIGA’s contract of guarantee.”¹⁷

In deciding whether the business activity subject to a CAO complaint qualifies as a “business operation” of an IFC sub-client, and thus a sub-project, CAO considers both the sub-client’s involvement in and leverage over the operations of the business activity, and the importance of the business activity to the sub-client.¹⁸

IFC has indicated that it has no financial exposure to the hydropower project through its investments in ABBank and Vietinbank.¹⁹ CAO’s appraisal concludes that the Lower Sesan 2 dam is an IFC sub-project of ABBank but not of Vietinbank, for the reasons outlined below.

IFC’s investments in ABBank

IFC’s General Purpose Investment in ABBank (2010)

The Lower Sesan 2 hydropower project meets the CAO Policy definition of an IFC sub-project through IFC’s 2010 investment in ABBank. EVNI is an IFC sub-client because it is a business directly supported by ABBank, a financial intermediary client of IFC. IFC’s investment in ABBank and ABBank’s investment in EVNI are both equity investments. As such, they do not have use of proceeds limitations. Since EVNI is a sub-client of ABBank, its “business operations” are considered sub-projects under the CAO Policy.²⁰

Based on publicly available information, EVNI’s main business activity is the Lower Sesan 2 hydropower project. Between 2007 and 2012, the hydropower project was planned as a joint venture between EVNI and the Royal Group. During this period, EVNI was the majority shareholder and was responsible for early project development including planning, exploration,

¹⁶ CAO Policy, glossary.

¹⁷ CAO Policy, glossary.

¹⁸ CAO, Compliance Appraisal of a Complaint Regarding IFC’s Exposure to the Dairi Prima Mineral Mine in Indonesia Through an Investment in Postal Savings Bank of China (PSBC), July 6, 2022, p. 29.

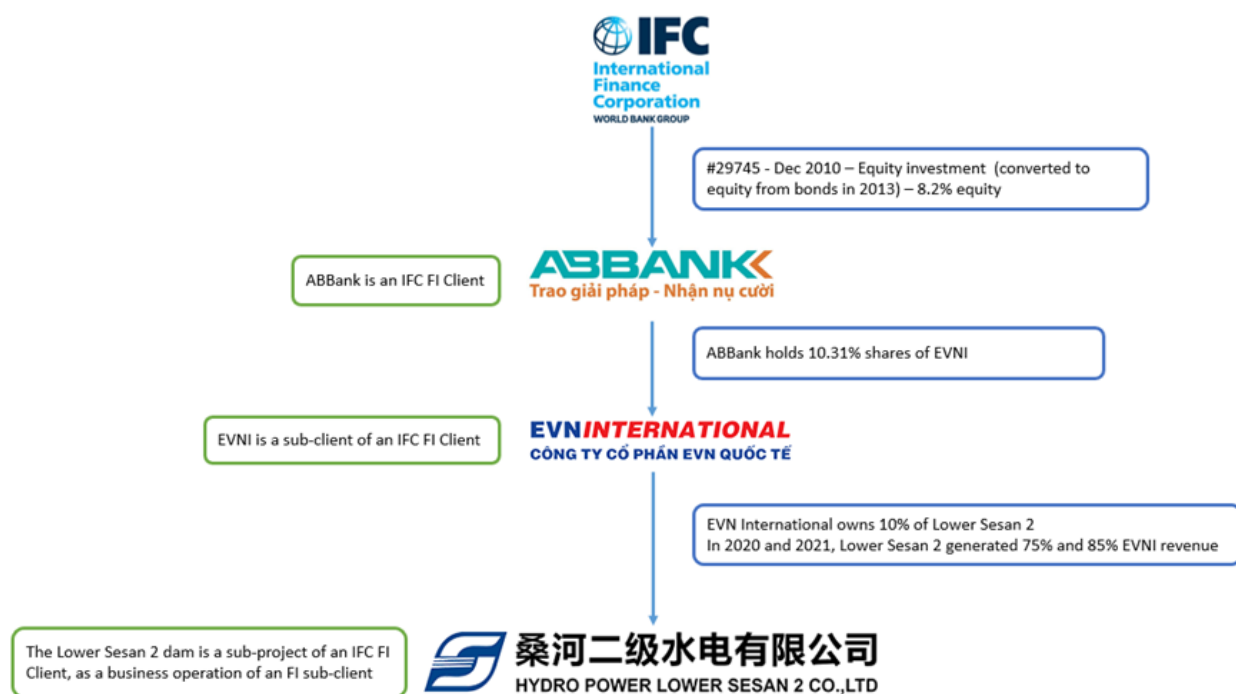
¹⁹ IFC has argued there are no material links between the FIs and the sub-project, on the basis of CAO’s current eligibility criteria. A compliance appraisal is not an opportunity for the parties to contest or argue the eligibility decision. Eligibility decisions are not subject to review and the requirements in the CAO Policy for the eligibility of FI projects do not apply retroactively to complaints filed before the effective date of the CAO Policy. As established in CAO’s transitional arrangements for ongoing cases, the 2021 CAO Policy applies to this case, submitted in June 2018, from the moment it transferred to compliance in July 2022. See CAO Policy, para. 175, and CAO Transitional Arrangements, available at <https://bit.ly/3CJgHbd>

²⁰ CAO Policy, glossary.

feasibility studies, and financing of an environmental impact assessment. Following a restructure in 2012, EVNI’s shareholding in the planned joint venture was reduced to 10% and EVNI stepped back from the day-to-day management of project development activities. However, as a shareholder, EVNI appoints a Director to the Board of the joint venture company that constructed and operates the hydropower dam. Publicly available data shows that 75-85% of EVNI’s revenue in the last two years came from Lower Sesan 2 hydropower project, making it EVNI’s main source of income.²¹

Based on the above analysis, CAO concludes that Lower Sesan 2 is a business operation of EVNI and thus a sub-project to which IFC has exposure through its equity holding in ABBank, following the definitions in the CAO Policy.

Figure 1.2: IFC’s exposure to the Lower Sesan 2 hydropower project through ABBank



Source: CAO Analysis

IFC’s SME Loan to ABBank (2017)

IFC’s 2017 SME loan to ABBank differs from its 2010 general purpose investment. The loan terms limit the use of its proceeds to eligible micro, small or medium enterprises (MSMEs)

²¹ EVNI, 2020 Annual Report, pp. 3 and 6, and EVNI, 2021 Annual Report, pp. 3 and 7. See also, Press Release from September 12, 2022, “EVN International Joint Stock Company – 15 years and a journey”, available at: <https://bit.ly/3Ty6a9W>

organized according to the laws of Vietnam,²² with a focus on women-owned SMEs. According to project documents, IFC funds can only be used for these purposes. ABBank's investment in EVNI, and EVNI's investment in the Lower Sesan 2 hydropower project, do not fall within these definitions.²³

As a result, CAO concludes that EVNI cannot be considered a sub-client and Lower Sesan 2 cannot be considered a sub-project under the SME loan. Since IFC's funds from this loan cannot be used to finance the Lower Sesan 2 project, EVNI or EVN, the SME loan cannot be the subject of a CAO compliance investigation regarding the Lower Sesan 2 hydropower project and this aspect of the complaints will be closed.

IFC's investment in Vietinbank

There is insufficient basis to conclude that the Lower Sesan 2 hydropower project meets the CAO Policy definition of an IFC sub-project through Vietinbank.

Between August and December 2018, CAO requested information from IFC and Vietinbank, regarding the latter's financial relationship with EVN, during the assessment stage of the CAO process. Vietinbank and IFC informed CAO that Vietinbank's exposure to EVN was limited to six loans for five projects developed in Vietnam between 2005 and 2015.²⁴ When CAO requested more details regarding the existing loans to EVN, Vietinbank declined to provide further information and IFC did not require Vietinbank to provide such information, as required in IFC's investment agreement with Vietinbank. In September and October 2022, after a further request from CAO for detailed information about the financial relationships between Vietinbank and EVN, IFC Management advised that during a site supervision visit in 2017 its staff reviewed the loan books for the two EVN projects that Vietinbank financed after IFC's investment began in 2011. These were project related loans to support the Duyen Hai 3 thermal project in Vietnam from 2013 and its expansion from 2015. IFC also informed CAO that it had confirmed during its monitoring of Vietinbank that there were no additional exposures to EVN. Based on this representations, the Lower Sesan 2 hydropower dam would not be a sub-project to which IFC has exposure through Vietinbank, because Vietinbank funds could not be used by EVN to finance the Lower Sesan 2 hydropower project.

CAO has not been able to verify IFC and Vietinbank's assertions regarding the latter's lending to EVN based on primary documentation (financial statements, internal reports, legal agreements

²² The specific requirements that MSME and SME must meet in order to be considered eligible to receive funds from this loan, are set out in the project's legal agreement.

²³ According to public information, EVNI has assets that exceed the maximum for eligible MSMEs and SMEs under the loan's legal agreement. Further, according to representations made by IFC, EVNI has not requested or been granted a loan by ABBank between 2017 and the present date. The Lower Sesan 2 dam could also not be considered an eligible MSME or SME as it is operated through a company incorporated in Cambodia and has assets that would exceed the maximum for the eligible SMEs under the loan's legal agreement.

²⁴ These six projects are: (i) the Lai Chau hydropower project -Lai Chau Province- in 2013; (ii) the Son La hydropower project -Son La Province- in 2007; (iii) the Sesan 3 hydropower project -Kon Tum Province- in 2005; (iv) the Sesan 4 hydropower project -Gia Lai Province- in 2007; (v) the Duyen Hai 3 thermal project -Tra Vinh Province- in 2013; and (vi) the expansion of the Duyen Hai 3 thermal project in 2015.

etc.).²⁵ However, absent evidence indicating that Vietinbank has a financial exposure to the hydropower project, and considering IFC and Vietinbank's representations to the contrary, CAO has insufficient basis to conclude that the Lower Sesan 2 hydropower project is a sub-project of Vietinbank. As a result, the complaint against Vietinbank cannot be the subject of a CAO compliance investigation and will be closed.

b) Relevant IFC Policy Framework and Performance Standards

IFC's 2006 Policy on Environmental and Social Sustainability (the Sustainability Policy) and Performance Standards (PS), together referred to as the Sustainability Framework, were applicable when IFC made its 2010 investment in ABBank. In 2012, IFC updated its Sustainability Framework.

The 2006 Sustainability Policy states that "efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" are "central to IFC's development mission."²⁶ To help meet this mandate, IFC seeks to ensure that the projects it finances are "operated in a manner consistent with the requirements of the Performance Standards."²⁷

As a first step, IFC is required to conduct pre-investment environmental and social due diligence of all its investment activities. For financial intermediaries that are potential clients, the 2006 Sustainability Policy states that IFC should "revie[w] the business of its FI clients" through its Environmental and Social Review Procedure and "identify activities where the FI could be exposed to social and environmental risk as a result of its investments".²⁸ Based on the results of the pre-investment review, IFC must require the FI client to implement environmental and social policy requirements "proportional to the level of potential risk" posed by its business activity.²⁹ In all cases, FIs are "required to establish and maintain a Social and Environmental Management System to ensure that its investments meet IFC's requirements."³⁰

After a project has been approved by the IFC Board of Directors, committed and disbursed, IFC monitors the FI's performance on the basis of the Social and Environmental Management

²⁵ Note that refusal of a client or IFC to provide CAO with relevant documentation may lead CAO to draw an adverse inference in relation to the contents of the requested documentation. However, in this case, CAO has not drawn such an adverse inference, considering a lack of other indications that the Lower Sesan 2 hydropower project is a sub-project of Vietinbank.

²⁶ 2006 Sustainability Policy, para. 8 and 2012 Sustainability Policy, para. 9.

²⁷ 2006 Sustainability Policy, para. 5. The 2012 Sustainability Policy includes similar terms when it states that: "Proposed investments that are determined to have moderate to high levels of environmental and/or social risk, or the potential for adverse environmental and/or social impacts, will be carried out in accordance with the requirements of the Performance Standards." 2012 Sustainability Policy, para. 3.

²⁸ 2006 Sustainability Policy, para. 28. A similar requirement is included in the 2012 Sustainability Policy, currently in force: "34. In order to appropriately identify the environmental and social risks related to FI investments during the appraisal process, IFC reviews the existing portfolio and prospective business activities of its FI clients to identify activities where the FIs and IFC could be exposed to risks as a result of their investments, and defines requirements for managing these risks. IFC reviews the implementation capacity of FIs as well as their ESMS, as required by Performance Standard 1."

²⁹ 2006 Sustainability Policy, para. 28.

³⁰ 2006 Sustainability Policy, para. 29. See also, the 2012 Sustainability Policy, paras. 33 and 35.

System,³¹ and “the client’s commitments in [any] Action Plan [agreed] or the legal agreement with IFC”.³² Both the 2006 and 2012 policies establish that, in cases where the client fails to comply with its E&S commitments in an action plan or the legal agreement with IFC, then IFC must “work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate”.³³

For FIs providing long-term corporate finance or project finance, IFC’s E&S requirements must include “the Performance Standards where the activity financed presents significant social or environmental risks.”³⁴ The following IFC Performance Standards are relevant to the allegations of harm made by complainants in relation to the Lower Sesan 2 hydropower project:

- Performance Standard 1 (PS1): Social and Environmental Assessment and Management Systems
- Performance Standard 4 (PS4): Community Health, Safety and Security
- Performance Standard 5 (PS5): Land Acquisition and Involuntary Resettlement
- Performance Standard 6 (PS6): Biodiversity Conservation and Sustainable Natural Resource Management
- Performance Standard 7 (PS7): Indigenous Peoples³⁵

c) Preliminary Analysis of IFC Policy Compliance

As stated above, a compliance appraisal must consider whether a complaint raises preliminary indications that IFC may not have complied with its E&S Policies.³⁶ Based on the information available during appraisal, CAO finds preliminary indications that IFC did not comply with its E&S obligations regarding its 2010 investment in ABBank in two key respects. First, there are indications that IFC did not comply with its obligations to adequately review the E&S risk associated with ABBank’s business activities prior to making its investment. Second, there are

³¹ 2006 Sustainability Policy, para. 28.

³² 2006 Sustainability Policy, para. 26; 2012 Sustainability Policy, paras. 24 and 45, and 2009 ESRP, section 10.2.7; 2016 ESRP, section, 9.2.1. Paragraph 24 of the 2012 Sustainability Policy establishes that “IFC’s agreements pertaining to the financing of clients’ activities include specific provisions with which clients undertake to comply. These include complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate. *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.” Additionally, paragraph 45 of the same policy establishes that, to supervise FI investments, IFC must “Implement a regular program of supervision of FI investments with environmental and social risks and/or impacts in accordance with the requirements of IFC’s Environmental and Social Review Procedures.” The 2009 ESRP, section 10.2.7, indicates that supervision of FI investments should include a review of the client’s performance against the applicable performance requirements and the status of the implementation of the client’s SEMS plan. This procedure was updated in 2014, and the 2016 ESRPs, section, 9.2.1, indicates that FI supervision entails “Assessing the client’s level of compliance with the E&S requirements including all conditions of disbursement, *Environmental and Social Action Plan (ESAP) items and other E&S covenants included in the legal agreement*” (emphasis added).

³³ 2006 Sustainability Policy, para. 26, and 2012 Sustainability Policy, para. 24.

³⁴ 2006 Sustainability Policy, para. 28.

³⁵ Note: other PS may be relevant to the hydropower project though not directly relevant to the issues raised in the complaint.

³⁶ CAO Policy, para. 91.

indications that IFC did not adequately monitor ABBank's compliance with its E&S requirements as set out in the legal agreement for its 2010 investment.

IFC's General Purpose investment in ABBank (2010)

E&S pre-investment review

IFC made its 2010 investment in ABBank, through a convertible bond, when the 2006 Sustainability Policy was in force. As indicated above, this required IFC to review its prospective FI client's business, identify E&S risks resulting from the FI client's investments and, on that basis, establish the needed E&S requirements.³⁷ IFC carried out its appraisal of ABBank between June and October 2010. Based on available information, this was limited to a review of the client's responses to a Social and Environmental Management System (SEMS) questionnaire, and a labor and working conditions questionnaire. No site visit or review of specific loans and investments was conducted.

According to IFC, this level of E&S review was common practice at the time. However, the Environmental and Social Review Procedures (ESRP) applicable in 2010 indicate that a broader and more thorough pre-investment E&S review of ABBank should have been carried out. Specifically, following the ESRP, IFC's review of ABBank's business activities to identify possible environmental, social, and reputational risks, should have involved, at a minimum:

- (i) IFC recording its decision and supporting analysis on the project's E&S requirements;
- (ii) IFC obtaining information from the Investment Department on the FI's portfolio;
- (iii) IFC evaluating business activities with potential E&S impact by reviewing the portfolio and sectoral information; and
- (iv) IFC reviewing "the tenor, transaction sizes and the industrial sectors where the FI is investing."³⁸

³⁷ 2006 Sustainability Policy, paras. 28 and 29.

³⁸ The 2009 ESRP indicate in section 7.2.8 "For FI investments where the FI is engaged in providing equity, loans, or other financing to corporate or legal entities other than individuals, or for other activities that are expected to have potential E&S impacts: (a) Categorize the project as Category the project as Category FI, and require the FI to develop an ESMS to ensure application of the FI Exclusion List, applicable national E&S regulations and possibly the IFC PS; record the decision and supporting analysis in the ESRD; and provide language for the MOR as indicated in Annex 7.5.7. i. For FIs where there are potential significant E&S risks associated with their financing activities (e.g., large infrastructure or extractive sector projects) or where IFC is more directly exposed to the E&S risks of their financing activities (e.g., private equity fund operations), apply the requirement that IFC will reserve the rights to review the FIs' first few financing activities in such areas to ensure the FIs' ESMS implementation." Sections 7.2.12 and 7.2.13 of the 2009 ESRP also add that "For all FI investments [...] meeting the requirements outlined in Procedure No. 7.2.8: a. Obtain further information regarding the FI's portfolio either using the Financial Intermediary Portfolio Questionnaire (Annex 7.5.8) and/or similar portfolio information available from the Investment Department", and "Determine the significance of business activities that have potential E&S impact by reviewing the portfolio and sectoral information. Determine the Applicable Performance Requirements as outlined below:

- a. All FIs will ensure that their financing and investments are not in contravention of an IFC Exclusion List;
- b. In addition, review the tenor, transaction sizes and the industrial sectors where the FI is investing:
 - i. Where the portfolio review indicates that the FI's investments are expected to have limited E&S impact, the FI will ensure that its subprojects meet the applicable national E&S laws and regulations;
 - ii. Where the portfolio review indicates that the FI's investments could have potentially significant E&S impact, the FI will ensure that its subprojects meet the relevant elements of the IFC PS in addition to applicable national E&S laws and regulations.

CAO's preliminary review found no documentation of an E&S appraisal that covered the above issues for IFC's 2010 general purpose investment in ABBank, and no evidence or documentation that IFC conducted an analysis of the SEMS questionnaire. The SEMS questionnaire appears to have been limited to information about the client's Social and Environmental Management System and did not include a review of ABBank's business. In reviewing the documentation provided by IFC regarding its 2010 pre-investment review, there is no evidence of IFC performing a review or analysis of ABBank's business activities. CAO therefore finds that there are preliminary indications that IFC did not comply with its obligation to carry out a pre-investment review that considered the client's business activities and identified those activities exposed to social and environmental risk as a result of its investments, in line with the ESRP as required by IFC's Sustainability Policy.³⁹

E&S supervision of the ABBank investment

As outlined above, IFC's Sustainability Policy establishes requirements for supervision of E&S risks emerging from investments in financial intermediaries such as ABBank. One key requirement is that IFC monitor a client's compliance with its social and environmental commitments as included in the legal agreements governing the investment, as well as any related action plan agreed with IFC. If a client fails to comply with these commitments, IFC must work with the client to return it to compliance or exercise remedies as appropriate.⁴⁰

For IFC's 2010 investment in ABBank, a Social and Environmental Management System Plan (SEMS Plan) was incorporated into the legal agreements. This required ABBank to establish a SEMS policy document ensuring that its operations were consistent with IFC Performance Standards, applicable national laws, and IFC's Exclusion List, in accordance with IFC's Sustainability Policy. In addition, the SEMS Plan required ABBank to *ensure compliance of all existing investments* with the SEMS policy requirements.

During the course of this compliance appraisal, IFC has made several arguments related to its 2010 general purpose investment in ABBank.

First, IFC asserts that its E&S policy requirements should only apply to ABBank's portfolio originated after IFC's investment was made in December 2010. On these grounds, IFC argues that it did not financially support ABBank's September 2007 and November 2010 investments in EVNI and therefore that IFC's E&S standards do not apply to ABBank's investment in EVNI. This is consistent with IFC's 2012 Sustainability Policy which states that IFC's E&S requirements apply only to the portfolio originated *after* IFC's investment.⁴¹ However, the 2006 Sustainability Policy, which was applicable at the time of IFC's 2010 investment in ABBank, does not include

³⁹ 2006 Sustainability Policy, para. 28.

⁴⁰ 2006 Sustainability Policy, para. 26, and 2012 Sustainability Policy, para. 24.

⁴¹ 2012 Sustainability Policy, para. 37, which reads: "In cases where IFC provides equity or financial support of a general purpose, without a specified end use, IFC requirements regarding environmental and social risk management as described in paragraph 33 will apply to the entire portfolio of the FI that is originated from the time IFC became a shareholder or investor."

this limitation on the application of IFC's requirements. In addition, both the 2006 and the 2012 Sustainability Policies are clear that IFC must supervise an investment based on the legally binding E&S requirements agreed with the client. As noted above, the client's legally binding commitments in this case included requirements to apply IFC's E&S standards to its *existing investments*.⁴²

Second, IFC argues that the commitments in its legal agreement with ABBank exceed the requirements of the Sustainability Policy and so are beyond the scope of CAO's compliance mandate, which is to carry out "reviews of IFC/MIGA's compliance with E&S Policies."⁴³ However, in its compliance role, CAO is not evaluating the client's compliance with the legal agreement. Rather, it focuses on IFC's obligation under the Sustainability Policy to monitor the client's E&S performance against the commitments in the legal agreement.⁴⁴ As a result, CAO is considering IFC's compliance with its E&S Policies.

The analysis supporting the appraisal indicates that IFC has reviewed ABBank's annual environmental performance reports and carried out several supervision site visits. However, there are no indications that IFC has reviewed, asked for information about or followed up on ABBank's commitment to ensure compliance of its *existing investments*, as of December 2010, with IFC's Performance Standards, as legally required in the investment agreement.

Based on the above, there are preliminary indications that IFC: (i) did not comply with its obligation to carry out a pre-investment review that adequately considered the client's business activities and identified those activities exposed to social and environmental risk as a result of its investments; and (ii) did not comply with its obligation to monitor the E&S commitments contained in the legal agreement for its 2010 investment in ABBank, as required by IFC's Sustainability Policy.

d) Preliminary Analysis of Harm

A CAO compliance appraisal is required to consider whether a complaint raises "preliminary indications of Harm or potential Harm,"⁴⁵ and the CAO Policy defines harm as "Any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future."⁴⁶

The present case involves three distinct complainant groups, comprising several thousand people: (1) resettled villagers; (2) villagers who refused to resettle; and (3) upstream villagers. Some of their allegations of harm are similar, while others apply to one or two groups. For this

⁴² 2006 Sustainability Policy, para. 26, and 2012 Sustainability Policy, paras. 24 and 45, and 2009 ESRP, section 10.2.7 and 2016 ESRP, section, 9.2.1.

⁴³ CAO Policy, para. 76.

⁴⁴ 2006 Sustainability Policy, para. 26, and 2012 Sustainability Policy, paras. 24 and 45, and 2009 ESRP, section 10.2.7 and 2016 ESRP, section, 9.2.1.

⁴⁵ CAO Policy, para. 91.

⁴⁶ CAO Policy, glossary.

appraisal, CAO did not receive any access to non-public project information regarding the Lower Sesan 2 hydropower dam. As a result, this preliminary assessment of harm is based on publicly available information related to the complainants' allegations.

Based on analysis of available information, there are preliminary indications of Harm or potential Harm in relation to the following issues raised by complainants:

- **Lack of consultation, transparency, and information** All three community groups allege that they were not appropriately consulted during the project's planning and development process, including during the environmental impact assessment (EIA) and development of the compensation and resettlement plan. They cite a general lack of transparency and disclosure of information about the project, compounded by a lack of opportunity to participate in the land allocation process or the boundary setting for the logging concession in the reservoir area.⁴⁷

Public reporting dating back to 2009 highlights a lack of adequate consultation with communities living around the proposed dam site.⁴⁸ An EIA conducted in 2008 included some stakeholder meetings, where a vast majority of potentially affected communities opposed the project, but most of those who would be relocated expressed support.⁴⁹ In 2021, Human Rights Watch (HRW) published an extensive report on the dam's impacts. Its findings concluded that neither the government of Cambodia nor the operating company partly owned by EVNI adequately consulted impacted communities and affected families before or during the dam's construction. Instead, they reportedly "ignored communities' concerns and objections, dismissed calls for discussion of alternative project designs, provided wholly inadequate compensation to impacted communities, and failed to set up an effective grievance mechanism to address disputes".⁵⁰ According to HRW, the consequences of this lack of proper stakeholder engagement have been severe, leaving the communities "poorer and worse off". Other

⁴⁷ (i) Resettled villagers from Old Kbal Romeas have indicated that there was no transparency or possibility to participate in the decision-making process regarding the land allocation. (ii) Villagers from Old Kbal Romeas who refused to resettle allege that they had no involvement regarding the concession boundary for logging activities, which affects their communal forest, while (iii) the upstream villagers have indicated that no company or government representative came to share information with their communities, explain the hydropower project and/or its impacts or hold a consultation in their area. Upstream villagers allege that the only information they received was from a local NGO in 2017, which shortly after was no longer able to work with their communities due to threats from government authorities and the political sensitivity of the project.

⁴⁸ Baird, Ian (2009). Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia. Rivers Coalition in Cambodia, pp. 115-117. Available: <https://bit.ly/3gdRHl8>.

⁴⁹ EIA carried out by Key Consultants Cambodia (KCC), October 2008, executive summary. The EIA report is publicly available at: <https://bit.ly/3D5O9dm>. CAO cannot attest to the legitimacy of this public version of the report, or whether it is a draft or final version. The EIA was accessed through a public resource webpage, which is a non-governmental endeavor (opendevelopmentcambodia.net). In the absence of information directly from the project, provided by the IFC client, CAO considers this report a relevant source of information for the purposes of this compliance appraisal. Any questions about its legitimacy or relevance can be raised and considered during the compliance investigation.

⁵⁰ HRW, Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia, August 2021, p. 3, available at <https://bit.ly/3eAkOyo>.

NGOs and civil society organizations have conducted studies that reached similar findings and highlighted the lack of disclosure of information to communities.⁵¹

- **Lack of proper consultation with indigenous communities and consideration of their communal land rights, cultural identity, and sacred sites.** The complainants include residents of seven upstream villages who are ethnic Lao, Khmer, and indigenous Tampuan, and of 11 villages along the Srepok river who are ethnic Lao and indigenous Jarai, Krajoh, and Tampuan. In addition, the 136 or so families who refused to resettle include Bunong indigenous people from Old Kbal Romeas who allege that the hydropower project, and related flooding, has affected the boundaries of their communal forest and their access to sacred sites and ancestral burial grounds, impacting their cultural identity.⁵²

The lack of free, prior, and informed consultation with these indigenous communities, as well as impacts on their cultural and traditional practices has been reported on by academics, NGOs, and the media since 2009.⁵³ In 2018, the United Nations Special Rapporteur on the situation of human rights in Cambodia reported that “the Lower Sesan 2 hydroelectric project has resulted in the Bunong indigenous people⁵⁴ losing their homes and much of their spiritual forest and burial grounds to the reservoir’s water, leaving them at risk of losing their livelihoods.”⁵⁵ In 2021, the HRW report concluded that Cambodia’s government and officials at the Lower Sesan 2 hydropower company had made no attempt to obtain the “free, prior, and informed consent” of affected Indigenous peoples.⁵⁶

⁵¹ Earth Rights International, Lower Sesan 2 Dam webpage, available at: <https://bit.ly/3ERVMMWe>; Earth Rights International, Pahna, Watering Down the Law A Legal Analysis of the Proposed Lower Sesan 2 Dam Project, in Land, Water, Rights. Voices from the Tibetan Plateau to the Mekong Delta, p. 143-144, available at: <https://bit.ly/3S3CIN3>, and Baird, Ian (2009). Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia. Rivers Coalition in Cambodia, pp. 116-117. Available at: <https://bit.ly/3gdRH18>

⁵² According to an article published by Earth Rights, there are indigenous people such as the Kachey, Tompun, Kreung, Kavet, Kachok, Pnong, and Kouy along Srepok and Sesan rivers in Rattanakhiri and Stung Treng provinces, as well the Kbal Romeas Commune in Stung Treng Province, whose cultures, traditions, and ancestral graves are threatened by the Lower Sesan 2 dam because of flooding and resettlement. Earth Rights International, Pahna, Watering Down the Law: A Legal Analysis of the Proposed Lower Sesan 2 Dam Project, in Land, Water, Rights. Voices from the Tibetan Plateau to the Mekong Delta, p. 149-150, available at: <https://bit.ly/3S3CIN3>.

⁵³ Indigenous People NGO Network (IPNN), NGO Forum on Cambodia, Asian Indigenous Peoples Pact (AIPP), “The Rights of Indigenous Peoples in Cambodia, February 2010, Report submitted to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), p. 14, available at: <https://bit.ly/3T9uhMe>; Baird, Ian (2009). Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia, Rivers Coalition in Cambodia, pp. 13-15, available at: <https://bit.ly/3gdRH18>; Say Tola Sangeetha Amarthalingam, “Cambodians struggle to retain their identity after being displaced by dam”, in The Third Pole, June 2021, available at: <https://bit.ly/3D6Gs73>, and John Reed and James Kyng, “Belt and Road dam in Cambodia branded a ‘disaster’ for local communities”, in Financial Times, August 2021, available at: <https://on.ft.com/3TpFU1e>.

⁵⁴ Other sources confirm this refers to the villagers of the Old Kbal commune. Tith Kongnov, “Bunong demand company stop land clearing”, in Khmer Times, September 2022, available at: <https://bit.ly/3Tu2nuc>; Bunly Soeung, “Hydro-power projects and cultural rights for Bunong communities in Cambodia”, in New Mandala, January 2022, available at: <https://bit.ly/3s0xK3B>, and Khouth Sophak Chakrya, “Stung Treng authority agrees to Bunong request”, The Phnom Penh Post, December 2018, available at: <https://bit.ly/3CDmAac>.

⁵⁵ UN Human Rights Council Report of the Special Rapporteur on the situation of human rights in Cambodia; 15 August 2018; A/HRC/39/73, para. 32, available at: <https://bit.ly/3TpjUne>.

⁵⁶ HRW, Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia, p. 3, available at <https://bit.ly/3eAkOyo>.

- **Impacts on livelihoods, education, and health due to flooding and changing water levels.** All three groups of complainants claim their livelihoods have been affected as a consequence of the project's impact on water levels in the area. Resettled villagers state that the dam's operations are partially flooding their new land, which prevents them from being able to fully cultivate the rice fields. They allege that the company has not paid them proper compensation for this loss of livelihood.⁵⁷ Villagers that refused to resettle claim they were forced to move to community forest around Old Srekor and Old Kbal Romeas after the dam operations flooded their villages, rice fields, and school. They say this affects their ability to work and their children's education and claim the stagnant river water has caused skin diseases. Upstream communities have also noted impacts to their livelihood since the dam gates closed in 2017. They allege that unusual fluctuations in the water level (high in the morning and very low in the evening) makes it difficult to use traditional fishing gear and adversely affects their agricultural production, riverbank gardening, boat transportation, and livestock. These villages also report that flooding incidents have become more severe and longer lasting each year since the dam started operations, affecting living conditions and annual rice yields.

Studies of dams in the Mekong Basin have documented how changes in fish migration, river hydrology, and silt loads can negatively impact the food and economic security and wellbeing of riparian communities⁵⁸. News articles and HRW's 2021 report document negative effects of the dam on cultural identity as well as the daily struggles of communities that stayed close to their former, flooded villages as well as some of the irregular and extreme flooding upstream villagers have suffered since the dam's completion in 2017.⁵⁹

- **Impacts on livelihoods due to changes in fish migration.** All three complaints point out that there were early expert warnings that the Lower Sesan 2 dam would cause a significant decrease in fish, affecting the livelihood of upstream and downstream communities. Since the project went ahead, villagers who refused to resettle report a significant decline in the area's fish population, which they rely upon for both personal consumption and income. The upstream communities say they have witnessed more fish than usual, which they attribute to migration before the dam gates closed.

⁵⁷ The resettled villagers explained that parts of the land received as part of their resettlement packages (5 ha of rice field land), have been flooded by the dam, but the company refuses to give them new lands unless all of it is flooded. When only part of their resettled land is flooded, the company has given villagers a one-time monetary compensation.

⁵⁸ Soukhaphon, Akarath; Baird, Ian G.; and Hogan, Zeb S., "The Impacts of Hydropower Dams in the Mekong River Basin: A Review", *Water* 13, no. 3: 265, January 2021, available at: <https://doi.org/10.3390/w13030265>.

⁵⁹ Say Tola Sangeetha Amarthalingam, "Cambodians struggle to retain their identity after being displaced by dam", in *The Third Pole*, June 2021, available at: <https://bit.ly/3D6Gs73>; See Narin, Sun, 'Our Ancestors' Graves have been Drowned': Cambodian Dam Wipes Out Hill Tribe Way of Life'. VOA Khmer, December 7, 2018, available at: <https://bit.ly/3CEb4Ly>; Narin, Sun, 'Two Years on, Sesan's Ethnic Communities Attempt to Restart Their Lives'. VOA Khmer, March 30, 2020, available at: <https://bit.ly/3VAjH2f>; HRW, Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia, August 2021, pp. 10, 99-103, available at <https://bit.ly/3eAkOyo>, and Radio Free Asia, "More than 1000 Families in Cambodia Suffer after Flooding of Mekong River Tributary", August 21, 2018, available at: <https://bit.ly/3TpeBK>

The hydropower project's potential impacts on the local migratory fish population were first highlighted in 2003.⁶⁰ The 2008 EIA, and additional studies in 2009 and 2012, all determined that the impact would be severe, with some species disappearing, because many species were migratory, and the dam would block their passageway. All these studies concluded that fish loss would be one of the dam's largest impacts, with socio-economic consequences on both downstream and upstream communities.⁶¹ Some public reporting alleges that these expected impacts have now come to pass and there are local claims about a decrease in size and decline in amount of the fish population as well as the loss of certain species. There are also reports that fisheries-related conflicts are emerging between communities.⁶² The hydropower project operator has constructed a fishway/ladder to address the fish migration issue, but there are conflicting opinions on its effectiveness to address the scope of related impacts from the hydropower project.⁶³

- **Inadequate resettlement and compensation packages.** All three groups of villagers allege they were not adequately consulted about the resettlement plan or compensation packages before the dam was constructed or began operations. Villagers who relocated claim the resettlement packages were insufficient. In particular, their complaint highlights that conditions at the resettlement site are not as expected, the individual circumstances of each family were not considered, and households lost income due to the lack of a livelihood rehabilitation program.⁶⁴ Families who refused to resettle allege they never

⁶⁰ That year, a rapid review by the Asian Development Bank (ADB) identified that the Lower Sesan 2 dam project could cause loss of migratory fish species and decline or change in fisheries both in the reservoir and downstream from the dam. ADB, Environmental checklist for hydropower development, 2003, attached as Annex 4 of 2008 EIA, available at: <https://bit.ly/3D5O9dm>.

⁶¹ The 2008 EIA determined that impact on fish would be severe, and some would disappear, because around 66% of the species were migratory and their passageway would be blocked by the dam, and that "the socio-economic impact from the consequent loss of fish will be one of the single largest impacts of the dam." A 2009 study concluded that the villages along the Sesan and Srepok rivers and the reservoir area, which included indigenous communities, would lose access to the vast majority of their fisheries resources due to the dam blocking fish migrations from the Mekong and Sekong rivers up the Sesan and Srepok rivers, while upstream communities would lose access to migratory fish. Another study in 2012 found that the dam would cause an estimated 9.3% decrease in fish biomass across the entire lower Mekong basin (the largest impact on fish biomass of all the dams planned at that time), due to its location on a critical fish migration route between the river's downstream floodplains and upstream tributaries, potentially threatening the food security of hundreds of thousands of people. One of the report's conclusions was that "the construction of the LSS2 dam is highly detrimental according to [their] analysis." EIA by KCC, October 2008, executive summary, pp. S-4-5. The EIA report is available at: <https://bit.ly/3D5O9dm>; Baird, Ian G, "Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia), Rivers Coalition in Cambodia, 2009, p. 13, available at: <https://bit.ly/3gdRH18>; and G. Ziva, E. Baranb, S. Namc, I. Rodríguez-Iturbe, and S. A. Levin, "Trading-off fish biodiversity, food security, and hydropower in the Mekong River Basin", in Proceedings of the National Academy of Sciences of the United States of America (PNAS), Vol. 109, No. 15, April 2012, available at www.pnas.org/content/109/15/5609.full.pdf

⁶² Say Tola Sangeetha Amarthalingam, "Cambodians struggle to retain their identity after being displaced by dam", in The Third Pole, June 2021, available at: <https://bit.ly/3D6Gs73>, and Sango Mahanty, "Lower Sesan 2 Hydropower Dam", in The People's Map of Global China, October 2021, available at <https://bit.ly/3ToWaQJ>.

⁶³ Sango Mahanty, "Lower Sesan 2 Hydropower Dam", in The People's Map of Global China, October 2021, available at <https://bit.ly/3ToWaQJ>; and Mao Pengfei, Nguon Sovan, "Xinhua: Spotlight: China-built hydropower project in Cambodia guarantees the way home for fish, in Xinhuanet News, April 2019, available at <https://bit.ly/2PiMOAC>.

⁶⁴ In the complaints, villagers indicate that communities lack food and water, cannot raise animals because there is no place to keep them, and cannot fish because the pond provided is too deep. They stated that individual circumstances were not considered, all new houses in the resettlement area were the same size regardless of family size, and some villagers ended up with smaller, poorer quality houses than they had before. In general, they raised issues about the quality, adequacy, and capacity of infrastructure at the relocation site (regarding housing, the sewage system, and health centers, among other issues), which they claim was not as promised by government officials.

agreed to compensation because they did not want to move. Together with the upstream communities, their complaint argues for compensation for the dam's impacts on their livelihoods and property.

The construction of the Lower Sesan 2 hydropower dam required the resettlement of thousands of people. Studies conducted in 2008 and 2009 recorded opposition to these resettlements from many villagers whose lands would be inundated to make way for the dam reservoir resulting in their involuntary relocation.⁶⁵ Since the hydropower project began operations, HRW has highlighted several alleged problems with the project's resettlement plan. Its 2021 report cites lack of consideration for the rights of indigenous peoples and other ethnic minorities, insufficient compensation for resettled communities and inadequacies related to the resettlement site's location, which is far from places they frequented and with lower land fertility and agricultural productivity.⁶⁶ The media has also reported on some of these problems and the unequal delivery of compensation.⁶⁷

- **Lack of access to clean water.** Resettled villagers from Srekor and Kbal Romeas claim in their complaint that many families do not have access to sufficient clean water for drinking and household use. Instead, they now need to buy water, which represents a significant expense. The villagers that refused to resettle also claim that they currently have no source of safe drinking water now that the river water is stagnant.

Limited access to clean water among dam-affected communities has been documented in various public sources. The dam's potential impact on water quality and on domestic water sources was identified in the 2008 EIA and in a 2009 civil society study.⁶⁸ In 2021, HRW and other non-governmental organizations reported that, in at least one settlement, the water sourced from wells with pumps supplied by the developer had high levels of biological contamination. They also confirmed that villagers must pay for water deliveries, a major monthly cost.⁶⁹

⁶⁵ EIA by KCC, October 2008, executive summary, p. S-5, available at: <https://bit.ly/3D5O9dm>; and Baird, Ian G, "Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia", Rivers Coalition in Cambodia, 2009, p. 13, available at: <https://bit.ly/3gdRHl8>

⁶⁶ HRW, Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia, 2021 pp. 7-10, 81-102, available at <https://bit.ly/3eAkOyo>. See also, Sango Mahanty, "Lower Sesan 2 Hydropower Dam", in The People's Map of Global China, October 2021, available at <https://bit.ly/3ToWaQJ>.

⁶⁷ Keat Soriththeavy and Danielle Keeton-Olsen, "In Dam-Divided Srekor, Opposition Candidate Eyes Return With Lofty Plans," in VOD, May 2022, available at <https://bit.ly/3CIJtZw>; Sun Narin, "Two Years on, Sesan's Ethnic Communities Attempt to Restart Their Lives," in VOA Khmer, March 2020, available at: <https://bit.ly/3VAjH2f>. China's Huaneng Group Co. Ltd., the parent company of Hydrolancang International Energy Co. Ltd (the shareholder in the Lower Sesan 2 Hydropower Company), released a "Sustainability Report" in May 2020 prepared by a Cambodian group, Asian Vision Institute, which addresses the Lower Sesan 2 dam and some of the issues raised by resettled villagers. It concludes that the company's reparation policy is good and adequate. Sustainability Report, Rapid Assessment of Chinese State-Owned Enterprises in Cambodia, Corporate Social Responsibility of China Huaneng Group Co. LTD, prepared by the Asian Vision Institute, 2020, pp. 7-17.

⁶⁸ Baird, Ian, Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia, Rivers Coalition in Cambodia, 2009, pp. 13-14, 37-38, 54-55, 103-104, 112-113, available at: <https://bit.ly/3gdRHl8>.

⁶⁹ HRW, Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia, 2021 pp. 84-86, available at <https://bit.ly/3eAkOyo>, and Sango Mahanty, "Lower Sesan 2 Hydropower Dam", in The People's Map of Global China, October 2021, available at <https://bit.ly/3ToWaQJ>.

- **Social and safety impacts for communities including threats and intimidation.** All three groups of villagers allege being subjected to intimidation and threats due to their opposition to the project. Resettled communities state that they do not feel safe to express their concerns about living in the new village, because they were told their resettlement land and homes would be taken away. These villagers also claim that the resettlement site is surrounded by hundreds of dam workers' homes alongside restaurants, karaoke bars, and brothels, and expressed concern about the social and safety impacts on their communities. The villagers who refused to resettle allege they have received death threats from loggers in the reservoir area and that they have been accused of being anti-government, threatened, and charged for incitement. Upstream communities claim to have been threatened and intimidated by police and local government officials for gathering, discussing or opposing the Lower Sesan 2 project.

The 2021 HRW report and other outlets have reported threats and intimidation against communities living around the project area, aimed at pressuring them to accept the compensation offered or stop voicing their concerns and opposition.⁷⁰

Summary of CAO's observations in relation to Harm

Taking all of the above into consideration, CAO finds that there are preliminary indications of harm regarding the various issues raised by the three groups of complainants. Many of these have been persistently raised by the affected communities since at least 2008 and are consistent with well-known impacts from hydropower projects.⁷¹ A large hydropower project, such as Lower Sesan 2, carries significant environmental and social risks with potential impacts of the types described by the complainants, particularly when these risks have not been identified, assessed, and mitigated following good practice E&S standards such as the IFC's Performance Standards. There is a significant amount of publicly available information from civil society, academic, and media sources that is consistent with or attests to the complainants' allegations of harm. In addition, CAO does not have any clear information contradicting the complainants' claims or indicating that the environmental and social risks of the project have been assessed and mitigated following IFC's Performance Standards. All of this taken together leads CAO to conclude there are preliminary indications of harm in this case.

⁷⁰ HRW, *Underwater: Human Rights Impacts of a China Belt and Road Project in Cambodia*, 2021 pp. 17, 57, 61-62 and 69, available at <https://bit.ly/3eAkOyo>; Oliver Hensengerth, "Regionalism, Identity, and Hydropower Dams: The Chinese-Built Lower Sesan 2 Dam in Cambodia", in *Journal of Current Chinese Affairs*, 2017, p. 103, available at <https://journals.sagepub.com/doi/pdf/10.1177/186810261704600304>, and *Drowning Dissent: Report on the experiences of communities to be resettled for the Lower Sesan 2 dam. Findings and Recommendations on the Asset Survey*, by the Kbal Romeas and Sraekor communities, funded by CEPF, July 2016, pp. 10-11.

⁷¹ World Commission on Dams, "Dams and Development: A New Framework for Decision-making: the Report of the World Commission on Dams", United Kingdom, Earthscan, 2000, ISBN 9781853837982.

e) Plausible Link between Harm Allegations and Potential IFC Non-compliance

Lastly, a CAO compliance appraisal must consider whether “the alleged Harm is plausibly linked to the potential non-compliance.”⁷² In this case, there is a plausible link between the harms alleged by complainants and IFC’s potential non-compliance in its pre-investment review and E&S monitoring of its 2010 investment in ABBank, whose client, EVNI, is a shareholder in the hydropower project.

In determining whether there is a “plausible link” between non-compliance and harm, CAO considers the relationship between the potential non-compliance and alleged harm without requiring causation or contribution. CAO notes that a business can be directly linked to adverse E&S risks and impacts through its business relationships, which can include businesses numerous tiers down a value chain.⁷³

The preliminary indications of harm identified in this appraisal could plausibly have been mitigated or otherwise addressed if IFC’s E&S requirements had been applied to EVNI as required by IFC’s investment agreement with ABBank. The monitoring by IFC of the FI’s E&S performance, following the 2006 and 2012 Sustainability Policy, would have played an important role to that end.

Five Performance Standards are directly relevant to the harms alleged in this case:

- *PS1 (Social and Environmental Assessment and Management Systems)* in relation to: the requirements of an appropriate environmental and social impact assessment; management of risk and impacts; disclosure of the hydropower project’s information; and proper consultations and stakeholder engagement with affected communities.
- *PS4 (Community Health, Safety and Security)* in relation to: the standards for community health and safety, given communities’ allegations of illnesses from the frequent flooding; and threats and intimidation against those who voice opposition to the project.
- *PS5 (Land Acquisition and Involuntary Resettlement)* in relation to: the requirements and standards for a proper resettlement and livelihood restoration plan, including consultation and proper implementation to effectively restore and compensate for the physical relocation and livelihood impacts on affected communities.
- *PS6 (Biodiversity Conservation and Sustainable Natural Resource Management)* in relation to: biodiversity risks and impacts on the fish population and other ecosystems.
- *PS7 (Indigenous Peoples)* in relation to: the requirements for proper consultation with affected indigenous communities (including free, prior, informed consultation in defined circumstances); consideration of communal land rights; and protection of cultural identity and sacred sites.

⁷² CAO Policy, para. 91.

⁷³ OHCHR, *The Corporate Responsibility to Respect: An Interpretive Guide*, p.5, at: <https://bit.ly/3zuLgSI>; OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs), 2011, available at: <https://www.oecd.org/corporate/mne/> and <https://bit.ly/3S72BpP>, and OHCHR response to request from BankTrack and OECD Watch for advice regarding the application of the UN Guiding Principles on Business and Human Rights where private sector banks act as nominee shareholders, August 30, 2021, p.4.

The potential for IFC's client, ABBank, to influence the E&S risk profile of the hydropower project can be seen at different levels during different phases of the project's development. First, ABBank is a significant shareholder in EVNI. Second, EVNI had control of the hydropower project during its early planning and development stages, from 2010, when IFC invested in ABBank, until 2012 when EVNI lost its majority stake. During this phase EVNI was responsible for the project's development, including its environmental and social impact assessments and mitigation plans, technical design, stakeholder engagement activities, and other pre-construction activities (see timeline in Appendix 1). Third, after losing its controlling interest in 2012, EVNI remained a significant minority shareholder, with the potential ability to influence the project and raise concerns through its representative on the Board of Directors of the joint venture company that built and operates the hydropower project.

Given the financial and ownership relationships between ABBank, EVNI, and the hydropower project, ABBank's commitment to apply the IFC Performance Standards to its existing investments, and the nature of issues raised by complainants, potential non-compliance in IFC's review and monitoring of its 2010 investment in ABBank can be plausibly linked to the harms alleged by complainants.

f) Additional Policy Requirements for Consideration in the Appraisal

According to the CAO Policy, a CAO compliance appraisal must take into account a series of additional considerations.⁷⁴ In this case, CAO finds that none of the additional Policy considerations impact the decision to investigate. For completeness, analysis of each of these considerations is presented in Appendix 3.

5. CAO Decision

CAO will proceed with a compliance investigation into IFC's equity investment in ABBank and its exposure to the Lower Sesan 2 hydropower project in Cambodia, on the basis that the complaint meets the three appraisal criteria, as described above.

CAO concludes that the complaints do not meet the appraisal criteria in relation to IFC's investments in Vietinbank or the 2017 SME loan to ABBank. As a result, these IFC investments will not be included in the scope of the CAO compliance investigation.

This appraisal report will be shared with the Board, the World Bank Group President, IFC management, the client, and the complainants. CAO will also publish this appraisal report and IFC's Management Response on its website.⁷⁵

Terms of reference for the compliance investigation are attached in Appendix 4.

⁷⁴ CAO Policy, para. 92.

⁷⁵ CAO Policy, para. 106.

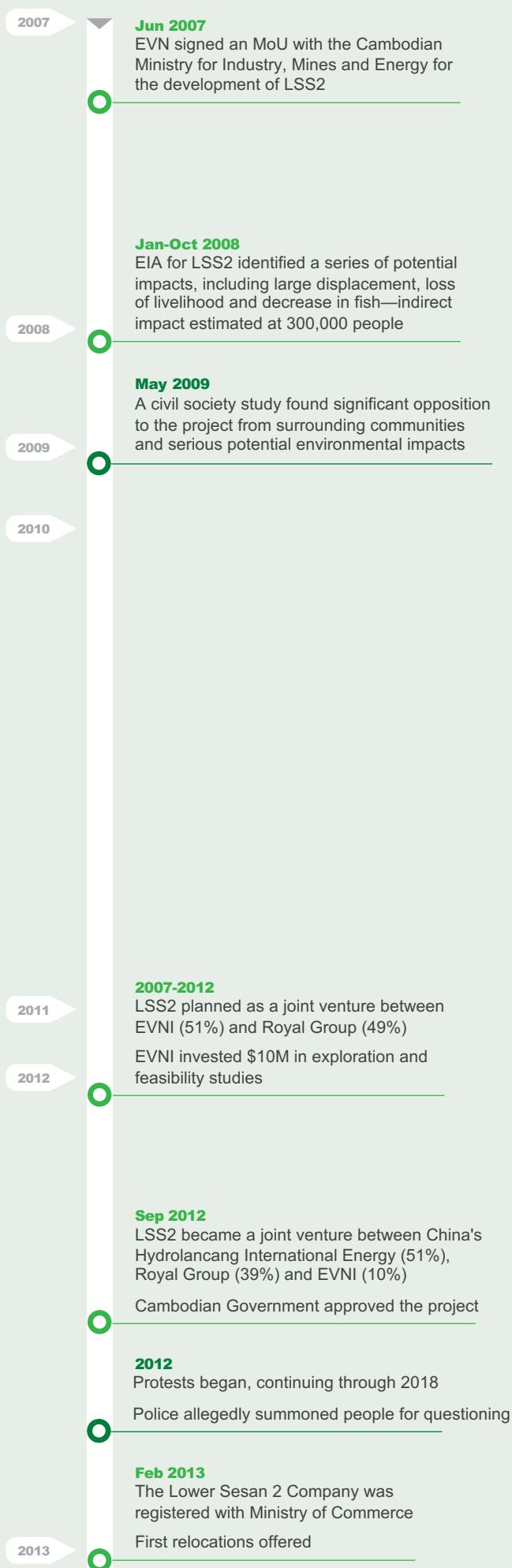
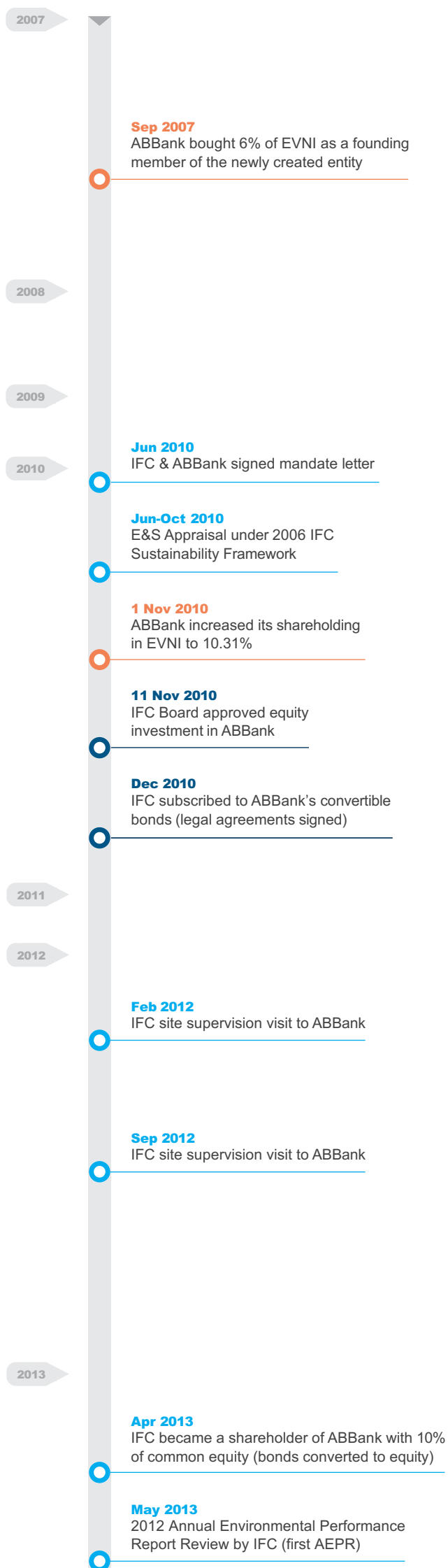
Appendix 1: Timeline of IFC's investment in ABBank and the development of the Lower Sesan 2 hydropower project

ABBank and IFC

Lower Sesan 2 Hydropower Project Development

○ IFC's investment in ABBank
 ○ ABBank's investment in EVNI

○ EVNI's investment in LSS2
 ○ Community Actions



Continued

Appendix 1: Timeline of IFC's investment in ABBank and the development of the Lower Sesan 2 hydropower project (cont.)

ABBank and IFC

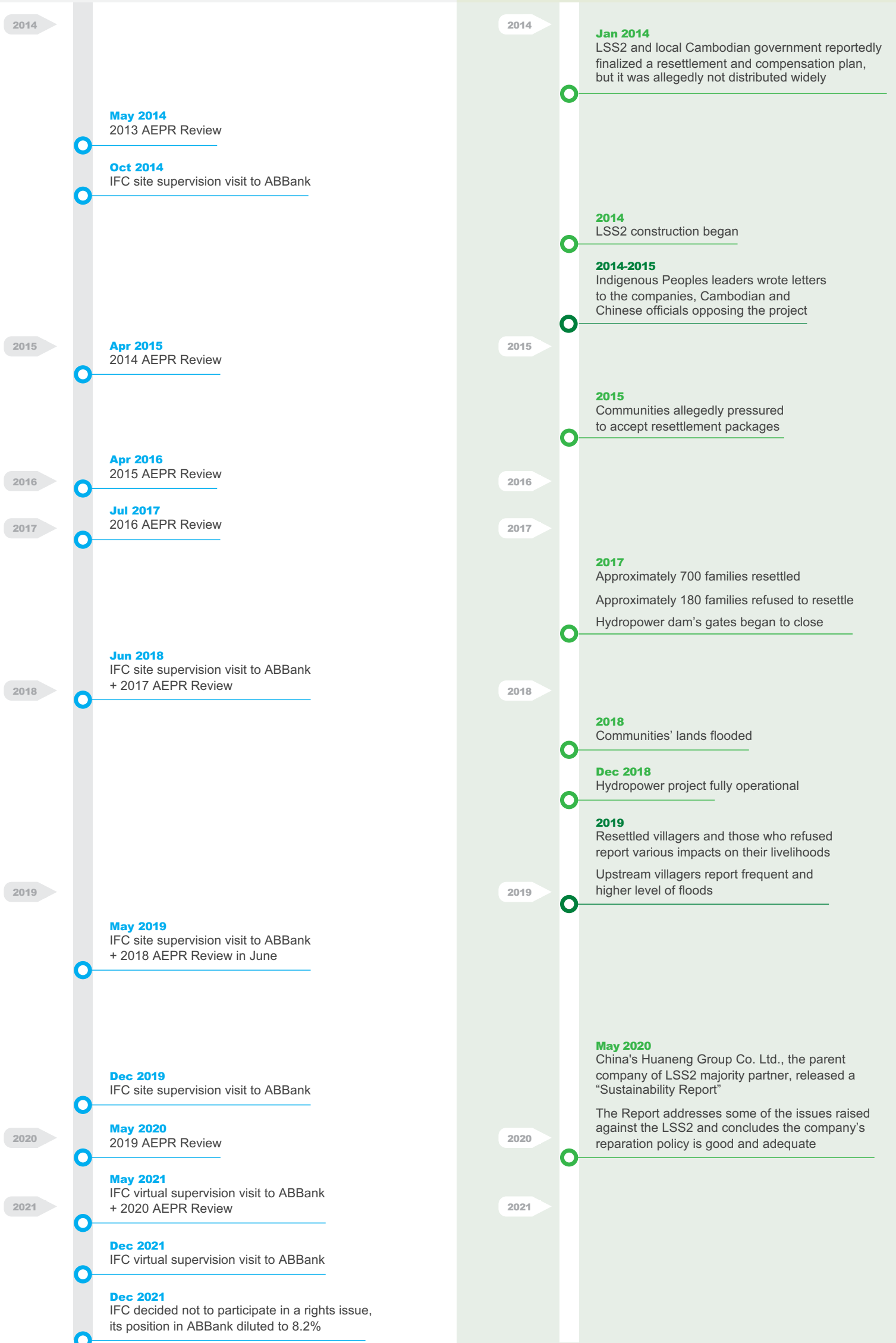
Lower Sesan 2 Hydropower Project Development

○ IFC's investment in ABBank

○ ABBank's investment in EVNI

○ EVNI's investment in LSS2

○ Community Actions



Appendix 2: IFC Management Response

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT RESPONSE
TO THE CAO COMPLAINT
ON**

**ABBank (Projects #29745, #40081)
Vietinbank (Projects #28509, #31300 #34124) and
Issues Raised in Cambodia**

July 20th, 2022

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ABBREVIATIONS AND ACRONYMS

ABBank	An Binh Commercial Joint Stock Bank
CAO	Office of the Compliance Advisor Ombudsman
EVN	Vietnam Electricity Group
EVNI	EVN International Joint Stock Company
E&S	Environmental and Social
FI	Financial Intermediary
FY	Fiscal Year
IFC	International Finance Corporation
LSSD2	Lower Se San Dam 2
MIGA	Multilateral Investment Guarantee Agency
NGO	Nongovernmental Organization
SME	Small and Medium Enterprise
US\$	United States Dollar
Vietinbank	Vietnam Joint Stock Commercial Bank for Industry and Trade
VND	Vietnamese Dong
WBG	World Bank Group

EXECUTIVE SUMMARY

- i. This Management Response pertains to the Complaint received by the Office of the Compliance Advisor Ombudsman (CAO) on June 11, 2018, asserting IFC exposure to the Lower Se San Dam 2 (LSSD2) project in Cambodia via its investments in two financial intermediary (FI) clients, An Binh Commercial Joint Stock Bank (ABBank) and Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank), which have financial interests in, or linkages to, EVN International Joint Stock Company (EVNI), which owns 10 percent of LSSD2. The Complaint was filed by local communities in the Stung Treng and Ratanakiri Provinces, Cambodia, with support from three international nongovernmental organizations (NGOs). The Complaint claims these communities are, or may be, affected by the environmental and/or social (E&S) impacts raised in the Complaint.
- ii. CAO found the Complaint eligible for assessment in July 2018 after determining it met its eligibility criteria: (i) the complaint pertains to a project in which IFC/MIGA is participating; (ii) the issues raised in the complaint pertain to CAO's mandate to address environmental and social (E&S) impacts of IFC/MIGA projects; and (iii) the complainants are, or may be, affected by the environmental and/or social impacts raised in the complaint.
- iii. Vietinbank has confirmed that it had neither provided any financing to, nor invested equity in, EVNI. Vietinbank's exposure to Vietnam Electricity Group (EVN), the parent company of EVNI, is limited to loans for projects/operations located in Vietnam only, not Cambodia. Therefore, as defined by paragraph 91 (c) of the new IFC/MIGA Independent Accountability Mechanism (CAO) Policy¹ (CAO Policy) regarding the linkage between non-compliance and harm, IFC considers that there is no material link between the FI client and the LSSD2 project that is subject of the Complaint, and therefore no plausible link between the alleged harm and any potential non-compliance of IFC.
- iv. In 2007 and November 2010, ABBank invested in the equity of EVNI. These investments predate IFC's ABBank Equity Project. IFC subscribed to a convertible bond issued by ABBank on December 28, 2010 and became a shareholder after exercising the conversion option of the bond, on April 18, 2013. As such, IFC funds were not used to finance ABBank's investment in EVNI, nor were ABBank's investments in EVNI subject to IFC E&S requirements as defined by paragraph 37 of IFC's Policy on Environmental and Social Sustainability² (the Sustainability Policy), which states that such requirements will apply to the portfolio that is originated from the time IFC became a shareholder. ABBank has confirmed that it has not provided further funding to EVNI since November 2010.
- v. The ABB Loan Project has no connection with the financing of EVNI's operation in Cambodia or the LSSD2. The project was committed and disbursed in 2017 and the totality of the loan proceeds was earmarked to finance small and medium enterprises (SMEs), including Women-SMEs, in Vietnam exclusively.

¹ <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2>

² https://www.ifc.org/wps/wcm/connect/7141585d-c6fa-490b-a812-2ba87245115b/SP_English_2012.pdf?MOD=AJPERES&CVID=kiIrw0g%20%E2%80%A6

- vi. After careful consideration of the facts, as well as the criteria and guidance provided by both the Sustainability Policy and the new CAO Policy, Management concludes that there is no link between IFC and LSSD2 to which IFC's requirements regarding E&S risk management apply.

I. INTRODUCTION

1. In June 2018, three separate complaints (together, the “Complaint”) were lodged with the Office of the Compliance Advisor Ombudsman (CAO) concerning IFC projects with An Binh Commercial Joint Stock Bank (ABBank) and Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank), two Vietnamese financial institutions (together, the “Banks”). The Complaint asserts that the following projects: ABBank quasi-equity and a senior syndicated loan (#29745 and #40081) and Vietinbank equity and quasi-equity (#28509, #31300, and #34124), (together, the “Projects”) financed by IFC, establish a relationship between IFC and Lower Se San Dam 2 (LSSD2), a hydropower project in Cambodia.

2. The Complaint was filed by three separate groups of villagers located in the Stung Treng and Ratanakiri Provinces (together, the “Complainants”), with guidance and support from three international nongovernmental organizations (NGOs) International Rivers, International Accountability Project, and Mekong Watch. Given the overlap of issues between the three complaints, CAO conducted a single assessment process, with the agreement of the Complainants.

3. LSSD2, a hydropower project located in Cambodia’s Se San River, was developed, constructed, and is being operated by Hydro Power Lower Sesan 2 Co. Ltd., a joint venture between Cambodia’s The Royal Group and Hydrolancang International Energy Co. Ltd. The joint venture holds 90 percent of LSSD2, while the remaining 10 percent is held by EVN International Joint Stock Company (EVNI)

4. In September 2007 and November 2010, ABBank invested in the equity of EVNI. These investments predate IFC’s ABBank Equity Project. It should be noted that IFC subscribed to a convertible bond issued by ABBank on December 28, 2010 and became a shareholder after exercising the conversion option of the bond, on April 18, 2013. Furthermore, ABBank confirmed that it has not provided further funding to EVNI since November 2010.

5. In March 2011, IFC, along with IFC Capitalization (Equity) Fund and IFC Capitalization (Sub-debt) Fund (“Cap Fund”), invested in Vietinbank’s equity, a state-owned bank in Vietnam. In parallel, the Cap Fund provided subordinated debt to Vietinbank. Both IFC and the Cap Fund have fully exited the investments in Vietinbank and currently hold no shares of this institution. While Vietinbank has financed EVN, it has not provided financing to EVNI or to any EVN project outside Vietnam.

6. In July 2018, CAO determined the Complaint was eligible for further assessment based on IFC’s investment in the Banks. CAO then extended its assessment timeframe at different stages due to a number of challenges faced during the process, including the COVID-19 pandemic, and to ensure that the potential for dispute resolution had been fully explored with all parties concerned.

7. Management has reviewed CAO’s Assessment Report and prepared the following response. The subsequent sections provide descriptions of the Projects’ background and the Complaint, and present IFC Management’s Response and conclusion.

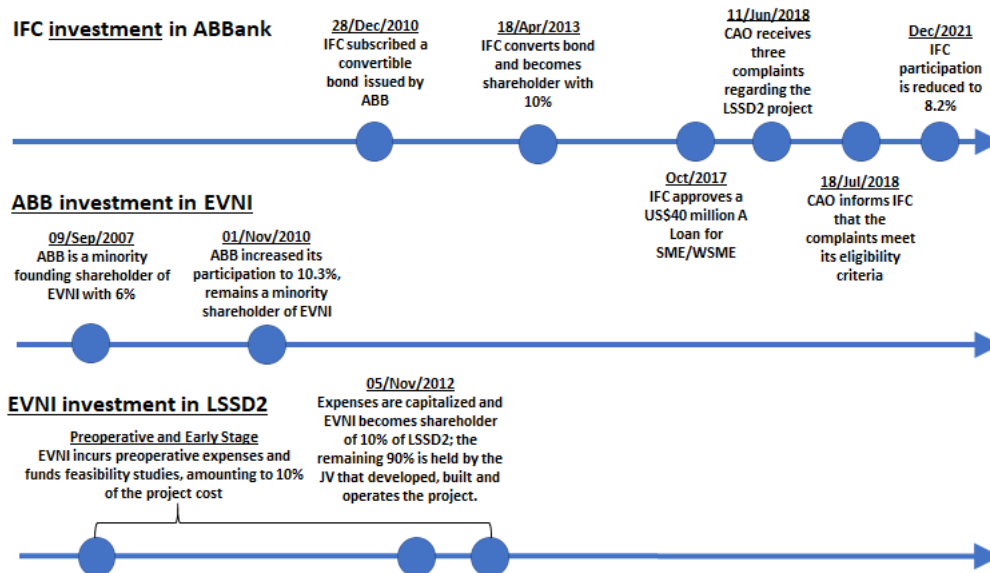
II. PROJECTS' BACKGROUND

A. ABBank

8. ***IFC Investments in ABBank.*** On December 28, 2010, IFC subscribed to a convertible bond issued by ABBank, a second-tier local bank in Vietnam which was transforming itself from a small rural bank into a full-service national bank providing financial services across its branch network, with a focus on small and medium enterprises (SMEs) and retail clients (the “ABB Equity Project,” #29745). The ABB Equity Project entailed IFC’s quasi-equity investment of up to VND 792 billion (equivalent to approximately US\$40.6 million) in the form of mandatory convertible bonds. In 2013, IFC converted the bonds into equity and, as a result, became a shareholder with 10 percent of ABBank’s common equity. IFC decided not to participate in ABBank’s rights issue completed in December 2021, and its position was diluted to 8.2 percent. In October 2017, IFC’s Board of Directors approved a US\$40 million senior loan investment in ABBank, with IFC’s own-account exposure of US\$28.5 million³ (the “ABB Loan Project,” #40081), exclusively for SME and Women-SME on-lending. As of March 15, 2022, the ABB Loan Project had an outstanding amount of US\$9.5 million.
9. ***Projects Context.*** The ABB Equity Project was aligned with IFC’s strategy in Vietnam in FY2010-2012, which focused on reinforcing Vietnam’s economic competitiveness as it transitioned into a market economy and promoted inclusive economic growth as a driver of urbanization in the country. IFC aimed to implement this strategy by supporting the Vietnamese financial market through investments and advisory work in SME finance, as well as assisting institutional capacity building in corporate governance for local entrepreneurs. The ABBank Loan Project was aligned with the World Bank Group (WBG) Vietnam Country Partnership Framework FY2018-2022, which aimed to strengthen financial viability of the private sector and broaden economic participation of women in the country.
10. ***Projects Purpose.*** The ABB Equity Project provided a unique opportunity for IFC to reinforce and significantly expand its mandate of financial inclusion and poverty alleviation in Vietnam, given the alignment of the project with IFC’s mandate, the extensive outreach in the frontier regions to underserved SMEs, and the potential growth of ABBank with the introduction of new products and channels. The ABB Equity Project also aimed to support the introduction of corporate governance best practices and development of capital markets in Vietnam. The ABB Loan Project, on the other hand, aimed to support increased access to finance for SMEs and Women-SMEs in Vietnam. The proceeds from the ABB Loan Project were ringfenced for the previously described purposes and, therefore, such proceeds were restricted from use for projects such as EVNI’s operation in Cambodia or the LSSD2.

³ The remaining US\$11.5 million were sold to IFC’s Asset Management Company’s (AMC) Women Entrepreneurs Debt Fund.

Figure 1 – ABB Equity Project Timeline



Source: <https://disclosures.ifc.org/project-detail/SPI/29745/abbank-equity-cb;>
[http://evni.vn/wp-content/uploads/2021/04/BC-thuong-nien-nam-2020-final_signed.pdf;](http://evni.vn/wp-content/uploads/2021/04/BC-thuong-nien-nam-2020-final_signed.pdf)
<http://evni.vn/quan-he-co-dong/bao-cao-tai-chinh-ki%cc%89m-toan-nam-2020.html>
<http://evni.vn/wp-content/uploads/2018/01/2.-EVNI-ban-TTTT-final.pdf>

- Advisory Services.** In addition to the equity investment, IFC also provided a comprehensive advisory services package to ABBank in the areas of: (i) SME banking; (ii) agribusiness financing; and (iii) corporate governance. All of IFC's advisory work with ABBank was delivered in Vietnam, for its local operations, and had been completed as of June 30, 2021.

B. Vietinbank

- IFC Investments in Vietinbank.** In December 2010, IFC's Board of Directors approved an investment by IFC and the Cap Fund in Vietinbank (the "Vietinbank Project," #28509). Vietinbank, the second largest commercial bank in Vietnam, was undergoing an equitization⁴ and transformation process to strengthen corporate governance, enhance competitiveness and expand access to finance in areas such as SME financing, which the project aimed to support. On March 10, 2011, IFC and the Cap Fund invested the VND equivalent of US\$169.6 million in newly issued shares of Vietinbank, for a 10 percent stake in the Bank, of which IFC's own-account amount was the VND equivalent of US\$55.6 million. At the same time, the Cap Fund provided a subordinated loan of US\$125.0 million to Vietinbank.

⁴ In the Vietnamese context, equitization refers to the transformation of a state-owned enterprise into a public (joint stock) company or corporation, implying a progressive dilution of government ownership and allowing for foreign participation.

13. Subsequently, IFC invested the VND equivalent of US\$5.2 million on December 26, 2011, and the VND equivalent of US\$5.7 million equivalent on October 2, 2013, through rights issues (projects #31300 and #34124). The total IFC/Cap Fund equity investment amounted to US\$203 million after the rights issues, representing a 10 percent stake in Vietinbank. In 2013, Bank of Tokyo Mitsubishi invested as a strategic shareholder of Vietinbank with a 19.8 percent equity stake. Accordingly, the IFC/Cap Fund total equity stake was diluted to 8.0 percent.
14. **Project Context.** The Vietinbank Project was aligned with the WBG strategy and IFC's financial markets strategy for Vietnam in FY2010-2012 as it supported the equitization of one of Vietnam's systemically important state-owned banks and contributed to the expansion of its reach to the underserved segments of the market. The Vietinbank Project also contributed to Vietnam's continued transition to a market economy and to the development of a more inclusive and competitive financial sector.
15. **Project Purpose.** The Vietinbank Project aimed to strengthen Vietinbank's capitalization, catalyze its equitization plan, support its organizational transformation program, improve its efficiency and sustainability standards, and strengthen its corporate governance and risk management. The Vietinbank Project represented a critical intervention by the WBG to support the country's banking sector equitization program amidst difficult market conditions and contribute to the financial inclusion of underserved segments of the population.
16. **Advisory Services.** In parallel with the investments, IFC also provided a package of advisory services in Risk Management, Corporate Governance, SME lending and Energy Efficiency financing. All advisory projects were completed as of August 31, 2018.
17. **Prepayment and Exit.** In October 2020, Vietinbank prepaid the subordinated debt to the Cap Fund and in May 2021, IFC/Cap Fund fully exited from the equity investment in Vietinbank. As of the date of this Management Response, IFC/Cap Fund do not hold any shares of Vietinbank.

III. CAO COMPLAINT

18. On June 11, 2018, the Complaint was lodged with CAO by three separate groups of villagers located in the Stung Treng and Ratanakiri Provinces, assisted by three international NGOs⁵. The Complaint claimed that the communities were, or might be, affected by the environmental and/or social impacts derived from LSSD2 and that IFC was actively exposed to LSSD2 through its investments in the Projects.
19. CAO found the Complaint eligible for assessment in July 2018 in relation to IFC's investments in the Projects after considering its three eligibility criteria: (i) the complaint pertains to a project that IFC/MIGA is participating in; (ii) the issues raised in the complaint pertain to CAO's mandate to address environmental and social (E&S) impacts

⁵ As per the CAO Assessment Report, the international NGOs involved are: International Rivers, International Accountability Project, and Mekong Watch.

of IFC/MIGA projects; and (iii) the complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

20. The Complainants originally requested CAO to keep their identities confidential due to concerns for personal security. Some complainants later granted permission to disclose their identities. Because of the anonymity concerns raised by the Complainants, CAO did not provide IFC with information regarding the details of the Complaint until September 18, 2021, when CAO shared a summary.

IV. MANAGEMENT RESPONSE

Coordination by IFC Pertaining to the Complaint

21. On June 11, 2018, CAO received the Complaint regarding LSSD2, and its alleged connection with the Projects.
22. On July 18, 2018, CAO informed IFC that the Complaints met CAO's eligibility criteria to initiate the assessment stage. Since that date, IFC has closely coordinated with CAO, ABBank and Vietinbank to facilitate the necessary information exchange. Due to the Complainants' request for anonymity, IFC was not informed of the Complainants' identities until September 2021 and was only provided a brief description of the Complaint.
23. IFC has assisted in the establishment of a direct communication channel between CAO and the Banks and has continued to provide information and facilitate the communications between CAO and the Banks regarding matters concerning the Complaint.

Assertion of Applicable Link between IFC and LSSD2 via ABB

24. The relationship between EVNI and ABBank predates the ABB Equity Project, and IFC investment proceeds did not support ABBank's investment in EVNI.
 - IFC subscribed to the convertible bonds on December 28, 2010, and became a shareholder in ABBank on April 18, 2013, by converting the bonds into the ABBank shares, under the ABB Equity Project.
 - ABBank is a founding shareholder of EVNI. It participated with 6 percent of the shareholding at EVNI's establishment in 2007, and then in November 2010 increased its participation to the current 10.31 percent.
 - ABBank confirmed that it has not made any additional capital contribution to EVNI since then, and that it has not provided any additional financing to EVNI. EVNI's largest shareholder is the Vietnam Electricity Group (EVN), through various subsidiaries, and ABBank has been a minority shareholder in EVNI from inception. Although ABBank appoints a director to EVNI's board, it is not involved in EVNI's day-to-day management. ABBank has also confirmed it has not executed any additional investment in, nor provided financing to, LSSD2.

- EVNI conducted feasibility studies and incurred US\$10 million in preoperative expenses for the LSSD2 project during its preoperative period and early stage (2007-2013). These expenses were later capitalized and, as a result, EVNI holds 10 percent of LSSD2.
25. Paragraph 37 of the Sustainability Policy states that IFC requirements regarding E&S risk management “will apply to the entire portfolio of the FI *that is originated from the time IFC became a shareholder or investor*” (emphasis added). As the relationship between EVNI and ABBank predates the ABB Equity Project, IFC concludes that there is no link between IFC and LSSD2 through ABBank to which IFC’s requirements for E&S risk management apply. For a detailed timeline, please refer to Section II., A.8, Figure 1, of this report. Furthermore, the 2017 ABB Loan Project, aimed to support increased access to finance for SMEs and Women-SMEs in Vietnam; the proceeds from this project were ringfenced and restricted from use for other purposes such as the financing of EVNI’s operation in Cambodia or the LSSD2.

Assertion of Applicable Link between IFC and LSSD2 via Vietinbank

26. Vietinbank, in which IFC/Cap Fund were shareholders from 2011 to 2021, has confirmed that it had neither provided any financing to, nor invested equity in, EVNI and/or LSSD2. Vietinbank’s exposure to EVN, the parent company of EVNI, is limited to loans for projects/operations located in Vietnam only—i.e., Lai Chau hydropower project (Lai Chau Province), Son La hydropower project (Son La Province), Sesan 3 hydropower project (Kon Tum Province), Sesan 4 hydropower project (Gia Lai Province), Duyen Hai 3 thermal project (Tra Vinh Province) during 2005-2015—and not in Cambodia. Therefore, IFC considers that there is no material link between the FI client and the LSSD2 project that is the subject of the Complaint.

V. CONCLUSION

27. Management respects CAO’s process in its assessment of the Complaint in relation to IFC’s investment in ABBank and Vietinbank and acknowledges that the determination of material linkages in the context of FI sub-projects can sometimes be complex. For this reason, and to provide greater clarity, the CAO Policy contains additional eligibility criteria in the context of FI sub-projects in paragraph 41 (a). In considering these criteria, as well as those of the Sustainability Policy (specifically, paragraph 37), Management concludes that no material link exists between IFC and LSSD2 to which IFC’s requirements regarding E&S risk management apply. As such, there is no linkage between the alleged harms and any potential IFC non-compliances, as required by CAO’s compliance appraisal criteria.
28. In the case of the ABB Equity Project, the indirect relationship between ABBank and LSSD2 (through EVNI) predates IFC’s investment and IFC’s proceeds did not finance LSSD2. The 2017 ABB Loan Project was earmarked to exclusively finance SMEs and Women-SMEs in Vietnam. As for Vietinbank, there is no known financial connection, current or past, between that bank and LSSD2 and, therefore, between IFC’s investment

and the alleged E&S impacts. IFC will of course continue to cooperate with CAO during its compliance appraisal.

DISCLAIMER

This IFC Management Response is provided in response to the Assessment Report of the Office of the Compliance Advisor Ombudsman (CAO) finding a complaint to a project supported by IFC finance or investment eligible for compliance appraisal.

Nothing in this IFC Management Response or in the process provided for in the CAO Policy (“CAO Process”) (1) creates any legal duty, (2) asserts or waives any legal position, (3) determines any legal responsibility, liability, or wrongdoing, (4) constitutes an acknowledgment or acceptance of any factual circumstance or evidence of any mistake or wrongdoing, or (5) constitutes any waiver of any of IFC’s rights, privileges, or immunities under its Articles of Agreement, international conventions, or any other applicable law. IFC expressly reserves all rights, privileges, and immunities. IFC does not create, accept, or assume any legal obligation or duty, or identify or accept any allegation of breach of any legal obligation or duty by virtue of this IFC Management Response.

While reasonable efforts have been made to determine that the information contained in this IFC Management Response is accurate, no representation or warranty is given as to the accuracy or completeness of such information. CAO is not a judicial or legal enforcement mechanism. Its analyses, conclusions, and reports are not intended to be used in judicial or regulatory proceedings nor to attribute legal fault or liability and it does not engage in factfinding nor determine the weight that should be afforded to any evidence or information. No part of this IFC Management Response or the CAO Process may be used or referred to in any judicial, arbitral, regulatory, or other process without IFC’s express written consent.

Appendix 3: CAO Policy Considerations for the Compliance Appraisal

The CAO Policy⁷⁶ provides for the compliance appraisal to take into account additional considerations, as outlined in the table below.

CAO Policy provision	Analysis for this case
<p>For any project or sub-project where an IFC/MIGA Exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA Exit (para. 92a).</p>	<p>CAO determined that the exited project, an equity investment in Vietinbank, could not be the subject of a CAO compliance investigation, because CAO does not have sufficient basis to conclude that the Lower Sesan 2 project met the CAO Policy definition of a sub-project through Vietinbank. Thus, CAO closed the complaint regarding the exited investment in Vietinbank.</p>
<p>The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).</p>	<p>Not applicable.</p>
<p>Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (para. 92c).</p>	<p>As outlined in the body of this report, CAO finds preliminary indications of non-compliance. CAO concludes that IFC has not clearly demonstrated that it dealt appropriately with issues raised by the complaints, nor has IFC acknowledged non-compliance with relevant E&S Policies.</p>
<p>Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).</p>	<p>IFC's Management Response does not include any statements indicating plans to undertake remedial actions to address the matters raised by Complainants.</p>
<p>In relation to a project or sub-project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).</p>	<p>Not applicable.</p>

⁷⁶ CAO Policy, para. 92.

Appendix 4: Terms of Reference for the Compliance Investigation



Terms of Reference for Compliance Investigation of IFC’s Environmental and Social Performance in relation to its Investment in ABBank and its investment in the Lower Sesan 2 hydropower project in Cambodia

IFC Project #29745

About CAO

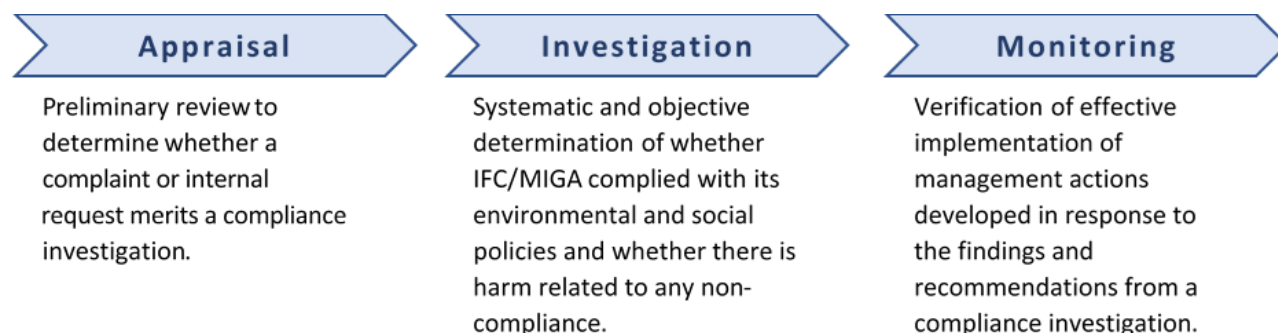
The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO’s compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO’s compliance function follows a three-step approach:



Context and Investment

IFC has had active investment in An Binh Commercial Joint Stock Bank (ABBank), a commercial bank in Vietnam, since 2010. Since 2013, IFC has been a shareholder and currently holds an 8.2% equity stake in ABBank. ABBank, in turn, holds a 10.31% share in Electricity Vietnam International Joint Stock Company (EVNI). EVNI holds 10% of the shares of the Hydropower Lower Sesan 2 Company, a joint venture in charge of construction and operation of the Lower Sesan 2 dam, together with The Royal Group (39%), a Cambodian conglomerate, and Hydrolancang International Energy Co. Ltd (51%), a Chinese firm. EVNI's 10% equity stake in Lower Sesan 2 gives it the right to appoint a representative to the Board of Directors. However, EVNI is not involved in the hydropower project's daily management.

Following the definitions in the CAO Policy,⁷⁷ EVNI is a sub-client of ABBank and Lower Sesan 2 is an IFC sub-project.

Lower Sesan 2 is the largest hydropower project in Cambodia, located in Stung Treng Province on the Sesan River. Construction began in 2014 and operations began in 2017. Numerous environmental and social allegations have been raised regarding the Lower Sesan 2 hydropower project since 2008, through public reporting and complaints.

The Complaint

In June 2018, CAO received complaints alleging widespread negative environmental and social impacts from three separate groups of people affected by the dam's operations. These included: (1) resettled villagers, (2) villagers who refused to resettle, and (3) upstream villagers.

- 1) *The resettled villagers* allege that their new living conditions are challenging and inadequate and that they were not provided livelihood restoration programs or support. They also claim that they were not able to participate in decisions about land allocation which lacked transparency.
- 2) *The villagers who refused to resettle* claim that their livelihoods have been affected by a significant decline in local fish stocks. Most now live in a communal forest outside their former villages. Some identify as indigenous peoples and seek to protect their cultural identity and sacred sites. Others complain about the lack of basic infrastructure and sufficient land to farm due to dam-related flooding.
- 3) *The upstream villagers* allege harms to their livelihoods, due to changing water levels and fewer fish in the Sesan and Srepok rivers. They also claim that they were never informed or consulted about the hydropower project or its compensation policies.

All three groups stated that they do not feel safe to voice their concerns and asked that their identities be kept confidential.

⁷⁷ CAO Policy, glossary.

Investigation Terms of Reference

Where, as in the present case, the CAO appraisal process results in a decision to investigate, CAO's appraisal report includes terms of reference for the compliance investigation, outlining:

- a. *The objectives and scope of the investigation;*
- b. *Any limitations on the scope of the investigation that may be appropriate, considering, among others, issues closed at the appraisal stage, the presence of concurrent judicial proceedings, or an IFC/MIGA Exit;*
- c. *The approach and method of investigation and specific consultant qualifications; and*
- d. *A schedule for the investigation tasks, timeframe, and reporting requirements. This schedule will include deadlines for the submission of information by IFC/MIGA to inform the compliance investigation process.*⁷⁸

Investigation Objective and Scope

As established in CAO's Compliance Appraisal Report, CAO will conduct a compliance investigation of IFC's 2010 investment in ABBank as it relates to the complaint. The investigation will determine whether IFC complied with its E&S Policies relevant to the investment and whether there is harm related to any IFC non-compliance. In determining whether IFC has complied with its E&S Policies, CAO will include, where appropriate, an assessment of whether IFC deviated in a material way from relevant directives and procedures.

Relevant to the issues raised in the complaint, the objective of the investigation is to determine:

1. Whether IFC has complied with its E&S Policies, including:
 - a. Whether IFC conducted a pre-investment E&S review of its 2010 investment in ABBank as required by the Sustainability Policy; and
 - b. Whether IFC has supervised its 2010 investment in ABBank, including the E&S commitments made in its legal agreements with ABBank, as required by the Sustainability Policy.
2. Whether the harms and potential harms raised by the complainants are related to any IFC non-compliance.⁷⁹

In considering findings regarding Harm and whether any Harm is related to IFC non-compliance, CAO will assess IFC's review and supervision of its E&S requirements at the project and sub-project level. CAO will consider project -or sub-project- level E&S performance particularly in relation to the application of the following Performance Standards to the sub-project, which are relevant to the issues raised in the complaints:

- *PS1 (Social and Environmental Assessment and Management Systems)* in relation to: the requirements of an appropriate environmental and social impact assessment;

⁷⁸ CAO Policy, para. 118.

⁷⁹ CAO Policy, paras. 112–114.

management of risk and impacts; disclosure of the hydropower project's information; and proper consultations and stakeholder engagement with affected communities,

- *PS4 (Community Health, Safety and Security)*, in relation to: the standards for community health and safety, given communities' allegations of illnesses from the frequent flooding; and threats and intimidation against those who voice their opposition to the project.
- *PS5 (Land Acquisition and Involuntary Resettlement)* in relation to: the requirements and standards for a proper resettlement and livelihood restoration plan, including consultation and proper implementation to effectively restore and compensate for the physical relocation and livelihood impacts on affected communities.
- *PS6 (Biodiversity Conservation and Sustainable Natural Resource Management)* in relation to: biodiversity risks and impacts on the fish population and other ecosystems.
- *PS7 (Indigenous Peoples)* in relation to: the requirements for a proper consultation with affected indigenous communities (free, prior and informed consultation in defined circumstances); consideration of communal land rights; and protection of cultural identity and sacred sites.

For the purposes of the CAO Policy and this investigation, the Lower Sesan 2 hydropower dam is considered a sub-project of IFC, through its sub-client EVNI.

EVNI does not currently have a controlling interest in the joint venture that constructed and operates the hydropower project. However, this does not mean that IFC, its client and sub-client (ABBank and EVNI) are or were without influence over the hydropower project. CAO's investigation will consider EVNI's current minority position in the Lower Sesan 2 hydropower project when assessing IFC's compliance with its E&S Policies. CAO will also consider the client and sub-client's E&S performance at the sub-project level.⁸⁰

Methodological Approach

CAO will base the compliance investigation on interviews, statements, reports, correspondence, CAO observations of activities and conditions, and other sources that CAO deems relevant.⁸¹

The compliance investigation process and compliance investigation report will include:

- a. The investigation findings with respect to compliance, non-compliance, and any related Harm.*
- b. Context, evidence, and reasoning to support CAO's findings and conclusions regarding the underlying causes of any non-compliance identified.*
- c. Recommendations for IFC/MIGA to consider in the development of a Management Action Plan (MAP) relating to the remediation of project- or sub-project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances. In case of a project where the IFC/MIGA Exit has*

⁸⁰ CAO Policy, para. 114.

⁸¹ CAO Policy, paras. 115 and 117.

*occurred, recommendations will take into account the implications of such an IFC/MIGA Exit.*⁸²

Sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions. CAO will assess whether there is evidence that IFC applied relevant E&S requirements considering the sources of information available at the time the decisions were made and will not make findings and conclusions with the benefit of hindsight.⁸³

External Expert(s)

Following established practice, CAO will engage one or more external experts for this investigation. For this compliance investigation, CAO considers the following qualifications as necessary:

- Significant expertise in project-related land acquisition and involuntary resettlement from hydropower projects;
- Significant expertise in environmental impacts from large hydropower projects, particularly those related to biodiversity and ecosystem services;
- Experience in social impact assessments, stakeholder engagement processes, consultations, and free, prior and informed consent from indigenous peoples;
- Knowledge of ethnic groups and indigenous peoples in Cambodia, particularly in Stung Treng Province;
- Knowledge of IFC's E&S policies, standards, and procedures, particularly the 2006 Sustainability Policy and the 2006 Performance Standards: Performance Standard 1 (Social and Environmental Assessment and Management Systems), PS4 (Community Health, Safety and Security), Performance Standard 5 (Land Acquisition and Involuntary Resettlement), PS6 (Biodiversity Conservation and Sustainable Natural Resource Management) and Performance Standard 7 (Indigenous Peoples);
- Experience and knowledge relevant to conducting compliance investigations;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts; and
- Fluency in Khmer and English. Vietnamese desirable.

Field Visit and Potential Limitations of the Investigation

A field visit to the Lower Sesan 2 hydropower project area in Cambodia and ABBank's offices in Vietnam is anticipated during the compliance investigation. For such a visit, the CAO case team, external experts, and an interpreter/translator would be expected to participate.

⁸² CAO Policy, para. 120.

⁸³ CAO Policy, paras. 116–117.

Compliance Investigation Schedule, Timeframe, and Reporting Requirements

According to the CAO Policy,⁸⁴ a draft compliance investigation report should be completed within one year of the disclosure of an appraisal report. By November 2023, a draft compliance investigation report for this case should be circulated to IFC management for factual review and comment. Management may share the draft report with the client on the condition that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure.⁸⁵ IFC will have 20 business days to provide written comments.

At the same time, the draft investigation report will be circulated to the complainants for their factual review and comment, provided that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure. If such confidentiality measures are not in place, complainants will, at a minimum, receive a draft table of the investigation's findings for factual review and comment and as a source of information to inform future consultations on any IFC Management Action Plan (MAP).⁸⁶

Upon receiving comments on the consultation draft from IFC and the complainants, CAO will finalize the investigation report. The final report will be submitted to IFC senior management and circulated to the Board for information. The Board has no editorial input on the content of a CAO compliance investigation report. Once the investigation report is officially submitted to IFC Management and circulated to the Board, CAO will notify the public on its website of the investigation's completion.⁸⁷

Upon CAO's final submission of the compliance investigation report to IFC, IFC Management has 50 business days to submit a management report to the Board for consideration. The management report must include a MAP for Board approval. A MAP contains time-bound remedial actions that IFC proposes for the purpose of addressing CAO findings of non-compliance and related harm. IFC must consult with complainants and the client during its MAP preparation process, and its management report must also include a reasoned response to CAO's finding or recommendations regarding non-compliance or related harm that IFC is unable to address in the MAP.⁸⁸

CAO will submit comments on the proposed MAP to the Board, and the complainants may submit a statement to CAO on the proposed MAP and the adequacy of consultations for circulation to the Board.⁸⁹ Upon the Board's approval of the MAP, the compliance investigation report, management report, and MAP will be published on CAO's website.⁹⁰

⁸⁴ CAO Policy, para. 121.

⁸⁵ CAO Policy, para. 122.

⁸⁶ CAO Policy, para. 124–125.

⁸⁷ CAO Policy, paras. 123, 127–129.

⁸⁸ CAO Policy, paras. 130–132, 134.

⁸⁹ CAO Policy, para. 135.

⁹⁰ CAO Policy, para. 138.