



August 8, 2018

Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

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

Complaints 01 and 02

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see www.cao-ombudsman.org.

Background to the investment

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

The loan proceeds were expected be used to construct the 531MW Alto Maipo hydroelectric project with an estimated output of 2,100GWh per year.

The loan is part of a US\$1.2 billion debt package with parallel financing provided by a syndicate of multilateral and bilateral development banks (Inter-American Development Bank (IADB), Overseas Private Investment Corporation (OPIC), and KfW) and commercial banks (Banco de

Credito e Inversiones, Banco del Estado de Chile, DNB, and Itaú).¹ In late 2016, the company notified the lenders that the project was experiencing large cost overrun as a result of ongoing construction difficulties. A restructuring of the loan was negotiated in 2017 as cost projections were raised to \$2.5 billion.² IFC's latest disbursement was carried out in March 2017.

The complaints

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

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

Scope of the compliance investigation

In May 2018, CAO released a compliance appraisal report regarding IFC's pre-investment review and supervision of the E&S impacts of the Alto Maipo Hydropower project. CAO's appraisal identified a number of compliance questions relating to the adequacy of IFC's review and supervision of the Performance Standards which are relevant to the issues raised in the two complaints.

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

The Compliance Investigation will consider whether IFC's investment in Alto Maipo was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on

¹ *Ibid.*

² See La Tercera, "AES Gener sella fondos para Alto Maipo y costo sube a US\$ 2.500 mills" - <https://goo.gl/E8D9qt>; and AES Gener, Reporting to the Superintendencia de Valores y Seguros (Chilean Financial Markets Supervision Authority), March 17, 2017 - <https://goo.gl/wzG7sP>

³ The complainants also received support from international NGOs: the Center for International Environmental Law (CIEL), International Rivers (IR), Natural Resources Defense Council (NRDC) and Patagonia Inc.

Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

More specifically, given the issues raised by the complainants and the outcomes of CAO's appraisal, CAO's compliance investigation questions will include:

1. Whether IFC's pre-investment review of the project was commensurate to the level of risks and impacts, particularly its review of the project's Environmental and Social Impact Assessment (ESIA) and additional studies, including an assessment of cumulative impacts.
2. Whether the criteria used by IFC to determine Broad Community Support (BCS) for the project were consistent with the requirements of IFC's Sustainability Policy (para. 30), and whether IFC adequately monitored the client's community engagement process as part of its supervision activities.
3. What steps were taken by IFC and whether these steps were adequate to assure itself of the client's commitment to prevent (and respond to allegations of) harassment, intimidation, and/or exploitation on the workplace, especially in regard to women, as per the requirements of Performance Standard 2 on non-discrimination and equal opportunity, and worker grievance mechanism.
4. What steps were taken by IFC and whether these steps were adequate to assure itself that the client was compliant with Performance Standard 3 requirements on Resource Efficiency and Pollution Prevention, particularly as relates to the management of waste rock disposal to prevent air and water pollution.
5. What steps were taken by IFC and whether these steps were adequate to assure itself of compliance with Performance Standard 4 requirements on Community Health, Safety and Security, including potential impacts from noise and vibration, use of security personnel, impacts of labor influx, and risks of water scarcity to communities.
6. What steps were taken by IFC and whether these steps were adequate to assure itself of the client's compliance with Performance Standard 5 requirements on Land Acquisition and Involuntary Resettlement, particularly regarding the client's approach to resettlement, economic displacement, and restrictions on land use.
7. What steps were taken by IFC and whether these steps were adequate to assure itself of the client's compliance with Performance Standard 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources, particularly regarding impacts on protected areas, endangered species, ecosystem services including impacts on tourism and recreation, impacts on river ecology arising from reduced environmental flow, sedimentation regimes, and impacts on glaciers.
8. Whether IFC's assessment of the applicability of Performance Standard 8 to the project was adequate given the information available at the time of project appraisal.

As in all cases, the scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Collaboration with other Independent Accountability Mechanisms

When relevant, CAO will collaborate with MICI, the Independent Accountability Mechanism (IAM) of the Interamerican Development Bank (IDB), to carry out this compliance review. In responding to a complaint similar to CAO's Alto Maipo-01 complaint, MICI concluded that a compliance investigation was warranted in relation to the issues raised by the complainants. This collaboration between the IAMs may involve joint field visits, as well as sharing external experts if relevant.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by April 2019.

A draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will then forward the investigation report and IFC's official response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the investigation report and IFC's response. The President retains discretion over clearance. After clearance, CAO will disclose the investigation report and IFC's response to IFC's senior management, the World Bank Group Board, and the complainants, and disclose both documents on CAO's website.

External Panelists

CAO will engage two or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Experience in the assessment and management of environmental and social risks and impacts of large infrastructure projects in Latin America, particularly in the hydropower sector.
- Significant expertise in environmental impacts of hydroelectric projects, including related to biodiversity, river ecology, and water quality and management.
- Significant expertise in social impacts of large infrastructure projects, including community health and safety, resettlement and economic displacement, and stakeholder engagement.
- Significant expertise in worker grievance mechanisms, specifically related to harassment and/or intimidation on the workplace.
- Knowledge of IFC's E&S policies, standards and procedures, and/or similar frameworks.
- Experience and knowledge relevant to the conduct of compliance reviews.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
- Proficiency in Spanish language.