



**CAO ASSESSMENT REPORT**

**Complaint Regarding the Albania Hydros Project (IFC Project #583387)**

**Tirana, Albania**

*April 2013*

*Office of the Compliance Advisor/Ombudsman  
International Finance Corporation/  
Multilateral Investment Guarantee Agency  
[www.cao-ombudsman.org](http://www.cao-ombudsman.org)*

## **About the CAO**

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

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## **LIST OF ACRONYMS**

CAO	Compliance Advisor Ombudsman
EDEN	Environmental Center for Development Education and Networking
GoA	Government of Albania
HPP	Hydropower Plant
IFC	International Finance Corporation
KESH	Korporata Electroenergjetika Shqiptare
METE	Ministry of Economy, Trade and Energy
MIGA	Multilateral Investment Guarantee Agency

## **1. Overview**

A complaint was filed to CAO in January 2013 by the Environmental Center for Development Education and Networking (EDEN) (“Complainant”). The Complainant raises concerns about the potential negative impact of privatizing four HPPs in Albania, an impact which, the Complainant alleges, will be felt by the Albanian population at large. The CAO determined that the complaint met its three eligibility criteria and so began the assessment of the complaint. Having now finalized the assessment, CAO confirms that the Complainant wishes to trigger CAO’s compliance function in addressing the complaint. This decision was made with a clear understanding of both options available, and having due regard to the current political climate in Albania. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

## **2. Background**

### **2.1. The Project<sup>1</sup>**

According to IFC project documentation, following years of underinvestment in the energy sector, Albania became heavily reliant on private investment and multilateral financing for the rehabilitation and expansion of electricity infrastructure. As such, the country’s hydropower plants (HPPs) on the river Mat and on the river Bistrica were partially rehabilitated borrowing funds from multilateral financial institutions. In strategizing to free up capital for other priority investments, the Government of Albania (GoA) decided to privatize a portfolio of HPPs - 1) Ulza HPP and Shkopeti HPP on River Mat; 2) Bistrica I HPP and Bistrica II HPP on River Bistrica (4 HPPs). Hence, the GoA anticipates further development of its already initiated power sector reform strategy, by attracting additional foreign investments in the Albanian energy sector, and specifically in hydropower generation projects. Prior to the privatization of the HPPs, the country’s energy sector reform commenced with the unbundling and privatization of the electricity distribution activities of the national electricity utility, Korporata Elektroenergjëtika Shqiptare (KESH).

The GoA hired IFC as Lead Adviser to assist in the introduction of private sector participation in the Shkopeti, Ulza, Bistrica I and Bistrica II hydroelectric power plants. IFC’s role includes assisting the GoA in structuring the project, preparing and conducting a fair, transparent and competitive selection process to achieve the sale of the facilities to a suitable private partner, capable of rehabilitating, efficiently operating and maintaining the plants, and also helping the GoA maximize the privatization proceeds.

### **2.2. The Complaint**

In January 2013, the Complainant lodged a complaint with CAO raising specific concerns about the perceived resultant impacts of privatization of the currently 4 HPPs. The Complainant contends that the privatization will potentially lead to a reduced pool of energy at direct disposal to KESH, which

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<sup>1</sup> IFC PDS Early Review and the Advisory Services Operational Portal and DUE DILIGENCE MEMORANDUM:

<http://www.mete.gov.al/upload/Due%20Diligence%20Memorandum%20HEC%20Ulez%20Shkopet%20S ha.pdf> (accessed March 11, 2013)

could subsequently force the corporation to purchase energy on the global market and/or from the new private HPPs owner to meet consumers' demand. Consequently, the Complainant believes this will cause continued energy shortages and blackouts in the country. They also expressed concerns that the cost of KESH buying supplementary energy would inevitably be passed on to the consumer through increased energy tariffs. Other issues cited includes possible negative environmental impact of the operations of K r m Holdings (K r m), the private steel company which is believed to have won the HPPs acquisition bid. Regarding IFC specifically, the Complainant believes that in giving advice to the GoA, IFC violated its Articles of Agreement and IFC Performance Standards.

A more detailed summary of issues is presented in Section 3.

### 3. Assessment

#### 3.1 Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainant, to gather information on how other stakeholders see the situation, and to help the Complainant and GoA determine which CAO function should be triggered, dispute resolution or compliance. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- reviewing project documents;
- meeting IFC project team;
- conducting confidential bilateral meetings with the Complainant, other stakeholders (including energy experts, environmental activists and trade union representatives) and GoA representatives (Deputy Ministers of Economy, Trade and Energy); and
- a site visit to Tirana in March 2013.

This Assessment Report consolidates the information received by CAO and captures the determination made by the Complainant regarding triggering CAO's compliance

#### 3.2 Summary of Issues

Based on the original complaint and further stakeholder engagements prior to and during CAO's field trip, the following table summarizes the key issues raised by the Complainant:

KEY ISSUE	SUMMARY
IFC Due Diligence and mandate	<ul style="list-style-type: none"> <li>• IFC did not adhere to its own policies in giving advice to the GoA on the advantages and disadvantages of the HPPs privatization.</li> <li>• GoA should explore other sources of energy besides hydropower.</li> <li>• IFC acting outside its mandate in providing services to a public enterprise and indirectly interfering in Albanian political affairs</li> </ul>
Process	<ul style="list-style-type: none"> <li>• People were not given an opportunity to raise concerns about the privatization of the HPPs as the public was not consulted prior to/during the privatization process.</li> <li>• Lack of access to project documentation.</li> </ul>
Land Compensation	<ul style="list-style-type: none"> <li>• Owners of pieces of land on which the HPPs are situated were not compensated by the previous communist Government. A question</li> </ul>

	<p>was raised regarding whether GoA will address this issue now.</p> <ul style="list-style-type: none"> <li>• According to Albanian regulations, land owners are to be compensated by having shares in any company that makes use of their land. A question was raised regarding whether Kürüm will be offering such shares to land owners.</li> </ul>
Rights to Water	<ul style="list-style-type: none"> <li>• Water is important for irrigation in the areas where the HPPs are located. However, with diversion for use by Kürüm, the community will be deprived of their rights to water.</li> </ul>
Environmental Pollution	<ul style="list-style-type: none"> <li>• With easier access to energy, Kürüm as a steel manufacturer will increase production thereby causing more pollution in the Elbasan area.</li> <li>• Concerns about the local communities situated near the HPPs being affected by flooding.</li> </ul>
Others	<ul style="list-style-type: none"> <li>• Current workers at the plants are at risk of being retrenched upon takeover by Kürüm.</li> <li>• Potential national impact of increased energy tariffs due to KESH being forced to purchase energy from the new operators or the global market.</li> </ul>

Regarding the GoA's view, CAO met with two Deputy Ministers of Economy, Trade and Industry who provided an overview of the privatization project and the due diligence process which was followed in implementing the project. It was stated that, according to Albanian regulations and IFC recommendations, public consultations were held to include the public and civil society. Further, IFC have followed all the requisite Performance Standards in giving their advice and the GoA has followed strictly the legal requirements for embarking upon a privatization project. The privatization process has been taking effect over the last six to seven years and GoA had never heard any complaints about this process from the Complainant. Also, they are not aware of whether EDEN participated in any of the consultation processes held by GoA as part of the privatization process. Nevertheless, both Deputy Ministers expressed a willingness to meet with the complainants to discuss their concerns and clarify any specifics of the project and suggested the Complainants approach the GoA formally in this regard.

#### **4 Next Steps**

Based on the original complaint and further stakeholder discussions undertaken during the assessment, as well as the current political climate in Albania, the Complainants do not believe their concerns are amenable to a collaborative dispute resolution process. Furthermore, as their key concern is regarding IFC's due diligence process, the complainants informed CAO that their interests would be best served by the CAO Compliance process. Hence, the complaint will be transferred to CAO's Compliance function for appraisal, per CAO Operational Guidelines.

## Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

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

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

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

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

Step 3: **CAO assessment:** "Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days."

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected<sup>3</sup>.

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<sup>2</sup> For more details on the role and work of CAO, please refer to the full Operational Guidelines: [http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines\\_2013.pdf](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf)

<sup>3</sup> Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not



OR

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

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

Step 6: **Conclusion**/Case closure

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possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.