



CAO ASSESSMENT REPORT

**Regarding issues of safety and occupational health raised on the second complaint
pertaining to the IFC's Alto Maipo Project (#31632)
in Cajón del Maipo, Chile**

December 2017

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

About the CAO

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

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

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

The CAO received a complaint filed by a former employee of the Maitenes Foundation - currently known as AES Gener Foundation - and a resident of Cajón del Maipo (the “Complainant”), whose work with the Foundation was to implement the Corporate and Social Responsibility programs of AES Gener and the other subsidiaries of the group. The complaint pertains to the IFC’s Alto Maipo project, which will be operated by Alto Maipo SpA (the “Company”), a subsidiary of AES Gener, the sponsor of the IFC Project (the “Project Sponsor”), and alleges an inappropriate response by the Company and the Project Sponsor to address her complaints of sexual harassment.

CAO determined that the complaint met its three eligibility criteria in August of 2017. CAO’s assessment concluded with the Project Sponsor’s decision to have the case referred to CAO’s Compliance function for a compliance appraisal.

2. BACKGROUND

2.1 The Project

IFC has an active project with the Project Sponsor. According to IFC, the Alto Maipo project will be operated by the Company, and consists of two high-head, run-of-river hydropower facilities located about 50 km southeast of Santiago in the Maipo River basin area.¹

As per the information disclosed in the IFC’s Summary of Investment Information on July 29, 2013, the construction of the project will take place over an approximately five-year period, and will require the excavation of about 67 km of tunnels. An estimated 90 percent of all civil construction will be carried out underground (underground facilities will include powerhouses, siphons, access tunnels and water conveyance systems).²

The proposed IFC investment is a US\$145 million A Loan through the IFC’s own account.

2.2 The Complaint

The Complainant alleges that, during her time at the Foundation she was the victim of sexual harassment and groping by one of her colleagues. The Complainant alleges that the Project Sponsor’s³ and the Company’s⁴ responses to the complaint she filed with the internal complaint mechanisms were both inappropriate and not properly communicated. As such she raises concerns in the complaint regarding the functioning of these complaint mechanisms. The Complainant also alleges that reprisals were taken against her and her family because of her having brought these complaints.

¹ See: <https://disclosures.ifc.org/#/projectDetail/SII/31632> Last accessed on December 6, 2017.

² See: <https://disclosures.ifc.org/#/projectDetail/ESRS/31632> Last accessed on December 6, 2017.

³ Response from AES Helpline, AES Corporate offices in Arlington VA, USA.

⁴ Letter dated April 7, 2017 from the community relations unit of the Alto Maipo project, declaring the complaint lodged on April 4 of the same year inadmissible, considering that the substance of the complaint had been duly addressed and reviewed by the AES Help Line, and that the Complainant had been notified of its resolution in a timely fashion.

3. ASSESSMENT SUMMARY

3.1 Methodology

The purpose of a CAO assessment is to clarify the issues and concerns raised by the Complainant, gather information on how other stakeholders see the situation, and determine whether the Complainant and the Project Sponsor would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or if the complaint should be referred to CAO Compliance for an appraisal of IFC's due diligence for the project. CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

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

- a desk review of IFC's project documentation;
- telephone conversations with the Complainant;
- a meeting with IFC project staff;
- telephone conversations with Project Sponsor's representatives.

3.2 Summary of Views

Complainant's perspective

The Complainant, Sandra Atisha, filed a complaint with CAO on June 30, 2017, expressing her concerns regarding the manner in which her former employer, the Foundation, managed the complaints she made internally against a colleague for sexual harassment and groping.

The Complainant states that she began to work for Alto Maipo's labor intermediation office in April 2009, and that she worked until March 31, 2017. At the date of termination, she was employed as Program Director.⁵

The Complainant alleges that in 2013, a colleague of hers began to make insinuations to her of a sexual nature, increasing the intensity of his harassment over the course of time. In June 2015, when the Complainant and her colleague were alone to sign some contracts at a Center that belonged to the AES Gener Foundation, her colleague said to her that she no longer needed to refuse his advances. According to the Complainant, on that same day, her colleague took advantage of the fact that they were alone to fondle her. The Complainant states that she was unable to defend herself, and that she felt very afraid and disgusted.

The Complainant indicates that, three months later, she was transferred from her place of work in San José de Maipo (one block from her home) to AES Gener's Renca Power Station. According to the Complainant, the AES Gener management explained that she would have to make the best of her transfer, since her father had a local supplier's contract with the Alto Maipo project. The Complainant indicates that because she could not endure the shame she experienced from what had happened and being forced to remain silent, she fell into a depression which lasted for fourteen months, and during which the Complainant was hospitalized in a psychiatric clinic for a month and a half.

⁵ Individual contract for fix term between Maitenes Foundation and the Complainant, signed on April 1 of 2009. The Complainant's employment contract states that she will act as the "Manager for the San José del Maipo office, which is focused on the Alto Maipo project and in charge of the implementation of the social ("Programa social Gener") and job creation programs for the Alto Maipo project, in the offices intended for these purposes and in the entire national territory.

The Complainant states that when she went back to work on December 5, 2016, she went immediately to file a complaint regarding the sexual harassment with AES Gener's Compliance manager in Chile. The Complainant indicates that on January 19, 2017, she was informed that the investigation had ended, and that AES Gener had decided not to terminate her colleague. The Complainant alleges that, in the context of the aforesaid investigation, the Compliance manager got in touch with two former female employees of AES Gener, who commented that they had also suffered sexual harassment by the same colleague.

The Complainant states that she was dismissed on March 31, 2017, under the article on "company necessities". The same day she states that she filed a complaint for sexual harassment with the Community Management office in San José de Maipo. She affirms that she did not file the complaint with this office sooner because she was afraid of being fired, and that her father would lose his local supplier's contract with the project.

After this, the Complainant indicates that she and her father submitted complaints – on sexual harassment and the father's loss of his contract with AES Gener – to the AES Gener help line in the United States, which were rejected on the grounds that they had already been addressed by AES Gener in Chile.

As the Complainant indicates, the complaint that she filed with the Community Management office in San José de Maipo was declared inadmissible considering that the substance of the complaint had been duly addressed and reviewed by the AES Help Line, and she had been notified of its resolution in a timely fashion. The Complainant contends that she was not duly notified of the resolution, and that she never received information as to whether any steps had been taken in response to her complaints.

The Complainant alleges that the Project Sponsor has not paid the necessary attention to her complaints, and that it has not treated her appropriately. The Complainant adds that the Project Sponsor treated her disrespectfully after the events in question, publicly denying what had happened to her, and that her dismissal was an act of reprisal because she had filed complaints of sexual harassment.

She indicates that the Project Sponsor and the Company were never willing to talk to her, and she is interested in talking to the Project Sponsor representatives so she could hear why they let this happen to her.

The Complainant states that her motivation in this proceeding is to defend her honor, and to ensure that the Project Sponsor does not treat other female employees who find themselves in a similar situation in the same way. She emphasizes that her goal is not, and has never been, to obtain financial compensation from the Company or the Project Sponsor.

Project Sponsor Perspective

The Project Sponsor indicates that the Complainant, who began to work with the Maitenes Foundation - currently known as AES Gener Foundation⁶ - in 2009, was an employee who

⁶ The AES Gener Foundation is a non-profit institution, created in 1993 with the name "Maitenes Foundation", with the mission of implementing outdoor education programs, which in turn constitute a contribution to education and value formation and integral development of children, youth and adults, using a methodology based on adventure, affectivity and interaction with the environment. By 2008, the foundation began to diversify its areas of action, now incorporating the development of leadership programs, teamwork, workshops and seminars for various areas and business units of AES Gener, as well as being a platform to manage social benefits that are promoted within the framework of the Corporate Policy regarding Communities Relationship and other social agreements. In order to position the management of the Maitenes Foundation in the different publics of interest of the company, the institution changed its name to AES Gener Foundation in July 2011, focusing now not only in the field of education, but also in that of sustainability. For more information, please refer to: <http://www.fundacionaesgener.cl/QuienesSomos/Paginas/Mision-y-vision.aspx>

was very dedicated to her work as the manager of the Maitenes. In 2015, she was awarded a promotion. Given that the Complainant was promoted to Program Director of the AES Gener Foundation, the Project Sponsor stated that it had to transfer her to AES Gener's Renca Power Plant, considering that it was the Foundation's legal domicile and that all the Foundation's operations were conducted from that office. According to the Project Sponsor, the Complainant was aware of the need for the transfer when she accepted the promotion offered by the Project Sponsor.

The Project Sponsor confirms that the Complainant took medical leave from September 2015 to December 2016. The Project Sponsor indicates that according to Chilean labor norms, the reasons for the leave are not shared with the employer. They affirm that when the Complainant returned to work in December of 2016, she submitted a complaint for sexual harassment to the Compliance Officer of the Project Sponsor. The Project Sponsor contends that the Compliance Officer conducted a full investigation of these facts, which concluded that there was no sufficient grounds or proof to justify a decision to terminate the accused employee.

According to the Project Sponsor, the Complainant later filed another complaint regarding the same facts using the complaint procedure of the Alto Maipo project this time, as well as two new complaints with the Project Sponsor's compliance office based in the United States. These were rejected, since the parent company reviewed the information and concluded that the process carried out by the Compliance Office of the Project Sponsor in Chile complied with what was established by the Code of Conduct regarding the mechanisms and instances to be exhausted.

The Project Sponsor contends that it terminated the Complainant in March of 2017 due to the reorganization of the Foundation where she worked.

The Project Sponsor indicated that the proceedings brought by the Complainant concerning the facts of sexual harassment were exhausted in the venues provided by the Project Sponsor, and as such the Project Sponsor preferred that the case be referred to CAO's Compliance function. The Project Sponsor does not recognize (except jurisdictional competence) another higher authority that can review the decisions related to this case, since the investigation and the adoption of the relevant measures by the Project Sponsor and the parent company have been completed.

Additionally, the Project Sponsor emphasized that the CAO would not have jurisdiction regarding this claim because the contractual link of the IFC is with the Company and not with the Project Sponsor, and the Complainant never had a contractual relationship with the Company. These two elements would transform the CAO process into an undue interference with the internal ethical and compliance policies of the Project Sponsor and its parent company.

The Project Sponsor stated that, to date, it has no knowledge of any administrative or judicial procedure regarding the facts denounced.

4. NEXT STEPS

Given the voluntary principle guiding participation in a CAO dispute-resolution process, and the Project Sponsor's preference for the complaint to be referred to CAO's Compliance function, CAO is referring the complaint to its Compliance function. In accordance with its Operational Guidelines, CAO will conduct a compliance appraisal of IFC's environmental and social performance related to the project.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an 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.

As per CAO's Operational Guidelines,⁷ 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:** Assessing the issues and providing 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 on or initiated by a Memorandum of Understanding and/or 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 goals. 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.⁸

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**

⁷ 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

⁸ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.