



CAO ASSESSMENT REPORT

**Regarding Second Complaint in Relation to
IFC's Investment in Enso (#30979) in Albania**

September 2019

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

About 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
ESIA	Environmental and Social Impact Assessment Report
IFC	International Finance Corporation

1. OVERVIEW

In March 2019, CAO received a complaint from community members living in and around the town of Klos in Albania, specifically in the villages of Klos Katund, Fshat, Benjë, Fullqet, Dars, Bershi, and Pleshë (“the Complainants”). The complaint raises concerns regarding potential environmental and social impacts of the Mati hydro project on the Mati river. Enso (“the Company”), an IFC client, owns this project. The project construction has not begun yet. CAO determined that the complaint met its three eligibility criteria and conducted an assessment, which concluded with the Complainants’ decision to have the case referred to CAO’s Compliance function for appraisal of IFC’s role.

2. BACKGROUND

2.1 The Project

According to IFC’s Disclosure website, IFC has an \$8.6 million equity investment in a holding company in Albania established by Enso Hydro, an Austrian company specializing in investments in small and medium-scale hydropower plants. One of the hydro projects the Company has invested in is the Mati hydropower plant, a concession for a cascade of small hydro projects (called Mati 1, Mati 2, and Mati 3) with a total installed capacity of 38 MW, in the downstream area of the Mati river basin in the Mat region, Albania (the “Project”). According to the IFC, the Company has yet to start construction activities on the site(s). The IFC adds that only few project-related technical documents have been developed and that Enso has yet to draft and publicly disclose the environmental and social assessment report.

2.2 The Complaint

The complaint was filed by the Complainants with the support of a local environmental specialist. The complaint raises concerns related to water shortages, impacts on agricultural activity and rural development, as well as lack of proper consultation and community development. More information about the complaint is available below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the assessment is to obtain a better understanding of the issues and concerns raised by the Complainants by gathering information from different stakeholders, without making a judgement on the merits of the complaint. The assessment also seeks to establish which CAO process the Complainants and the Company would like to pursue, the Dispute Resolution process or the Compliance function (see Annex A for CAO’s complaint-handling process).

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

- a desk review of project documentation;
- telephone conversations and in-person meetings in Albania with the Complainants and the environmental specialist supporting them;
- telephone conversations and in-person meetings with Enso representatives;
- telephone conversations with IFC’s project team;
- an in-person meeting with the Mayor of Klos; and
- an in-person meeting with Albanian environmental NGOs in Tirana.

This document summarizes the views heard by the CAO team from the parties and describes the next steps, based on the decisions taken by the Complainants and the Company.

3.2 Summary of Views

3.2.1 Complainants’ Perspective

The CAO team met with approximately 23 representatives of the Complainants. The Complainants’ concerns gathered throughout the assessment period fall into three categories:

- a) water shortage;

- b) Failure to properly consult with the affected community members; and
- c) lack of community development projects.

a) Water shortage

The Complainants claim that Enso is planning on completing a hydro project on the Mati river, in Klos Municipality, and that this project will have three sections located at three different points, called Mati 1, Mati 2, and Mati 3. Their understanding of how this project is designed is that, at each section, there will be a reservoir of water and a small dam, at which point the water will be diverted into a tunnel and then put back into the river.

The Complainants shared their concerns that the river would dry out on the portions where water is diverted into tunnels. They have heard that the Company is planning on leaving an “ecological flow” into the river – that is, a certain amount of water in the river – but they are concerned that this amount may be insufficient. They fear that during the dry season, which is when they need water the most, the river will be completely dry on those portions. They indicate it has happened in other regions with hydro projects. According to the Complainants, the decrease in the river’s water level will negatively impact the ecosystem of the river and cause fishes and other river fauna to die. They believe it will also prevent them from properly irrigating their crops and providing for their cattle. They add that, with climate change, episodes of drought may occur outside of the typical dry season, and they express the need to be able to have access to enough water for their crops throughout the year, not only during the dry season, as well as their fear that the project will prevent them from doing so.

The Complainants expressed their concern that the presence of the Mati 2 tunnel, which they say will run for seven kilometers under the village of Fullqet, will dry out the wells in that village. They claim that there is a precedent for such an occurrence in the region. They cited the example of a tunnel running underneath the village of Plan i Bardhe, which was built for the Bulqiza chromium mine. They claim that, as a result of that tunnel, the entire village of Plani i Bardhe was deprived of water and the inhabitants eventually had to leave and be relocated.

Additionally, the Complainants expressed concerns related to the reservoirs, which they believe will be created at the intake point of each section of the project (Mati 1, Mati 2, and Mati 3). They claim that, as has happened in other places, such as Ulza, the presence of reservoirs creates fog in the morning and raises the level of humidity, which has a negative impact on the crops planted close to the reservoir. They also allege that waste and gravel accumulate in reservoirs instead of being carried away by the river to the sea. The Complainants believe that the accumulation of waste and gravel in the river will eventually cause the reservoirs to overflow and flood the area.

Finally, the Complainants claim that there are seven hydro projects around Klos on the Mati river (some already operational, others in the works), and they are concerned about the potential cumulative impacts of those projects.

b) Failure to properly consult with the affected community members

The Complainants indicate that they are not against investment in the region, so long as the investment projects are done in consultation with the local community. They feel that, in the case of the Mati Project, proper consultations have not taken place.

The Complainants indicate that they received some information about the Project before and in 2016, but that the Company failed to provide details about the various components of the Project and the specific impacts of each component. They state that when the Company came to hold public consultation in the Klos Municipality in December 2016, the villagers organized a big protest, which eventually prevented the Company from holding the meeting.

The Complainants allege that they have also heard of closed meetings organized by the Company and are concerned that consultations might be held in secret with only a few people. Some Complainants indicate that they have attended meetings where the Company passes around an attendance sheet and later on claims that the signatures on the attendance sheet are considered as agreement to the Project.

The Complainants add that they do not know what the current status of the Project is and have not heard from the Company since 2016. They expressed their frustration that the Company has not kept them updated and not is being transparent in its communication with them.

The Complainants claim that the Company has never shared the environmental and social impact assessment report (ESIA) of the Project with them. They also indicate that, during their limited

interaction with the Company, the latter only shared positive impacts of the Project, and never any information in relation to potential negative impacts. The Complainants claim that they would like to receive more information about the Project, its status, and the Company's obligation under the concession contract.

c) Lack of community development projects

The Complainants claim that development projects in the region – such as the Project – use the region's resources and that it would be fair that those projects also bring development to the region. According to the Complainants, the hydro projects already operating around Klos solely serve the economic interests of the companies operating them and have not advanced the development of the community. Additionally, the Complainants explain that most of the workers who work on those projects come from Tirana, and are not hired locally.

They also claim that Enso promised to build roads, but construction has not yet started.

Finally, the Complainants stressed that they were against the Project and their goal was to block its construction. They added that they are not interested in engaging with the Company.

3.2.2 Company's Perspective

The Company stated that they received the license for the Project in 2012. They claim that to assess the feasibility of the Project and decide on the Project's design, they consulted with the Klos Municipality and community members from 2013 to 2016, and conducted various hydrological and geological studies.

The Company indicated that the intake of Mati 1 will be upstream of the Vasha bridge. The water will be diverted into a 2.6-kilometer tunnel, and then into a short one-meter-deep pipeline¹ up to the powerhouse, where the water will be put back into the river. The intake of Mati 2 will be just downstream of the Fullqet bridge in Klos. The water will be diverted into a 9.5-kilometer long tunnel and then into a short pipeline up to the powerhouse, where the water will be put back into the river. The intake of Mati 3 will be located downstream of Guri i Bardhe. Enso endeavors to respect the requirements of IFC's Performance Standard 5 for all needed land use.

Enso indicated that the construction of the Project has not yet started because competing projects endanger its feasibility and viability. They added that they were in contact with contracting authority to solve all the open issues that might have an impact on the concession and the future investment.

The Company then went on to address the specific concerns raised by the Complainants.

a) Water shortage

On the issue of the level of water in the river, the Company explained that the Project is designed to make sure that there is always sufficient water remaining in the river. The water that will remain in the river is called the "ecological flow." This flow may vary depending on the season, but the Company claims it will always be sufficient to protect the river's ecosystem and for the community's needs. A system will measure the level of water available in the river at all times and, in cases where the level is low (during the dry season for instance), the system is designed to stop the diversion and leave all the available water in the river.

On the issue of the wells in Fullqet, the Company explained that they went to Fullqet with a hydrologist and took measurements of all the wells. They also conducted studies that show that the construction of the Mati 2 tunnels under the village of Fullqet will not have any impact on the amount of water available in the wells. This is because the wells are surface wells and do not use underground water, and also because the tunnel will be located 100 meters below the surface and will be made of concrete, which is not porous.

Regarding the issue of fog, the Company explained that the Project does not include real reservoirs comparable to the one in Ulza. At the intake of each section, there will be a small basin and a four-meter-high dam. Such a small basin will not have any impact on the air humidity and will not create any fog. The Company indicated that they had considered a big dam in the first place, but that the Project design was changed because the community was against having a big reservoir and a high dam.

¹ According to the Company, the difference between a tunnel and a pipeline is that there is no air pressure in a tunnel, but there is in a pipeline.

The Company indicated that they conducted a comprehensive flood analysis to make sure that the basins were designed in a way as to not overflow even in case of a flood event. Technically, the level of water in the basin has to remain the same for the system to function properly. To make sure the level in the basin remains the same, the valves on the small dam will open if there is too much water.

Regarding the waste and gravel, the Company indicated that there was a system to flush them out in case they accumulate in the basins.

Generally, the Company explained to CAO that the Project was designed to respect existing wells and bridges, fishes, water sources, and flora, and to minimize its impact on communities and nature, avoiding forests and agricultural land as much as possible. The Project includes fish passes, which are designed to allow fish migration.

b) Failure to properly consult with the affected community members

The Company claims that, since they were granted the concession in 2012, they have been in contact with the Municipality of Klos. They allege that they consulted with community members during the Project's design and took their inputs into account. According to the Company, leaflets with information about the Project have been distributed in Klos and the surrounding villages.

They also explain that they have not interacted with community members about the Project since 2017 because the Project was halted and, to date, its construction is still uncertain. They add that they plan on engaging again with community members from the Klos Municipality as soon as they have more clarity on the Project's future.

c) Lack of community development projects

The Company indicated that the Project will have a positive impact on community development. The construction of the Project will last for approximately three years. People working on the Project will need food and accommodation, which will benefit hotels, restaurants, and landlords willing to rent out their properties.

The Company explained that they have already discussed some community development projects with community members. These have not yet started because the Company is still unsure if and when the Project will be constructed. The Company mentioned that, for instance, the community in Shkalle and Fshati Fshat expressed a need for a better irrigation system for their crops. The Company indicated to community members that they would agree to install pipelines for them to transport water from the Mati 3 intake to their village. The Company also mentioned that if the Project were to move forward, they would consider providing support to the villagers by giving English courses, and improving the schools and the roads.

The Company explained that they would ensure that 30% of their workforce is comprised of local people during construction and that they would strive to also employ locals during the operational phase.

Generally, the Company stressed that they were open to participating in meetings with community members and having a dialogue with them.

4. NEXT STEPS

During CAO's assessment, the Complainants expressed their preference for the complaint to be referred to CAO's Compliance function. Therefore, given the voluntary nature of the dispute resolution process, and in accordance with CAO's Operational Guidelines, the complaint will now be referred to CAO Compliance for appraisal of IFC's performance related to the Project.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, CAO dispute resolution specialists conduct an initial assessment. 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,² 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.³

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**

² 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

³ 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.