



June 19, 2017
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

Corporación Dinant S.A. de C.V. (IFC Project # 27250)
Honduras

Complaints 02 and 03

In July 2014, the *Movimiento Campesino Refundación Gregorio Chávez* (MCRGC) and the *Movimiento Unificado Campesino del Aguán* (MUCA) filed two separate complaints with CAO on behalf of their members in the Aguán Valley, regarding concerns arising from the palm oil operations of Corporación Dinant (“the company”), an IFC client since 2009. The complaints raised a number of allegations related to violations of human rights due to the company’s operation in the region, particularly in relation to land disputes and subsequent displacement, the use of security forces by the company, and negative environmental impacts of the company’s operations.

The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

A number of issues raised in the complaints are similar in substance to those covered in a 2014 CAO audit of IFC’s investment in the company, and thus by CAO’s ongoing monitoring of IFC’s response to the 2014 audit. The scope of this appraisal is therefore limited to an assessment of whether the complaints raise substantial additional concerns such that would require a separate compliance investigation.

The complainant’s concerns regarding land disputes and the actions of armed security personnel are similar in nature to issues covered by CAO’s 2014 audit. Thus while these issues raise substantial concerns regarding project E&S outcomes and compliance with IFC’s E&S requirements, CAO does not consider that they require a separate compliance investigation.

Concerns regarding the environmental impacts of the project were not considered in CAO’s 2014 audit. However, the complaint in relation to these issues provides insufficient information for CAO to conclude that it raises substantial concerns regarding project impacts or IFC’s performance. CAO thus concludes that a separate compliance investigation of these issues is not required.

As a result, CAO has decided to consider the issues raised by these complaints as part of its ongoing monitoring of IFC’s response to the 2014 audit. CAO expects to publish its next monitoring report in the course of 2017.

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).

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

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Acronyms

Acronym	Definition
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CBI	Consensus Building Institute
CSO	Civil Society Organization
E&S	Environmental and Social
EAP	Enhanced Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
IFC	International Finance Corporation
MCRGC	Movimiento Campesino Refundación Gregorio Chávez
MIGA	Multilateral Investment Guarantee Agency
MUCA	Movimiento Unificado Campesino del Aguán (Unified Peasant Movement of the Aguán)
NGO	Non-Governmental Organization
PS	IFC Performance Standards
SPI	Summary of Proposed Investment

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. 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.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

In 2009, IFC provided Corporación Dinant (“the company” or “the client”), an integrated palm oil and food company in Honduras, with a corporate loan (IFC Project #27250). Dinant is headquartered in Tegucigalpa, Honduras. As described in IFC’s Summary of Proposed Investment,¹ it owns oil palm plantations across the Aguán and Lean Valleys and operates two palm oil mills and an edible oil refinery near the cities of Tocoa and La Ceiba.

IFC’s proposed investment was a \$30 million loan, of which \$15 million was disbursed in November 2009. As at the time of writing, Dinant had repaid its loan from IFC, and has agreed with IFC that the remaining \$15 million tranche of the loan will not be disbursed. Consequently, IFC and Dinant no longer have a direct commercial relationship.

IFC also has exposure to Dinant through a 2011 equity investment in Banco Financiera Comercial Hondurena S.A. (or Ficohsa), a Honduran bank (IFC Project #29257).² However, IFC’s exposure to Dinant through its investment in Ficohsa, is outside the scope of this compliance appraisal as it was the subject of a compliance investigation by CAO, published in August 2014. IFC’s response to the 2014 investigation is currently being monitored by CAO.³ Similarly, this compliance appraisal does not consider IFC exposure to Dinant through other financial intermediaries.

CAO’s 2014 Audit of IFC’s Investment in Dinant

The 2014 Audit

In January 2014, CAO released a compliance audit which considered reports of land conflict and related incidents of violence on and around the company’s oil palm plantations in the lower Aguán Valley (*Bajo Aguán*).⁴

The audit made a number of non-compliance findings in relation to IFC’s review and supervision of the social impacts aspects of the project, particularly as related to land and security issues.

IFC released an initial response to the audit in January 2014 and an Enhanced Action Plan (EAP) in response to the audit in April 2014.⁵ IFC presented the EAP as a draft which would be further developed in consultation with affected communities.

The EAP included three areas of focus: (i) actions to address the client’s E&S performance within the framework of the IFC Performance Standards, (ii) a broader set of actions (including stakeholder dialogue and dispute resolution activities) designed to identify the root causes of the conflict in the *Bajo Aguán* and frame a possible dialogue process to help address these structural issues, and (iii) a commitment to learning lessons from the Dinant audit and thereby strengthening IFC’s approach to the management of E&S risks in fragile and conflict affected situations.

¹ IFC, Summary of Proposed Investment, Corporacion Dinant S.A. de C.V. – <https://goo.gl/oOdp1S>

² IFC, Summary of Proposed Investment, CF Ficohsa – <https://goo.gl/glelDT>

³ For more information about the Ficohsa-01 case, see: <https://goo.gl/pUq8kD>

⁴ The CAO audit, IFC’s initial response to the audit and related materials are available on the CAO website – <http://goo.gl/PHKdri>

⁵ IFC, Enhanced Action Plan in Response to CAO Audit of Investment in Corporación Dinant, April 2014 – <http://goo.gl/FpMdkh>

Subsequently, IFC has provided regular updates on actions taken in relation to the commitments of the EAP.⁶

A cornerstone of IFC's response to the CAO audit was a community engagement and stakeholder mapping initiative which IFC has supported through the Consensus Building Institute (CBI), a not-for-profit organization with expertise in the field of stakeholder dialogue and mediation.⁷ From July 2014 to August 2016, CBI undertook participatory stakeholder mapping, identified issues of concern (in particular regarding impunity, land, and inclusive economic development) and then formulated a first and second draft documenting those concerns and defining a framework for possible dialogue to address them. This document is known as the Roadmap. Stakeholders engaged included peasant (*campesino*) movements, local and international CSOs, the Government, the company and local community members. IFC further reported to CAO that workshops with Civil Society Organizations and Government authorities were delivered by IFC and CBI to build negotiation and conflict resolution skills. CAO's understanding is that this process has been on hold since August 2016 due to a lack of clarity as to the extent of support from key stakeholders.

Summary of CAO monitoring outcomes

CAO's monitoring of IFC's response to the 2014 audit is ongoing. CAO released two monitoring reports, in April 2015⁸ and August 2016.⁹ In its 2016 monitoring report, CAO acknowledged steps taken by IFC to address findings from the audit while at the same time identifying findings that had not yet been addressed.

In relation to security issues, CAO noted IFC and its client had demonstrated commitment to relevant standards such as the Voluntary Principles for Security and Human Rights (Voluntary Principles) and IFC Performance Standard 4 (PS4). CAO also noted IFC reports that client had conducted a security risk assessment for all facilities, that all staff had been trained to implement the Voluntary Principles, and that private security guards on the company's plantations and facilities had been disarmed. IFC further reported to CAO that the implementation of the Voluntary Principles was subject to a third party audit. At the same time, CAO monitoring noted continued allegations by the complainants of harassment by military and para-military groups which they see as linked to the conflict between their community members and the client.

Findings not yet addressed as set out in CAO's 2016 monitoring report included: (a) the Action Plan commitment for the client to engage a reputable third party to conduct an investigation of past security incidents – which was reported by IFC as a “work in progress;” (b) non-disclosure of the client's 2008 environmental and social assessment; and (c) the absence of a publicly available risk assessment, or evidence of consultation with Garifuna communities regarding the application of Performance Standard 7 (Indigenous Peoples).

CAO expects to release a third monitoring report in the coming months.

Complaints and CAO Assessment Report

The Complaints

⁶ IFC Updates Related to Corporación Dinant's E&S Action Plan – <https://goo.gl/v6zX8T>

⁷ IFC, TOR for Community Engagement / Conflict Mediation Adviser – <http://goo.gl/irLKKO>

⁸ CAO Compliance Monitoring Report, Dinant-01, April 2015 – <https://goo.gl/WVLGog>

⁹ CAO Compliance Monitoring Report, Dinant-01, August 2016 – <https://goo.gl/H6Dd4O>

In July 2014, the *Movimiento Campesino Refundación Gregorio Chávez* (MCRGC)¹⁰ and the *Movimiento Unificado Campesino del Aguán* (MUCA)¹¹ (“the complainants”) filed two separate complaints (the Dinant 02 and 03 complaints) with CAO on behalf of their members in the Aguán Valley, regarding concerns arising from the palm oil operations of Corporación Dinant. The complaints raised a number of allegations related to violations of Human Rights due to the company’s operation in the region, particularly:

- Land disputes as a consequence of land grabbing in the 1990s, and subsequent displacement of communities;
- Use of security forces by the company, leading to the acts of violence against members of their communities, including multiple deaths, and lack of independent investigations;
- Negative environmental impacts of the company’s palm oil operations in the *Bajo Aguán*, including contamination of rivers and lagoons.

The complainants request an independent investigation into the root causes of the land conflict, as well as into impunity in relation to violations of Human Rights, and the alleged destruction and contamination of the environment.

CAO Assessment Report

CAO released an assessment report of these complaints in February 2017.¹² The assessment report notes that at the time the complaints were filed, CAO was monitoring IFC’s actions to address findings from the 2014 audit. In November 2014, after consultation with the complainants, the company, and the Government of Honduras, CAO and the stakeholders agreed to postpone the completion of CAO’s assessment to respect dialogue efforts underway through the work of CBI.

During 2015 and 2016, CAO followed up with the complainants regarding progress in the dialogue efforts lead by CBI to address their issues of concern. Between July and December 2016, CAO resumed the assessment at the request of the complainants. CAO’s assessment concluded with the company’s decision for the complaints to be referred to CAO’s compliance function for an appraisal of IFC’s environmental and social performance. The company informed CAO that dialogue efforts with the complainants had been explored as part of the CBI process under the support and auspices of the IFC. The company reiterated that the Roadmap process, which involved multiple stakeholders and most particularly the Government, was their preferred way to proceed, and therefore the complaints should be referred to CAO’s compliance function. The complainants indicated their openness to dialogue regarding a way forward in resolving the conflict.

Compliance Appraisal Methodology

In preparing this compliance appraisal report, CAO staff reviewed IFC’s documentation of the investment, and gathered information through meetings with IFC staff with direct knowledge and/or responsibilities for the project.

Additionally, in March 2017, the CAO team, including CAO’s Vice President and staff gathered information during a field visit to Honduras, in Tegucigalpa and the lower Aguán Valley.

¹⁰ MCRGC is an associative company constituted by approximately 480 families who form part of the Panama community in the Aguán Valley. The Dinant 02 complaint is available at: <https://goo.gl/HkBrmx>

¹¹ MUCA is a conglomerate of associated companies representing approximately 702 families from the Aguán Valley and together they constitute 16 companies. The Dinant 03 complaint is available at: <https://goo.gl/Uk3IN4>

¹² CAO Assessment Report, Dinant 02 & 03, February 2017 – <https://goo.gl/XHi40i>

The CAO team met with:

- IFC and World Bank country office staff;
- Client management and staff (including a visit of Dinant facilities and plantations in the Aguán Valley);
- Representatives of *campesino* movements, including the complainants (MUCA, MCRGC, MARCA, and other organizations);
- Representatives of the Government of Honduras;
- International NGOs;
- Other stakeholders with knowledge of the situation in the Aguán Valley.

Relevant secondary material was gathered using internet searches. Secondary materials were also provided by some of the interviewees.

III. Discussion

A number of issues raised in the complaints are similar to those covered in the 2014 audit, and thus by CAO's ongoing monitoring of IFC's response to the audit. The scope of the current appraisal is therefore limited to an assessment of whether the complaints (read together with CAO's assessment report in relation to these complaints) raise substantial additional concerns regarding E&S outcomes of the project and/or issues of systemic importance to IFC, such that would meet the standard for a compliance investigation.

Land disputes and subsequent displacement of communities

The complainants allege that since the agrarian reform that was conducted in the 1990s, their land has been taken from them and sold to private corporations. Consequently, they allege that they have been displaced and dispossessed of their properties. They consider that land disputes are the main causes of violence and conflict in the Aguán. They demand an investigation into the root causes of the agrarian conflict, and that their land be returned to them.

Allegations regarding land disputes in relation to the client's operations in the Aguán were included in the scope of the 2014 audit, and CAO has reviewed IFC's due diligence and supervision of its client in relation to these issues.

In the 2014 audit, CAO found that IFC was aware of the importance of access to land free from conflicts and disputes as crucial to the success of agribusiness projects, but that its staff underestimated risks related to security and land conflict associated with the Dinant investment. CAO found that IFC's E&S review was not "commensurate to risk", and thus did not meet a key requirement of the Sustainability Policy (para. 13) in relation to these issues.

CAO further found that IFC failed to assure itself that the client E&S Assessment met the requirements of PS1; particularly in relation to the definition of the project's area of influence, the identification of those who would be affected by project risks and impacts, and the establishment of an appropriate social baseline.

As a result of the audit, issues of land disputes and displacement have been part of the scope of CAO's monitoring activities.

In summary, the land related concerns in the complaint raise substantial issues regarding project E&S outcomes and compliance with IFC's E&S requirements. However, these are issues that

largely overlap with the scope of the 2014 audit. As a result, CAO does not consider that they require a separate compliance investigation.

Use of security forces leading to acts of violence, and lack of independent investigations

The complainants allege that the use of armed security forces by the company led to acts of violence, including the death of a number of community members during conflicts on and around the company's plantations, and that the company was responsible for these deaths. They further request that independent investigations into these deaths be conducted.

This raises the issue of the client's compliance with the requirements of Performance Standard 4 (PS4: Community Health, Safety, and Security) in relation to the use of security personnel.

Such allegations were included in the scope of the 2014 audit, and CAO has reviewed IFC's due diligence and supervision of the client's PS4 obligations.

In relation to the use of security personnel and acts of violence in and around the company's plantations, the 2014 audit concluded that IFC's pre-investment E&S review accepted an overly narrow definition of project E&S risk, without adequate consideration of project context or contemporaneously available sources of information regarding land conflict and insecurity in the *Bajo Aguán*. In particular, CAO found no indication that IFC supervised its client's PS4 obligations: (a) to investigate credible allegations of abusive acts of security personnel; or (b) that the use of force by security personnel would not be sanctioned other than for "preventative and defensive purposes in proportion to the nature and extent of the threat", as required by PS4 (para. 13, 2006).

As a result of the audit, issues related to the use of security personnel, and investigations into past acts of violence, have been part of the scope of CAO's monitoring activities.

In summary, the security related concerns in the complaint raise substantial issues regarding project E&S outcomes and compliance with IFC's E&S requirements. However, these are issues that largely overlap with the scope of the 2014 audit. As a result, CAO does not consider that they require a separate compliance investigation.

Negative environmental impacts of the company's operations

The complainants allege that the company's operations in the Aguán Valley have had a negative impact on the environment, including contamination on rivers and lagoons.

These allegations are relevant to the client's compliance with the requirement to develop and implement an Environmental and Social Management System (PS1), as well as IFC's supervision of the client's compliance with the requirements of Performance Standard 3 (PS3: Resource Efficiency and Pollution Prevention) and Performance Standard 6 (PS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources).

While the issue of environmental impacts of the project was not included in the scope of the 2014 audit, CAO notes that these issues are mentioned only in general terms in the complaint letters received by CAO in July 2014. No further information on the alleged environmental impacts of Dinant's operations was included in CAO's February 2017 assessment report. Environmental issues were not a focus of complainant concerns during CAO's visit to Honduras in March 2017. CAO followed up with the complainants to seek further information about the environmental impacts mentioned in the complaint, however, no further information was available at the time of writing.

In summary, available information is not sufficient to sustain a conclusion that the complaints raise substantial concerns about the environmental impacts of the project or IFC performance, such that would meet the threshold for a separate compliance investigation.

IV. CAO Decision

The purpose of a CAO compliance appraisal is to determine whether an investigation of IFC's environmental and social performance is required in response to a complaint. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The Dinant 02 and 03 complaints raise substantial concerns regarding the E&S outcomes of the project, as well as questions as to the implementation of IFC's policies, procedures and standards. However, these issues, namely land disputes and conflicts, the involvement of armed security personnel in acts of violence, and lack of subsequent investigations, fell within the scope of CAO's 2014 audit of IFC's investment in Dinant. As a result, CAO does not consider that they require a separate compliance investigation.

Concerns regarding the environmental impacts of the project were not considered in CAO's 2014 audit. However, the complaint in relation to these issues provides insufficient information for CAO to conclude that it raises substantial concerns regarding project impacts or IFC's performance. CAO thus concludes that a separate compliance investigation of these issues is not required.

As a result, CAO has decided to consider the issues raised by these complaints as part of its ongoing monitoring of IFC's response to the 2014 audit. CAO expects to publish its next monitoring report in the course of 2017.