



## **CAO ASSESSMENT REPORT**

**Complaint regarding IFC's investment in CIFI (Project # 26031)**

**Santa Cruz Barillas, Guatemala**

May 2016

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

## **About CAO**

The Office of 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 lending arms of the World Bank Group. CAO reports directly to the President of the World Bank Group. Its mandate is to assist in addressing complaints by people affected by IFC and MIGA projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role.

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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## LIST OF ACRONYMS

CAO	Office of Compliance Advisor Ombudsman
CIFI	Inter-American Corporation for Infrastructure Finance ( <i>Corporación Interamericana para el Financiamiento de Infraestructura</i> )
COCODES	Communal Development Councils ( <i>Concejos Comunitarios de Desarrollo</i> )
EIA	Environmental (and Social) Impact Assessment
EPC	Engineering, Procurement and Construction
ESAP	Environmental and Social Action Plan
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

## 1. OVERVIEW

In July 2015, a group of community representatives filed a complaint with CAO on behalf of themselves and other community members from the Department of Huehuetenango, regarding a proposed hydroelectric dam project in the Municipality of Santa Cruz Barillas, Guatemala. The Hydroelectric Santa Cruz Project (“the project”) is funded by a private equity fund, *Corporación Interamericana para el Financiamiento de Infraestructura* (CIFI or “the fund”), supported by the International Finance Corporation (IFC). CAO’s assessment concluded with complainants’ decision for the complaint to be referred to CAO’s Compliance function for an appraisal of IFC’s environmental and social due diligence of the project. This report provides an overview of the CAO assessment process, including a description of the project, the complaint, the views of the parties, findings and next steps.

## 2. BACKGROUND

### 2.1 The Project

According to IFC documentation,<sup>1</sup> IFC holds an active investment in CIFI, established in 2001 as a non-banking financial institution to provide financing to small and medium infrastructure projects across Latin America and the Caribbean. IFC’s investment is for the implementation of CIFI’s business plan, including expected asset growth and operational consolidation, as well as potential access to long-term funding through the international capital markets.

CIFI has indicated that as part of its projects portfolio they granted a credit facility to Hydro Santa Cruz, S.A. (HSC), a legally constituted business under Guatemalan laws and regulations, for the design, construction, implementation, and operation of a run-of-river hydropower plant with 4.9 megawatts (MW) generation capacity in its first operation phase, located in Santa Cruz Barillas, Department of Huehuetenango, Guatemala. At the time of the drafting of this report the project operator is Ecoener Engineering, S.A. (the “company” or “Ecoener”).

According to Ecoener<sup>2</sup>, the project would construct a facility for clean electricity generation, for which part of the river flow needs to be diverted—channeled through a pipe to a powerhouse where it will go through a turbine before being restored in full to the river.

### 2.2 The Complaint

A group of community representatives filed a complaint on behalf of themselves and other community members in the Municipality of Santa Cruz Barillas. The group includes community members who have been arrested for allegedly expressing resistance and opposition to the project. The complainants have raised concerns on several environmental and social issues related to IFC’s due diligence, the dissemination and disclosure of project information, lack of consultation, potential impact on local water resources, *q’anjob’al* indigenous populations, displacement, and safety issues.

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<sup>1</sup> See: <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/4AE7AE952CF18EEC852576BA000E2B35> (accessed January 24, 2016).

<sup>2</sup> Ecoener reported that this information about the project is described in the documentation approved by the Ministry of Energy and Mining of Guatemala.

### **3. ASSESSMENT PROCESS**

#### **3.1. Methodology**

The aim of the CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on the different stakeholders' views, and to determine whether the complainants, the IFC client and project sponsor would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint handling process). CAO does not gather information during assessment to make a judgment on the merits of the complaint.

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

- A review of IFC project documentation, along with documents submitted by the IFC client, the project sponsor and the complainants;
- Meetings with community leaders and members of the communities that filed the complaint;
- Meetings with NGOs, at the local and departmental levels, currently supporting the complainants;
- Meetings with representatives from the IFC client and with project representatives;
- Meetings with IFC's project team; and
- Visits to various communities living in the project area.

#### **3.2. Summary of Views**

As a result of meetings held and the documentation review, CAO found divergent perspectives between the complainants and representatives of the project sponsor in terms of the project's environmental and social impacts, benefit distribution, and the consultation process. These perspectives are summarized in the table below. Subsequently, a brief reference to CIFI's position is presented.

**PERSPECTIVES ABOUT ISSUES RAISED IN THE COMPLAINT**

	<b>Complainants and civil society organizations supporting the complaint</b>	<b>Ecoener S.A.</b>
<b>Environmental Impact</b>	<p>Complainants indicate that this is a small-scale project and should therefore not pose a significant environmental risk. However, they draw attention to the fact that since this would be the first of two consecutive projects to be implemented on the same river, environmental impacts should be assessed cumulatively. They are also concerned that the concession contract to build a hydroelectric plant may be a way to later request a mining license contract in the area, with considerably greater potential impact. In addition, the complainants contend that the river has three waterfalls that are considered sacred by the indigenous communities and serve touristic and recreational purposes.</p>	<p>Ecoener points out that a 5MW project poses very low environmental risks and that relevant authorities have granted the Environmental License. They also indicate that, at some point and only using maps, they transparently explored the possibility of developing a second project downstream, but dismissed the idea due to the existing unrest. As for the condition of the river, Ecoener signals that it is extremely polluted as it gets the wastewater discharge from the urban area of the Municipality of Santa Cruz Barillas and therefore cannot be used as a touristic resource.</p> <p>Ecoener states it works solely on renewable energy generation and that it holds no link or connection to any mining activities that could support rumors of this being a mining project.</p>

<b>Social Impact</b>	<p>The complainants indicate that all the <i>q'anjob'al</i> territory is threatened by businesses that do not consult the communities, but rather divide them, prosecute their leaders, and resort to violence to impose their projects on them. They believe that, in line with this pattern, the project has brought about division in the Barillas community, now stigmatized as a violent municipality. They see that the conflict around the project has affected the organization of local communities—and even that of the local families—which now gather and join in opposing factions, either opposing or supporting the project.</p> <p>They also contend that the lands for the project were bought through a front man with a lack of transparency about what the lands would be used for.</p> <p>The complainants also point out that the company's decision to hire armed guards and custodians brought back memories of the 1980s, when the police and the military abused human rights. According to complainants, the contract with the security company was cancelled after an enraged community mobilized in a protest that included the burning of machinery.</p> <p>The complainants report that since they decided to show their opposition to the project, the community at large has been victim to violence, persecution, threats and intimidation. They say that they have been repressed by police forces and their leaders judicially prosecuted and condemned without due process, by the issuing of arrest warrants that hinder their free movement, limit their ability to look after their families, and cut short their income-generation capacity. They maintain that the women in the community have been driven to take up the role of men.</p> <p>The complainants specifically accuse a worker from the security company hired by the project of having murdered a member of their community in May 2012. They report that the enraged Barillas community reacted violently and that the national government responded by declaring a state of emergency. Along with the mobilization of police forces and the military in Barillas, nineteen individuals were detained and nine were sent to jail for nine months. Complainants maintain that the way in which events have unfolded points to an alliance between the company and the national government.</p> <p>Complainants recount that United Nations representatives questioned the detentions and arrests as arbitrary and irregular.</p>	<p>According to the company, the project should be beneficial for the neighboring communities in terms of job creation and community development projects. The company also informs that the available documentation and testimonies from the sellers prove that the lands were bought on the company's own behalf and not through intermediaries, with transparency about their purposes.</p> <p>The company expresses concern since it claims that the individuals opposing the project are a minority that resort to violence to intimidate the workers and those supporting the project, while occupying the project's lands and setting fire to its machinery on several occasions. The company's representatives believe that the community division and violence stem from politically motivated NGOs supported by European cooperation agencies. According to Ecoener, there is some indication that money was distributed in the communities to push their mobilization against the project. .</p> <p>The company said that initially, following standard practice in the country and due legal requirements, they hired a security company with armed guards who were detained by detractors opposing the project, doused with fuel, and deprived of their weapons. Upon the intervention of the local justice of peace, the detractors returned the weapons and the company substituted the security service with another one to control and protect access to the project site without the need for armed personnel.</p> <p>Ecoener said that one of the individuals accused of murdering a member of the community had worked for the security company that control and protect access to the project site. They remarked that the circumstances in which the killing occurred are unclear, but that the ruling of one of the most prestigious judges in Guatemala absolved the accused party of the charges against him.</p>
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<p style="text-align: center;"><b>Benefit Distribution</b></p>	<p>The complainants remark that the communities do not benefit adequately from the utilization of their resources. They believe that the project benefits powerful foreign groups and that it does not take into account the engagement of the local communities and does not provide long-term, significant development opportunities. They also say that the communities must bear the social and environmental costs without getting any electricity or paying very high fees for the service.</p> <p>They state that the path used by the project had been initially opened by the communities. They chose to block it if it will not be used for the benefit of the community.</p>	<p>Ecoener maintains that the Cooperation Agreement they were looking forward to signing with the communities after a long-awaited process of information exchange and consultation would have created beneficial projects for the development of the communities, alongside job creation for construction purposes. However, they regret that those opposing the project boycotted its signature. They agree with the complainants that it would be convenient to offer electricity to the community, but Guatemalan law does not allow this type of agreement.</p>
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<b>Consultation Process</b>	<p>Complainants indicate that in 2007, before the project kicked off, the communities of the Municipality of Santa Cruz Barillas held a community consultation in good faith, which concluded with an overwhelming majority of votes against mining activities and in favor of defending natural resources. They maintain that this consultation was not respected by the project sponsor.</p> <p>The complainants question the way in which the project sponsor carried out their own consultation process. They said that very little information was disclosed to second-level organizations in micro-regions, their leaders were co-opted, and Ecoener did not engage in dialogue with the communities seeking agreement. As a result, mistrust arose among people, the project site was occupied, workers were asked to leave the project site, and machinery was burned.</p> <p>Complainants said that the company reached an agreement with the Municipality in order to sign a covenant authorizing them to perform works in exchange for 1.2 million quetzales (US\$156,000) per year, but this covenant was rejected by the representatives of the 305 COCODES (Communal Development Councils), the most local level of elected representation recognized by Guatemalan law, because they had not been duly informed and—therefore—felt they were being deceived.</p> <p>The complainants indicate that the Presidency promoted a dialogue process in 2013 with the mediation of Bishop Monsignor Ramazzini, but agreements were not reached and the process was used to identify the leaders of organizations opposing the project and issue arrest warrants against them.</p>	<p>Ecoener considers that documents elaborated by the complainants prove that the community-led consultation was exclusively focused on mining. However, it does acknowledge that their first approach to the communities was limited. They state that they made their first contact with the mayor, who, in turn, recommended that they should contact second-level COCODES in 16 micro-regions in Barillas. They made contact with them and shared information on the project while they processed their corresponding authorizations with the Municipality and the Ministries of Energy and the Environment. They remark that only after the permits had been obtained and after having shared the information on the project with the aforementioned COCODES did they decide to initiate the project. Yet, numerous community members that were not aware of the project halted it, burned the machines, and beat workers who had been sub-contracted to initiate work. At that point, the project entered a stand-by stage for them to seek advice and counseling, and since then, they have exerted efforts to approach and engage each of the communities with specific meetings that have been documented and properly kept in minutes. Per their records, around two thousand (2,000) members of the communities were taken to visit the hydroelectric facilities in Zunil in the hope that they would visualize what the project would look like once completed. At the same time, they claim to have started a negotiation process with the Municipality and the representatives of all the communities to sign a cooperation agreement by which the company would support projects during the life-span of the project—40 years. According to the company, these efforts reversed the situation of social resistance and opposition and an agreement was ready to be signed in December 2011. However, they claim that a radical minority group that had not been democratically elected resorted to violence and boycotted the signature of the agreement.</p> <p>Ecoener said it participated in good faith in the dialogue process mediated by Monsignor Ramazzini and convened by the Presidency under the United Nations system to initiate talks with the complainants. Yet, they stated that efforts failed due to negative responses from complainants.</p>
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<p><b>Dispute Resolution Approaches</b></p>	<p>Complainants express that Ecoener, with support of government administrations, and judicial and security authorities, have only left sorrow and fear and that, in their belief, the only way to restore peace and tranquility in Barillas is if the project is dropped and the company leaves the area. To this end, they have expressed their hope that IFC withdraws its funding from the project, even though they understand that this request exceeds CAO's mandate.</p> <p>Several complainants clarified that they are not against every single hydroelectric project, but only against those that do not propose a distribution of benefits aimed at helping the communities fight against poverty, and that do not engage the community in proper consultation.</p>	<p>Ecoener expressed that despite the various failed opportunities to engage in dialogue and the violence exerted on their workers and facilities, it is willing to try again under CAO's auspices, seeking to reach agreements that may bring about peace and development in Barillas.</p>
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### *CIFI's perspective*

CIFI says that prior to the approval and disbursement of the loan, it hired the services of a prestigious consulting firm with expertise in environmental and social issues, in order to assess the HSC Project. The assessment provided a satisfactory evaluation. On December 6, 2011, CIFI and the Norwegian Investment Fund for Developing Countries ("Norfund") as creditors subscribed a loan facility of up to US\$10.6 million with HSC as borrower. Having verified compliance with the corresponding environmental and social requirements, among others, creditors made an initial disbursement of US\$3.5 million. The remaining US\$7.1 million were never disbursed since HSC was not able to successfully settle the social conflicts in the HSC project area that emerged after having made the first disbursement effective.

CIFI reported that at the time the first disbursement was made, they did not have information about social opposition to the project. In February 2012, as a result of the problems the project was facing, CIFI commissioned a specific social risk study. The results confirmed the need to halt further disbursements indefinitely until social conflicts were resolved. CIFI remarked that, as a result, the creditors sent a letter to HSC asking that they come to agreement on a strategy to settle the issues, to seek and obtain the support from the community, and to share benefits with them. CIFI emphasizes that given the scarce progress made in the construction phase, the environmental impact has been limited.

From CIFI's perspective, despite multiple efforts by creditors to solve problems, a satisfactory resolution was never reached. Therefore, CIFI reported that as of November 3, 2015, HSC and the creditors terminated their credit relationship. Lenders took considerable financial losses related to the investment made. Since then, CIFI bears no contractual relationship with HSC regarding the project.

#### **4. FINDINGS AND NEXT STEPS**

Whereas Ecoener has expressed its willingness to participate in a dispute resolution process convened by CAO, the complainants consider it is not worth initiating a new dialogue process with Ecoener in light of the violent events and damages suffered. The complainants would consider the possibility of maintaining dialogue only with CIFI representatives and without Ecoener's participation, with the aim of analyzing an investment model where benefit distribution may be more fair and equitable. This option is not a possibility given that the relationship between CIFI and HSC has been terminated. Therefore, the complainants request that the complaint be handled through CAO's Compliance function.

Given the voluntary principle guiding participation in a CAO dispute resolution process, and in accordance with CAO's Operational Guidelines, the complaint will be referred to CAO Compliance for appraisal of IFC's environmental and social performance related to the project.

## ANNEX A. CAO COMPLAINT HANDLING PROCESS

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) 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 CAO 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>3</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:** 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 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<sup>4</sup>.

OR

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<sup>3</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>4</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 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.

**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