



---

## **COMPLIANCE MONITORING REPORT**

*IFC Investment in Eco Oro (Project #27961)*

*Colombia*

---

**Monitoring of IFC's Response to:  
CAO Investigation of IFC Investment in  
Eco Oro Minerals Corporation Limited (#27961)**

**June 15, 2018**

*Office of the Compliance Advisor Ombudsman (CAO)*

## 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](http://www.cao-ombudsman.org)

## Table of Contents

Introduction .....	4
Background.....	4
Observations from CAO Monitoring (Sep. 2016 – Apr. 2018) .....	5
1. Project-Level Developments.....	5
1.1. Angostura Project Suspension and IFC Divestment .....	6
1.2. IFC Supervision Activities prior to IFC Divestment.....	7
1.3. Complainants' Perspective .....	7
2. IFC Policies, Procedures, Practice or Knowledge.....	8
2.1. Sustainability Policy and PS1: Appraisal, Project Categorization, Stakeholder Engagement, and Client Capacity .....	8
2.2. PS4: Assessment and Supervision of Security Risks .....	11
2.3. PS6: Biodiversity Conservation .....	12
2.4. Complainants' Perspective .....	13
Conclusion .....	13
Annex 1 – Summary of Investigation Findings.....	16

## Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to assessing compliance with relevant requirements and improving the E&S performance of the institutions.

Following a CAO compliance investigation, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed.

CAO's monitoring considers IFC/MIGA's response to a compliance investigation at two levels:

- Firstly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the project level.
- Secondly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to address project level concerns identified by CAO. The second level is designed to document progress in the IFC/MIGA's approach to the identification and management of E&S risk.

This is CAO's first monitoring report documenting CAO's assessment of IFC's response to its investigation of IFC's investment in Eco Oro Minerals ("the compliance investigation"), which was finalized in June 2016.<sup>1</sup> This report documents IFC's response to the compliance investigation in the period from June 2016 to April 2018.

## Background

The compliance investigation relates to IFC's investment in Eco Oro Minerals Corporation Limited, formerly Greystar Resources Limited (the company). The company is a publicly listed junior mining company headquartered in Canada that owned the Angostura gold and silver mining project in the Santander region of Colombia. At the time of IFC's investment, exploration and feasibility work was being carried out at the project. To date, the mine remains undeveloped. In 2009, the IFC Board of Directors approved an equity investment of up to \$20 million in the company to fund completion of a bankable feasibility study (BFS), an environmental and social impact assessment (ESIA) and other ground works to prepare for the construction of an open-pit mine. IFC made three equity investments in the company of approximately \$9.6 million in March 2009, \$4.8 million in January 2010 and \$0.27m in February 2015.

The compliance process was triggered by a complaint received in June 2012 from the *Comité por la Defensa del Agua y el Páramo de Santurbán* (the complainants), who claim to represent 75,000 community members in the region of Bucaramanga, Colombia.<sup>2</sup> The complainants filed the complaint with the support of three international civil society organizations: the Center for International Environmental Law; the Inter-American Association for the Defense of the Environment; and MiningWatch Canada. The complaint raised concerns over E&S aspects of IFC's investment in the company, including the project's anticipated impact on water quality and

---

<sup>1</sup> CAO Investigation of IFC Investment in: Eco Oro Minerals Corporation Limited (#27961), June 30, 2016, available at: <https://goo.gl/9ofi8E>. The CAO investigation, IFC's response to the investigation and related materials are available on the CAO website, see <https://goo.gl/q2pkTf>.

<sup>2</sup> "Complaint Presented to the Office of the Compliance Advisor / Ombudsman (CAO)", June 2016, available at: <https://goo.gl/xcHXD4>.

quantity in the watershed that supplies the city of Bucaramanga as well as its anticipated impact on the *páramo*, an Andean ecosystem prioritized for conservation under Colombian legislation.

The compliance investigation was released in August 2016, and made a number of non-compliance findings in relation to IFC's due diligence and supervision of the project. A summary of findings as presented in the August 2016 investigation report is set out in Annex 1.

IFC prepared a management response to the investigation which was released together with the investigation report.<sup>3</sup> At the project level, IFC's response agrees that mine development at Angostura would have E&S impacts that would need to be carefully assessed and managed, particularly given the proximity of the paramo. IFC notes that Eco Oro management had decided to suspend project development but that, should the project progress to full mine development, IFC would require PS compliance.

At the level of IFC policies, procedures, practice or knowledge, IFC's response acknowledges areas for improvement, and confirmed that IFC had developed new procedural guidance for staff describing IFC's E&S approach to phased development investments such as Eco Oro.

## **Observations from CAO Monitoring (Sep. 2016 – Apr. 2018)**

During the monitoring period, CAO sought information from IFC on its project-level and system-level responses to the investigation findings. CAO also sought information from the complainants regarding IFC's engagement to address the investigation findings.

This section summarizes key developments during the monitoring period at the project level and provides an overview of IFC actions to address CAO findings at the level of policies, procedures, practice and knowledge.

### **1. Project-Level Developments**

During the monitoring period, IFC has not reported any action that addresses CAO's project-level findings. These include findings in relation to:

- IFC appraisal and supervision of client commitment and capacity in relation to environmental requirements;
- IFC supervision of client compliance with security risk mitigation measures, in particular reporting on the progress on implementing the Voluntary Principles on Security and Human Rights (VSPHR); and
- IFC supervision of progress on the completion of biodiversity assessments (e.g. baseline study or critical habitat assessment).

In explaining the decision not to take up the findings with its client, IFC notes that the Angostura project has been suspended and that IFC has sold its equity in the project.<sup>4</sup> Relevant developments are discussed in further detail below.

---

<sup>3</sup> IFC Management Response to the CAO Compliance Investigation Report on IFC's investment in Eco Oro Minerals Corp., Colombia (Project #27961), available at: <https://goo.gl/izZskS>.

<sup>4</sup> Bloomberg L.P., "Security Ownership History Details for Eco Oro Minerals Corp.: International Finance Corporation, 2015 Q4 to 2018 Q2," Bloomberg database, accessed May 11, 2018.

### **1.1. Angostura Project Suspension and IFC Divestment**

As noted in CAO's investigation, development of the Angostura project was suspended in early 2016 following a decision by the Colombia Constitutional Court that effectively prohibited all mining activities in the paramos.<sup>5</sup> In March 2016, the company announced that it had notified the Government of Colombia of the existence of a dispute under the Free Trade Agreement between Canada and Colombia.<sup>6</sup> The company noted that it had an option to submit the dispute to international arbitration if no acceptable settlement was reached by September 2016.

In August 2016, the Colombian National Mining Agency (ANM) issued a decision on the company's application to extend the exploration phase of its mining title.<sup>7</sup> According to the company, the decision deprived it of its mining rights in respect of roughly half of the concession area that falls within the defined preservation zone of the Santurbán Páramo.<sup>8</sup>

In October 2016, the complainants and supporting civil society organizations met with IFC representatives at World Bank headquarters to demand that IFC withdraw its investment in the company.<sup>9</sup>

In early December 2016, IFC management approved its divestment from Eco Oro.<sup>10</sup> As reported by the IFC project team, the decision to divest was based on IFC's review of its development role, consideration of market conditions, and in light of Eco Oro's decision to suspend the Angostura project indefinitely.

Also in early December, Eco Oro filed a request for arbitration against the Republic of Colombia.<sup>11</sup> According to the company, it had invested over US \$250 million since the mid-1990s to complete more than 360,000 meters of drilling and 3000 meters of underground development at the project site.<sup>12</sup> The company claims that the result of government measures is that "resources remaining in Concession 3452 that could potentially be accessed are insufficient to justify the significant investments required to develop an underground mine. The Project has been rendered unviable."<sup>13</sup> In March 2018, the company filed a memorial on the merits with the World Bank's International Centre for Settlement of Investment Disputes in its arbitration against the Republic of Colombia.<sup>14</sup> The arbitration is ongoing at the time of publication of this monitoring report.

---

<sup>5</sup> See CAO Investigation Report – IFC's Investment in Eco Oro, p. 20.

<sup>6</sup> Eco Oro, "Eco Oro Minerals Notifies Colombian Government of Investment Dispute," News Release (March 7, 2016), available at: <http://goo.gl/HwkMYd>.

<sup>7</sup> Agencia Nacional de Minería (ANM), "ANM Resolution VSC 829 of 2016," August 2, 2016.

<sup>8</sup> Cision, "Colombian National Mining Agency Deprives Eco Oro of its Mining Rights," August 12, 2016, available at: <https://goo.gl/2rcrVU>.

<sup>9</sup> Committee for the Defense of Water and Páramo of Santurbán, Center for International Environmental Law (CIEL), Interamerican Association of Environmental Defense (AIDA), Center for Research on Multinational Corporations (SOMO), Mining Watch Canada, "Civil society urges World Bank to withdraw funding from Colombian mining project," November 1, 2016, available at: <https://goo.gl/TTNvBM>.

<sup>10</sup> CIEL, Press Release, "World Bank divests from Eco Oro Minerals and its mining project in the Colombian Paramos," December 21, 2016, available at: <https://goo.gl/B72PKA>.

<sup>11</sup> International Centre for Settlement of Investment Disputes, *Eco Oro Minerals Corp. v The Republic of Colombia, Request for Arbitration*, December 8, 2016, available at: <https://goo.gl/8Ym6Ui>.

<sup>12</sup> Market Wired, "Eco Oro files Request for Arbitration against Colombia," Dec 6, 2016, available at: <https://goo.gl/J6KMnA>.

<sup>13</sup> *Ibid.*

<sup>14</sup> ICSID Case Details webpage, *Eco Oro Minerals Corp. v Republic of Colombia (ICSID Case No. ARB/16/41)*, available at: <https://goo.gl/a6UoTT>.

## **1.2. IFC Supervision Activities prior to IFC Divestment**

During the monitoring period, CAO inquired with IFC about supervision activities that had been carried out prior to IFC divestment. IFC noted that, as the project had been on hold since early 2016, no exploration or development work was ongoing. IFC reported that the company had reduced on-site staff to a minimum, but that the company was maintaining measures for environmental protection.

IFC supervision documentation indicates that the project team continued to engage with the company's management and sustainability personnel after the project had been suspended up until the IFC divestment. Of note, in June 2016 IFC engaged with the client on its security arrangements, with a focus on the company's capacity to respond to incidents where artisanal and small-scale miners (ASM) were entering the concession area and accessing mine tunnels. As reported to CAO, and as noted in IFC's response to the investigation, the IFC project team and the company were concerned that ASM activities in the concession area were potentially dangerous to the miners and could cause environmental impacts. IFC supervision noted that the company was in discussions with the national mining authority, ANM, to shut down tunnels that had been dug as part of project development.

In June 2016, the company reported that its intention was to retain its E&S team and continue dialogue with stakeholders. The company reported that it would continue environmental management plans, community investment commitments, titles housekeeping and compliance reporting to the regional environmental authority, CDMB.

Following IFC's divestment from the company in December 2016, there has been no record of engagement between IFC and the client on responses to the CAO investigation findings.

## **1.3. Complainants' Perspective**

During the monitoring period, the complainants sought to engage with IFC and with other stakeholders to address the findings of the CAO investigation. As noted above, representatives met with IFC in October 2016 to request that IFC end its support for the project. The complainants also requested information about IFC's decision to divest from the project in order to better understand IFC's decision process.

The complainants state that IFC was one of the first development actors to implicitly or explicitly promote the idea that the Santurbán Páramo would become a mining district. According to the complainants, although development of the Angostura project has been suspended, they remain concerned about potential mine development in the future. As a result, the complainants have continued their focus on the delimitation and protection of the Santurbán Páramo, including through legal action in Colombia.

The complainants filed a petition to challenge a December 2014 Resolution from the Ministry of Environment that delimited the Santurbán Páramo. Among other things, the complainants were concerned that the Resolution had been issued without the participation of interested stakeholders. In November 2017, the court required that the Ministry issue a new resolution to define the Santurbán Páramo within one year, following a comprehensive, participatory, effective and deliberative procedure.<sup>15</sup>

---

<sup>15</sup> Republica de Colombia, Corte Constitucional, Sala Octava de Revision, Sentencia T-361 de 2017, available at: <https://goo.gl/4taK7j>. The new delimitation will not be permitted to impair the level of environmental protection achieved by the December 2014 Resolution.

The complainants continue their work to engage with affected communities and other stakeholders on the delimitation and protection of the Santurbán Páramo by disseminating information and supporting participation.<sup>16</sup>

The complainants expressed a view that IFC's response to the investigation report was not adequate. The complainants note that they do not know what IFC has done or intends to do with regard to the negative E&S impacts of its investment, and emphasize that these impacts persist because the problems of participation and lack of evaluation have not been resolved. The complainants communicated that IFC, and the CAO in its investigation report, could have addressed more vigorously the issue of security and environmental defenders, especially in light of information that the complainants shared with CAO. The complainants also expressed a view that the client's arbitration proceedings against Colombia would not have occurred in the absence of IFC's investment.

## **2. IFC Policies, Procedures, Practice or Knowledge**

During the monitoring period, IFC reported steps that have been and are being taken that relate to investigation findings at the level of policy, procedures, practice or knowledge. In particular, these include findings in relation to:

- Appraisal, project categorization and stakeholder engagement;
- Due diligence and supervision of client capacity and commitment;
- IFC's procedures for ensuring compliance with security-related aspects of Performance Standard 4: Community Health, Safety and Security (PS4);
- Biodiversity assessment and conservation measures in accordance with Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).

### **2.1. Sustainability Policy and PS1: Appraisal, Project Categorization, Stakeholder Engagement, and Client Capacity**

#### CAO Investigation Findings

CAO's investigation noted that IFC's pre-investment review of the project considered only the E&S impacts of the client's immediate planned activities and did not undertake an analysis of project E&S risks beyond the completion of a BFS and preparation of an ESIA. CAO noted that this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with IFC's PSs was uncertain and potentially challenging due to the location's environmental sensitivity.

CAO found that IFC's approach to E&S risk categorization of the project, and its approach to community engagement was based on a limited definition of project scope as involving mineral exploration and feasibility study activities.

In relation to client capacity and commitment, CAO found that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.

#### IFC's Actions in Response to the Findings

---

<sup>16</sup> See public documentation related to the delimitation of the Santurbán Páramo: Ministry of the Environment, Housing and Territorial Development of the Republic of Colombia, "Páramo delimitation participation Santurbán," available at: <https://goo.gl/jZpQtr>.



IFC's response states that its phased approach to the classification of mining investments is sound.

IFC reported to CAO that it had not approved any new early equity mining projects during the monitoring period.

IFC released new procedural guidance for staff describing its E&S approach for phased development investments in October 2016 as part of its updated Environmental and Social Review Procedures (ESRP) Manual.<sup>17</sup> *ESRP 13: Phased Development Projects* describes processes for E&S appraisal and supervision of IFC investments in "phased development projects."<sup>18</sup> Early equity mining projects, such as Eco Oro, would be defined as phased development projects that fall within the scope of ESRP 13.

Key aspects of ESRP 13, as they relate to the investigation findings, are summarized below.

- **E&S Risks & Impact:** ESRP 13 provides that an investee company will be required to apply IFC's Performance Standards to all stages of project development for the entire time that IFC remains an investor.<sup>19</sup> Consistent with the approach taken by IFC in relation to the Eco Oro investment, ESRP 13 notes that the appraisal should:

"consider the actual risks and impacts resulting from the **development stage activities** being financed (i.e. use of IFC proceeds). Specialists should be **mindful of potential prospective impacts should the project be developed**, but given inherent uncertainties over whether any later-stage development will result, the form it will take, and the nature of any related impacts, these **should not be reviewed or discussed in detail**" (*emphasis added*).

- **Assessment of client capacity and commitment:** ESRP 13 provides that IFC will review and assess the client's policies, procedures and E&S management system against Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts (PS1). Any gaps will be filled following IFC guidance. Any final health, safety, environment and communities policy or similar:

"[...]should include clear documentation of the investee company's **commitment to meet the Performance Standards in connection with its existing and future activities and operations**" (*emphasis added*).

Client commitments related to Performance Standards and E&S obligations should similarly be included in IFC investment agreements with the client.<sup>20</sup>

- **Categorization:** ESRP 13 notes that categorization of phased development projects should follow guidance in existing IFC documents:<sup>21</sup>

---

<sup>17</sup> IFC, Environmental and Social Review Procedures Manual, October 2016, available at: <https://goo.gl/Uc2Xqz>.

<sup>18</sup> Such projects are defined as activities where IFC makes a direct financial investment (usually equity) in a company engaged in preliminary development stage activities such as scoping, design, planning, exploration or feasibility studies prior to any final decision being taken to proceed to full project development of an asset. Note that ESRP 13 does not apply to InfraVentures projects. ESRP 13, "1. Purpose and Applicability."

<sup>19</sup> ESRP 13, "2.1 Appraisal of phased development projects," p. 1.

<sup>20</sup> ESRP 13, "2.4 Legal Documentation," p. 3.

<sup>21</sup> Specific reference is made to the following provisions: "Where [...] IFC invests in a pre-development phase of a business activity, IFC will determine the category based on risks inherent to the particular sector and the context of the business activity's setting." (Sustainability Policy, para. 43); and "For instance, when IFC's investment [...] financed activities which are for exploratory / investigative work, the IFC's investment

“Typically the risks and impacts of early stage investments are limited and readily mitigated or reversible and these are therefore category B investments. **Specialists should however consider the potential speed of likely development** and IFC’s entry point with respect to the project phase which may influence the level of risk associated with the project and hence its categorization” (*emphasis added*).<sup>22</sup>

ESRP 13 notes that early phase projects may need to be recategorized if they progress and E&S risks and impacts change.<sup>23</sup>

- **Disclosure and Stakeholder engagement:** ESRP 13 addresses disclosure and stakeholder engagement as they relate to different phases of the investment. It states that publicly disclosed E&S assessment documents should describe impacts and mitigation of the activities covered by IFC’s financing:

“If there is sufficient information to inform the specialist that the future development could potentially have major impacts, it would be appropriate to note that IFC is aware of these and will consider such impacts and their proposed mitigation at the relevant time.”<sup>24</sup>

At the early or “exploration” phase, the procedure notes:

“Management of stakeholder expectations is very important for phased development projects. Local communities **may confuse preliminary studies with the development itself**. Consequently, active engagement will be required to explain the nature of the early works, the phased development and potential outcomes” (*emphasis added*).<sup>25</sup>

ESRP 13 notes that, during the supervision period, IFC may support the client to prepare E&S documentation for project development such as ESIA and resettlement action plans, etc. Final versions of such documents should be disclosed on IFC’s website in accordance with the Access to Information Policy.<sup>26</sup>

- **Project Supervision:** ESRP 13 directs E&S specialists to follow regular supervision procedures for phased development projects, and notes that:

“Because the nature and timing of phased development projects are often uncertain, the project team and E&S specialist must monitor the development of the project carefully and adjust the advice and guidance to the company in light of potential shifts in project focus and timing.”<sup>27</sup>

Specialists should monitor during supervision any changes to E&S risks and impacts and appropriate mitigation measures as the nature of project activities evolve.<sup>28</sup>

- **Follow-on investments:** ESRP 13 distinguishes between follow-on investments in phased development investee companies. Where subsequent investments fund additional scoping, design, planning, exploration or feasibility studies by the investee companies, they may not significantly alter the impacts of the original investment. In such cases, ESRP

---

would typically be categorized as B.” (IFC, Interpretation Note on Environmental and Social Categorization, January 2012, para. IN 11, available at: <https://goo.gl/fgixJL>).

<sup>22</sup> ESRP 13, “2.1 Appraisal of phased development projects,” p. 2.

<sup>23</sup> ESRP 13, “2.3 Procedure for future project development,” p. 3.

<sup>24</sup> ESRP 13, “2.1 Appraisal of phased development projects,” p. 2.

<sup>25</sup> *Ibid.*

<sup>26</sup> ESRP 13, “3.1 Records and Documentation,” p. 4.

<sup>27</sup> ESRP 13, “2.2 Supervision of phased development projects,” p. 2.

<sup>28</sup> ESRP 13, “2.2 Supervision of phased development projects,” p. 3.

provides that investments “may be financed by mechanisms that do not require additional E&S processing (e.g. rights issues).”<sup>29</sup> IFC notes that guidance for specialists on such financial mechanisms will be issued in due course. However, where subsequent investments relate to company activities and operations that are materially different from those reviewed at the time of IFC’s initial investment, these should be processed as a new project and should be subject to appropriate E&S due diligence and public disclosure prior to Board approval.

- ***Maintained IFC financial interest:*** ESRP 13 notes that the E&S commitments of an early phase investment will remain in place as long as IFC maintains a financial interest.<sup>30</sup> This means that “any future development should continue to comply with IFC’s at-approval E&S requirements, including Performance Standards compliance, and that all phases of project development are subject to E&S supervision.”<sup>31</sup> ESRP 13 notes that if project risks and impacts change in a material manner as the project evolves, project recategorization may be considered. In relation to Performance Standards compliance, ESRP 13 notes:

“For example, activities with significant impacts will need to comply with PS1 requirements for a full ESIA, stakeholder engagement, and, where appropriate, independent monitoring of the project’s social and environmental performance. The investee company should also ensure that social and environmental assessment documents associated with such a development are consistent with IFC’s Performance Standards and EHS Guidelines, publicly available and consulted upon in accordance with PS1 prior to the start of construction. This is the case notwithstanding the initial categorization of the investment (such categorization being relevant only to IFC’s internal process, and not to the investee company’s compliance obligations per se).”<sup>32</sup>

## **2.2. PS4: Assessment and Supervision of Security Risks**

### **CAO Investigation Findings**

CAO’s 2016 investigation found that IFC assessed security risks and recommended mitigating measures during project appraisal, in particular that the client adopt new arrangements with security contractors that reflected the Voluntary Principles for Security and Human Rights (VPSHR). CAO’s investigation found, however, that IFC’s supervision documentation lacked adequate reporting on the company’s implementation of the VSPHR.

### **IFC Actions in Response to the Finding**

IFC’s response to the investigation did not propose any action in relation to this finding.

In discussions with CAO, IFC reported that work was ongoing to develop internal and external guidance on project security, including the use of security forces. This guidance was developed in light of IFC experience with projects in several regions, including projects that have been considered in CAO compliance processes.<sup>33</sup>

---

<sup>29</sup> ESRP 13, “2.3 Procedure for future project development,” p. 3.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, note 4., p. 3.

<sup>33</sup> In particular, IFC noted that lessons from the CAO investigation of IFC’s investment in Corporación Dinant informed the development of these guidance materials, see CAO case page: <https://goo.gl/7qaWvP>.

In February 2017, IFC released a *Good Practice Handbook on Use of Security Forces*.<sup>34</sup> The Handbook provides guidance and resources for IFC clients and other companies informed by PS4 and the VPSHR.<sup>35</sup> Relevant to the investigation findings, the Handbook provides guidance on managing private security and relationships with public security forces. In addition to setting out key steps for risk assessment, prevention and mitigation, the Handbook describes means for clients to document their efforts. To this end, the Handbook provides examples of risk analysis charts, a security management plan, sample agreements or memoranda of understanding, and incident reports.<sup>36</sup>

IFC released additional internal guidance on PS4 in a *Good Practice Note* for E&S staff in August 2017.<sup>37</sup> The Note focuses on client screening, including guidance on planning and conducting site visits. It sets out how security analysis and arrangements should be documented and agreed between IFC and the client including the following recommendations.

- *Supervision*: The Note recommends that IFC staff set up automated alerts for security issues related to the client and utilize reputational risk monitoring reports where available.
- *Reporting*: The Note states that staff should encourage clients to report proactively any changes in the security situation or incidents such as protests or injuries related to security.
- *Public security forces*: The Note acknowledges that formal documentation of an agreement between the client and public security forces (such as an MOU) is not always possible. However, the IFC client should document its efforts to build relationships and discuss security issues with public forces.

### **2.3. PS6: Biodiversity Conservation**

#### CAO Investigation Findings

As noted in the CAO investigation, one of the stated purposes of IFC's investment in the company was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. Although the client ESAP included a requirement to complete an ESIA including a biodiversity assessment, CAO found that IFC did not ensure substantive progress on the completion of those studies as would have been expected given the stage of development of the project.

#### IFC Actions in Response to the Finding

In its response to the investigation in August 2016, IFC noted, that at that time the project remained in the pre-feasibility phase as the company had not finalized the preliminary mine design.

IFC's response to the investigation did not propose any action in relation to this finding.

During the monitoring period, IFC informed CAO that it was undertaking a review and update of guidance materials on certain aspects of PS6, particularly in relation to biodiversity and the treatment of critical habitats. The objective of the review of Guidance Note 6 is to integrate lessons learned in PS6 implementation since its update in 2012. The revised Guidance Note will also

---

<sup>34</sup> IFC, *Good Practice Handbook Use of Security Forces: Assessing and Managing Risks and Impacts; Guidance for the Private Sector in Emerging Markets*, February 2017, available at: <https://goo.gl/v2SRgt>.

<sup>35</sup> *Ibid*, p. 15, "Box 3: Performance Standard 4 and the Voluntary Principles."

<sup>36</sup> *Ibid*, pp. 12-13, Annexes A, B, C, and D.

<sup>37</sup> IFC, "Good Practice Note: Supporting Compliance with Security-Related Aspects of Performance Standard 4," August 2017, on file with CAO.

reflect changes in the external international standards to which PS6 refers (including, for example, IUCN's Key Biodiversity Standard).

As part of this task, IFC advised that it has carried out a review of PS6 implementation in the IFC portfolio and with IFC staff. IFC also advised that it has consulted with practitioners, including NGOs and consultancies, that have technical expertise in relation to PS6, and with private sector representatives including mining companies and banks that subscribe to the Equator Principles. IFC anticipates that the revised Guidance Note will be available in the coming months.

The Guidance Note updates are focused on specific issues, including:

- Aligning thresholds for “critical habitat” with IUCN consensus;
- Emphasizing long-term management and financing issues around offsets; and
- Updates to reflect practice on risk-based approaches to “no net loss” and “net gain” requirements that would require evidence base and quantification of loss/gain to be commensurate with impacts and risks. This would allow more qualitative approaches where projects have low/minimal impacts or risk.

Aspects of biodiversity that relate to community engagement or social impacts (including references to other PSs and ecosystem services) are not being changed in these updates.

IFC notes that any future updates to the Performance Standards would be subject to public comment and consultation as is standard practice.

#### **2.4. Complainants' Perspective**

During the monitoring period, the complainants expressed concern that IFC continues to promote, through its investments, mining development districts in ecologically sensitive areas. The complainants requested that IFC share its intention to make policy changes to prevent this from happening.

Further, the complainants reported to CAO that they believe that it is important for IFC to carry out analysis of social and environmental impacts that are cumulative and long-term, and that take into account issues about environmental defenders and the security situation. In relation to Eco Oro, for example, the complainants note that the issue of cumulative impacts would have been important to understand the effects of promoting a mining district in Santurbán given that several companies entered the area after IFC invested.

The complainants also believe that the negative effects of IFC's investment could have been anticipated if an appropriate impact assessment had been carried out and if the community had been engaged through effective participation.

## **Conclusion**

IFC has not reported any actions taken to address CAO's findings at the project level. IFC explains this decision on the basis that development of the Angostura mine has been suspended since early 2016. CAO recognizes IFC's continued engagement with its client up until its decision to divest in December 2016 and commends IFC's willingness to meet with complainant representatives following the publication of CAO's investigation. Nevertheless, CAO's project level findings remained unaddressed when IFC exited the investment in early 2017.

At the systems level, IFC has issued or is developing new procedures and guidance notes that are relevant to the investigation findings regarding phased development projects, implementation of PS4 requirements, and PS6. CAO has considered the extent to which these actions respond to the noncompliance findings of its investigation.

### ***Phased development projects***

CAO recognizes efforts by IFC to document and release publicly its approach to phased development projects in ESRP 13. In assessing IFC's systemic response to the Eco Oro investigation, CAO considered whether adherence to ESRP 13 in a similar early equity project would address CAO's noncompliance findings.

CAO notes that certain aspects of ESRP 13, as applied to a situation such as Eco Oro, indicate a strengthened approach to categorization, E&S risk analysis and mitigation. In particular, ESRP 13 notes that specialists should consider the potential speed of likely development and IFC's entry point with respect to the project phase when assessing risk. This helps to address CAO's finding that Eco Oro categorization was inconsistent with IFC's stated goal of commencing mine development within 18 months.

However, ESRP 13 does not address other aspects of CAO's findings in relation to the Eco Oro investment. ESRP 13 is unclear about how specialists should address early phase investments in highly challenging environmental and/or social contexts. The procedure does not address completeness of supervision documentation, provides little guidance on legal documentation and provides no guidance around divestment or closure.

ESRP 13 states that, for phased development projects, "management of stakeholder expectations" is very important, and notes that local communities may "confuse preliminary studies with the development itself."<sup>38</sup> CAO's investigation identified a gap between community members' understanding of risks associated with the project and the limited scope of IFC's project definition at appraisal. While enhanced early stakeholder engagement would have been appropriate in the case of Eco Oro, attributing the problem to community confusion may be unhelpful. As set out in PS1, consultation should "begin early in the process of identification of environmental and social risks and impacts" and be "commensurate with the project's risks ... and concerns raised by Affected Communities" (para. 30). For projects with potentially significant adverse impacts a more in-depth process of "Informed Consultation and Participation" is required (para 31). Positively ESRP 13 provides for a phased development project to prepare a Stakeholder Engagement Plan in accordance with PS1, however, it provides limited additional guidance on the application of PS1 consultation requirements to such projects. More generally, CAO is concerned that ESRP 13 reads as an explanation of IFC's "phased development" financing model and does not engage with legitimate concerns regarding mine development that affected communities may have at the pre-construction phase.

### ***PS4: Security Forces***

CAO found that, while IFC did assess the project's security risks and develop recommendations, IFC's supervision documentation lacked adequate reporting on the progress of implementing those recommendations. Relevant to this finding, CAO notes that IFC's 2017 Good Practice Handbook recommends methods for clients to track implementation of PS4. Such approaches could support IFC clients' reporting and IFC project supervision of PS4 requirements.

### ***PS6: Biodiversity***

CAO notes that IFC has not responded directly to investigation findings related to the supervision of progress on studies required to demonstrate a project's potential to comply with PS6.

While CAO understands that IFC is continuing work on PS6 implementation related to critical habitats, CAO has not received the updated Guidance Note, and notes that its relevance to the investigation findings is unclear.

---

<sup>38</sup> ESRP 13, "2.1 Appraisal of phased development projects," p. 1.

### ***Monitoring Outcomes***

CAO finds that IFC's response to this compliance investigation has partially addressed its compliance findings. Nevertheless, CAO has decided to close its monitoring of the investigation considering that IFC has divested from the company, in light of IFC's decision not to engage in a project level response with its former client or the complainants, and given that mine development has been suspended.

## Annex 1 – Summary of Investigation Findings

### ***Finding No. 1: Appraisal & Project Categorization***

#### **Finding No. 1a (E&S Review):**

At appraisal, IFC considered the E&S impacts of the client's immediate planned activities, related to the completion of a BFS and the preparation of an ESIA for the proposed mine. IFC did not undertake an analysis of E&S risks beyond this phase. CAO notes that this approach was consistent with IFC's appraisal of other early equity mine projects. As applied in this project, this approach permitted IFC to take an equity stake in a company that was planning to develop a mine for which the potential to comply with IFC's PSs was uncertain and potentially challenging due to the location's environmental sensitivity.

#### **Finding No. 1b (Categorization):**

IFC's approach to the categorization of the project was based on a specific definition of the scope of the project as mineral exploration and feasibility study activities. As discussed in section 4.4, this approach to project definition contributed to gaps between IFC's actions and community expectations. Categorization of this investment as an exploration and feasibility project with limited adverse social or environmental impacts was consistent with the early equity approach but inconsistent with the goal stated in IFC's disclosure material of developing the mine in late 2009/early 2010.

### ***Finding No. 2: Due Diligence and Supervision of Client Capacity and Commitment***

CAO finds that IFC's appraisal and supervision documentation did not promptly capture regulatory actions relevant to IFC's assessment of client capacity and commitment.

#### **Finding No. 2a (Appraisal):**

Although IFC considered regulatory actions as part of its pre-investment due diligence, IFC's appraisal documentation did not capture or analyze information about the CDMB investigation carried out from 2006 to 2008. CAO notes that in 2008, prior to IFC's initial investment decision, the CDMB had found the company to be generally compliant with environmental requirements. However, CAO finds that the CDMB investigation was a relevant consideration for IFC to assess the client's track record in S&E management.

#### **Finding No. 2b (Supervision):**

By 2010, IFC was aware of issues related to its client's E&S performance and had initiated discussions with the company. However, CAO finds that IFC's supervision documentation did not adequately capture information about the company's non-compliance with environmental requirements relating to acid water treatment, soil erosion and slides observed by the CDMB in 2010 or its decision to fine the company for those infractions. CAO finds that the CDMB penalties, and the company's actions to resolve the non-compliance, should have been considered as part of IFC's ongoing assessment of the client's commitment and capacity.

### ***Finding No. 3: PS1: Stakeholder Engagement***

#### **Finding No. 3a (Appraisal):**

CAO finds that IFC considered that the project, defined as the preparation of a BFS and ESIA, had the support of local communities. The intent at this point was that the client's stakeholder engagement process and associated programs would be further developed as the mine progressed toward construction. The requirement to conduct ongoing community engagement activities in accordance with IFC requirements was included in the ESAP.



**Finding No. 3b (Supervision):**

CAO finds that IFC supervised the company's stakeholder engagement requirements and raised shortcomings when these were identified. IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at the appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks associated with the project (which included potential impacts from construction and operation of a mine).

**Finding No. 4: PS1: Compliance with National Law**

CAO finds that IFC was aware of the project's proximity to the páramo at the time of IFC's investment, and identified this as a risk at appraisal as there was potential for the mine to impact the páramo. IFC recognized that the project would need to abide by national law as it applied to the area. At the time of IFC's investment in 2009, the legal restrictions related to the páramos were unclear. National legislation was being developed to determine the boundaries of the páramos, and to identify what activities would be permitted therein. It was not clear whether and to what extent the Angostura project area would overlap the páramos boundary. Legislation passed in 2010 and 2011 explicitly prohibited mining activities in the páramos. The detailed maps of final páramo boundaries were determined in 2014.

**Finding No. 5: PS4: Security**

**Finding No. 5a (Appraisal):**

IFC's appraisal of the project included an assessment of security risks. This led to the development of recommendations, including adoption of new legal arrangements with security contractors that reflected the Voluntary Principles for Security and Human Rights (VPSHR).

**Finding No. 5b (Supervision):**

In reviewing project documents and in interviews with IFC staff, CAO determined there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements. CAO notes that IFC reviewed and reported information in relation to the company's security personnel staffing; however, IFC's supervision documentation lacks adequate reporting on the progress on the implementation of the VSPHR.

**Finding No. 6: Biodiversity conservation**

One of the stated purposes of IFC's investment was to develop the studies necessary to determine whether the project could comply with IFC's PSs, including PS6. The requirement to complete an ESIA in accordance with IFC requirements, including the biodiversity assessment, was included in the ESAP. IFC supervision documentation does not show substantive progress on the completion of necessary studies during the supervision period, such as an adequate biodiversity baseline study or critical habitat assessment. IFC has not pursued a remedy, but has made subsequent investments in the company.