



CAO ASSESSMENT REPORT

Complaint regarding IFC investment in Hidromaule (Project # 25568)

San Clemente, Chile

Abril 2015

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

About CAO

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

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

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LIST OF ACRONYMS

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

1. OVERVIEW

In October 2014, CAO received a complaint from a local individual on behalf of himself and several members of his family regarding IFC's investment in Hidromaule S.A., a hydropower generation company in Chile. As a result of CAO's assessment, the complaint is being referred to CAO's Compliance function for appraisal of IFC's environmental and social performance related to the project. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, outcomes, and next steps.

2. BACKGROUND

2.1 The Project

As per IFC's Summary of Proposed Investment¹, Hidromaule S.A. (the "company") is a start-up hydropower generation company owned by an Italian-Chilean consortium. Hidromaule's initial project, Lircay, is a 20 Megawatt (MW) run-of-river hydropower project located along the Lircay River, approximately 30 kilometres to the northeast of the city of Talca, in Chile's VII Region. The Lircay hydropower project ("Lircay Project") takes advantage of water rights owned by the Canal Maule Association, a long-established irrigation group formed mainly by medium and small agriculturists and with approximately 2,200 shareholders.

According to IFC, the Lircay project is made possible through a surplus of water during wet periods of the year and as a result of topographic relief at a point on the Maule Norte Bajo that overlooks the confluence of the Corel and Lircay rivers. The Lircay Project qualifies as a Non-Conventional Renewable Energy Project as defined in Section (a) Art. 60 of the Chilean Regulation for Non-conventional Means of Generation and Small Established Means of Generation of the General Law of Electrical Services of January 17, 2006.

Infrastructure required for the Lircay Project includes a diversion structure on the Maule Norte Bajo canal, a 2,950 meter-long canal to bring the diverted water to a point overlooking the powerhouse, a 520 meter-long steel penstock pipe to the powerhouse, and a powerhouse with two Francis-type turbine-generator groups with a 9.7 MW capacity each.

The total project cost was estimated at US\$23.3 million. The proposed IFC investment is a \$6.2 million A Loan for IFC's own account, a \$10.0 million syndicated B Loan for the account of participants, and a \$3.5 million subordinated C Loan for IFC's own account.

¹ See: <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/6A3C7DCEB6B92F62852576BA000E2B6A>, Accessed April 15, 2015.

2.2 The Complaint

On October 28, 2014, a local individual filed a complaint to CAO on behalf of himself, his siblings and two cousins (the “complainants”) raising concerns that they have been negatively affected by the land acquisition process conducted by Hidromaule on the Lircay Project. The complainants claim that they were not properly compensated for the value of their land, and that there were irregularities around the land acquisition and environmental permitting processes.

The land parcel forming the subject of this complaint belonged to the complainants’ grandparents. There are approximately 120 heirs, and the complainants are part of two family branches. Part of the Lircay Project takes place on this land parcel. The complainants claim that they were not paid a fair price for their land in 2010, and two of them, who did not sell and still own rights in the land, claim a fair price was never offered by the company.

3. ASSESSMENT PROCESS

3.1 METHODOLOGY

The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation, and to determine whether the complainants and the company 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 consisted of:

- A review of project documentation from IFC and Hidromaule, as well as documentation presented by complainants;
- Meetings with the lead complainant, a group of complainants, and IFC client;
- Discussions with the IFC project team;
- A visit to the project area; and
- Follow up by phone and email with both parties to gather documentation and discuss next steps.

3.2 CONCERNS IDENTIFIED DURING THE ASSESSMENT

Complainants

In addition to the concerns put forward by the complainants in the original complaint, during the assessment they also expressed the following concerns to CAO:

1. The complainants expressed dissatisfaction with the way in which the process for the purchase of the hereditary property was carried out, given their limited levels of education, literacy, tenuous grasp of legal information and limited negotiating abilities.
2. The group of complainants explained that from their perspective there was lack of information regarding the way the value of the property was assessed, as well as regarding their sale options. They reported that they never saw a market assessment of the land’s value.
3. The complainants expressed frustration regarding the way the company seems to have approached them to buy their property, and stated that the process had consisted of calls in which they were pressured to sign the purchase contract in an arrogant tone, and under threat of suing them.

4. The complainants stated that the relationship between the company and the group of complainants during the purchasing process was practically non-existent, and when there was any relationship, it was of a tense and coercive nature.
5. There is mistrust on the part of the complainants and a perception that certain basic operating activities of the hydroelectric company were not transparent and did not comply with national legislation.
6. The complainants believe that IFC was not diligent in its verification of the purchasing process, of the founding of the hydroelectric company, and of the granting of the loan and mortgage. From their perspective, the amount paid to the selling parties was unfair and insignificant when considering the investment that the company and IFC would be making.

The company

During the assessment, the IFC client expressed the following concerns to CAO:

1. The company emphasized its frustration at the lack of recognition on the part of the complainants regarding the long and complex purchasing process conducted by Hidromaule over the years.
2. The company expressed concern that the filing of this complaint reflects neither the complexity nor the degree of effort that the company has invested to be in compliance with all of the requirements that were established by IFC in the framework of the investment project, and in turn to comply with the requirements imposed by Chilean legislation to contribute to the development of the hydroelectric sector.
3. The company expressed frustration and concern with respect to the economic expectations of the principal claimant in relation to the property, considering that such expectations do not correspond with the market value for the property at the time of the purchase offer, and would give rise to unfairness in terms of what was paid to other sellers. They indicated that they feel confident a fair price was offered and paid for those complainants that agreed to sell.
4. The company expressed frustration with the handling of the legal actions—approximately 50—that were filed by the principal claimant in the course of 2014.
5. The company expressed its confidence that the complainants were adequately informed about the purchase process by the respective officers who took part in the process, among them real estate brokers, notaries, and attorneys.

Both the complainants and the company are in agreement that this case has had a long history, involving very complex proceedings.

3.3 OUTCOMES AND NEXT STEPS

The complainants expressed interest in finding solutions to this complaint through a mediated process facilitated by CAO's Dispute Resolution function. The company determined that they would prefer the case to be addressed by CAO's Compliance function, and not enter in a CAO dispute resolution process. Therefore, in accordance with CAO's Operational Guidelines and given the voluntary principle that guides CAO's Dispute Resolution function, the complaint will be handled by CAO's Compliance function for appraisal of IFC's environmental and social performance with regard to the project.

Annex A. CAO Complaints 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 handled 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 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,² the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** Assessment of the issues and provide 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 a 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 goal. 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 affected³.

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

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