

Conclusion Report CAO Ombudsman Process / ICIM Consultation Phase

April 2011

This joint report summarizes the dispute resolution and consultation process by the Compliance Advisor/Ombudsman (CAO) and the Independent Consultation and Investigation Mechanism (ICIM) on the Pando-Monte Lirio project in Panama.

SUMMARY OF THE COMPLAINT AND CAO OMBUDSMAN / ICIM CONSULTATION PROCESS

The Pando-Monte Lirio project, approved by IADB on December 9, 2009 and by IFC on February 4, 2010, consists of two run-of-river hydroelectric power plants to be operated in cascade on the Chiriquí Viejo River in Western Panama. The plants are being developed by Electron Investment, S.A. (EISA).

In January 2010, 16 community and environmental organizations based in the Chiriquí province filed a complaint with CAO and ICIM citing a number of social and environmental concerns, including lack of participative consultation processes with communities; cumulative environmental impacts; possibility of flooding to communities downstream; endangering of fish and other species; over-exploitation of water resources and the river; limited community access to water; high levels of sedimentation that affect water quality and downstream water treatment facilities (such as Baru); and negative impacts on the natural landscape and on mangroves located near the mouth of the river in the Gulf of Chiriquí.

After CAO completed an Assessment in July 2010, the parties agreed to participate in a dialogue process facilitated by CAO and ICIM in order to try to reach a mutually agreeable resolution to the issues raised. ICIM formally joined the process in October 2010.

The CAO-ICIM team held several separate working meetings with the complainants, EISA, IFC, IADB,



Community meeting with complainants, Volcan, Panama

and other stakeholders, including additional local community members, municipal authorities, other lenders, and national government regulators. CAO-ICIM also convened two information-sharing sessions in October 2010 – one for the complainants and EISA and the second for the complainants and the government (the National Environmental Authority (ANAM), the National Authority for Public Services (ASEP), and the Bugaba Mayor's Office). EISA also participated in the second meeting as an observer.

Over the next five months, in preparation for the Dialogue Table, ICIM completed its Assessment and the CAO-ICIM team met and communicated with the parties intensively. By March 2011, the parties had not reached an agreement and while the complainants continued to be amenable to a dialogue process, the project sponsor (EISA) decided it was no longer in their interest to continue participating in such a process. Therefore the complaint has been transferred to CAO's Compliance function for

appraisal and to ICIM's Compliance Review Panel for Eligibility Analysis. The lenders also have to verify EISA compliance with a series of conditions prior to first disbursement of the loan.

OUTCOMES OF THE PROCESS

- **Agreement on Ground Rules.** Although the parties ultimately were not able to reach agreement on all substantive issues, early on they were able to reach agreement on the procedural ground rules to govern the dialogue process.
- **Mutual Understanding.** Most of the stakeholders involved in the dialogue process facilitated by CAO-ICIM acknowledged that their understanding of the issues and each other improved significantly as a result of their participation. For example, the project sponsor gained a better understanding of who the complainants were and their respective concerns and goals. The complainants learned more about the actions and commitments made by EISA, the various options available to address their concerns, the overlap between their concerns and EISA's Environmental and Social Action Plan (ESAP) for the project, and the roles and responsibilities of IFC, IADB, CAO, and ICIM. The issues in the initial complaint were further clarified and defined by the parties, including differentiating issues at the national, watershed/basin, and project-specific levels. All participants seemed to better comprehend the various roles (and limitations) of other stakeholders in addressing those issues.
- **Enhanced Awareness.** Overall, the CAO-ICIM process seems to have also raised the awareness and visibility of the challenges of integrated watershed management in the Chiriquí River basin among the key stakeholders and the Panamanian public more generally. The lenders involved are now also more aware of the complainants' concerns regarding the hydroelectric development in the Chiriquí River.
- **Empowerment and Strengthened Capacity.** The CAO-ICIM team invested significant time assisting the parties to prepare for effective participation in a

dialogue process (e.g. planning and strategizing, preparing presentations, designing analytical tools, developing understanding of the "other side", etc.). Although disappointed that the Dialogue Table could not go forward and an agreement could not be reached, the complainants reported that they were much better organized, focused, and informed at the conclusion of the consultation/ombudsman process. They also feel better prepared to engage in future dialogue and collaborative/consultative processes. Representatives from ANAM and ASEP also noted that their inter-agency relationship and cooperation improved greatly.



EISA hydroelectric plant construction, Chiriquí Viejo River, Panama

LESSONS AND INSIGHTS

Lessons and insights that emerged from the CAO-ICIM dialogue process included the following:

- **Focus on primary stakeholders/parties.** During the assessment the complainants, project sponsor, and lenders had all recommended reaching out to other important stakeholders (e.g. government regulators, other hydro developers, other lenders, etc.). Given the nature of the issues, CAO-ICIM also agreed that these other stakeholders would likely need to be involved in order to reach a satisfactory resolution. However, given the respective mandates of CAO and ICIM, the primary parties are the complainants and the project sponsors. After some progress had been achieved between these primary stakeholders, (improved

trust and understanding, actual or tentative agreements, etc.) other stakeholders could have then been invited to work on the broader issues. Holding smaller, more low profile and/or confidential meetings early on might have also provided more space and freedom for the parties to engage constructively with one another.

In cases such as this one, where there are large numbers of complainants, it is critical to thoroughly discuss and reach agreement on how they will be represented and make decisions during the dialogue/dispute resolution process. There will be practical and procedural barriers that will prevent every individual from personally participating in every meeting. The respective mandates and policies governing CAO and ICIM give priority to *local project-affected people*, and the participation of other parties may also be required in order to resolve the issues and/or reach a credible and meaningful agreement. Parties should take care to ensure that procedural questions or disagreements over representation do not unnecessarily overshadow or distract them from their substantive issues and goals.

- **Invest early in clarifying and defining concerns/issues.** For a dialogue or mediation process to be successful the parties must spend time clarifying and defining the issues, relevant actors involved, and respective roles and limitations in a way that they all understand. This ultimately forms the agenda, forum and topics for the dialogue itself. At the beginning, the parties are obviously not able to agree on solutions, but they must at least agree on the problems they are trying to solve, and the actors involved. As noted above, the parties in this case actually made significant progress in this regard, but it took longer than expected.
- **Assess and discuss political context.** Environmental and social issues were “hot topics” in Panamanian politics and public policy debates during the Assessment and Dialogue Process. In the Fall of 2010 mass demonstrations were held related to controversial environmental and labor legislation pending before the National Assembly.

In early 2011, there were again protests and demonstrations related to regulation of the mining industry. This tense political context presented challenges for both the complainants and project sponsor in terms of maintaining their reputations and relationships with peers in the business/NGO community and with government agencies, while at the same time engaging in good-faith dialogue with one another.

- **Analyze the broader context for certain type of projects.** The case of hydropower plants or dams is a good example. Issues/problems in this context cannot be analyzed exclusively at the project level given the project’s natural area of influence. Concerns regarding Pando-Monte Lirio touched upon issues that exceeded the mere physical project area (e.g. water flow, water sedimentation, water use and accessibility, coordination of environmental mitigation measures, etc.). Therefore more comprehensive analysis and broad-based discussions would be required for all parties to achieve mutually satisfactory outcomes and agreements.
- **Consult key parties on the role of lenders.** The role of IFC and IADB in CAO and ICIM cases, respectively, is specific to each situation. In situations such as this case, where government agencies are also active participants and there are potential policy implications of the case, the role that lenders may play individually or as co-financiers can be quite influential in fostering an open and responsible dialogue between sponsors and local communities, and between sponsors and the regulators. In almost all cases, the lenders (along with the project sponsor and complainants) help the Ombuds team (and each other) get acquainted with the local issues, situation, contexts, etc. The important lesson is to determine with all relevant stakeholders (including the lenders themselves) as to the most appropriate and constructive role the lenders can play in any given case. It may be that their role changes and evolves over time, so this can be an iterative discussion as the process unfolds.