



## **Dispute Resolution Conclusion Report Regarding a Complaint Received in Relation to IFC's Investment in Alquería (#28492 and #39308) in Colombia**

**March 2023**

### **SUMMARY**

This Conclusion Report documents CAO's dispute resolution process in relation to a complaint related to IFC's project with Productos Naturales de la Sabana S.A. Alquería ("Alquería" or the "company") in Cajicá, Colombia, and offers some reflections and lessons learned from the process. Honoring the confidentiality provisions agreed to by the complainants and the company (the "parties"), this report only provides a general overview of the process and the issues discussed by the parties during the dispute resolution process.

CAO's dispute resolution process responded to a complaint received in April 2013 from the owners (the "complainants") of a farm called Finca Golpe de Agua, ("Golpe de Agua"), which is adjacent to a dairy production plant owned by Alquería. The complainants raised concerns about alleged adverse environmental impacts from Alquería's operations on their farm, including soil, air, and noise pollution and inadequate disposal of toxic residues.

CAO found the complaint eligible for assessment in April 2013.<sup>1</sup> During the assessment, the complainants and the company expressed their interest in engaging in a CAO dispute resolution process to resolve the issues raised in the complaint.

After four years of facilitated dialogue, the parties signed an agreement in June 2017 to address the concerns raised in the complaint. CAO monitored implementation of the agreement until September 30, 2022. During the monitoring phase, CAO found progress toward full implementation of the agreement to be very slow. Between 2019 and 2021, COVID-19 restrictions and social unrest in Colombia contributed to delays. Receiving timely responses and accurate information from key stakeholders became a recurrent challenge, which made monitoring implementation of the agreement difficult. In particular, CAO was unable to obtain timely responses from the auditing firm selected by the parties and, towards the end of the process, from the company. More positively, however, during the dispute resolution process, the parties established the necessary communication channels to continue their relationship without CAO's support. Because of this relationship, some aspects of the agreement related to noise reduction are now in place, including contractual procedures and a schedule of works.

On August 17, 2022, CAO informed the parties that it would close the dispute resolution process after having reviewed the challenges, progress of the monitoring phase, and relationship the parties had established. Given that the agreement had not yet been fully implemented, CAO asked the complainants whether they wanted the case to be transferred to CAO's Compliance function for appraisal of IFC's performance in relation to the project in

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<sup>1</sup> CAO eligibility criteria can be found at <https://www.cao-ombudsman.org/how-we-work/intake-assessment>.

accordance with CAO's Policy<sup>2</sup>. After obtaining a letter from Alquería on October 12, 2022, ratifying the company's commitment to fully implement the agreement signed during the CAO process, the complainants informed CAO that they did not wish to transfer the case to the Compliance function. Therefore, CAO is closing the case.

## **BACKGROUND**

### **The Project**

At the time the complaint was filed to CAO in 2013, IFC had an active project with Alquería. IFC had approved a US\$15 million loan and \$5 million in equity in 2010 to help the company implement a 2-year investment program to expand production capacity across its plants and capital investments aimed at gaining efficiencies and cost reduction. In 2018, IFC also approved \$20 million in equity to help the company strengthen its capital structure and support its 4-year expansion program through 2021. According to IFC disclosures, both investments have been completed.

### **The Complaint**

In April 2013, CAO received a complaint from the owners of the Golpe de Agua farm, which is adjacent to Alquería's plant in Cajicá. The complainants raised concerns about alleged environmental impacts on Golpe de Agua due to Alquería's operations. The allegations included pollution caused by liquid discharges into the soil, loud noise beyond legal limits, inadequate disposal of toxic residues, and air emissions.

### **CAO Assessment**

CAO found the complaint eligible in April 2013 and began an assessment of the complaint to clarify the issues and concerns raised by the complainants and gather information on the views of different stakeholders. The assessment also sought to determine whether the parties wished to pursue a dispute resolution process or initiate a compliance appraisal of IFC's environmental and social performance (see Appendix A)<sup>3</sup>.

The assessment took place between April and August 2013. CAO conducted a desk review, held meetings with the complainants, IFC, and the client, and conducted a field visit to Cajicá in July 2013. While parties had different views about the issues raised in the complaint, they agreed to address them through a confidential and voluntary dialogue process facilitated by

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<sup>2</sup> This case was processed and completed under CAO's 2013 Operational Guidelines. In accordance with transitional arrangements for CAO cases to the new CAO Policy, effective July 1, 2021, cases transition to the CAO Policy following the conclusion of their current phase in the CAO process. Therefore, CAO sought the consent of the complainants following the conclusion of this dispute resolution process to determine whether the case would transfer to CAO's compliance function or close, consistent with the new policy requirements. The CAO Policy is available at <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>.

<sup>3</sup> See Appendix A for more information on the CAO complaint-handling process.

CAO. In August 2013, CAO published its assessment report summarizing the parties' perspectives and the outcome of the assessment.<sup>4</sup>

### **Dispute Resolution Process**

In September 2013, CAO provided training to the parties in negotiation, conflict resolution, and communication skills in preparation for the dispute resolution process. The CAO team continued to provide capacity-building to the parties throughout the process. In early joint meetings, CAO facilitated a discussion between the parties so they could agree on ground rules to govern how the dispute resolution process would be conducted. The parties finalized the ground rules and agreed to keep the process confidential.

During the dispute resolution process, CAO facilitated multiple sessions in which the parties discussed the concerns raised in the complaint. At the parties' request, the process included the participation of independent noise reduction experts, who provided technical information when needed.

In June 2017, after four years of facilitated dialogue, the parties signed an agreement, which included measures to address noise mitigation, air emissions, urban planning, and soil contamination. The parties agreed that the terms of the agreement would remain confidential, and CAO started monitoring implementation of the agreement.

### **Monitoring**

During the monitoring phase, CAO followed up closely with the parties on the implementation of commitments made in the agreement. Since noise mitigation was a priority for the parties, the company began working on noise mitigation measures between 2017 and 2019. However, these efforts failed to deliver the desired results due to technical reasons. Social conflict in Colombia in 2019 delayed implementation and travel restrictions during the COVID-19 pandemic prevented the CAO team from meeting with the parties in Colombia to monitor implementation.

Between November 2021 and September 2022, CAO facilitated four monitoring meetings (three in-person and one virtual). During the meetings, parties renewed their commitments to move forward with implementing agreed actions to address noise mitigation. An independent auditing firm engaged by the parties during the dispute resolution process to audit noise reduction works also participated in the meetings.

CAO followed up separately with the complainants and the company, as well as with the auditing firm, to identify progress toward implementing the agreed actions and to help the parties address challenges as they arose. The pace of implementation was slow. The auditing firm took a long time to respond to questions, provide feedback on technical proposals, and

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<sup>4</sup> During the assessment phase, CAO conducted a desk review, held meetings with the complainants, IFC, the Client and other relevant stakeholders, and conducted a field visit to Cajicá in July 2013. As a result of the assessment, Golpe de Agua and Alquería indicated their willingness to engage in a dispute resolution process facilitated by CAO. The August 2013 assessment report can be found at [https://www.cao-ombudsman.org/sites/default/files/downloads/AlqueriaColombia\\_CAOAssessmentReport\\_August\\_22\\_2013.English.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/AlqueriaColombia_CAOAssessmentReport_August_22_2013.English.pdf) (English version) and [https://www.cao-ombudsman.org/sites/default/files/downloads/AlqueriaColombia\\_CAOAssessmentReport\\_August22\\_2013.Spanish.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/AlqueriaColombia_CAOAssessmentReport_August22_2013.Spanish.pdf) (Spanish version).

negotiate contracts. Despite CAO's follow-up, agreed deadlines were not met. Towards the end of the process, it also became difficult to obtain key information from the company.

In August 2022, Alquería reported that it had implemented 20 percent of the work related to noise reduction. However, the complainants said that they had not yet detected changes in noise levels. In relation to the other 80 percent of agreed actions to address the concerns about noise, Alquería informed CAO they had already signed contracts with the auditing firm and a service provider to do the work.

Acknowledging that CAO's involvement and resources were no longer adding value to the implementation process and that the parties had established their own direct channel of communication, CAO informed the parties in August 2022 that it would conclude the monitoring phase of the dispute resolution process. CAO based its decision on its obligation to fulfill its mandate and objectives fairly and efficiently<sup>5</sup>.

On August 22, 2022, Alquería, their service provider, and the auditing firm agreed on a schedule of works, which is included in this report as Appendix B. On October 12, 2022, Alquería sent a letter to the complainants reiterating their commitment to fully implement all activities agreed to in the context of CAO's dispute resolution process and to keep them informed about progress of the works.

In accordance with transitional arrangements for cases under CAO's new policy<sup>6</sup>, CAO asked the complainants to decide whether they wanted the case to be transferred to CAO's Compliance function or be closed. The complainants met with CAO's Compliance team to help inform their decision. After receiving the letter of commitment from the company on October 12, 2022, the complainants informed CAO on October 20, 2022, that they did not want the case to be transferred to the Compliance function. They stated that they resorted to the CAO process to avoid damaging Alquería with administrative and judicial processes. Even if the main problem has not yet been resolved, the complainants said they trusted that Alquería's Board, shareholders, and management are aware of the agreement signed under the auspices of CAO and committed to its full implementation. Therefore, in accordance with CAO's Policy, CAO formally closed the case in February 2023 and issued this conclusion report.

## **CONCLUSION**

CAO's monitoring phase is a crucial part of the dispute resolution process. It involves an active role for CAO by maintaining constant communication with the parties to assess progress toward implementation of agreements; communicating the status of implementation to all involved parties to ensure they have the same information; and convening to the parties if there are different perceptions regarding the interpretation and implementation of agreements.

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<sup>5</sup> The case was open before the new CAO Policy was approved. According to transitional arrangements, CAO's Operational Guidelines ([CAO Operational Guidelines, 2013](#)) continue to apply until the dispute resolution process is complete.

<sup>6</sup> See <https://www.worldbank.org/en/about/leadership/brief/ifc-miga-independent-accountability-mechanism-cao-policy-english-and-additional-languages>

Most agreements involve challenges and delays during implementation. CAO's role is to support the parties to find ways to solve problems and help them reach full implementation of agreements. However, when progress is too slow, CAO retains the discretion to assess whether it should continue investing resources to sustain the process or bring it to a close.

While CAO saw its value decreasing in the latter stages of the case due to the challenges with the auditing firm, CAO welcomes the company's letter reiterating their commitment to fully implement the agreement reached during CAO's dispute resolution process. As such, CAO believes that the parties have the capacity and good will to continue working on the implementation without CAO's support.

All public documentation relevant to this case is available at CAO's website at [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

## APPENDIX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainants; (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.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,<sup>7</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 CAO (no more than 15 business days).
- Step 3:       **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 90 business days, with possibility of extension for a maximum of 30 additional business days if, after the 90-business-day period: (1) the parties confirm that resolution of the complaint is likely or (2) either party expresses interest in dispute resolution, and there is potential that the other party will agree.
- 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 on 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>8</sup>

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<sup>7</sup> For more details on the role and work of CAO, please refer to the full [IFC/MIGA Independent Accountability Mechanism \(CAO\) Policy](#).

<sup>8</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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

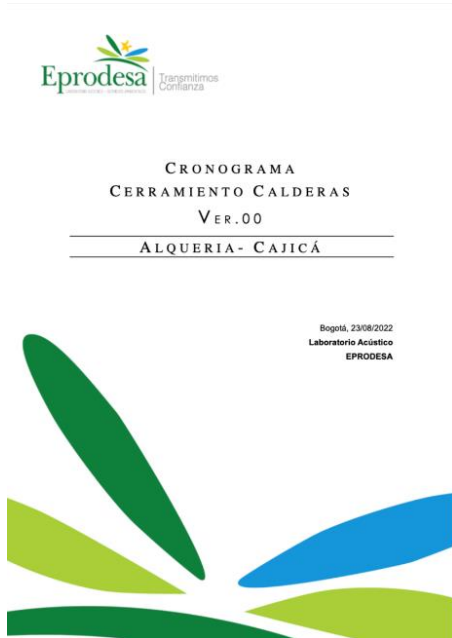
OR

**Compliance Appraisal/Investigation:** If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one affected community member must provide explicit consent for the transfer unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate, following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

**APPENDIX B. WORKPLAN FOR NOISE REDUCTION MEASURE**



**CRONOGRAMA**

Actividades		% de Avance	Semana 1	Semana 2	Semana 3	Semana 4	Semana 5	Semana 6	Semana 7	Semana 8	Semana 9	Semana 10	Semana 11	Semana 12	Semana 13	Semana 14	Semana 15	Semana 16	
Alistamiento (Administrativo y diseño)	Elaboración de Contratación	100%	X																
	Legalización contrato y pólizas	80%	X																
	Pago de anticipo	0%		X															
	Levantamiento de planos de estructura existente	0%			X	X													
	Presentación de diseño arquitectónicos y estructural	0%					X												
	Observaciones al diseño arquitectónico y estructural por parte del contratante	0%					X												
	Kick off de diseños arquitectónicos y estructurales	0%						X											
	Visita en planta para corroborar diseños	0%							X										
	Aprobación de diseños arquitectónicos finales	0%								X									
	Aprobación de colores de estructura y panel	0%									X								
	Calculos estructurales finales	0%										X							
	Modelamiento acústico actual y proyectado del cerramiento de calderas	0%	X	X	X	X													
Panel acústico	Pedido de panel acústico	0%			X														
	Fabricación panel	0%				X	X	X	X										
	Despacho	0%								X									
	Tránsito marítimo	0%									X	X							
	Nacionalización	0%										X	X						
	Transporte terrestre	0%												X	X				
	Entrega en obra	0%														X			
Instalación de estructura y panel	Compra de materiales, fabricación y pintura de estructura metálica en taller	0%			X	X	X	X											
	Montaje de estructura pemedada y retoques de pintura	0%							X	X	X	X							
	Mano de obra, instalación de panelería con los respectivos remates	0%													X	X	X		
Mediciones	Medición de ruido en el predio colindante	0%	X																X

Nota: los tiempos de ejecución de obra puede varias por condiciones ajenas, como la importación de los insumos, las condiciones que no permitan los trabajos en obra como condiciones climatoógicas, orden público y demás.