



September 30, 2019
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Condor Gold (IFC Project # 32519)
Nicaragua*

Complaint 01

IFC approved an equity investment in Condor Gold (or “the client”) of up to US\$10 million in 2014. Condor Gold is a junior mining company carrying out exploration at the La India Project (“La India”) located in northwestern Nicaragua. The La India concession covers 280 km² (98% of the historic La India Gold Mining District) and comprises eight contiguous concessions. The investment was expected to support the client’s exploration program at La India, and to fund studies required to advance the project from Pre-Feasibility Study (“PFS”) to Bankable Feasibility Study (“BFS”). The project was classified as Category B, on the basis that the exploration activities, for which the client required capital, were expected to have potential limited adverse environmental and social (E&S) risks and/or impacts.

In July 2018, CAO received a complaint from 11 members of the Santa Cruz de la India community, organized as a Communal Movement (the “*Movimiento Comunal*”). The complainants raise concerns regarding actual and potential negative E&S impacts related to the project. They allege inadequate consultation and disclosure of information regarding the project. They claim that the client’s exploration activities have caused water levels in nearby aquifers to fall, drying out wells they use to get water. They raise concerns regarding the potential impacts of a future mine on local community’s access to water. The complainants also raise threats of evictions and risk of involuntary displacement, risk of seismic activity, and potential impacts to biodiversity and ecosystems related to mine development. The complaint claims that the project is in violation of national and international laws, as well as IFC’s Performance Standards (PS) and Access to Information Policy (AIP). It also cites intimidation and threats of reprisals by police and client representatives, as well as criminalization of community actions against the project.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

This compliance appraisal identifies questions as to the adequacy of IFC’s pre-investment E&S review of the project, and whether IFC had a reasonable expectation that the project would be able to meet the requirements of the Performance Standards. In particular, CAO notes that IFC’s review was limited to exploration activities, and did not include screening of potential future impacts of a mine, including some that may have constituted red flags in terms of the client’s ability to meet IFC E&S standards during mine development, construction and operation.

However, IFC picked up a number of these issues early in its supervision, including the potential relocation of the La India village and economic displacement of artisanal miners. IFC also raised concerns related to the concept mine plans submitted by the client to national authorities as part of a regulatory EIA, such as the absence of flood pathways analysis and the close proximity of the La India community to the planned mine. IFC raised concerns with the client around issues relevant to the CAO complaint including the need to align the Environmental and Social Impact Assessment (ESIA) process with IFC's PS and Good International Industry Practice (GIIP), the need to verify water monitoring results, the need for alternatives analysis, community engagement and disclosure of information. These concerns were communicated by IFC management to the client on several occasions, and IFC abstained from further investments when the client raised additional capital in 2017 and 2018.

The security situation in Nicaragua deteriorated in 2018. In this context, communities opposing the La India project – and mining activities more broadly – reported an increase in threats and reprisals. IFC was made aware of these concerns and monitored them, especially after the complaint was sent to CAO. In 2018-2019, IFC raised these concerns with its client, and flagged them with World Bank Group senior management. IFC hired a security consultant to review the client's security procedures, and advised the client on actions to be taken to review its security arrangements in light of the context in Nicaragua. IFC also advised the client to engage a third party to undertake a security risk assessment as a component of a robust comprehensive risk management and mitigation plan. This assessment was expected to consider both security arrangements and the wider (and future) social/human rights risks around the project.

In June 2019, IFC fully divested from the project. During the period of IFC's investment, the client carried out exploration activities such as drilling and collecting geological samples, as well as using and maintaining access roads in the concession area. The client completed a PFS in November 2015, however, at the time of IFC's divestment, a BFS and an international ESIA were pending. While CAO notes the complainants concerns regarding impacts on groundwater levels during the exploration phase, based on available information IFC has supervised the client's monitoring of groundwater levels, surface water flow and water quality, and no indications of such negative impacts were identified.

Following a preliminary review of IFC's E&S performance in relation to this investment, CAO has decided not to open a compliance investigation. In reaching this conclusion CAO notes that there are questions as to the depth of IFC's pre-investment E&S review of the project, whether it adequately considered client commitment and capacity to meet IFC's Performance Standards, whether it adequately considered third party and contextual risk, and thus whether it met IFC's requirements for review commensurate to risk. At the same time, CAO notes that key issues as raised by the complainants were picked up by IFC early in its supervision of the project, and raised with the client. Without satisfactory resolution of these issues, IFC abstained from further financing the project. CAO further acknowledges IFC's monitoring of allegations of threats and reprisals against community members.

During the period of IFC financing, the client undertook activities that are preparatory to the construction of a mine. The complainants' main areas of concerns relate to potential future impacts of mining activities on the environment, their homes and livelihoods. The client does not yet have in place the studies needed to raise finance for construction of the mine. IFC fully divested from the project in June 2019 and has no ongoing commercial relationship with the client. Challenges in ensuring the effective application of IFC's E&S standards to the project contributed to this decision.

In this context, CAO concludes that IFC's approach to the review and supervision of this project in relation to the issues raised in the complaint, does not meet the threshold of raising substantial

concerns regarding E&S outcomes and/or issues of systemic importance to IFC that would warrant a compliance investigation. In accordance with its Operational Guidelines, CAO has thus decided to close this case.

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

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Acronyms

Acronym	Definition
AIP	IFC Access to Information Policy
AMR	Annual Monitoring Report
BFS	Bankable Feasibility Study
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ESAP	Environmental and Social Action Plan
ESHS	Environmental, Social and Health and Safety
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
GIIP	Good International Industry Practice
HSEC	Health, Safety, Environment and Community
IFC	International Finance Corporation
LACP	Land Use and Compensation Plan
MIGA	Multilateral Investment Guarantee Agency
PFS	Pre-Feasibility Study
VPSHR	Voluntary Principles on Security and Human Rights

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

According to IFC's disclosures,¹ the project consists of an equity investment in Condor Gold Plc (the "client"), an AIM² listed junior mining company carrying out exploration at the La India Project ("La India"), its flagship project located in northwestern Nicaragua. The La India concession covers 280 km² (98% of the historic La India Gold Mining District) and comprises eight contiguous concessions.

IFC approved an equity investment in the client of up to US\$10 million in 2014, to support its exploration program at La India, and to fund studies required to advance the project from Pre-Feasibility Study ("PFS") to Bankable Feasibility Study ("BFS"). The project was classified as Category B,³ on the basis that the exploration activities, for which the client required capital, were expected to have potential limited adverse environmental and social (E&S) risks and/or impacts.

Complaint and CAO Assessment

The Complaint

In July 2018, CAO received a complaint⁴ from 11 members of the Santa Cruz de la India community (the "complainants"), organized as a Communal Movement (the "*Movimiento Comunal*"). The complainants state that they are represented by the Alexander von Humboldt Center and supported by the Nicaraguan Center for Human Rights (CENIDH), and the Center for International Environmental Law (CIEL).

The complainants raise concerns regarding actual and potential negative E&S impacts related to the project, and inadequate consultation and disclosure of information regarding the project. The complaint includes allegations that:

- Exploration activities by the client have dried out wells from which the community used to get drinking water, and have caused water aquifers to drop to deeper levels, resulting in water scarcity for the community.
- The client's original intention was to involuntarily resettle the community of La India, including its cemetery, and threats were used to force families to accept resettlement. Opposition by the community against resettlement forced the client to change their plans and redesign the project.
- The project is incompatible with artisanal mining and will deprive the local community of the only source of livelihood they have. The pit will be opened in the same area where artisanal miners currently work, resulting in economic displacement for them and the owners of small processing plants.
- The client did not consult the community when they were granted the concessions, and the Environmental Impact Assessment (EIA) was not made fully accessible to the community for analysis and feedback.
- Open pit exploitation would have significant impacts on wildlife and surrounding ecosystems.
- Blasting during mining activities could increase seismic risk, causing landslides that would jeopardize the community and workers in the area.

¹ IFC, Summary of Investment Information, Condor Gold Plc (32519) - <https://bit.ly/2LLC2rZ>

² AIM is a sub-market of the London Stock Exchange for smaller, growing companies.

³ See IFC, Policy on Environmental and Social Sustainability, para. 40, 2012 - <https://bit.ly/2mJbbiR>

⁴ CAO Complaint, Condor Gold-01, July 2018 - <https://bit.ly/2Hw4II9>

- The complainants feel at risk of reprisals for speaking up against the project. They allege that they are subject to threats and intimidation from the police, who want to protect the client's interests and suppress any opposition to the project.
- The project is in violation of national and international laws, as well as IFC's Performance Standards (PS) and Access to Information Policy (AIP). In particular, the project was wrongly categorized as Category B although it has had impacts during exploration phase. Further, IFC did not include in their review process the cumulative impacts that will exist in the mining district in which the project is located.⁵

Client's perspective

CAO's Assessment Report⁶ notes the client's perspective on the issues raised by the complainants:

- The client claims that water scarcity and poor water quality have been long-standing problems in the area and cannot be attributed to their exploration activities. The client engaged an international consulting firm to conduct independent hydrogeological studies, and levels of ground and surface water are being monitored. The client is providing drinking water in containers which are distributed weekly to around 350 households, and there is a plan to develop a more sustainable solution to water supply as part of a social program.
- There is no incompatibility between the mine development plan and artisanal mining. Rather, the client believes it will be beneficial to artisanal miners, because the client expects that the mine will process 10,000 ounces of gold from artisanal mining. The client further noted that it was engaging with artisanal miners to find solutions in line with IFC's guidance on livelihood restoration.
- The client indicated that the design of the mine was revised to avoid relocating the village of La India, and that the cemetery was not going to be affected either.
- Regarding potential impacts on biodiversity, the client noted that the ecosystem where the project will be built is highly degraded and that project activities will not represent significant risk for local flora and fauna.
- The client rejected any association with threats, intimidation, or reprisals and stated that they have always attempted to engage with the complainants through dialogue. The client alleges, however, that the complainants resorted to aggressive behavior on several occasions to disrupt public consultation meetings or to stop the progress of the project, which led to police presence to preserve the peace in the area.

CAO found the complaint eligible in August 2018. During CAO's Assessment, the client indicated a willingness to engage in a dispute resolution (DR) process, while the complainants preferred that the complaint be handled by CAO's compliance function. Since no consensus was reached on a DR process, which is voluntary, the complaint was referred to CAO's compliance function for appraisal of IFC's performance in March 2019, in accordance with CAO's Operational Guidelines.⁷

⁵ *Ibid.*

⁶ CAO Assessment Report, Condor Gold-01, March 2019 - <https://bit.ly/2VUORGx>

⁷ *Ibid.*

III. Analysis

This section outlines IFC's applicable E&S policies and procedures for this project. It then provides a preliminary analysis IFC's performance against these standards during preparation and implementation of the project, and in the context of the issues raised by the complainants.

IFC Policy Framework

IFC's investment in the client was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards" (para. 7). The Sustainability Policy also notes that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment" (para. 9). IFC will invest in a project only when the activities it finances "are expected to meet the requirements of the Performance Standards within a reasonable period of time" (para 22).

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks, and opportunities associated with the investment. Once the project is approved and IFC has invested in a client, the investment is supervised throughout the project cycle to ensure compliance with the conditions in the financing agreement(s) and IFC's applicable policies and standards. This CAO compliance appraisal considers IFC's performance at these two stages in the project cycle as relevant to the issues raised by the complainants.

IFC's Pre-Investment Due Diligence

Requirements

The key question for CAO at pre-investment phase of the project cycle is whether IFC exercised due diligence in its review of the E&S risks of the investment. As a general principle, IFC is committed to a pre-investment E&S review that is "commensurate with the nature, scale, and ... level of environmental and social risks and impacts" of the project (Sustainability Policy, para. 26).

For projects with potential significant E&S impacts, PS1 requires the client to carry out "a comprehensive Environmental and Social Impact Assessment, including an examination of alternatives, where appropriate" (para. 7, fn. 11). It further requires that "E&S risks and impacts will be identified in the context of the project's area of influence" (para. 8). The assessment should present an "adequate, accurate and objective evaluation and presentation [of the issues], prepared by competent professionals" (para. 19). To this end, IFC commits not to fund projects unless they can be expected to meet the requirements of the Performance Standards "within a reasonable period of time" (Sustainability Policy, para. 22).

In conducting the E&S review, IFC considers the E&S risks as assessed by the client and the level of E&S capacity of the client, as well as its commitment to manage these risks. IFC also considers the client's "track record" in relation to E&S issues.⁸ The Sustainability Policy further requires that "IFC, as part of its own due diligence process, will review clients' identification of third-party risks, and will determine whether such risks are manageable, and if so under what conditions, so as to create outcomes consistent with the Performance Standards." (para. 23).

IFC's review is required to identify any gaps in the client's practices and propose additional measures and actions to resolve those gaps. IFC captures supplemental actions in an E&S Action

⁸ ESRP 3, para.3.2.3, version 1, April 2006.

Plan (ESAP), and incorporates them as conditions of IFC's investment (Sustainability Policy, para. 28).

IFC's Pre-Investment E&S Review

IFC's pre-investment review of the project was conducted in 2012. According to IFC's disclosures, the review consisted of an appraisal mission in July 2012 to the La India concessions, additional site visits by IFC's Chief Geologist and subsequent communications and updates on the project to assess Environmental, Social and Health and Safety (ESHS) Management, a document review, including the project's technical, ESHS reports and records, interviews with key personnel of the client, and meetings with community members and land owners at La India.⁹

IFC indicated that the activities funded through this investment would have impacts which must be managed in a manner consistent with the following PS:

- PS1 – Assessment and Management of Environmental and Social Risks and Impacts
- PS2 – Labor and working conditions
- PS3 – Resource Efficiency and Pollution Prevention
- PS4 – Community Health, Safety and Security¹⁰

Relevant to the issues raised in the complaint regarding risks of evictions and involuntary resettlement, as well as risks of impacts on biodiversity and ecosystem services, CAO notes that IFC's due diligence concluded that the project (defined as supporting only exploration phase activities) was not expected to trigger PS5 (Land Acquisition and Involuntary Resettlement) or PS6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources). IFC indicated that PS5 was not relevant as exploration activities only required temporary use of land with limited impacts on local landholders. Related to PS6, IFC noted that no sensitive habitats had been preliminarily identified in the project area with limited impacts from exploration activities on biological resources.¹¹

Based on the results of its pre-investment review, IFC classified the project as Category B, considering that impacts related to the exploration phase would be limited, site specific and therefore adequately managed through implementation of appropriate mitigation measures.¹²

IFC's Environmental and Social Review Summary (ESRS),¹³ disclosed in September 2014, noted that categorization of this project was based on the impacts of exploration activities, which consisted of construction of drill pads and access roads for exploration drilling, construction of 20 rooms for staff at its base camps and a core shed located a few meters away, limited emissions of dust, and waste streams from camp activities and machinery maintenance. The key E&S risks associated with exploration activities ongoing at La India were identified as the following:

- ESHS management, specifically erosion control, restoration and rehabilitation of drill pads and access roads, disposal of waste and oils, dust and noise control, water and effluent management, management of flora and fauna resources, occupational health and safety, community safety and emergency preparedness and response;
- Potential impacts on local communities from use of, or impacts to, local water sources;
- Temporary and limited land access resulting in reduced grazing ground for livestock or agricultural use;
- Managing community expectations with respect to job opportunities and community investment; and

⁹ IFC, Environmental and Social Review Summary, Condor Gold Plc (32519) - <https://bit.ly/2K2Rb7r>

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

- Ongoing community consultations and land use compensation planning.

The ESRS further indicated that any investment in future mining development would be assessed as a new project and its categorization would be determined after the necessary due diligence. It noted that even without an additional investment, IFC would require any future mine development with major impacts to follow PS1 in its requirements for a full ESIA as well as independent monitoring of the project's E&S performance and stakeholder engagement.¹⁴ These conditions were also set forth as covenants in the subscription agreement later signed by IFC and the client in October 2014.

An ESAP was disclosed along with the ESRS, and contains a number of actions to be completed by the client in order to satisfy IFC requirements, in particular:

- Develop a Health, Safety, Environment and Community (HSEC) Policy that defines how the project will be operated in line with the requirements of IFC's PS, EHS Guidelines and Nicaraguan legislation appropriate to the level of activities of the project.
- Retain experienced international consultants to support the client with the necessary management plans to:
 - a) address ESHS risks from current exploration activities;
 - b) design and implement a surface and ground water participatory monitoring program;
 - c) update the Stakeholder Engagement Plan, develop a Grievance Mechanism and Procedure; and
 - d) update the Land Use and Compensation Plan (LACP) to outline the principles, guidelines and approaches that would be followed for any future land acquisitions and compensation activities in accordance with PS5.
- Develop a Security Policy and a Code of Conduct for security personnel in line with the requirements of Good International Industry Practice (GIIP) and the Voluntary Principles on Security and Human Rights (VPSHR).¹⁵

This set of policies, procedures and plans were aimed at managing E&S risks of the project's exploration activities, as well as serve as baseline for a future ESIA. All ESAP items were expected to be completed by the client between the end of 2014 and April 2015.

The proposed investment was approved by the IFC Board in October 2014, and a first disbursement was processed (US\$ 5.6m, 8.5% equity).¹⁶

Conclusion

On the basis of the material reviewed in the course of this compliance appraisal, it is unclear to CAO whether certain aspects of IFC's pre-investment E&S review were commensurate to risk, and thus whether IFC had a reasonable expectation that the project would be able to meet the requirements of the PS over a reasonable period of time.

In particular, CAO notes that IFC's review was limited to exploration activities, for which the client had immediate capital needs, and did not extend to screening potential future impacts of the mine against IFC's E&S standards as apply during development, construction and operation. For example, issues of potentially significant economic displacement of families whose livelihoods had been depending on artisanal mining for decades, were known to IFC but no further inquiry was documented at pre-investment stage. Similarly, the possible resettlement of the La India village was known to IFC as a potentially significant impact of the future mine, however, PS5 was

¹⁴ *Ibid.*

¹⁵ IFC, Environmental and Social Action Plan, Condor Gold Plc (32519) – accessible at <https://bit.ly/2K2Rb7r>

¹⁶ IFC, Summary of Investment Information, Condor Gold Plc (32519) - <https://bit.ly/2LLC2rZ>

not triggered at this stage, considering that it was not relevant to exploration activities. The potential for community opposition to the project and associated security risks was not assessed. While detailed review and mitigation of these risks and impacts could properly be deferred to the ESIA process, an initial screening of potentially significant future impacts of a mine, based on available information at the time of IFC's investment, was necessary to assess the project's ability to meet the requirements of the PS and thus its suitability for IFC financing.

IFC's Supervision of the Project

Requirements

Following approval and investment, IFC monitors the project to ensure compliance with the conditions in the investment agreements and applicable IFC policies and standards.

As set out in the Environmental and Social Review Procedures (ESRP), "the purpose of supervision is to obtain information to assess the status of project's compliance with the PS and other specific E&S requirements agreed at commitment; to assess the current level of E&S risk; to provide advice to clients on how to address critical E&S issues; and to identify opportunities for improvement and good practices that could be applied to similar projects."¹⁷

The Sustainability Policy further states that "if the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents, IFC will work with the client to bring it back into compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate" (para. 24).

IFC's Early Supervision (2014 – 2017)

IFC's supervision commenced in October 2014 and is documented in IFC's supervision site visits and reviews of the client's Annual Monitoring Reports (AMR).

The client completed a Pre-Feasibility Study PFS for the project in November 2014, an initial step before embarking on the development of a BFS and ESIA.

IFC's first supervision visit in July 2015 aimed at assessing progress against the requirements of the ESAP. Although the completion of ESAP items was slightly delayed, IFC noted that the client had hired a number of international consultants to support the development of various actions, and was progressing in the establishment of good ESHS practices for exploration activities.

Some gaps between local EIA requirements and IFC's PS were flagged by IFC, encouraging the client to develop a gap analysis to avoid duplication of efforts, and initiate collection and analysis of E&S information to comply with both local and international requirements. IFC further indicated that the client was expected to go beyond local requirements and implement a robust consultation and disclosure process around the EIA.

IFC's early supervision documentation further identified three key risks associated with the project: (a) surface land acquisition of 700 ha; (b) potential resettlement of the La India village; and (c) economic displacement of 474 artisanal miners working within the client's concession area, including close to 100 informal mills of varying capacities. IFC noted that the client had developed an LACP in line with PS5 for the communities to be relocated, but should further develop a plan complying with Nicaraguan regulations to allow artisanal miners activities in the concession and support them to maintain their livelihood, or find viable alternatives.

¹⁷ ESRP 6, para.1, version 7, April 15, 2013.

In relation to PS6 on biodiversity and ecosystem services, IFC noted that, as part of upcoming ESIA studies, the necessary flora, fauna and ecosystem services baseline studies and an assessment of potential impacts would need to be conducted.

IFC's following site visit and review of the client's performance in June and September 2016 indicated that little work had yet been done on the ground (geological samples, remediation of five perforation sites, and road maintenance). IFC's findings in relation to the client's performance against ESAP items were similar to the ones made after the June 2015 site visit. IFC noted that a preliminary EIA was submitted to national authorities in November 2015, and reported concerns about community engagement in this context, as well as the need to follow up on the issue of artisanal mining.

In 2016, the public hearing process for the national EIA was suspended at the request of the government of Nicaragua, as a protest took place outside the venue. After that event, all public consultation on the mine development ceased at the request of the government until the November 2016 presidential elections. Communication between the client and the community was reduced thereafter, and focused only on aspects related to exploration work.

After a July 2017 site visit, IFC reported progress on the following ESAP requirements:

- Surface and ground water monitoring was going as expected, and the participatory monitoring program was implemented as scheduled.
- An international consultant was hired to develop a Security Policy and a Code of Conduct for security personnel in line with the requirements of PS4 and the VPSHR.

However, IFC noted that an opposition movement against the project had been gaining momentum, raising concerns about the potential impact of a future mine to water supply, the resettlement of the La India village, and the displacement of artisanal miners. IFC further reiterated the need to develop a gap analysis to ensure compliance with both local and international requirements in preparation for the ESIA process.

In September 2017, IFC formally shared E&S concerns with its client, and reiterated these concerns in December 2017, particularly in relation to the following requirements:

- Carry out a gap analysis between national and international requirements for the ESIA;
- Include an Alternatives Analysis in the ESIA studies;
- Document consultations/community engagement activities;
- Provide further information regarding resettlement planning and livelihood restoration;
- Verify results from local laboratories undertaking water analysis for the project.

In December 2017, the client communicated to IFC its intention to amend the concept mine plan, which would not result in the originally intended resettlement of the La India village.

IFC's Supervision post-national EIA submission (2018)

The client submitted a revised EIA to national authorities in February 2018. At this point IFC advised the client of concerns over plans to amend the project's footprint, and the need for a robust scientific study to support any changes. Concerns related to plans to establish a mine directly abutting the La India community, among other issues.

In March 2018, IFC made a decision to initiate divestment from the project. E&S concerns as previously raised with the client were taken into account in making this decision. In May 2018, IFC informed the client of its intent to fully divest, and reiterated its E&S concerns, though final divestment did not take place until June 2019.

IFC's June 2018 supervision activity recognized that the client had completed all ESAP items appropriate to the exploration stage of the project. However, concerns regarding management of

E&S risks and impacts associated with the revised mine plans were again flagged. The IFC team shared these concerns directly with the client's senior management in May 2018 and July 2018. At this point, IFC also urged the client to adopt an E&S risk management system consistent with IFC's mining guidelines and GIIP, and in line with the client's commitment under the Subscription Agreement. This was expected to include undertaking a more comprehensive and robust assessment on minimum offsets for the mine's location near the La India village and an assessment of flood pathways.

In August 2018, an environmental permit to construct and operate the mine at La India was granted to the client by the government of Nicaragua. At the same time, the complaint was submitted to CAO and found eligible.

IFC's Supervision of issues of threats and reprisals (2018 – 2019)

As the CAO Assessment process was initiated, and acknowledging concerns of threats and reprisals raised by the complainants to CAO, IFC shared its "*Position Statement on Retaliation Against Civil Society and Project Stakeholders*"¹⁸ with the client's management in November 2018.

In December 2018, after being made aware of further community concerns, IFC participated in a meeting with CAO complainants and CAO staff to discuss these concerns. The IFC team also briefed IFC senior management on issues of threats and reprisals against community members affected by the project.

As part of its supervision of these concerns in December 2018, and in light of the deterioration of the security situation in Nicaragua, IFC engaged an external security consultant to undertake a high-level review of Condor's security policy and Code of Conduct. Subsequently, in January 2019, IFC presented the case to the client for the need to undertake an assessment considering both security arrangements and the wider social and human rights risks related to the project.

IFC organized a number of meetings in January 2019 to discuss and/or address these issues, in particular related to the security situation in the country and community safety around the project:

- A formal response to the complainants' concerns was prepared;
- A briefing was held with the World Bank Group's Executive Director for Nicaragua;
- IFC and World Bank staff shared views on the political and security situation in Nicaragua;
- The office of the President of the World Bank Group was briefed on ongoing security issues around the project.

IFC's divestment (2019)

In March 2019, IFC revised the project E&S risk rating considering community claims of police and client harassment, and concerns regarding the revised concept mine plan.

At the same time, both IFC and CAO briefed the President of the World Bank Group on recent developments, ahead of the transfer of the case to CAO's compliance function.

IFC's last supervision activity in May 2019 raised concerns about the client's reporting to IFC. In particular, it noted the need for additional information regarding the client's community engagement efforts given the challenging situation on the ground.

In June 2019, IFC sold its remaining shares in the client and thus fully exited its investment in Condor Gold.

Conclusion

¹⁸ IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders, October 2018 – <https://bit.ly/2Y0QAuQ>

On the basis of the material reviewed in the course of this compliance appraisal, CAO notes:

- a) IFC's engagement with the client to ensure that international consultants were hired to develop relevant HSEC policies and systems;
- b) IFC's repeated follow ups to require that the client conduct a gap analysis to ensure studies that were being carried out would meet IFC's PS and GIIP, and that consultation and disclosure processes around the preparation of an ESIA were taken to a level that would meet international standards; and
- c) IFC's supervision of water monitoring issues, including concerns raised to the client about the quality of results from local laboratories undertaking water analysis.

In addition, CAO recognizes IFC's efforts to require the client to analyze alternatives to the concept mine plans in order to limit impacts on the La India village, and to assess and address potential economic displacement of artisanal miners, in line with PS5 requirements. Nevertheless, CAO notes that issues related to artisanal mining were not triggered in IFC's pre-investment review and therefore no actions were included in the ESAP, potentially limiting IFC's leverage on these issues during supervision.

CAO further notes IFC's supervision of community concerns around issues of threats and reprisals in 2018-2019. This included escalation of the issues to IFC and World Bank management, regular communication with the client, communication with affected communities (represented by the CAO complainants) and with CAO staff. This also included IFC's commissioning of a review of the client's security protocols and Code of Conduct, leading to recommendations for the client to revise its procedures and conduct more thorough assessments of the social and human rights risks related to the project.

IV. CAO Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

This compliance appraisal identifies questions as to the adequacy of IFC's pre-investment E&S review of the project, and whether IFC had a reasonable expectation that the project would be able to meet the requirements of the Performance Standards. In particular, CAO notes that IFC's review was limited to exploration activities, and did not include screening of potential future impacts of a mine, including some that may have constituted red flags in terms of the client's ability to meet IFC E&S standards during mine development, construction and operation.

However, IFC picked up a number of these issues early in its supervision, including the potential relocation of the La India village and economic displacement of artisanal miners. IFC also raised concerns related to the concept mine plans submitted by the client to national authorities as part of a regulatory EIA, such as the absence of flood pathways analysis and the close proximity of the La India community to the planned mine. IFC raised concerns with the client around issues relevant to the CAO complaint including the need to align the ESIA process with IFC's PS and GIIP, the need to verify water monitoring results, the need for alternatives analysis, and the need to ramp up community engagement and disclosure of information. IFC management

communicated these concerns to the client on several occasions, and IFC abstained from further investments when the client raised additional capital in 2017 and 2018.

The security situation in Nicaragua deteriorated in 2018. In this context, communities opposing the La India project – and mining activities more broadly – reported an increase in threats and reprisals. IFC was made aware of these concerns and monitored them, especially after the complaint was sent to CAO. In 2018-2019, IFC raised these concerns with its client, and flagged them with World Bank Group senior management. IFC hired a security consultant to review the client's security procedures, and advised the client on actions to be taken to review its security arrangements in light of the context in Nicaragua. IFC also advised the client to engage a third party to undertake a security risk assessment as a component of a robust comprehensive risk management and mitigation plan. This assessment was expected to consider both security arrangements and the wider (and future) social/human rights risks around the project.

In June 2019, IFC fully divested from the project. During the period of IFC's investment, the client carried out exploration activities such as drilling and collecting geological samples, as well as using and maintaining access roads in the concession area. The client completed a PFS in November 2015, however, at the time of IFC's divestment, a BFS and an international ESIA were pending. While CAO notes the complainants concerns regarding impacts on groundwater levels during the exploration phase, based on available information IFC has supervised the client's monitoring of groundwater levels, surface water flow and water quality, and no indications of such negative impacts were identified.

Following a preliminary review of IFC's E&S performance in relation to this investment, CAO has decided not to open a compliance investigation. In reaching this conclusion CAO notes that there are questions as to the depth of IFC's pre-investment E&S review of the project, whether it adequately considered client commitment and capacity to meet IFC's Performance Standards, whether it adequately considered third party and contextual risk, and thus whether it met IFC's requirements for review commensurate to risk. At the same time, CAO notes that key issues as raised by the complainants were picked up by IFC early in its supervision of the project, and repeatedly raised with the client. Without satisfactory resolution of these issues, IFC abstained from further financing the project. CAO further acknowledges IFC's monitoring of allegations of threats and reprisals against community members.

During the period of IFC financing, the client undertook activities that are preparatory to the construction of a mine. The complainants' main areas of concerns relate to potential future impacts of mining activities on the environment, their homes and livelihoods. The client does not yet have in place the studies needed to raise finance for construction of the mine. IFC fully divested from the project in June 2019 and has no ongoing commercial relationship with the client. Challenges in ensuring the effective application of IFC's E&S standards to the project contributed to this decision.

In this context, CAO concludes that IFC's approach to the review and supervision of this project in relation to the issues raised in the complaint, does not meet the threshold of raising substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC that would warrant a compliance investigation. In accordance with its Operational Guidelines, CAO has thus decided to close this case.