



---

## **COMPLIANCE MONITORING REPORT**

*IFC Investments in Reventazón HPP (Project #31383)*

*Complaints 01 and 02*

*April 5, 2021*

*Office of the Compliance Advisor Ombudsman (CAO)*

---

**Monitoring Report of IFC's Response to:**

**CAO Investigation of IFC's Environmental and Social  
Performance in Relation to its Investment in  
Reventazón HPP, Costa Rica**

## **About CAO**

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

# Contents

- About CAO..... 2
- Introduction and Background ..... 4
- Observations from CAO Monitoring..... 5
- IFC Response to CAO Findings ..... 5
- Summary of CAO Compliance Monitoring..... 6
- Complainants' Update..... 7
  - Reventazón-01 Complaint..... 7
  - Reventazón-02 Complaint..... 7
- Conclusion ..... 8
- Annex 1. IFC Management Response and Implementation with CAO Observations..... 9

## Introduction and Background

CAO's compliance function oversees investigations of IFC's environmental and social (E&S) performance with a view to ensuring compliance with relevant requirements and improving institutional E&S performance. Following a compliance investigation, CAO monitors actions taken by IFC until it is assured that findings of non-compliance are being addressed.

This compliance monitoring report relates to CAO's investigation<sup>1</sup> of IFC's investment in the Reventazón Hydropower Project in Costa Rica, developed by the Instituto Costarricense de Electricidad (ICE, or the Company). CAO's compliance process was triggered by two complaints received in September and December 2016 from landowners who faced expropriation of property for the project. The first complaint raised concerns regarding E&S impacts, including the land acquisition and expropriation process, impacts on biodiversity, risks of landslides, and greenhouse gases emissions. It also alleged that the project did not comply with IFC's disclosure, consultation, and grievance handling requirements. The second complaint raised additional concerns about loss of access to water sources on the expropriated portion of the Complainant's property.

While the complaints raised concerns related to a broad range of E&S impacts, CAO concluded that only the following issues would be the subject of a compliance investigation: (a) IFC's review and supervision of the project's approach to land acquisition, particularly as it relates to landowners who were categorized as non-vulnerable; and (b) related issues of consultation, disclosure of information, and grievance handling.<sup>2</sup>

CAO released its compliance investigation report in October 2019.<sup>3</sup> The investigation made several non-compliance findings in relation to IFC's due diligence and supervision of the project. CAO found that IFC lacked assurance that displaced landowners were compensated for loss of assets at full replacement cost and provided with other assistance to help them improve or at least restore their livelihoods as required by Performance Standard 5 (Land Acquisition and Involuntary Resettlement) (PS5). CAO observed that an underlying cause of the non-compliance was IFC's focus on the project's resettlement impacts on vulnerable households at the expense of ensuring compliance in relation to the larger group of households classified as non-vulnerable. This led to inadequate review and supervision of the application of PS5 to these households and what CAO described as a "a risk of systemic under-compensation contrary to the requirements of PS5."<sup>4</sup>

The investigation report concluded that six issues needed to be addressed by IFC to bring the project into compliance:

1. Approach to land acquisition and livelihoods restoration
  - a. Negotiation process and expropriation
  - b. Land pricing
  - c. Extent of land take
  - d. Baseline data (in relation to livelihood restoration)

---

<sup>1</sup> The CAO investigation, IFC's response to the investigation, and related materials are available at: <https://bit.ly/Reventazon-01>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> CAO (2019). CAO Investigation of IFC's Environmental and Social Performance in Relation to its Investment in the Reventazón HPP, Costa Rica, page 29. Available at: <https://bit.ly/Reventazon-01>

2. Consultation and disclosure of information
3. Grievance mechanism

An IFC Management Response was released together with the investigation report.<sup>5</sup> IFC's response set out a number of actions to address the investigation findings at project level and indicated improvements to be made at the level of IFC policies, procedures, practice, and knowledge (systems-level actions).

This monitoring report documents IFC's response to the compliance investigation in the period November 2019–February 2021.

## **Observations from CAO Monitoring**

### **IFC Response to CAO Findings**

The IFC Management Response committed to three actions: two project-level actions and one action focused on institutional learning.

The first project-level action consists of a Gap Review of the land valuation methodology used by the Company and local courts against PS5 requirements. Based on this assessment, IFC committed to work with the Company to develop “corrective actions” with the aim to restore livelihoods and income as relevant. IFC also committed to engage the Company to review its internal procedures and establish a Corporate Land Acquisition and Resettlement Policy consistent with IFC Performance Standards for its future projects.

The second project-level action consists of data collection relevant to livelihood restoration for the landowners classified as non-vulnerable. In October–November 2017, IFC had required the Company to conduct ex-post visits to these landowners. Based on that information, IFC requested further information for 15 landowners to better assess PS compliance. IFC noted that, where issues were identified, corrective actions focusing on livelihood restoration and income would be established. In March 2019, the Company issued a report with information related to the 15 landowners (see Annex 1, section on Baseline Data).

As a measure to capture lessons learned, IFC's action plan committed to develop internal guidance for IFC staff on working with clients, such as state-owned enterprises who may face particular challenges in implementing PS5, including early engagement and highlighting increased PS5 compliance risks and challenges.

IFC informed CAO that, in August 2020, the Company prepaid its loan to IFC. As such, IFC advised CAO that it no longer has any formal or contractual relationship with the Company or the Reventazón project. IFC noted, however, that IFC would continue to engage with the Company until mid-2021 on lessons learned related to Performance Standard 6<sup>6</sup> in preparation for the International Hydropower Conference to be hosted by the Company in San José, Costa Rica, in May 2021.

---

<sup>5</sup> The CAO investigation, IFC's response to the investigation, and related materials are available at: <https://bit.ly/Reventazon-01>

<sup>6</sup> PS6 relates to Biodiversity Conservation and Sustainable Management of Living Natural Resource.

## Summary of CAO Compliance Monitoring

There were delays in implementing IFC actions to address CAO's findings. The project-level Gap Review, initially set for completion by December 2019, was completed in June 2020. IFC completed a review of baseline information submitted by the Company in March 2019, concluding that three landowners required further monitoring. IFC's internal guidance document on PS5 implementation was set for completion by December 2019. As of February 2021, IFC reported to CAO that the guidance document was undergoing internal review. CAO did not have the opportunity to review the guidance note during the course of this monitoring process.

The project-level Gap Review of PS5 implementation was a central part of IFC's response to CAO's findings. It confirmed significant gaps with PS5 implementation in relation to non-vulnerable landowners consistent with the findings of CAO's 2019 compliance investigation report, namely: (a) reliance on expropriation rather than negotiated agreements; (b) lack of compensation for transaction costs; (c) lack of compensation for loss of or impact on informal and small-scale economic activities and loss of income; (d) lack of support during the transition period; and (e) lack of support for restoration of livelihoods. Absent from the IFC consultant's report, however, are corresponding recommendations for corrective actions, as committed to in the IFC Management Response. As explained by IFC, this was due to an understanding reached with the Company that the Gap Review should be a forward-looking exercise and focus on lessons learned rather than remedial action. This was not consistent with the commitment in IFC's response to agree on "Corrective Actions as applicable" following completion of the Gap Review.

In relation to the monitoring of livelihood restoration, CAO notes that five of the 15 landowners were excluded from the Company's additional data collection. This means that no baseline information exists for these landowners and that they were excluded from assessments related to compliance with PS. These five landowners' cases remain in court over expropriation, and two of the cases are party to the CAO complaint. The decision to exclude these households from assessments of PS compliance is not justified on the basis that they have chosen to contest compensation offers through the courts. Courts decide compliance with national law, not PS5, and as confirmed by IFC's project-level gap analysis, there were gaps between PS5 requirements and national law. Regardless of whether a displaced household decides to accept or contest a compensation offer through the courts, IFC's obligation is to supervise PS5 compliance.

IFC also committed to engage the Company to review its internal policy and procedures regarding land acquisition and resettlement. This was to include issues related to consultation, information disclosure, and grievance handling, consistent with PS1 and PS5. In relation to this action, IFC documented engagement with the Company through workshops based on the findings of the Gap Review. Completion of the Company's updated internal land acquisition and resettlement policy and procedures was set for June 2020. However, as reported by IFC in July 2020, it remained a recommendation to ICE with no proposed completion date. In this context, CAO notes the Company's view that there would be challenges to PS5 implementation given national regulations related to expropriation. As of February 2021, IFC confirmed with CAO that IFC would not follow up with the Company to ensure completion of this action item, considering IFC's exit from the project in August 2020.

The table in Annex 1 details the CAO investigation findings, IFC's actions in response to the findings including the management response and recent updates, as well as observations of the actions by CAO.

## Complainants' Update

### *Reventazón-01 Complaint*

The Complainants from the Reventazón-01 complaint claim that the negative project impacts raised in their complaint persist, noting that the expropriation process has caused them economic harm as well as harm to the mental and physical well-being of the family members.

They assert economic impacts relating to the landowners' previous participation in the governmental Payments for Environmental Services Program (Pago de Servicios Ambientales), which is a financial mechanism through the National Forestry Financing Fund (FONAFIFO) that promotes forest ecosystem conservation and combats land degradation by providing landowners direct payment for their lands' environmental services when sustainable land-use and forest management techniques are adopted.<sup>7</sup> The Complainants point out that some of the expropriated lands had forestry contracts with FONAFIFO, which means the family has lost income on those lands. In addition, the Complainants assert that they are no longer able to obtain any forestry or agroforestry loans for the property because the Lancaster Wetlands have been placed on a list of defaulters due to the Company's failure to pay and cancel the contract with FONAFIFO. The Complainants also assert they are not able to receive various COVID-19-related governmental assistance for farms and reservations that preserve nature because of their default status.

Other economic impacts described by the Complainants include costs associated with commissioning a geological study of the environmental impacts caused by the mining of materials as well as private appraisals as part of the legal expropriation process.

Further, the Complainants assert that the expropriation of their lands has resulted in a lack of access to their remnant lands. They assert that their timber production farms are now inaccessible.

The Complainants state that since the unsuccessful mediation organized by the lenders in 2016, neither the Company nor IFC has contacted them. They confirm that they were not contacted as part of the Company's survey of non-vulnerable landowners in October/November 2017 nor in relation to the Company's March 2019 report on the 15 non-vulnerable families. They expressed concern that they were being excluded from any assessment of impacts to their income and livelihoods, and hence any remedial actions due to their decision to contest the expropriation.

### *Reventazón-02 Complaint*

As outlined in the CAO investigation report, in April 2018, the Reventazón-02 Complainants reached an agreement with the Company as part of an agreement facilitated by the Inter-American Development Bank Group to restore access to water for animal troughs and irrigation on their property. As reported by MICI,<sup>8</sup> in July 2019, MICI visited the property to confirm that the agreed work was completed, and the system was operating properly. In August 2019, the Complainants submitted to CAO their intention to withdraw their complaint associated with access to water. As a result, the specifics of the Reventazón-02 complaint are no longer subject to CAO monitoring.

---

<sup>7</sup> See FONAFIFO, Pago de Servicios Ambientales, available at: <https://bit.ly/39V1A1F>, and UN Climate Change, Payments for Environmental Services Program, available at: <https://bit.ly/3a4I6Yq>

<sup>8</sup> MICI is the independent accountability mechanism for the Inter-American Development Bank Group. See: Case page MICI-BID-CR-2017-0125, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project). Available at: <https://goo.gl/34VGHR>

## Conclusion

As the largest hydropower project in Central America, Reventazón had a large land acquisition and resettlement component. CAO's investigation found that IFC appropriately required the Company to establish a PS5-compliant Land Acquisition and Involuntary Resettlement Framework and a full Livelihoods Restoration Plan prior to its investment. However, IFC lacked assurance that all displaced landowners were compensated for loss of assets at full replacement cost and provided with other assistance to help them improve or at least restore their livelihoods as required by PS5. CAO observed that an underlying cause of the non-compliance was IFC's focus on the project's resettlement impacts on vulnerable households, at the expense of ensuring compliance in relation to the larger group of households classified as non-vulnerable. This led to inadequate review and supervision of the application of PS5 to the households deemed non-vulnerable, which included the Complainants.

In response to CAO's investigation findings, the IFC Management Response committed to three actions: two project-level actions and one systemic action.

Despite delays, IFC documented engagement with the Company in order to address some of the non-compliance findings of CAO's investigation. IFC hired a consultant to conduct a Gap Review of the land valuation methodology used by the Company against PS5 requirements. The Gap Review confirmed CAO's findings regarding gaps between national law and PS5 requirements. However, contrary to the commitment in IFC's Management Response, IFC did not agree with the Company on corrective actions to address the shortcomings in PS5 implementation confirmed by the Gap Review. As a result, CAO's investigation finding in relation to the under-compensation of landowners classified as non-vulnerable has not been addressed.

IFC documented engagement with the Company to review its internal policy and procedures regarding land acquisition and resettlement for consistency with PS. However, the outcome of this engagement in terms of aligning the Company's approach to land acquisition and resettlement to IFC standards was unclear at the time of IFC's exit.

At a systemic level, IFC reported to CAO that an internal guidance document for enhanced appraisal for projects working with state-owned enterprises is currently under review. CAO cannot draw any conclusion in relation to this action, as the draft guidance was not complete at the time of writing and had not been shared with CAO.

CAO expresses concern that IFC has exited its investment in Reventazón without ensuring that households who had land expropriated as part of this project were compensated as required under PS5. Despite identification of significant gaps in PS5 implementation, IFC did not engage the Company to establish corrective actions prior to exiting the project. Landowners whose cases remain in court have been excluded from assessments of PS compliance and any potential corrective actions.

CAO has a mandate to "monitor the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing [its] non-compliance [findings]."<sup>9</sup> Overall, CAO finds that IFC's response to this compliance investigation has only partially addressed its project-level non-compliance findings and has not addressed associated risk of under-compensation as identified by CAO. As a result, CAO concludes that the response is unsatisfactory. Nevertheless, CAO has decided to close its monitoring of the investigation considering that IFC no longer has an investment in the Company and IFC has not committed to any further project-level actions to address the non-compliance findings.

---

<sup>9</sup> CAO Operational Guidelines (2013), para. 4.4.6. Available at: <https://bit.ly/CAO-Op-Guidelines>



## Annex 1. IFC Management Response and Implementation with CAO Observations

### 1. Approach to Land Acquisition and Livelihoods Restoration a. Negotiation Process and Expropriation

#### CAO Investigation Findings

CAO finds that IFC's review overlooked the risk that the Company would rely on the continued use of expropriation to complete its land acquisition program at the expense of negotiating settlements. IFC's review lacked an analysis of the Company's expropriation law against the requirements of PS5, as required by PS5, paras. 30-31. Of particular concern were the provisions of national law that allowed the Company to take possession of land in advance of paying compensation, and without an opportunity given to reach negotiated settlements (cf. PS5, paras. 3 and 9). CAO further finds that, despite a growing recourse to expropriation as project construction and the land acquisition process advanced, IFC did not take action to encourage the avoidance of expropriation as required by PS5, para. 3.

#### IFC Actions in Response to the Findings

##### *IFC Management Response (June 2019)*

IFC recognized that IFC did not apply the same attention relating to PS5 on households classified as non-vulnerable and did not sufficiently supervise the Company's management of households that were classified as non-vulnerable. As such, two commitments were made:

1. Project-level actions that are detailed in the section on Baseline Data below
2. Systemic-level action for the IFC to manage similar clients better in the future
  - Develop guidance on working with clients who may face particular challenges in implementing PS5, including early engagement and highlighting increased PS5 compliance risks and challenges

The expected timeline to complete the systemic action was by December 2019.

##### *IFC Update*

As of February 2021, a draft of the guidance note was completed and under review.

#### CAO Observations

See section on Baseline Data below for CAO observations on the project-level actions.

As of the writing of this report, CAO has not received a copy of the draft guidance note. IFC should report on the status of the actions following completion.

### 1. Approach to Land Acquisition and Livelihoods Restoration b. Land Pricing

#### CAO Investigation Findings

CAO finds that IFC did not ensure that the land pricing methodology developed in the Resettlement Policy Framework (RPF) and Livelihoods Restoration Plan (Plan de Restitución de Condiciones de Vida, PRCV) met PS5 requirement for "compensation for loss of assets at full replacement cost and other assistance" (para. 9). While additional forms of assistance were envisaged for vulnerable landowners, the Company's approach to land pricing for non-vulnerable groups relied on estimations of market land values, and contrary to the objectives of PS5, IFC did not ensure that the methodology used included replacement cost and additional assistance designed to ensure that displaced landowners were not left worse off.

CAO further finds that, as the land acquisition program advanced, and despite concerns being raised about under-compensation by affected landowners, the independent environmental and social monitoring consultant (IESMC), and the resettlement completion audit (RCA), IFC did not require the Company to implement corrective actions to ensure that affected landowners classified as non-vulnerable would be compensated for loss of assets at full replacement cost as per PS5, para. 9. This gives rise to a risk of systemic under-compensation contrary to the requirements of PS5.

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

### *IFC Management Response (June 2019)*

IFC recognized the need for ongoing monitoring of project compliance with agreed measures and made three commitments:

- Conduct a Gap Review of the land valuation methodology used by the Company and the courts against PS5;
- Agree with the Company on corrective actions as relevant; and
- Engage the Company to review its internal procedures and establish a Corporate Land Acquisition and Resettlement Policy consistent with PS5 for its future projects.

The expected timeline to complete the gap analysis and agreement on corrective actions was set for December 2019, and an update of the Company's internal procedures and policies was set for June 2020.

### *IFC Update*

Gap Review: IFC hired a consultant to conduct a Gap Review and a report was submitted to IFC in June 2020 that was prepared on the basis of the following: a review of applicable Costa Rican legislation; identification of the land valuation methodology used by the Company and the Court-assigned assessors; and a review of a sample of cases expropriated by judicial means.

The Gap Review confirmed significant shortcomings in the application of PS5 requirements to non-vulnerable households consistent with CAO's findings, namely:

- Lack of preference for negotiated agreements;
- Lack of compensation for transaction costs;
- Lack of compensation for loss of or impact on informal and small-scale economic activities and loss of income;
- Lack of support during the transition period; and
- Lack of support for the restoration of livelihoods.

The report noted that the assessment's objective was to extract lessons learned and provide recommendations for future projects, and that it was not IFC's expectation to request retroactive application of the assessment's recommendations given that the majority of expropriation cases had been closed either administratively or judicially.

Update of ICE's internal procedures: IFC confirmed the Company's commitment to review its corporate approach to land acquisition, involuntary resettlement, and livelihood restoration in line with the recommendations from the Gap Review. As reported by IFC, this included a commitment to update its Resettlement Policy Framework and its manual for valuation and expropriation (Manual para la Elaboración de Avalúos para Expropiación y Constitución de Servidumbres) to reflect good international industry practices such as those outlined in PS5. IFC also reported that the Company agreed to use best efforts to engage external resettlement experts at early stages of projects involving significant land take and resettlement, and to promote a country-wide dialogue to update current expropriation law to expand scope to include negotiated land acquisition processes, as well as involuntary resettlement and livelihoods restoration requirements aligned with PS5. In addition, IFC noted that, based on lessons learned from Reventazón, ICE agreed to place special emphasis on the need to monitor all project-affected people impacted by land take regardless of their vulnerability and ensure that the process is transparent and participatory.

## **CAO Observations**

The outcome of the Gap Review was consistent with CAO's non-compliance findings regarding application of PS5 to the Reventazón project and the risk of systemic under-compensation of households whose land was expropriated for the project. However, IFC did not engage the Company to correct identified shortcomings in the application of PS5 to households whose land was expropriated. The lack of action to address this non-compliance was inconsistent with IFC's commitment to agree relevant corrective actions with the client as set out in IFC's Management Response. According to the IFC Management Response, the expected timeline for completion of

the update to ICE's internal procedures and policies was set for June 2020. In July 2020, IFC reported to CAO that ICE is committed to this recommendation without specifying an anticipated completion date. However, the Company, as a state-owned enterprise, notes challenges in aligning its expropriation practices with PS5 absent amendment of relevant national laws and regulations.

Following IFC's exit from the investment in August 2020, IFC clarified to CAO that it will not follow up with the Company to ensure that items included in the IFC response to the CAO compliance investigation are completed.

## **1. Approach to Land Acquisition and Livelihoods Restoration**

### **c. Extent of Land Take**

#### **CAO Investigation Findings**

CAO finds that when the Company sought additional land for the management of geological risks, IFC did not ensure that land take was minimized as required by the objectives of PS5 and para. 8. In particular, IFC did not assure itself that the Company informed and incorporated feedback from affected landowners to define the extent of land required following the expansion of the geological buffer zone (cf. PS1, para. 31).

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

##### *IFC Management Response (June 2019)*

According to the IFC Management Response, IFC acknowledged that IFC had limited opportunity to influence the process involving the additional land take based on the requirements of geological risks. IFC noted that a lender-triggered mediation effort in July 2016 to support information sharing regarding the issue of additional land take was unsuccessful.

IFC's management response did not include any follow-up action.

##### *IFC Update*

None

#### **CAO Observations**

According to the IFC Management Response, no action was proposed to address this finding.

## **1. Approach to Land Acquisition and Livelihoods Restoration**

### **d. Baseline Data (in relation to Livelihood Monitoring)**

#### **CAO Investigation Findings**

CAO finds that IFC did not ensure that the Company collected appropriate baseline data given the need to: (a) apply vulnerability criteria to all affected landowners; and (b) identify and manage impacts of land acquisition on all affected landowners. Following identification of this issue in the RCA, IFC required the company to collect additional data regarding 15 potentially misclassified families.

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

##### *IFC Management Response (June 2019)*

IFC acknowledged that baseline data collection focused on owners considered vulnerable. According to IFC's management response, IFC asked the Company to collect additional data regarding the individuals considered non-vulnerable. The data collection was completed in November 2017, and IFC considered that no additional actions were required for 28 landowners (representing 65% of the cases) because: (a) the landowners declared they were satisfied with the compensation and the Company presented information demonstrating appropriate compensation and livelihood restoration; (b) the landowners had their claims successfully reviewed by the local courts; or (c) the information provided by the Company revealed they were absentee owners or owners where only a marginal portion of the property was affected, hence the economic impact was deemed negligible.

IFC requested further information for 15 landowners (the remaining 35% of the cases). In March 2019, the Company presented IFC a report with information related to these 15 owners classified as non-vulnerable.

### *IFC Update*

Based on ICE's March 2019 report on the 15 families, ICE determined that: (a) 8 cases required no additional action because the land acquisition did not have a material impact on livelihood or income; (b) 5 cases entered expropriation, and thus, ICE decided no additional information would be gathered and no additional action would be taken; and (c) 2 cases required additional action to determine impact on livelihoods or income. The latter two cases could have been classified as vulnerable, based on the information in the report.

In July 2020, IFC reported to CAO that the final number of households to be monitored by ICE is three. For these three non-vulnerable landowners, IFC reported that ICE continues to monitor and assess whether the land acquisition process resulted in loss of income and adverse livelihood impacts, and if applicable, propose and implement remedial actions.

IFC noted that the monitoring of the three landowners were planned for 2020 but have been re-programmed for the beginning of 2021 due to restrictions from the COVID-19 pandemic.

### **CAO Observations**

The Company's March 2019 report concluded that 13 of the 15 cases did not require monitoring. Of these 13 cases:

- Two cases were only lease contracts, and the lands were returned to their owners.
- In six cases, no monitoring was recommended because the lands acquired by the Company were reportedly not used for economic activities and/or did not have a material impact on livelihood or income. One of these cases was included by IFC for monitoring.
- Five cases were undergoing expropriation in the courts, and two of these had submitted complaints to CAO and MICI. No ex-post information was collected in the Company's 2019 report for these five owners. It is unclear why no information was collected either for owners whose cases were in the judicial process or for those who had submitted complaints to CAO and MICI.

CAO notes that five landowners have been excluded from ex-post information gathering processes by the Company, including the November 2017 ex-post visits and survey and information collection for the Company's March 2019 report. This means that no baseline information exists for these owners and that they have been excluded from assessments related to compliance with PS, and thus potentially from corrective actions. These five landowners' cases remain in court over expropriation, and two of the cases are party to the CAO complaint.

Given that IFC no longer has a contractual relationship with the Company, IFC does not intend to follow up with the Company on ICE's monitoring of the three non-vulnerable landowners, and if applicable, of the implementation of corrective actions.

## **2. Consultation and Disclosure of Information**

### **CAO Investigation Findings**

CAO finds that IFC did not ensure that the company's land acquisition process met the consultation and disclosure requirements of PS1 or PS5. IFC did not have assurance that the process was transparent or understandable without a lawyer. IFC also lacked assurance that the timeframes for land acquisition provided by the Company allowed non-vulnerable landowners sufficient time to consider their options prior to making a decision.

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

#### *IFC Management Response (June 2019)*

IFC recognized the CAO finding that IFC's monitoring efforts were focused on compliance with PS5 for those landowners considered vulnerable. IFC made a similar commitment to that linked to Land Pricing outlined above:

- As part of the established of a Corporate Land Acquisition and Resettlement Policy, IFC will engage ICE to develop a land acquisition process that is transparent, in line with the consultation and disclosure requirements of PS1 and PS5.

The expected timeline to complete the action was June 2020.

### *IFC Update*

IFC reported to CAO that it engaged with ICE to identify the gaps between PS5 and national regulations and to review internal procedures. IFC reported that ICE has committed to review its corporate approach to land acquisition, resettlement, and livelihood restoration as well as to update its Resettlement Policy Framework and manual for valuation and expropriation (Manual para la Elaboración de Avalúos para Expropiación y Constitución de Servidumbres) to reflect good international industry practices such as those outlined in PS5. IFC also noted that ICE agreed to place special emphasis to ensure the process is transparent and participatory.

### **CAO Observations**

CAO acknowledges that IFC engaged with ICE to identify the gaps between PS5 and national regulations, as described above in the section on Land Pricing. The engagement also touched on issues related to consultation and disclosure of PS5, but there is no indication it covered PS1.

As noted in the section above on Land Pricing, according to the IFC Management Response, the expected timeline for completion of the update to ICE's internal procedures and policies was set for June 2020. In July 2020, IFC reported to CAO that ICE is committed to this recommendation without specifying an anticipated completion date. However, the Company, as a state-owned enterprise, notes challenges in aligning its expropriation practices with PS5 absent amendment of relevant national laws and regulations. While an update of ICE's internal policies was set out as an action item in the IFC Management Response, IFC does not intend to follow up with the Company to ensure it is completed.

## **3. Grievance Mechanism**

### **CAO Investigation Findings**

CAO finds that IFC did not ensure that grievances about compensation for land acquired from non-vulnerable landowners were addressed through a Grievance Mechanism as required by PS5. Even after the IESMC reported on inadequate management of grievances, there is no evidence that IFC required the company to manage complaints in a manner consistent with PS5 requirements through a recourse mechanism designed to resolve disputes in an impartial manner (cf. para. 11). This led to significant delays in the resolution of complaints regarding compensation from non-vulnerable landowners, who were required to go through lengthy court proceedings. While CAO notes that the majority of non-vulnerable complainants secured increased compensation from the courts, the lack of an impartial recourse mechanism applying PS5 standards meant that awards did not necessarily reflect PS5 requirements for compensation at full replacement cost.

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

#### *IFC Management Response (June 2019)*

IFC acknowledged that the Grievance Mechanism similarly focused on owners considered vulnerable. IFC considered the existing Grievance Mechanism in place for operations to be adequate and in compliance with PS1. IFC committed to continue to monitor its effectiveness for all owners on an annual basis. As part of IFC's engagement with ICE to review its internal procedures, IFC noted it will encourage ICE to disseminate the use of the Grievance Mechanism to all owners, including the non-vulnerable owners, consistent with PS1.

The expected timeline to complete the action was June 2020.

#### *IFC Update*

IFC reported to CAO that, based on IFC supervision activities, IFC confirmed that the project's Grievance Mechanism continues to function properly and remains available to all project-affected people, including the non-vulnerable owners.

### **CAO Observations**

As noted above in the section on Consultation and Disclosure of Information, according to IFC's management response, the expected timeline for completion of the update to ICE's internal procedures and policies was set for June 2020. In July 2020, IFC reported to CAO that ICE is committed to this recommendation without specifying an anticipated completion date. While an update of ICE's internal policies was set out as an action item in the IFC Management Response, IFC clarified with CAO it will not follow up with the Company to ensure it is completed.