



## **ASSESSMENT REPORT**

### **Complaint regarding Allain Duhangan Hydropower Project Himachal Pradesh, India**

March 23, 2004

Office of the Compliance Advisor/Ombudsman  
International Finance Corporation/  
Multilateral Investment Guarantee Agency

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## **1. Introduction**

The Office of Compliance Advisor/Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO reports directly to the President of the World Bank Group, and its mandate is to assist parties in addressing complaints raised by people affected by projects. CAO acts in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are managed through the CAO's Ombudsman function. The purpose of this assessment is to:

1. Provide a neutral assessment of the facts gathered during the assessment that are associated with questions raised in the complaint;
2. Propose appropriate steps to assist parties to achieve resolution of this complaint.

This assessment is not a formal compliance audit of IFC's or its partner's adherence to established policies. Such an audit, as specified by CAO's Operational Guidelines, could occur if deemed necessary, at a later stage. The assessment report presents facts, gathered by the CAO during assessment about activities that relate to and address concerns raised in the complaint.

## **2. The Complaint**

On the 1<sup>st</sup> October 2004 the CAO received a complaint from 63 people likely to be impacted by the development of the Allain Duhangan Project in the Indian Himalayas. The complaint raises concerns related to:

- i. Disruption of village water supplies as a result of the Duhangan river diversion, as well as religious and cultural objections to the 'drying up' of the river; and
- ii. Inadequacy of the project Environmental and Social Impact Assessment (ESIA) in considering the legitimate concerns of villagers. Complainants are also concerned that the draft ESIA documents – of August 2003, December 2003 and subsequent updates – do not provide a sufficient basis for informed consultation on key impacts of the project. In particular, people perceive the ESIA process to be flawed because it appears that the project will proceed regardless of what the findings of the ESIA are. In part, this concern is fuelled by recognition by the project developer that certain aspects of the ESIA are incomplete and a number of studies are currently ongoing.
- iii. The project is proceeding without the prior consent of the community in the form of an up-to-date No Objection Certificate (NOC) from Jagatsuk which is the larger of the two impacted villages.
- iv. Compliance mechanisms that have been established are not credible, providing communities with no adequate means of redress.

### **3. Approach**

A CAO team investigated the complaint during a field visit to the project site during the last week of October 2004 and a series of meetings with IFC project staff and the project developer.

The CAO's approach was to engage directly with individuals registered on the complaint rather than to hold a larger public meeting. This approach enabled constructive, detailed and open discussion by the complainants as well as allowing for some confirmation of the complainants identities as part of the CAO's own due diligence. The CAO's meetings with the complainants were structured on the issues raised in the complaint and with sufficient time to allow extensive discussion and sharing of perspectives.

The complaint was lodged by a diverse group, predominantly from Jagatsuk village. A series of relatively small meetings were held with the complainants on 28th and 29th October 2004 in Manali and Jagatsuk. These meetings were focused and comprehensive, allowing every individual an opportunity to express his/her views openly and in detail. The meetings on the 29th October were complemented by a small meeting with villagers from Prini, and by field assessment of Jagatsuk's water supply, *Chor Pani*, the proposed access road, the Duhangan River and its upstream tributaries including the *Kala Nala*.

In addition to meeting with the complainants, the assessment team received a request to meet a group of villagers from Jagatsuk who expressed their support for the project. This meeting was held outside Prini on the 29th October. This group asserted that there was considerable support for the project within Jagatsuk.

In Delhi, the CAO met with senior management of the Bhilwara Group, representatives from Norway's SNPower (a co-investor in the project) and representatives of the project's environmental consultants. The CAO also met with Mr. Shekhar Singh, one of the nationally respected independent external observers of the project and Himanshu Thakkar, a representative of the South Asia Network on Dams, Rivers and People (SANDRP) who has been active in assisting project-affected people.

The assessment team traveled to an existing hydro-power project – also in the Himachal Pradesh mountains – built, owned and operated by the Bhilwara Group. The CAO was able to conduct a small number of informal interviews in Chauki village, which is the nearest settlement to the project buildings, but due to the presence of project staff, these meetings can not be described as being independent.

CAO released its draft report in December 2004 and has subsequently revised that draft based on new information received from IFC, complainants and the sponsor during January and February 2005.

### **4. Background**

The Allain Duhangan project is a planned 192 MW run-of-river hydroelectric power plant, with an associated transmission line, to be built on the Allain and Duhangan tributaries of the Beas River near Manali, Kullu District in the state of Himachal Pradesh in India. The plant will be on the Allain River, but will be powered by the combined flows of the Allain and the diverted Duhangan River. The proposed project will consist of an underground

power plant that would utilize flows from a combination of glacial snowmelt and monsoon rains to supply reservoirs from catchments of the two rivers and an intermediate storage reservoir. The combined flows of the two rivers will feed a powerhouse with 2 units each of 96MW capacity. The hydroelectric power facility will require around 77 ha of land over the project's life. A 220 kV power transmission line (of 185 km in length) will connect the hydroelectric facility to an existing substation at Nalagarh in the Solan district of Himachal Pradesh.

The project Sponsor is Malana Power Company Limited (MPCL) which is 100% owned by LNJ Bhilwara (LNJ) Group. LNJ and Statkraft Norfund Power Invest AS (SNP) from Norway have concluded a shareholder agreement whereby SNP will take a 49% interest in MPCL. The project company (borrower) is called Allain Duhangan Hydro Power Limited (AD Hydro), and was formed to construct, operate and maintain the power plant. MPCL will hold 90% of the equity in AD Hydro and IFC will hold 10%.

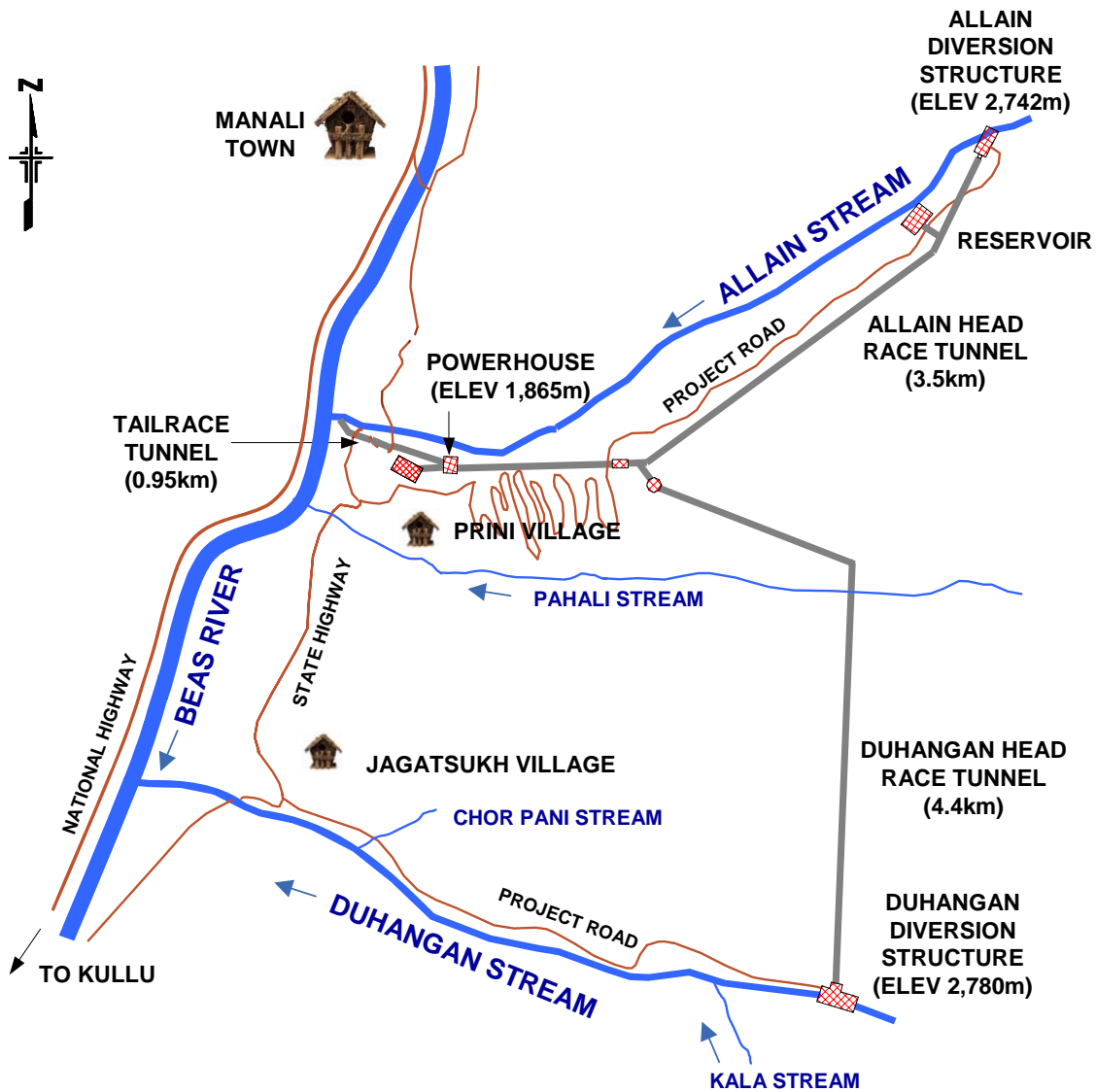
AD Hydro proposes to sell its power mainly to consumers in the northern region of India, including State Electricity Boards, privatized distribution companies and the Power Trading Corporation, India's first power trading company, through short-term power purchase agreements (PPAs).

Total project costs are estimated at US\$192 million, of which IFC will invest up to Rs1,840 million (approximately US\$40 million) in the form of an A loan, which is a loan for IFC's own account, and up to US\$7 million in a C loan, which is equity and/or quasi-equity for IFC. The estimated construction period is 48 months from financial closure. This is a Category A project, due to significant environmental and social impacts, according to IFC's Environmental and Social Review procedure.

The project was approved by the Board on 12th October 2004.

The project has direct and indirect social and environmental impacts on a number of settlements, the largest of which is the Prini village on the Allain River and Jagatsuk village on the Duhangan River (see below).

Figure 1: Schematic of the Allain Duhangan Project



The social and environmental impacts of the project have been characterized through a series of assessments commissioned by the sponsor, the first of which was released to the public on August 11th 2003. In response to stakeholder feedback and project design considerations, these documents were extensively revised and new versions released in December 2003. Further amendments were subsequently released in September 2004. Commitments of mitigating measures are documented in the ESIA.

In the period between December 2003 and September 2004, IFC, together with the project developer, commissioned three separate public meetings that were facilitated by independent third parties including Shekhar Singh, Harsh Mander and the NGO Kalpravriksh. These efforts are broadly perceived to have been positive in helping villagers to both understand impacts and better negotiate with the project Sponsors. IFC

and the project developer have used the recommendations of the independent observer to substantially revise the ESIA and produce the August 2004 ESIA Addendum.

## **5. Assessment**

Villagers raised a diversity of concerns all of which have been documented by the independent observers and listed in the August 2004 ESIA Addendum.

This complaint raises four questions that go beyond the material presented in the ESIA:

- **Are operational releases of water adequate?**
- **Is the ESIA process and content adequate?**
- **Does the project have a valid basis for assuming community support from Jagatsuk?**
- **Will commitments of the Sponsor be complied with?**

Each of these issues are discussed in detail in the following sections.

### **5.1. Are operational releases of water adequate?**

The amount of water that is released by the project at the diversion point is critical to many of the individual concerns raised in the complaint. If the project releases adequate water into the Duhangan valley, then the project will have minimized its downstream impacts. It will not then have any impact on the availability of water for irrigation, agriculture or other social and cultural requirements. Equally, if there is sufficient water released to the Duhangan, then the potential impacts on ecological diversity will similarly have been prevented.

Jagatsuk has different sources for potable water and irrigation water. Potable water is derived from springs (*Chor Pani*) that arise in the valley above the village and is piped through a 2" pipe to storage tanks. Irrigation water derives from a small (0.75m) aqueduct that draws directly from the Duhangan stream. The ESIA makes mention of tube wells as a source of potable water but these no longer function. In addition, although the ESIA notes that water shortages are uncommon, both the complainants as well as the ESIA consultants have confirmed to the CAO that potable water shortages are, in fact, common. The diversion of water in the Duhangan has a potential impact on irrigation water, but is not expected to impact potable water supplies.

The ESIA commits AD Hydro to release at least 150 litres per second (lps) at both the Allain and the Duhangan diversion points. AD Hydro has made a formal commitment to the Himachal Pradesh Pollution Control Board (HPPCB) to maintain this flow at all times. Any breach of this, or any obligation for compliance with the Environmental and Social Management & Monitoring Plan (ESMMP) would be an event of default under the Loan Agreement with IFC. AD Hydro is required to compensate users and make alternative arrangements for provision of water under the unlikely circumstance that any disruption occurs. AD Hydro has additionally committed to publicly monitoring the release of water and including local people in this monitoring process.

The basis for this 150 lps figure has been questioned by the complainants. The ESIA and associated documents provides the following information:

- Flow data for both the Allain and the Duhangan streams are available for a 20 year period from 1973-4 to 1993-4. This is a rich data set, but it is surprising that no data are available after 1994 – eleven years ago.
- For the Duhangan stream, the project estimates that 360 lps was the lowest recorded contribution by other tributaries to the main stream so that at Jagatsuk 510 lps will be available. Based on the historical flow data, this is approximately 40% of the lowest ever recorded minimum flow on the Duhangan stream at Jagatsuk between 1973 and 1994<sup>1</sup>.

Is 40% of the lowest ever recorded minimum flow (between 1973 and 1994) at Jagatsuk sufficient to meet human and ecological requirements? The ESIA provides the following information:

- The Town and Country Planning Department issued a letter<sup>2</sup> (dated 17 June 2002) confirming community water requirements of 100 lps for Allain & Duhangan Streams. No data are given as to how these figures are arrived at, or when, if ever, an assessment of demand was undertaken, nor is there any specific reference to either Jagatsuk or Prini villages;
- Two irrigation channels that draw only on the Duhangan stream have a combined flow of 130 lps<sup>3</sup>. No data are given to show how this figure was calculated, when the flow was assessed and by whom. In addition, it should be noted that this measure is one of water availability rather than demand.

The ESIA and addenda do not make mention of increases in demand due to development needs and population increase over the life of the project. Furthermore, there is no calculated estimate for ecological requirements. The Sponsor has committed to undertaking a study of ecological requirements, noting that four years of construction time will be required between now and the time when diversion of water will begin. This study is now expected to be completed by February 2006.

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<sup>1</sup> Hydrology Study, page 6, Environmental Resources Ltd. Undated.

<sup>2</sup>[http://www.ifc.org/ifcext/spiwebsite1.nsf/0/ebdc4548b2ceace285256e1300663901/\\$FILE/ESIA%20Annex%20A%20-%20Part%201.pdf](http://www.ifc.org/ifcext/spiwebsite1.nsf/0/ebdc4548b2ceace285256e1300663901/$FILE/ESIA%20Annex%20A%20-%20Part%201.pdf)

<sup>3</sup> ESIA Addendum, page 11, Environmental Resources Ltd. September 2004.



## CAO Findings

If the figures presented on water flows are correct, then the project should be able to meet irrigation requirements while producing a minimum of 380 lps for ecological purposes. However, the ESIA does not provide sufficient methodological rigor to give confidence that the figures are correct. Furthermore, there is no calculation of water demand, only estimates of availability. Finally, there is no indication of the implications of reducing the flow of water to 40% of the lowest recorded flow on ecological integrity. Taken together, the information provided within the ESIA is not sufficient to provide an informed basis for deciding whether or not the minimum flows released by the project will be adequate for human demand and to meet environmental requirements.

Given the significance of increased vulnerability with respect to water supply, this absence of rigour in the public documents is concerning.

In correspondence with the CAO, AD Hydro consultants were able to provide some additional clarification of the basis for these estimates and gave assurances that long-term water demand over the life of the project had been included in calculating these figures. However, the methodology was not adequately explained leaving the impression that the estimates given are based on untested assumptions. It is not possible for the CAO to assess whether these assumptions are reasonable. Furthermore, this information had not been presented in the ESIA or its Addenda and so has not been made available to affected people.

With respect to potable water, the concern of villagers is that these supplies could be damaged during the construction period, particularly when the proposed access road is built. Both the source and infrastructure for this water are fragile, and although the Sponsor has indicated that it will attempt to avoid these water sources, villagers are still concerned that their supply may be inadvertently damaged.

The impact of the diversion of the Duhangan River is a substantive concern for downstream-affected communities. Although the project sought to avoid any significant impacts by making commitments to maintain a minimum flow that will meet the needs of downstream communities, these commitments have not been developed in a way that adequately addresses the perceived social as well as cultural concerns of people affected by the diversion.

The Sponsor has committed to both the government of India and the IFC to ensure that appropriate contingency plans are in place to ensure a supply of water to affected villagers if any damage to existing supplies occurs as a result of project development or operations. However, these contingency plans are not developed to an adequate level of detail, nor do they give effective assurance to affected people that remedial action will be taken.

In summary adequacy of both irrigation and potable water for Jagatsuk village is a critical unresolved issue for the complainants which needs to be addressed in a more thorough, credible way by the project Sponsor.

## CAO Recommendations

AD Hydro should ask ERM to undertake an independent study of water demand and vulnerability for the village of Jagatsuk. This study should involve villagers as well as trusted government agencies and independent reviewers in its design as well as implementation. It should include:

1. A participatory assessment of domestic as well as agricultural water and not be limited to abstraction of water from the Duhangan stream by villagers;
2. Current as well as future projections of demand for water within the village over the life of the project;
3. An assessment of options/solutions and contingency plans that reduce the vulnerability of water supply to the village to meet its requirements over the life of the project. Implementation of these solutions should occur before construction of the access road so as to protect the village from inadvertent damage to their potable water supply or irrigation supplies.

The methods, implementation and findings of this study should be made public and, once agreement is reached, formal commitments made for implementation of its recommendations in the ESMMP. Adherence to these commitments should be monitored publicly and appropriate recourse made available to affected people.

This study should be initiated within the next month and should involve credible third-party consultants who can inspire trust in the work that is done.

## 5.2. Is the ESIA adequate?

The principal concerns of complainants are: (a) the extent to which the ESIA process gives them the right to influence the decision of whether or not the project should be developed; and (b) whether the ESIA had a sufficient level of detail to allow an informed decision of project viability. In addition, the complaints identify the following issues specifically:

- There has been insufficient public consultation
- The ESIA is incomplete because of on-going studies of social and ecological baselines
- Social and economic consequences of both construction and operations on the village have not been adequately considered – in particular, issues of women's safety and management of the construction workforce
- Cultural and religious significance of the Duhangan is not adequately considered
- Seismic events and their influence on the engineered structures (dams and diversion tunnels) have not been adequately considered
- Assessment of associated facilities has not been adequately considered.

IFC has no defined 'standard' against which to judge the adequacy of an ESIA. The scope and content of an ESIA depends on the type of project and the sensitivity of its surroundings. The release of ESIA documents on IFC's website is a signal that IFC is satisfied that the document is complete in all material respects. This judgment is based

on an appraisal of the adequacy of the work done by the project's environmental consultants and experience of IFC's own staff with similar projects elsewhere.

The projected social and environmental impacts of the project have been characterized through a series of assessments that were consolidated to form the project's ESIA. The first ESIA was released to the public on August 11<sup>th</sup>, 2003. These documents were not released locally in Hindi. In response to stakeholder criticism and project design considerations, these documents were extensively revised and new versions released in December 2003.

Since December 2003, the project Sponsors, with guidance from the IFC, have taken a number of steps to engage more constructively with local communities. In particular, these were:

- i. Engaging independent facilitators/trusted observers to assist with village-based consultation.
- ii. Hiring ESIA consultants on a long-term basis to the project.
- iii. Making ESIA documents are locally available in Hindi<sup>4</sup>.

The sequence of consultation, recorded by IFC, included:

#### 2003

- January – ESIA consultant engaged and community consultations begin
- May - First public meeting in Prini village (attended by IFC)
- August – Summary of project information and ESIA disclosed on IFC's website
- November – IFC meets with local NGOs at Prini
- December – Revised ESIA disclosed locally with Summary and ESMMP translated to Hindi and distributed to each project-affected family.

#### 2004

- January – Revised ESIA disclosed on IFC website and document of "Frequently Asked Questions" is distributed to project-affected families
- January – second public meeting held in Jagatsuk (attended by IFC)
- February – Hindi translation of entire ESIA disclosed
- March, April, May – Focus group meetings led by independent facilitators
- May – Third public meeting facilitated by independent panel of experts held in both Prini and Jagatsuk (attended by IFC)
- July – Focus group meetings with project affected people led by independent facilitator.
- September – ESIA Addendum disclosed locally and on IFC website in both English and Hindi.

The independent third parties included Shekhar Singh, Harsh Mander and the NGO Kalpravriksh. These efforts are broadly perceived to have been positive in helping villagers to both better understand project impacts and negotiate with the project Sponsors. The IFC and the project developer have used the recommendations of the independent observers to substantially revise the ESIA and produce an ESIA addendum

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<sup>4</sup> ESIA documents are also available on IFC's website. The organization of these documents is still, unfortunately, confusing.

in September 2004. This addendum and previous editions of the ESIA include consideration of:

- Social and economic consequences of both construction and operations on the village, including issues of women's safety and management of the construction workforce.
- Cultural and religious significance of the Duhangan.
- Assessment of associated facilities including transmission lines.

These measures at least in part, have resulted in the resolution of a series of critical direct impact issues through negotiations related to the purchase of land in the Prini village. This village had been opposed to the project but now supports it. The CAO notes that compensation has been paid and that land is in the process of being transacted.

The early ESIA process and disclosures presented in August 2003 were criticized by local leaders as well as the broader NGO community. These documents did not adequately address the concerns of local people, nor were they made locally available in Hindi. As a result, many local people had limited opportunities to inform themselves of the project. The initially poor presentation left the impression that the project was being rushed through, resulting in some tension and mistrust between the project Sponsors and some in the local community.

Based on its own judgment, IFC concluded that the ESIA was complete in December 2003 and that identified impacts were not likely to be material to consideration of whether or not to proceed with approval of the project. It did, however, require that additional studies be commissioned on the longer-term ecological impacts of the project based on the recommendations of the independent panel. These studies are expected to be completed by February 2006 and IFC believes that they will not materially affect the project.

#### CAO findings and recommendations

1. There have been substantial efforts of consultation and engagement by the Sponsor with affected communities, particularly since December 2003. Many of the issues raised by communities in both Jagatsuk and Prini have been documented and commitments made for mitigation. The ESIA Addendum dated September 2004 identifies the issues so far raised by the complainants and makes points of clarification or identifies mitigating actions. The CAO is not in a position to judge whether or not the commitments made in the ESIA will be met in practice as the bulk of project activities are yet to be implemented. Many members of the Jagatsuk community are concerned, and require assurances, that commitments will be complied with. This issue is dealt with in the section 5.4. In some cases, the ESIA could be clearer or the proposed mitigation actions made more explicit. One such case is the response of the project to spiritual concerns raised by villagers.

**Recommendation:** The Sponsor should develop a schedule for implementation of each of the commitments contained in the ESIA Addendum and ESMMP. This

schedule should be developed in a participatory manner so that it is clear to affected people what the mitigation measures are, and when they will be implemented. Specific measures for mitigation of key identified impacts should include commitments that can be understood by affected people and monitored by a credible panel representing the Appeals mechanism (see section 5.4).

2. The CAO finds that the language and process by which ESIA has been managed is confusing. IFC has sought approval from the Board based on the production of a 'draft' report produced in May 2004, combined with the September Addendum. IFC has not indicated when the 'final' ESIA will be available. IFC's position is that future changes to the 'draft' report will not be material to the Board's decision. In the interests of effective due process, the CAO believes that it would have been more forthright to have presented a final report to the Board and public. This provides the clearest signal that IFC believes that all material concerns have been met. The CAO believes that the transparency of process of developing the scope and content of the ESIA could be improved, particularly with regard to IFC demonstrating that its own due diligence has been met and that concerns that are material to progressing the project have been prevented or mitigated.

**Recommendation:** The Sponsor should consider the relevance of each of IFC's Safeguard Policies explicitly in a section of the ESIA indicating the nature of expected impacts with respect to the project and appropriate mitigation measures. This process will help to demonstrate to all parties that the ESIA is both relevant and complete, and that material issues have been considered. AD Hydro and IFC should make clear why they have concluded that the additional studies will not be material to progressing the project.

IFC should be clear in defining the publication of a 'final' ESIA which clearly indicates that all material requirements are met and that the project is expected to proceed to the Board. IFC should consider making more transparent its process of appraisal and the basis for its assertion that IFC's obligations for due diligence have been met. This will be the subject of an Advisory note to the President.

3. One specific area which was raised as a concern that is not evident in the ESIA is the extent to which risks of seismic events on the engineered structures (dams and diversion tunnels) have been incorporated into the project's design. IFC have commissioned an independent engineering report that includes a technical analysis of risks to the engineered structures. IFC has indicated to CAO that it is not willing to release this report to the public in full.

**Recommendation:** The CAO recommends that affected people test the effectiveness of the project grievance mechanism by requesting this information directly. CAO expects to remain engaged and informed of progress relating to this request in order to understand the responsiveness of the grievance mechanism to concerns from its community.

### 5.3. Does the project have a No Objection Certificate?

The No Objection Certificate (NOC) is a required permit, issued by the village-elected council – the Panchayat – to indicate local support for significant development projects. The NOC is part of a hierarchy of approvals and is necessary to obtain additional clearances from both State and national agencies. The NOC for Jagatsuk used by the Sponsor was issued in March 1997 and there is now controversy within with village about its validity. Complainants claim that the NOC was only issued for preliminary studies, not the entire project. In addition, the then village Headman has indicated that he alone issued the NOC without clearing it through the Council. Complainants are adamant that the NOC is no longer valid.

On July 4 2004 the Jagatsuk Gramsabha – village assembly – issued a resolution rejecting the project. As a backdrop, some complainants are concerned that no further implementation should be carried out by the Project Sponsor prior to resolution of their key concerns. The CAO's latest understanding is that a series of peaceful protests have been launched including the threat by some in Jagatsuk to embark on a hunger strike against the project.

The project has obtained NOC's from Prini – both in March 1997 as well as in June 2004. It appears that efforts to ensure adequate compensation for land purchases in Prini have been instrumental in ensuring improved relations with this community.

IFC maintains that the NOC is legally valid. IFC's assessment of government approval processes for this project is that although people's concerns are taken into account, public participation does not necessarily give affected people the power to veto a project. This view was apparently conveyed to project-affected people by the Kullu District Deputy Commissioner during the May 21 2004 public meeting in Jagatsuk. Similarly, IFC believes, based on project ESIA documents and processes, that the adverse social and environmental impacts of the project are manageable. Its emphasis was accordingly more on how these impacts and risks could be mitigated rather than on whether or not the project should proceed.

#### CAO findings and recommendations

1. The legal intent of the NOC is to demonstrate local support for development projects. It is clear that Jagatsuk as a village have demonstrated, through their own representative processes, that they do not support the AD Hydro project. While AD Hydro may be able to demonstrate legal compliance, this does not mean that the intent – of village support – is evident. On this basis, it is difficult to argue that the project has broad community support, especially since Jagatsuk is the more populous (1200 people versus 700 people in Prini) of the two key affected villages. The CAO recognizes that Sponsor has a strong commitment to dialogue and has engaged constructively in communication with affected parties to date. The CAO also recognizes that the Sponsor has engendered a good working relationship with Prini villagers.

**Recommendation:** IFC should encourage its Sponsor to make clear to affected communities the extent to which the ESIA will guide project approval versus project design decisions. This step will likely help all parties to manage expectations from consultation and participation better.

2. Villagers in Jagatsuk are concerned that they face the risk of increased vulnerability of their water supplies, together with the mix of positive and negative social and environmental impacts associated with the project's development. The CAO believes that the Sponsor should recognize this as a legitimate concern and discuss opportunities to resolve it.

**Recommendation:** AD Hydro should ensure that its community investment programme generates opportunities and improved livelihoods for Jagatsuk, in the first instance, and Prini communities.

#### **5.4. Will commitments of the Sponsor be complied with?**

The complainants have little confidence that the project developer will actually implement commitments made in the ESIA or elsewhere. This concern underlies many of the individual issues presented in the ESIA Addendum and by other independent observers. Villagers simply did not believe that the minimum guarantees provided by the company will be met, nor did they have any confidence that the regulatory mechanisms are sufficiently robust to ensure that their concerns will be addressed should infringements occur. In essence, people felt that the project developer will promise whatever it takes to obtain approval, but will not then follow through.

There has been a breakdown in trust between Jagatsuk and the project, reasons for which are difficult to define precisely. Reflecting a common sentiment among the complainants, one villager from Jagatsukh offered this account of the situation: "*The Company has been following a 'Divide and Rule' policy and is breaking the unity of our village. Their men approach only certain people and use them for information. They also spread rumours about those who oppose the project, saying that they have taken money so that people turn on them. In this way, we are being made to suspect each other.*" Moreover, this feeling of mistrust has been aggravated by some villagers viewing developments such as roadwork and the cutting of a few trees/saplings as the beginnings of project construction without consent and approval. Whatever the interpretations of the process of communication and these specific events, such commonly voiced concerns revealed the prevailing mistrust of a section of Jagatsukh residents towards the Sponsor.

For its part, the Sponsor maintains that it has attempted to ensure open and transparent communications with all affected communities at all times, and has taken significant steps to improve capacity on the ground including the hiring of consultants and additional personnel. With respect to project commitments, the Sponsor has accepted the following:

1. An Affidavit dated May 7, 2004 that commits the Sponsor to protect the riparian rights of users, and to compensate water users for any violation of those rights for reasons attributed to the project and, if necessary, make alternate arrangements to meet local water requirements.

2. An Implementation Agreement signed with the government of Himachal Pradesh which requires the Sponsor to ensure a minimum flow of downstream water requirements.
3. Himachal Pradesh State Pollution Control Board (HPPCB) clearance with mandates that AD Hydro will: (a) release adequate water downstream of the diversion weirs during all seasons in order to maintain user requirements and sustain aquatic life; (b) bear the cost of any alternative schemes in case of adverse impact on any of the water sources due to project construction; (c) compensate any damages under the riparian rights of downstream users; and (d) submit to HPPCB regular, independent monitoring reports with respect to environmental and social provisions. HPPCB clearance is valid for one year and must be renewed annually.
4. AD Hydro's compliance with all provisions in the ESMMP is also a covenant under IFC's Loan Agreement. Non-compliance with these provisions can result in an event of default imposing significant financial penalties on AD Hydro.

The Sponsor has agreed to the establishment of a Grievance Redressal Cell as well as an Appeals mechanism (in the event that grievances are not seen to have been resolved satisfactorily) for project-affected people.

With respect to public scrutiny and access to these mechanisms, the CAO understands that HPPCB reserves the right to revoke its consent for renewal of approvals in case of public complaint with respect to violation of project commitments. The ESMMP makes provision for project-affected people to participate in the periodic monitoring of ESMMP implementation. In addition:

1. IFC will appoint an independent engineer to oversee the project and report on a quarterly basis on social and environmental matters. The independent engineer is required to contract and retain consultants with expertise in these matters.
2. The Sponsor will be required to report to IFC on a quarterly and annual basis on all requested items including social, environmental and health issues.

### CAO Findings

Although the grievance redress mechanisms have been established, CAO has not been able to obtain clarification on how personnel are appointed to these bodies, their terms of reference, or minutes of any meetings already held.

The Sponsor acknowledges that its approach to community relations has so far not been commensurate with the challenges it has experienced. For example, informal channels for communication have been relied upon, but there is less evidence of formal processes of negotiation with communities. Engagement with affected communities could be more professional. It seems that both the IFC and its client have underestimated the level of local as well as national interest in this project. As a result, they were not appropriately resourced at the earliest stages to manage demand for open and constructive dialogue, nor to meet local as well as national criticism. These early weaknesses, despite actions for redress, have now translated into a soured relationship between the project developer and part of its host community.



## Recommendations:

1. The Sponsor should implement improvements in project capacity to negotiate and engage with affected people, and particularly to manage a process of two-way dialogue. The CAO understands that additional staff has recently been recruited by the project. It is particularly important that any new personnel have substantial experience of community conflict issues and are able to win the trust of local people in delivering on the project's social commitments.
2. The CAO recommends strengthening of the life-of-project Grievance Redressal Cell and associated Appeals Panel to ensure that it has:
  - a. Defined Terms of Reference
  - b. Credible processes for selection of people to participate on these panels - they must be effective, fair and transparent and should involve local people.
  - c. Clear mechanisms for monitoring and enforcing agreed outcomes.It must also ensure that the interests of both the community as well as the project developer are met.

## **6. Conclusion**

The concerns summarized in this report have implications for people beyond the immediate complainant group and will likely include the majority of people in both Jagatsuk and Prini villages. The CAO does not believe it is in the interests of IFC nor its client to proceed without engaging constructively with communities to turn-around the current negative sentiment towards the project. Engagement will be extremely difficult in the current climate of mistrust. This is particularly the case when some factions within Jagatsuk believe that IFC's client has embarked on a programme of 'divide and rule' in its community relations.

The CAO understands that community consensus is unlikely to be possible under the current conditions and some members of the community will always reject the project. It is clear that the community is divided over this issue and that there is a complex undercurrent of local political agendas.

Despite this difficulty, the CAO understands that there is appetite for dialogue between the complainants and the Sponsor.

Based on its assessment the **CAO recommends** that:

The CAO convene a meeting between the Sponsor and representatives of the complainants in order to discuss the findings of this report, identify shared concerns, and develop an agreed charter for resolving issues as appropriate. This meeting will be facilitated by the CAO who will be responsible for ensuring a neutral and fair process. The outcome and anticipated next steps agreed at this meeting will be made public. This meeting is scheduled to be held in April 2005.

The CAO stands ready to assist the community as well as the Sponsor in order to bring this complaint to resolution.