



OMBUDSMAN ASSESSMENT REPORT

**Regarding Community and Civil Society concerns in relation to
hydropower investments in Chile, including IFC Project Aconcagua**

June 2010

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

CAO	Office of Compliance Advisor/Ombudsman
CONAMA	National Environmental Commission
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
WBG	World Bank Group

1. Introduction

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by projects 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 responded to by the CAO's Ombudsman function.

This assessment report is a public document that summarizes the complaint, stakeholder views expressed during the CAO's assessment phase, and CAO's assessment of the situation and any recommended further actions to help find a resolution to the concerns raised in the complaint.

2. The Complaint

The complainants

A group of community members from Santa Barbara, in the Biobio region of Chile, submitted a complaint to CAO in November 2009, raising concerns about social and environmental impacts in relation to several hydropower plants in Chile.

The projects

Hydroelectric plants

<u>5th Region of Valparaíso</u>	<u>8th Region of Biobio</u>	<u>11th Region of Aysen</u>
Chacabuquito I	Central Angostura	Central Baker I
Chacabuquito II	Quilleco	Baker II
Hornitos	Pangue	Pascua I
Aconcagua	Ralco ¹	Pascua II.I
		Pascua II.II

The hydropower plants referenced in the complaint are located in three separate regions of Chile (see table above). IFC has current or previous links to two of these plants:

- IFC is currently invested in the Aconcagua project in the 5th Region of Valparaíso.
- IFC used to be an investor in the Pangue project in the 8th Region of Biobio, from which it divested in 2004.

Concerns raised in the complaint

The complaint raises concerns around anticipated social and environmental impacts of planned dam construction on the Biobio River. The complaint makes a link between the planned Angostura dam project in the Biobio River, which is owned by Colbun S.A., and IFC's commercial relationship with Colbun S.A. through its Aconcagua project. Further, it makes reference to IFC's previous Pangue hydroelectric investment on the Biobio River.

¹ in 8th Region of Biobio & 9th Region of Araucania

In parallel with the complaint to the CAO, a request for inspection was lodged with the World Bank's Inspection Panel regarding IBRD's involvement in Chilean dam development.

3. The Projects

The **Aconcagua project** referenced in the complaint is an active IFC investment from 1992. Hidroelectrica Aconcagua S.A. was established to build, own and operate a 72.6 MW run-of-the-river hydroelectric power plant on the Aconcagua River in the Municipality of Los Andes in Chile's 5th region.

The project involved the construction of: (1) Blanco: a 46 MW plant, completed in July 1994; (2) Juncal: a 26.5MW plant, completed on July 1995; and, (3) Juncalito: an additional plant that together with Juncal provides a total capacity of 30 MW². The total project cost was US\$72.5MM. The IFC investment comprised an A loan of US\$8.0, a B loan of US\$6.0 and equity of US\$6.5. The A and B loans were fully repaid in September 1996.

The complaint also makes reference to IFC's previous investment in the **Pangue Hydroelectric Project**. The Pangue Hydroelectric Project involved a 450MW hydroelectric dam (completed In September 1996) on the Biobio River in Chile. The dam was built and operated by Empresa Electrica Pangue S.A. (Pangue S.A.), owned 97.5% by Empresa Nacional de Electricidad S.A. (ENDESA), and 2.5% by IFC. IFC held 2.5% of the equity interest in Pangue following its investment agreement in October 1993 until divestment in July 2002. IFC had also invested and arranged loans of \$170 million in the project, which were prepaid in May 1997. IFC has no current connection to the project or its sponsors.

4. CAO Ombudsman Assessment

CAO received this complaint on November 11, 2009. CAO concluded its eligibility assessment on December 4, 2009, finding the complaint eligible for further assessment on the basis that CAO's knowledge did not allow CAO to rule out that:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Under the CAO process, the CAO Ombudsman initiates an assessment of the issues raised in a complaint once it has been found eligible, with the purpose of gathering information on how different stakeholders see the situation, and to help determine how these issues might be resolved, and whether there is a role the CAO Ombudsman can play.

² Information provided by IFC.

According to CAO's Operational Guidelines, the CAO Ombudsman began its assessment on December 4, 2009. The assessment period is limited to a maximum of 120 working days.

4.1 Key Issues Raised in the Complaint

The complaint references a number of Chilean dams, focusing specifically on concerns regarding anticipated project impacts of a dam in the 8th Region of the Biobio, Central Angostura, to be constructed by Colbun S.A. The environmental and social impacts of concern to complainants include involuntary resettlement, direct and indirect impacts on indigenous communities living in the area, and impacts on cultural heritage, and that no cumulative impact assessment is being carried out.

The complaint makes the link between IFC and Colbun S.A. through IFC's current Aconcagua project, in which IFC and Colbun are co-investors.

Further, the complaint alleges that IFC has not fulfilled past commitments regarding IFC's Pangué hydroelectric project, and calls for public release of a cumulative impact study, environmental monitoring plans from the company, a "lessons learned" document by IFC, as well as previous "Hair" and "Downing" Reports.

4.2 Background and History

Controversy around hydroelectric projects in Chile started in 1996 related to the Pangué project, followed by public debate around the construction of the Ralco dam in the same watershed in 2000. In the context of construction of these two hydroelectric projects, several Pehuenche indigenous communities did not want to leave their lands, alleging violation of their lands as per Indigenous Law 19.253 of 1993³.

IFC's involvement in the Pangué hydroelectric project has been highly controversial. The experience has changed IFC as an institution, including through the formal adoption of environmental and social policies, the establishment of an environment and social development department, and of the CAO.

CAO has received two complaints⁴ relating to the Pangué Hydroelectric Project in the past:

- The first complaint was filed with CAO in August 2000 by a member of the indigenous Pehuenche community relating to insufficient compensation. An agreement between the complainant and the company was negotiated and duly signed in 2001.
- The second complaint was filed in July 2002 by a group of Pehuenche women. IFC divested from the project in July 2002. CAO accepted the complaint and conducted an appraisal for audit of the project. The appraisal report of May 2003 recommended that IFC disclose the Hair Report and work with its previous client to disseminate documents it had commissioned including emergency response plans and downstream impact studies. At the request of the complainants, CAO

³ See: http://www.dibam.cl/archivo_nacional/pdf/publica/ley_19253.pdf

⁴ See CAO case history including assessment reports on www.cao-ombudsman.org

Ombudsman continued to monitor the work with local and indigenous organizations to address broader, cultural impacts of the project. In February 2006, a settlement agreement concerning local development capacity building was reached, and on request of community members CAO continued to monitor implementation of this agreement. CAO's support is being phased out this year.

On the national stage, indigenous peoples' efforts to see their rights recognized have been advanced by Chile's ratification of ILO Convention 169⁵ in September 2008. In late November 2009, invoking ILO Convention 169, Chile's Supreme Court handed down a landmark ruling on indigenous water rights in a dispute that involved Aymara communities in the 1st Region and a Mineral Water Chusmiza, a company seeking the rights to bottle and sell freshwater from a source used historically by Aymara indigenous residents⁶.

4.3 Rationale of Assessment

In assessing the present complaint, CAO conducted interviews with the complainants and the sponsor, and discussions with IFC. In addition, CAO gathered information available in the public domain regarding the hydroelectric power plants mentioned in the complaint.

The complainants

While the complaint references a number of different hydroelectric projects, the complainants' concerns center on the planned hydroelectric project in Central Angostura, and impacts they fear from this project. The complainants believe that given the project operator's commercial ties with IFC through the Aconcagua project, IFC should require the operator to meet IFC environmental and social standards also in this project.

Local community members expressed that this project should not have been approved by the regional environmental agency⁷, and have filed recourse before Chile's environmental agency, the National Environmental Commission or CONAMA, on December 11, 2009⁸. Decision from the national agency regarding this matter is still pending.

Further, the complainants feel that IFC's failure to share relevant environmental reports of the Pangué project with CONAMA is directly impacting events around the new project's approval process, and preventing earlier findings from being taken into consideration. Specifically, they call for the disclosure of the cumulative impact study conducted in the context of IFC's Pangué project, as well as a 'lessons learned' document drafted by IFC regarding this project.

⁵ See: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169>

⁶ To see full article: <http://www.business-humanrights.org/Links/Repository/300158> and www.santiagotimes.cl

⁷ See CONAMA's website – System of Environmental Impact Assessments: https://www.e-seia.cl/expediente/expedientesEvaluacion.php?modo=ficha&id_expediente=3142073

⁸ Regarding the recourse before CONAMA see: https://www.e-seia.cl/expediente/expedientesRecursos.php?modo=ficha&id_expediente=3142073

The complainants did not raise any concerns about environmental and social impacts of IFC's Aconcagua project, which is located in a different region of Chile.

The company

In discussions with CAO, the company clarified its commercial structure and relationship with IFC. Its subsidiary Aconcagua S.A. is majority owned (85%) by Hidroelectrica Guardia Vieja (HGV), which in turn is fully owned by Colbun S.A.. IFC owns 15% of Aconcagua S.A. At 3.46 percent of Colbun's combined installed generation capacity stemming from 20 power plants, Aconcagua S.A. represents a relatively small part of Colbun's overall operations. IFC is not invested or otherwise involved in Colbun's project in Central Angostura.

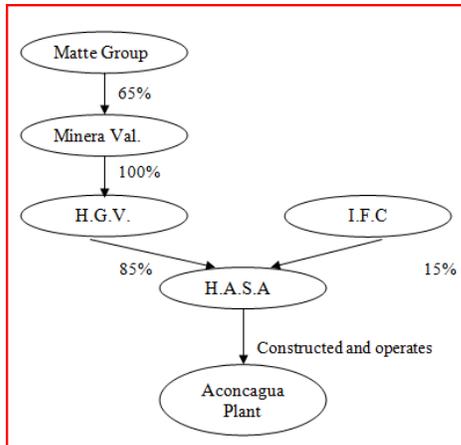
Company representatives from Colbun further expressed willingness to explain to CAO the company's environmental and social due diligence relating to the Angostura project.

IFC

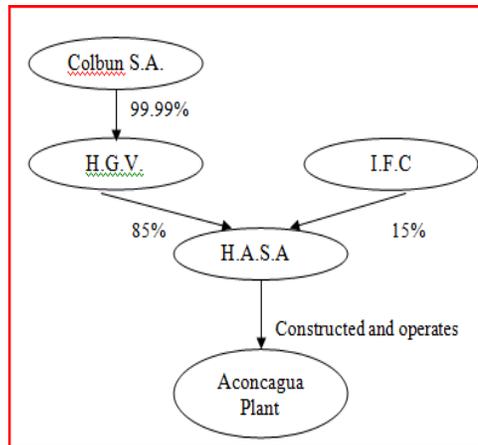
At the time when IFC co-invested in Aconcagua S.A. with HGV in 1992, HGV was 100% owned by Minera Valparaiso S.A., a publicly owned company diversified in electricity generation and distribution (including its 100% ownership of HGV), port services, forestry and real estate services. The Matte Group owned and continues to own 65% of Minera Valparaiso. Today, Hidroelectrica Guardia Vieja (HGV) is owned by Colbun S.A.

Commercial ownership structure of Hidroelectrica Aconcagua S.A. (H.A.S.A.)

In 1992



In 2010



IFC noted that their commercial relationship with Colbun, through its equity stake in Aconcagua S.A., is limited to the Aconcagua hydropower plants. IFC has supervised the Aconcagua project within recent months and is not aware of any local community concerns regarding this project.

5. Conclusion

Based on the information provided by both parties, and discussions with IFC, the CAO Ombudsman understands that IFC is not involved in the project of concern to the

complainants, and IFC's relationship with the project operator, Colbun, does not extend beyond the jointly financed Aconcagua project to other corporate activities. CAO finds that this indirect connection to the project of concern to the complainants does not justify the use of Ombudsman resources in an alternative dispute resolution approach.

In May 2010, this complaint will be closed.

6. Additional Observations for IFC

This complaint raises questions around IFC's ongoing responsibility to disclose project documents from its now closed Pangué project. CAO has asked IFC to consider disclosing relevant documents, specifically, the cumulative impact study conducted in the context of IFC's Pangué project, as well as the full (as opposed to draft) 'lessons learned' document prepared by IFC regarding the Pangué project. CAO understands that a summary of the Pangué lessons learned project is available on IFC's public website:

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_pangué_summary/\\$FILE/pangué_summary.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_pangué_summary/$FILE/pangué_summary.pdf)

While CAO understands that IFC is under no *policy* obligation to make environmental and social disclosures from projects processed at the time of the Pangué project, CAO nevertheless believes that IFC's mandate and mission as a developmental institution, and its presumption in favor of disclosure, should lead it to take a pro-active stance and make relevant information publicly available to the full extent it can, or explain its reasons where such disclosure is impossible, with view to informing public debate and transparency around development projects in its member countries.