



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding the Electron Investment S.A. Pando – Monte Lirio
Hydroelectric Project (#27975)**

Chiriquí Province, Panama

July, 2010

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

Table of Contents

LIST OF ACRONYMS..... 3

INTRODUCTION 4

SUMMARY AND PURPOSE OF THE ASSESSMENT 4

1. The Project..... 6

2. The Complaint..... 8

3. CAO Ombudsman Assessment..... 11

 3.1 Methodology..... 11

 3.2 Stakeholders 12

 3.2.1 Complainants 12

 3.2.2 Other Community Members..... 13

 3.2.3 Electron Investment S.A. (Project Sponsor)..... 13

 3.2.4 Government of Panama (ASEP, ANAM, and Secretary of Energy):..... 14

 3.2.5 Local government authorities (Renacimiento and Bugaba)..... 15

 3.2.6 International Finance Corporation (IFC)..... 16

 3.2.7 Inter-American Development Bank (IADB) 17

 3.3 Summary of Issues..... 18

 3.4 Possible Alternatives for Consideration 19

4. Conclusion & Next Steps..... 20

 4.1 Conclusion..... 20

 4.2 Next Steps..... 20

 4.3 Proposed Schedule 22

LIST OF ACRONYMS

ANAM	National Environmental Authority
ASEP	National Public Services Authority
CAF	Andean Producers Corporation
CAO	The Office of Compliance Advisor/Ombudsman
CDC	Community Development Committee
CVR	Chiriquí Viejo River
EIA	Environmental Impact Assessment
EISA	Electron Investment S.A.
IADB	Inter-American Development Bank
IFC	International Finance Corporation
MICI	Independent Consultation and Investigation Mechanism (from the Spanish <i>Mecanismo Independiente de Consulta e Investigacion</i>) of IADB
MIGA	Multilateral Investment Guarantee Agency
SIEPAC	Central American Interconnection System

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 document is a preliminary record of the views heard by the CAO team, and suggestions for next steps among the parties. These suggestions are intended to stimulate further ideas and options for improving environmental and social outcomes on the ground. This report does not make any judgment on the merits of the complaint.

SUMMARY AND PURPOSE OF THE ASSESSMENT

In January 2010, sixteen community and environmental organizations based in the Chiriqui province filed a complaint with the CAO. The complainants believe they will be adversely impacted by the development of all the hydroelectric power projects that currently hold concession in the Chiriquí Viejo River watershed, including the IFC financed Pando and Mote Lirio Projects, due to a number of social and environmental concerns. In the complainant's views, many of the short-comings of the process include lack of participative consultation process with communities, lack of a cumulative impact assessment, possibility of flooding to communities downstream, endangering of fish and other species, over-exploitation of water resources and the river, limited community access to water, high levels of sedimentation that affect water quality and downstream water treatment facilities (such as Baru), and negative impacts on the natural landscape and on mangroves located near the mouth of the river in the Gulf of Chiriqui.

Per CAO's Operational Guidelines¹, the following steps will normally be followed in response to a complaint that is received:

Step 1: Acknowledgement of receipt

Step 2: Assessment of eligibility and decision whether to proceed (no more than 15 working days)

Step 3: Assessment of potential for achieving resolution of the complaint (no more than 120 working days). If the assessment determines that a collaborative resolution is not possible, the CAO Ombudsman will refer the complaint to CAO Compliance for compliance appraisal.

Step 4: Facilitating Settlement

If the CAO ombudsman process continues, then implementation of next steps (usually based on a Memorandum of Understanding and/or mutually agreed-up

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

ground rules between the parties) through facilitation/mediation, joint-fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected².

Step 5: Monitoring and follow-up

Step 6: Conclusion/Case Closure

In February 2010, the CAO determined that the Pando-Monte Lirio complaint was eligible on the basis 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.

Subsequently, according to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of the opportunities for resolving the complaint. The assessment period is limited to a maximum of 120 working days, but may be completed more quickly depending on whether the issues are amenable to resolution.

The purpose of the CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant; (2) identify the principal stakeholders that need to be consulted on the issues raised in the complaint and gather information on their perspectives and view of the situation; (3) understand how the CAO Ombudsman might best assist the stakeholders determine whether and how they can resolve the issues raised in the complaint.

As part of CAO's assessment phase, CAO conducted a field trip to Panama during the week of June 7th to 11th, 2010. In preparation and during the field trip CAO Ombudsman team reviewed IFC files, met with complainants' organizations, IFC's project sponsor, other affected community members, Panama's government officials, IFC staff, and staff from the Inter-American Development Bank (IADB). In addition, the CAO Ombudsman team visited the project area. The CAO team made a follow trip to Panama July 12th to 16th, 2010 to conclude its assessment. The principal parties all agreed to continue with the CAO Ombudsman process and the CAO has proposed a process for addressing the issues in Section 4 of this Report.

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

1. The Project

The IFC Pando and Monte Lirio power projects comprise a hydroelectric power development on the Chiriquí Viejo River (CVR) in the Chiriqui Province of Western Panama. The Project involves the construction of two run-of-river hydroelectric power plants to be operated in cascade, totaling 85 MW in installed capacity (Pando, 33 MW and Monte Lirio, 52 MW) and 57.4 MW in firm capacity. The Project is expected to produce on average approximately 430 GWh per annum.

The Project is being developed by Electron Investment S.A. (EISA), a Panamanian company.

The Company is a joint venture between Inveravante Inversiones Universales S.L. (“Inveravante”, a Spanish company) with a 51% ownership, and Fundación Fernando Eleta Almarán (“Grupo Eleta”, a Panamanian entity owned by the local Eleta family) with a 49% ownership; together the “Sponsors”. It is envisaged that prior to closing of the financing, Inveravante’s shareholding will increase to 65% of the Company, with the remaining shares being held by Grupo Eleta.

Inveravante is a Spanish corporation founded in 2007 by well known entrepreneur Mr. Manuel Jové Capellán. Inveravante, a well diversified conglomerate, carries out its activities through two divisions: i) a financial investments division providing liquid assets and allowing for risk diversification; and ii) a “real sector” division which develops and manages a wide range of businesses in distinct sectors, in which Inveravante strives to maintain management control. Avante Genera, Inveravante’s energy arm within the real sector division has a sizeable pipeline of power projects in development stage, with focus on renewable energy generation (solar, hydro and wind).

Grupo Eleta is a Panamanian private foundation created in 2003. The Group was founded by Mr. Fernando Eleta Almarán, a well known Panamanian business man and politician. Grupo Eleta’s main activities comprise: media, energy, real estate, and agribusiness.

The Project cost is estimated to be \$291.7 million, of which \$109 million will be in equity from the Sponsors, \$153 million will be in senior debt, and US\$30 million will be in subordinated debt. The Project is expected to be financed on a 63:37 total debt/equity ratio.

IFC’s investment consists of a \$25 million A loan, a \$ 15 million C Loan and an IFC Swap with an initial loan-equivalent exposure amount of up to \$5.0 million³.

The Pando site is in the upper part of the CVR catchment area (at 184 km²). The main Pando dam would be located about 4 km downstream and west from the city of Volcan, District of Bugaba. The Pando development includes the construction of a 28 m high dam, 150 m long at the crest and 90 meters long at its foundation, that will create a daily regulation reservoir with a total capacity of 900,000 m³, a useful volume of 440,000 m³ with an average storage of 8 hours and covering an area of 180,000 m², a tunnel of 3.0 m in diameter and 5.1 km length, a 2.1 km long penstock and diameters of 2.4 to 1.9 meters; a 60 m high oscillation tank and a powerhouse with 32 MW of installed capacity split in two units. The dam will have water-regulating equipment including ecological flow release valve and an overflow fixed-crest spillway

³ Summary of Proposed Investment (SPI) available at IFC external website: www.ifc.org / for project information see: <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/e036c1b5fb2cb301852576ba000e32bf?opendocument> (Exact financial numbers are subject to change)

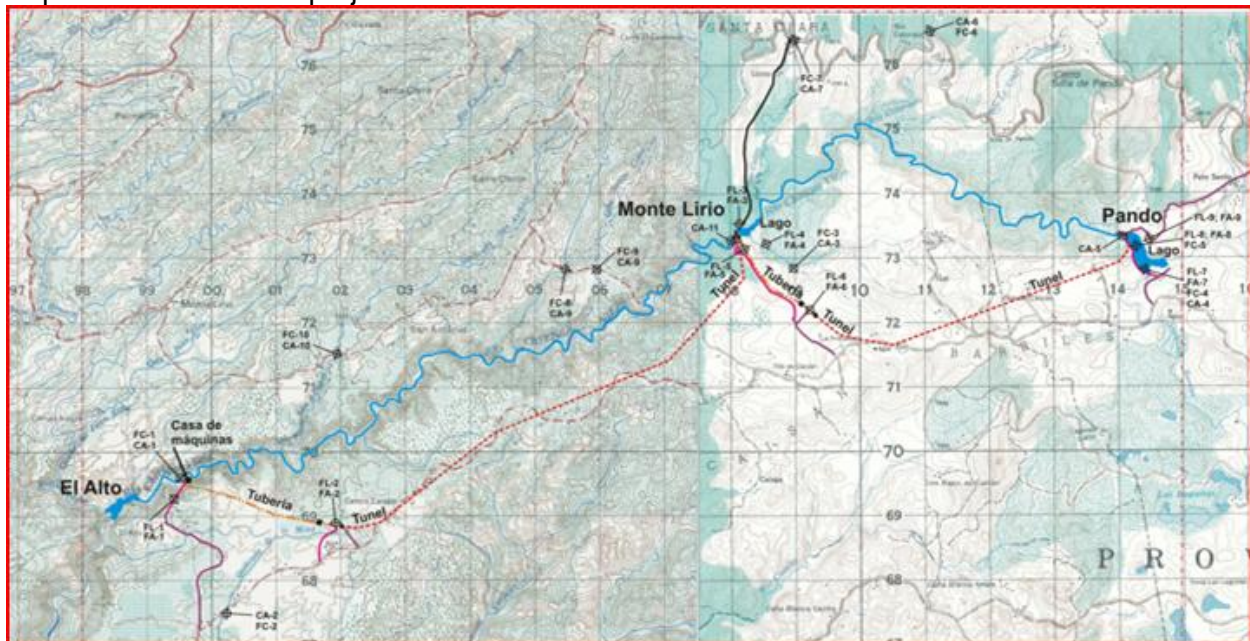
structure. While the Pando dam will have storage for sediment transport from the upper basin for an estimated period of not more than 5 years, it will also have a sluiceway structure for removing sediment that may collect in the vicinity of the power intake. Gross head of the scheme is estimated at 280 meters⁴.

Monte Lirio would be immediately downstream of Pando with a catchment area of approximately 275 km². The location of the Monte Lirio dam will be near the *corregimientos* (small political unit equivalent to villages) of Caizan (Caizan Plaza, Centro and Primavera), Monte Lirio, San Antonio, San Antonio Bajo, Santa Clara and Rio Sereno, all part of the District of Renacimiento. This development includes a 15 m high by 46 m long dam, total capacity of 90,000 m³, and a total surface area of approximately 1,500 m², a tunnel with a 3.2 m diameter and 8.2 km length; a 65.5 m high oscillation tank, penstock of 2.69 km long and diameters of 2.8 to 2.2 m, and a powerhouse with 52 MW of installed capacity split in two units. Gross head of the scheme is estimated at 314 meters⁵.

Additionally, the Project also involves the construction of a 19 km of 230 Kv transmission line from the plant to an interconnection substation with the Central American Interconnection System (SIEPAC).

Along with IFC, the Inter-American Development Bank (IADB) and the Andean Development Corporation (CAF, for its Spanish acronym - *Corporación Andina de Fomento*) are financing the projects of Pando and Monte Lirio.

Map of location area of projects Pando and Monte Lirio⁶:



⁴ Summary of Proposed Investment (SPI) available at IFC external website: www.ifc.org

⁵ <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/e036c1b5fb2cb301852576ba000e32bf?opendocument>

⁶ Map provided by EISA.

2. The Complaint

On January 2010, the CAO received a complaint filed by 16 organizations of farmers, environmentalists, producers and religious and social welfare groups from the Province of Chiriquí. The complaint raised a series of environmental and social concerns regarding the Pando Monte Lirio project financed by IFC. More broadly, complainants are also highly concerned about the cumulative impacts that may result from the development of all approved hydroelectric projects in the CVR watershed, some of which have not started construction (e.g. damage to the environment, the quality and access to water for human consumption and local agriculture, maintaining the ecological flow⁷ without impacting the river's fish and animal species, etc.).

Some of the concerns expressed in the complaint include lack of participative consultation process with communities, lack of a cumulative impact assessment, possibility of flooding to communities downstream, endangering of fish and other species, over-exploitation of water resources and the river, limited community access to water, high levels of sedimentation that affect water quality and downstream water treatment facilities (such as Baru), and negative impacts on the natural landscape and on mangroves located near the mouth of the river in the Gulf of Chiriquí.

In addition, the complaint noted community members' lack of trust and technical deficiencies in the Environmental Impact Assessments (EIAs) conducted by the developer of Pando and Monte Lirio projects, and more broadly a lack of trust in any of the EIAs conducted for hydroelectric projects in the CVR.

The group of 16 local organizations that filed the complaint before the CAO is (in English translation):

1. Foundation for Integrated And Communitarian Development and Conservation Of Ecosystems In Panama (FUNDICEP)
2. Environmental Association of Chiriquí – ASAMCHI
3. Friends of Amistad International Park – AMIPILA
4. Alliance for Environmental Development of the Highlands – ADATA
5. Association of Biosphere Conservation – ACB
6. Association of Export Crop Producers – APCE
7. Association of Producers of Renacimiento – APRE
8. Ecological Group of Renacimiento for the Protection of Amistad International Park - GERPROPILA
9. Association of Agro-Ecological Producers of Amistad– ADPAELA
10. Committee for the Defense of the Chiriquí Viejo River
11. Central Mission of la Concepción – CEMCODE
12. “Colibri” Ecological Association of Panama
13. Macho Mountain Group Of Cuesta De Piedra
14. Ecological Association of La Rovira Organic Producers- ASEPOR
15. Committee for the Defense of the Gariche River and its Tributaries

⁷ "Environmental or Ecological Flow (EF) is the water regime that occurs in a river, wetland or coastal zone to maintain ecosystems and their benefits where there are competing uses of water and where flows are regulated. EF contributes decisively to river health, economic development and poverty alleviation by ensuring the constant availability of benefits that rivers and surface water and groundwater systems contribute to society." Republic of Panama, Official Gazette, Monday, March 27, 2006. N. 25511.

16. Association of Agro-Ecological Producers of Santa Clara – APASSAC⁸

During the interviews conducted for the CAO Ombudsman Assessment, the following four organizations requested to be added to the complaint:

1. Association of Ecological Producers “La Amistad” of Cerro Punta – ASAELA
2. Natural Expeditions Group – GENAT
3. Organic Producers of Cerro Punta – GORACE
4. Parents Association of Río Sereno

In Panama the key national governmental authorities involved in the decision-making process regarding the usage and conservation of natural resources like water and generation of energy are the National Public Services Authority⁹ (ASEP, for its acronym in Spanish – Autoridad Nacional de los Servicios Públicos), the National Environmental Authority¹⁰ (ANAM, for its acronym in Spanish – Autoridad Nacional del Ambiente) and the Secretary of Energy¹¹. Other government entities that are also involved include the Ministry of Health (MINSAs), Ministry of Agricultural Development (MIDA), Ministry of Culture, Ministry of Public Works, the National Institute of Sewers and Aqueducts (IDAAN), and the National Institute of Culture.

According to ANAM and IADB, 19 generation concessions for the possible development of hydroelectric projects on the CVR have been granted; 9 have been granted environmental permits, 7 of which have conducted EIAs (2 are not required to conduct EIAs because they are smaller than 5MW)¹², including Pando and Monte Lirio. Concessions are granted for a period of 50 years.

See below map from ANAM indicating water concessions granted for development of hydroelectric power plant projects.

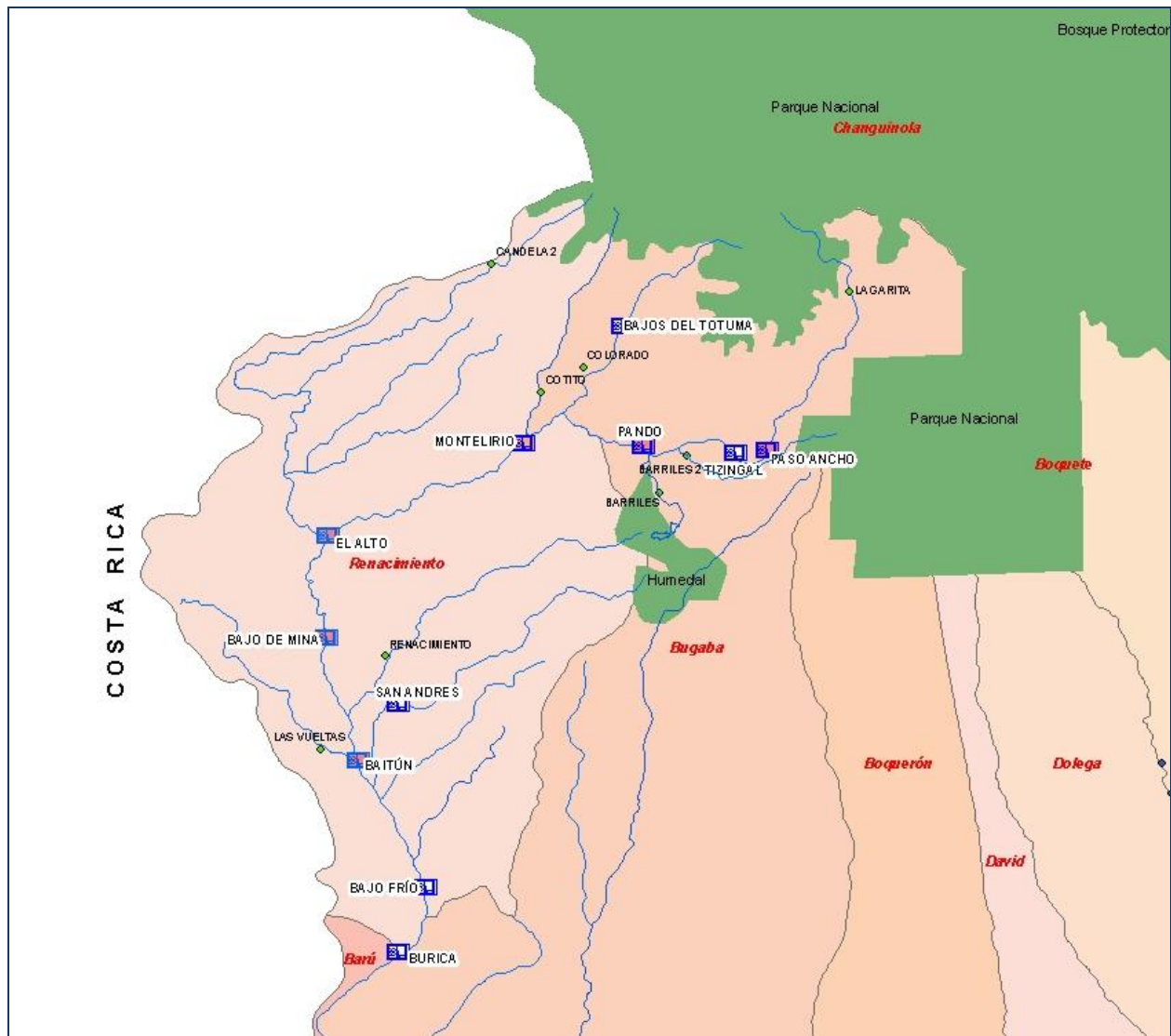
⁸ It should be noted that there were initially 16 signatory organizations, but the Asociación Agroambientalista de Santa Clara organization was later removed, and the CAO confirmed with their representative that they did not wish to be a complainant.

⁹ See www.asep.gob.pa

¹⁰ See www.anam.gob.pa

¹¹ The Secretary of Energy was created by Law No. 52 from the National Assembly on July 30, 2008 (Law was made public through *Gaceta Oficial* No. 26095, July 31, 2008. See: http://www.energia.gob.pa/descargas/comunicado_110907.pdf

¹² Final water and electrical generation concessions are granted by ASEP after approval of projects' Environmental Impact Assessments (EIA) by ANAM. For further information see www.asep.gob.pa, <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35177396> and http://www.anam.gob.pa/index.php?option=com_wrapper&view=wrapper&Itemid=397&lang=en



In summary, the original complaint raised the following issues:

1. Lack of institutional capacity of ANAM/ASEP/Municipal Governments to provide recommendations to the EIAs.
2. Environmental concerns regarding water use and minimum ecological flow discharge: 90% of the river water at the project sites will be used on energy generation and 10% for the ecological flow.
3. Destruction of gallery forest and more general deforestation.
4. Impacts on some aquatic and terrestrial species.
5. High level of sedimentations.
6. Concessions are granted for a period of 50 years without a long-term plan to support communities' needs.
7. Impact on local agricultural projects and producers due to lack of access as concessions grant owners the right for water usage.
8. Impact on access roads due to heavy construction traffic.

9. Cumulative impacts on the Chiriqui Viejo River due to the high number of concessions granted on the river.
10. Health and safety of workers employed by the project

3. CAO Ombudsman Assessment

3.1 Methodology

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainant, to gather information on how other stakeholders see the situation, and to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint. The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.

The CAO assessment of the Pando-Monte Lirio complaint consisted of:

- Review of project documents
- Interviews and small group discussions
- Country missions and project site-visit

CAO conducted a field trip to Panama during the week of June 7th to 11th, 2010. In preparation and during the field trip CAO Ombudsman team reviewed IFC files and project documents, met with complainants organizations, IFC's project sponsor, other affected community members, Panama government officials (national and local, including the Minister of Environment, Secretary of Energy, and the ASEP General Administrator), IFC staff, and staff from the Inter-American Development Bank (IADB). In addition, the CAO Ombudsman team visited the project area.

Individual interviews and small group discussions were held with approximately 44 representatives from all the complainant organizations, the Asociacion Agroambientalist de Santa Clara, approximately 20 other community members, several staff from ANAM and ASEP, two local mayors (*alcaldes*), and several county/municipal (*corregimiento*) representatives. The CAO team also met with investment officers and environmental and social specialists from IFC and IADB, the CEO and several employees of Electron Investment S.A. (EISA) as well as a representative of Fundación Fernando Eleta Almarán (the Panamanian joint venture owner).

The interviews were conducted using semi-structured questionnaires. The CAO team included an international mediator from the Foundation for the Future of Latin America (Futuro Latinoamericano - FFLA) in Ecuador with extensive experience in water-related conflict, two CAO staff, and an interpreter.

A follow up CAO visit to Panama was conducted July12-16, 2010 in order to confirm CAO's understanding of the issues and stakeholder concerns and to assist the parties in reaching an informed decision on a process for addressing the issues raised in the complaint.

3.2 Stakeholders

3.2.1 Complainants

The formal complainants are now 19 organizations – the 15 signatories of the initial complaint letter and the four who requested to be added during the CAO Assessment (see list above in Section 2). The complainants represent their own members and constituencies, including community members living in the project area and neighboring regions. They are primarily farmers, environmentalists, producers, and religious and social welfare groups from the Province of Chiriquí. Complainants estimate that 80% of Panama’s agricultural output comes from this one watershed (no. 102) and agriculture (coffee, vegetables, livestock, dairy, beans, grains, etc.) is the primary source of livelihood for many local residents. As one complainant said, “soil and water are our most important resources – our lives depend on it.”

Based on interviews and discussions with the 19 complainants, the primary concerns underlying the complaint are the following:

- (i) Conducting reliable, credible, and accurate environmental studies for public understanding and informed policy and decision making
- (ii) Keeping the public informed (accessing and disseminating accurate information about the project)
- (iii) Ensuring all community concerns are heard by decision-makers in a timely manner
- (iv) Guaranteeing access to water (for all uses including agriculture and human consumption)
- (v) Protecting the ecosystem and natural resources
- (vi) Promoting long-term sustainable development
- (vii) Minimizing risk and damage from natural disasters (earthquakes, floods, etc.)
- (viii) Ensuring transparent and honest dialogue without fear of retribution
- (ix) Defending worker health and safety
- (x) Providing community benefits equitably

All but one of the complainants expressed their willingness to participate in dialogue with other stakeholders to address issues and solve problems (the Committee for the Defense of the Chiriquí Viejo River informed the CAO that they did not wish to participate directly in the CAO Ombudsman process¹³). Indeed, some complainants have already participated in previous meetings with EISA and IFC. The variety of views among the complainants regarding what might happen if the issues identified in the complaint were not resolved:

- additional hardship of local residents and farmers, and further decline in standard of living;
- inability of many families and farmers to continue to provide for themselves;
- serious environmental damage including the possibility that the CVR would dry up or cease to exist;
- possible lawsuits and/or continued filing of complaints; and
- additional social and environmental conflict.

¹³ The Committee for the Defense of the Chiriquí Viejo River informed the CAO that they prefer to address the issues through local Panamanian institutions. They did request to keep them informed about the process and confirmed that they still support the original complaint.

3.2.2 Other Community Members

As noted above, the CAO also interviewed approximately 20 local community members living near the CVR and project area. Among those interviewed by CAO, there was a range of opinions and knowledge about the Pando-Monte Lirio projects (including strong support and opposition)¹⁴. Residents were generally less informed about the project than the complainants, and shared some (but not all) of the same concerns. Those who were less informed explained that either they learned about public meetings (or even the project itself) at the last minute (e.g. when they observed surveyors already making preparations for construction), or the meetings were held too far away to attend, or they weren't informed at all. Many also had the perception that if they did not support a particular local politician or candidate, they were purposely excluded.

In summary, the most common concerns shared with the CAO by the community members were the following:

- (i) Being informed about the project in a timely manner
- (ii) Having opportunities to participate in community meetings about the project
- (iii) Guaranteeing access to water (for agriculture and/or human consumption)
- (iv) Realizing benefits for the community (social, economic, etc.)
- (v) Increasing employment opportunities

These concerns were largely shared by both supporters and opponents of the projects; the difference tended to be around the degree to which they were already being satisfactorily met or addressed. It is important to note that one community member also expressed concern about possible retribution for not supporting the project.

3.2.3 Electron Investment S.A. (Project Sponsor)

The representatives of Electron Investment S.A. (EISA) and Fundación Fernando Eleta Almarán (the Panamanian joint venture owner) acknowledged that complainants had raised some legitimate concerns and questions (while also noting that they strongly dispute some claims). EISA also expressed their willingness to meet and talk with the complainants and other relevant stakeholders to address their concerns. Indeed, from their perspective, they have already done more engagement and consultation than required by IFC and Panamanian law (and much more than other hydroelectric projects in Panama, with the possible exception of Changuinola). Because they have held themselves to such a high standard and have expended great effort and significant resources to “do the right thing”, EISA management is very disappointed that they have been the target of a complaint and criticism. They feel as though they are being unfairly singled out. They are quite proud of the work already done by the Community Development Committees (CDCs)¹⁵ and the documentation of those efforts.

EISA noted the importance of clearly defining what is in their direct control and what can be addressed by them and what cannot (for example, development of watershed policies is outside of their authority and area of expertise). They emphasized that the project will comply with the

¹⁴ It should be noted that that these were informal interviews and conversations, and not a scientific or statistically validated survey.

¹⁵ Beginning in February 2010, EISA created four CDCs (one each in Caizan, Monte Lirio, Santa Clara/Rio Sereno, and Volcan) for the purpose of creating a communication mechanism with the local communities, identifying social investment projects, implementing social aid programs, and involving the community in reforestation and mitigation measures.

ecological flow rates as defined by current Panamanian law and regulations (i.e. 10%) and indeed the success of their business depends on it. They are also willing to contribute their ideas, experience, and expertise to addressing relevant issues that may not be in their direct control.

As part of any collaborative problem-solving process, they also feel it is important to address how Pando-Monte Lirio fits into the overall picture. For example, they do not want to be held responsible for all problems on the CVR or the actions of other hydro project sponsors. They are, however, “willing to continue to consider mitigation measures that make sense, make a difference, and are required by all.”

In summary, EISA’s main concerns are (the order does not necessarily imply priority or level of importance):

- (i) Keeping project on schedule
- (ii) Complying with IFC standards and policies and the agreed-upon Environmental and Social Action Plan (as well as other IFI’s and Panamanian law)
- (iii) Ensuring project is financially and operationally successful
- (iv) Maintaining good relations with government agencies and local communities
- (v) Being a “best in class” model for corporate community engagement and sustainable hydroelectric development
- (vi) Avoiding retribution and managing risk effectively (e.g. preventing continued openness and information-sharing from being used against them)

3.2.4 Government of Panama (ASEP, ANAM, and Secretary of Energy):

The three primary national government agencies and entities that are involved in making decisions and/or providing input and expertise on the issues related to the complaint are: the National Environmental Authority (ANAM), the National Authority for Public Services (ASEP), and the Secretary of Energy.

The National Environmental Authority (Autoridad Nacional del Ambiente – ANAM per its acronym in Spanish) is an autonomous State entity created by Law Nr. 41 – Panama’s General Environmental Law - on July 1, 1998. ANAM’s main role is to guide, facilitate, supervise and provide environmental management for sustainable development with the objective of conserving, protecting, restoring, recovering, and improving the environment and the basis for natural resources in Panama. In addition, ANAM’s other responsibilities are: 1) lead and coordinate the institutions and organizations with environmental mandate; 2) propose policies, laws, norms, and tools for environmental management, as well as lead, supervise and implement such governmental policies, strategies, laws, and environmental programs; 3) provide environmental information; 4) promote a sustainability culture and developing capacities; 5) establish the scope, guides and terms of reference for the implementation of declarations, assessment and environmental impact studies, their evaluation and producing the pertinent resolutions; and 6) promote citizen participation¹⁶.

The National Authority for Public Services (Autoridad Nacional de los Servicios Públicos – ASEP per its acronym in Spanish) is an autonomous State entity created by Law Nr. 26 – Public Services Regulator Entity – on January 29, 1996 to regulate public services in Panama. ASEP’s main role and responsibility is to comply and ensure compliance of legal norms related to the

¹⁶ See: Law Nr. 41 from July 1, 1998 – articles 5 and 7; also ANAM’s web site: www.anam.gob.pa

provision of public services and its quality. ASEP also grants concessions, licenses and authorizations for the provision of public services, including electricity, under its mandate in accordance with the law; ensures its operational and managerial efficiency; applies tariffs; disseminates users' rights and duties; receives complaints about provision of public services; applies sanctions; serves as an arbiter of disputes between public service providers and customers, and in general intervenes when established by the Constitution or sector norms; and provides support to relevant authorities regarding possible monopolistic, anticompetitive or discriminatory conduct by companies and entities providing public services¹⁷.

The office of Secretary of Energy was created by Law Nr. 52 – Creation of the Secretary of Energy and other provisions – on July 30, 2008. The Secretary's main role is to promote, in the most beneficial manner for Panama's citizens, the adoption of measures to ensure permanent provision of energy. Additionally, it proposes laws and regulations to promote energy generation at the lowest possible prices and measures for a more efficient usage. More generally, it coordinates with pertinent institutions to discuss energy matters in a timely and expeditious manner¹⁸.

The CAO interviewed the heads of each of these entities, as well as several staff members. While there was disagreement with some claims made in the complaint to the CAO, all government representatives interviewed for the assessment were willing to participate in meetings or other forums with stakeholders to provide information, answer questions, address issues and solve problems. They also noted that the Pando-Monte Lirio projects have consistently complied with Panamanian law and regulations and felt that the claimants' claims must be substantiated.

Consistent with the Government's overall energy policy and international agreements, the primary objectives expressed by the national government representatives included:

- (i) Providing sufficient, reliable, and predictable energy supply for the Panamanian economy and society
- (ii) Strengthening Panama's energy independence
- (iii) Keeping the public informed and disseminating accurate information about projects, strategy, and policies
- (iv) Protecting the ecosystem and promoting sustainable development

The government also observed that complainants and EISA (indeed, all hydroelectric sponsors) share a common interest in protecting the Chiriqui Viejo River and volume of water flow.

3.2.5 Local government authorities (Renacimiento and Bugaba)¹⁹

Local government authorities in the Renacimiento and Bugaba Districts (where Pando and Monte Lirio are located) have regular interaction with the project and see themselves as primary stakeholders. Their direct role in the project includes providing construction permits and

¹⁷ See: Law Nr. 26 from January 29, 1996 – articles 1 and 19; also ASEP's web site: www.asep.gob.pa

¹⁸ See: Law Nr. 52 from July 30, 2008, and also Secretary of Energy's web site: www.energia.gob.pa

¹⁹ The complainants noted that local government authorities from the Baru District, located downstream of Pando and Monte Lirio, may also need to be consulted at some point in the dialogue process to address potential downstream impacts.

setting local tax rates. They also assist in addressing residents' concerns and questions related to the project and they support EISA in establishing and convening the Community Development Committees (CDCs).

Local government representatives generally viewed EISA as very cooperative and providing great benefits to the community; one even noted that he "would like to see other companies do what they do." They also noted that while they support the Pando-Monte Lirio project, they did share concerns about limiting overall hydroelectric development on the CVR.

The local mayors (*alcaldes*) and representatives expressed a strong desire to be included in the CAO Ombudsman process and any ongoing problem-solving efforts. The main concerns they expressed were:

- (i) Ensuring all community concerns are expressed and heard by decision-makers
- (ii) Keeping the public informed (accessing and disseminating accurate information about the project)
- (iii) Ensuring project compliance with permit requirements and Panamanian laws and regulations
- (iv) Realizing benefits for the community (social, economic, etc.)
- (v) Responding to constituent requests and inquiries

3.2.6 International Finance Corporation (IFC)

As noted above, IFC is providing financing to EISA for the Pando-Monte Lirio project. IFC's mission is to promote sustainable private sector development in developing countries, helping to reduce poverty and improve people's lives. IFC believes that sound economic growth, grounded in sustainable private investment, is crucial to poverty reduction.

While managing social and environmental risks and impacts in a manner consistent with the IFC Performance Standards²⁰ is the responsibility of the client, IFC seeks to ensure that the projects it finances are operated in a manner consistent with the requirements of the Performance Standards.

Among IFC's responsibilities are: (1) to review the client's assessment; (2) to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards; (3) to help identify opportunities to improve social and environmental outcomes; and (4) to monitor the client's social and environmental performance throughout the life of IFC's investment. IFC also discloses information relating to its own institutional and investment activities in accordance with its Policy on Disclosure of Information.

As noted above, the IFC Investment Officers and Environmental and Social Specialist for the Pando-Monte Lirio project were interviewed as part of the CAO assessment. The primary concerns of IFC related to the issues in the complaint are:

- (i) Financing an environmentally and socially sustainable project that is good for the people of Panama
- (ii) Ensuring compliance by EISA with IFC standards and policies

²⁰ IFC's Performance Standards define clients' roles and responsibilities for managing their projects and the requirements for receiving and retaining IFC support. See <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>

- (iii) Ensuring project is financially and operationally successful
- (iv) Maintaining good relations with sponsor, government agencies, and local community
- (v) Preserving a positive institutional reputation and mitigating reputational risk
- (vi) Resolving issues efficiently and in a fair balanced manner (i.e. collaborating with all stakeholders so that their responsibilities are within their scope of action)

IFC noted that EISA had conducted extra consultations at their request and as an integral part of the Environmental and Social Action Plan (ESAP) because they realize its importance. IFC Investment Officers and Environmental and Social Specialist believe that most (if not all) of the issues in the CAO complaint that could be applicable to either the Pando and Monte Lirio Project, or the IFC, were detected during the Project appraisal, discussed and documented at length in all project documentation, and disclosed to Management and the Board of Directors prior to Project approval. They emphasize that continued management of these issues is included in the agreed ESAP. They further noted that the ESAP was disclosed in IFC's webpage 60 days prior to Board approval, it is an integral part of the Legal Agreement, and its continued compliance is being closely monitored. IFC further noted that EISA compliance with a series of conditions is required prior to agreeing to First Disbursement, which is not expected until the first quarter of 2011.

3.2.7 Inter-American Development Bank (IADB)

The Inter-American Development Bank (IADB) is providing long term financing to the Pando-Monte Lirio project, and the complaint received by CAO was also submitted to their Independent Consultation and Investigation Mechanism (known by its Spanish acronym, MICI) by the same complainants. The new policy establishing MICI was approved by IADB in February 2010 and they are still in the process of hiring staff and launching the new mechanism.

While the CAO has no formal authority or mandate to respond to IADB complaints, as both a courtesy and practical matter, CAO has coordinated closely with the IADB staff (including the Investment Officer, Safeguard Specialist, and Country Representative) and MICI throughout its eligibility screening and assessment. Both IFC and IADB staff have emphasized the importance of their close cooperation and coordination with one another, and have asked the CAO to continue to work with them and include them in relevant communications and meetings. IADB has also expressed their willingness to participate in ongoing collaborative problem-solving through the CAO Ombudsman process.

The IADB's concerns, as expressed to CAO, are largely consistent with IFC's concerns with one significant difference related to their role and relationship with the Government of Panama in the design and implementation of development options:

- (i) Enhancing long-term development benefits and ensuring that all IADB operations and activities are environmentally sustainable
- (ii) Keeping project on schedule
- (iii) Complying with IADB standards and policies
- (iv) Ensuring project is financially and operationally successful
- (v) Maintaining good relations with sponsor, government agencies, and local community
- (vi) Preserving a positive institutional reputation
- (vii) Assisting the Government of Panama in promoting sustainable development (especially renewable energy)

3.3 Summary of Issues

This section summarizes the views expressed by the various stakeholders and organizes them around a manageable set of the most pertinent issues. The purpose is not to validate or deny any issue but rather to describe the issues the parties need to address from their various perspectives.

The issues have been grouped as follows (not necessarily in order of importance):

- i. Public consultation and project-related communication
- ii. Environmental and social impact, studies, analysis, and monitoring
- iii. Watershed governance and decision-making
- iv. Impacts on local access roads from heavy construction traffic

Most stakeholders noted the importance of discussing these topics in a way that distinguishes what is relevant to the Pando-Monte Lirio specifically and what relates to overall hydroelectric development on the CVR more generally.

Public consultation and project-related communication. The complainants are concerned that Pando-Monte Lirio project community engagement and consultation efforts conducted to date have been limited, inadequate, and largely symbolic. The government and EISA dispute that claim and EISA is confident that they have conducted more public informational forums and community outreach than required and more than any other hydroelectric project in Panama (with the possible exception of Changuinola). Many community members and complainants interviewed by CAO were not aware of the CDCs established by EISA. Some stakeholders also expressed concern that community members who do support the project may have been influenced by the community development projects undertaken by EISA and the CDCs (water aqueducts, school building renovations, new electricity lines, etc.) and/or the fear of losing those benefits. EISA stresses that the CDCs and community benefit projects have been conducted transparently with the active participation of local residents and municipal officials.

Community members also expressed interest in receiving current and accurate information on topics such as employment opportunities, construction schedules, availability of water, etc. EISA feels it is making a good faith effort to engage with the community and has recently established a local community relations office in Caizan to further those efforts and facilitate better communication and information dissemination. IFC and the governmental representatives (both local and national) are very interested in having the public be as informed as possible and having the community engagement efforts be as genuine and meaningful as possible. Interviewed community members described a need to clarify roles and responsibilities among all the major decision-makers (investors, company management, government regulators, permit/license procedures, etc.), and to identify to whom they should turn when projects cause direct damages or other problems.

Environmental and social impact, studies, analysis, and monitoring. This issue is separate, yet closely related to the aforementioned issue around consultation and project-related communication. Two aspects identified by stakeholders were (1) availability and dissemination of environmental studies and reports and (2) facilitating broad public understanding of technical and scientific data (ecological flow, water balance, environmental impacts, off-stream and in-stream uses, biodiversity, hydro-biological data, energy supply and demand, etc.). Furthermore, complainants question the quality and credibility of previous studies that have been conducted. Several stakeholders also voiced the need for a comprehensive and detailed cumulative impact study of hydropower development on the CVR. Stakeholders also emphasized the importance of ongoing monitoring of

impacts during construction and after the plants are operational (indeed, ANAM and ASEP officials stress that they have already been doing monitoring).

Watershed governance and decision-making. Many concerns raised by various interviewees relate to how the overall watershed is managed, especially integrated and coordinated management and development of water and other natural resources in the area (including coordination by the regulators and between all the private sector CVR hydroelectric developers). Complainants expressed a desire for significant public participation in overall watershed governance and decision-making.

Panama has regulated its water since 1966, when it passed Law 35, and other laws in this regard were enacted through 1997. The Law of August 5, 2002 (“Ley de Cuencas”) establishes the overall institutional and governance framework at the scale of river basins, including: a) development of a Management Plan for the Development, Protection and Conservation of the River Basin; b) development of a Environmental Master Plan for the River Basin; c) establishment of a basin committee and technical sub-committees with stakeholder representation. The country has an overall policy and legal framework, and together with the IADB, has developed hydrological studies of Panama’s hydroelectric potential, including a hydrological balance study of the CVR, (which was one of the instruments used by the Government to validate their concession program). However, many stakeholders see the policy approach explicitly related to watershed management and integrated water resource management as unclear.

Impacts on local access roads from heavy construction traffic. Complainants expressed concern about potential impacts on local access roads from construction traffic related to the Pando-Monte Lirio project. Some local residents perceive that promises made regarding local road repairs and improvements related to other projects in the area were not fulfilled. Thus, there is a desire for specific commitments and guarantees for any road damage related to Pando-Monte Lirio.

3.4 Possible Alternatives for Consideration

During the assessment interviews, stakeholders expressed a number of suggestions and options that might resolve the issues in the complaint. CAO provides a summary of those alternatives below, but emphasizes that there is not yet agreement or consensus on any of these options or who would bear the cost of their implementation. The list of ideas presented here is only a possible starting point for discussion and is not exhaustive:

1. Conduct additional, iterative educational and informational events regarding the Pando/Monte Lirio project in particular, and hydroelectric development in general, for the local community.
2. Involve NGOs and local community residents in monitoring of project implementation.
3. Involve and coordinate with stakeholders (especially local community members) through integrated water resource management led by the Government of Panama.
4. Evaluate and analyze recommendations from the Inter-American Development Bank Report, “Preliminary Study for the creation of a Framework for Evaluating the Potential Accumulative Impacts of Hydropower Development Concessions in Chiriquí Viejo River Basin – Panama”²¹ and other related studies.

²¹ See <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35177396> and <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/2B66650654EF01A7852576BA000E32C0>; IFC also contributed to the study.

5. Consider working with all hydroelectric project sponsors to help coordinate the implementation of measures for the management of river otters and migratory species and other flora and fauna rescue and relocation efforts .
6. Review whether any additional hydroelectric concessions and/or projects should be allowed on CVR.
7. Clarify, strengthen, or establish inter-institutional coordination mechanisms for watershed management and integrated water resource management.
8. Involve trusted, independent experts in any future impact and environmental studies.
9. Conduct a detailed, comprehensive cumulative impact study of hydropower development in the CVR basin.
10. Address how to repair/improve any local roads that are used for (or damaged by) construction vehicle traffic.
11. Research possible outside funding sources (international donors, foundations, etc.) to support environmental activities such as reforestation.
12. Clarify how to measure and explain “ecological flow”.

Some complainants have called for an immediate moratorium on all hydroelectric projects. While this may be an option worth considering, it cannot be a basis for collaborative resolution of this specific complaint through the CAO Ombudsman process.

4. Conclusion & Next Steps

4.1 Conclusion

Based on CAO’s meetings with all the key stakeholders, there is a broadly recognized need for a new collaborative process that provides an opportunity for all key stakeholders to engage in constructive dialogue and problem solving around the issues raised in the complaint. Furthermore, the principal parties have all agreed to continue with the CAO Ombudsman process. Therefore, CAO is proposing a course of action below.

For all participants to be able to engage in a meaningful way, significant preparation is required. Furthermore, before the group can engage effectively in problem solving, some basic data and information on the project need to be shared, discussed, and understood (e.g., defining technical and/or financial terminology, review of existing studies and reports, understanding regulatory and policy implications, etc.). This mutual exchange of information will build on existing publicly available documents and information that has already been shared and disclosed, will be part of the CAO Ombudsman process and will lay the foundation for a more focused discussion among the participants.

A structured, collaborative dialogue process should follow rules agreed upon by all parties and utilize an independent mediator/facilitator. The CAO consultant and CAO staff will serve as the independent facilitators. Draft ground rules to be followed in all the sessions will be provided by CAO and changes can be made at any time with the consent of all parties. The joint meetings should take place at a neutral location.

4.2 Next Steps

The proposed next steps are based on a combination of stakeholders' suggestions and CAO’s expertise in conflict management. The proposed process is not exclusive, and the different stakeholders should provide comments and make suggestions for changes if needed.

I. Confirm Stakeholder Participation

The complainants (with the one exception noted above) and EISA have confirmed their willingness to continue with the CAO Ombudsman process. Although the other stakeholders have also indicated their willingness to participate to the CAO Ombudsman team, exact roles, participants, representation, and other details need to be confirmed.

II. Preparation of Stakeholders

CAO will support and work with the stakeholders to prepare for effective and constructive engagement with one another. This support may take a variety of forms including, but not limited to:

- Planning for internal (“intra-stakeholder”) decision-making, representation and communication with constituents
- Finalizing ground rules
- Identifying and addressing data needs
- Clarifying roles
- Defining goals and strategies
- Addressing logistical matters
- Providing capacity-building or training (in communication, negotiation, “interest-based” problem-solving, etc.)

III. Information-sharing and mutual education

CAO would convene an information-sharing and mutual education session for all key parties. The goal of this event/stage is NOT to resolve the issues or negotiate. The purpose is to provide parties with an opportunity to:

- exchange and share relevant data
- ask questions
- gain a better understanding of technical data, the situation overall and what has happened to date
- hear how everyone has been affected
- delineate macro issues related to the CVR overall and those that are specific to Pando-Monte Lirio
- clarify areas of disagreement
- agree on any additional data needs

IV. Problem-solving Dialogue

CAO would convene and facilitate a dialogue process to resolve any outstanding issues and assist the parties in deciding how to improve the situation going forward.

4.3 Proposed Schedule

This is a tentative timeline and actual dates may vary.

Activity/Event	Date
Confirm Stakeholder Participation	July-August 2010
Preparation of Stakeholders	July – September 2010
Information-sharing and mutual education workshop/session	late September/ early October 2010
Problem-solving Dialogue	October-December 2010