**‘Responsible Exit?’**

**Why the IFC cannot just walk away from harms its investment caused in Guatemala**

**10 June 2020:** The independent watchdog for the World Bank’s private sector lending arm, the International Finance Corporation (IFC), today [published an investigation](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=241) into a dam project in Guatemala, cataloguing IFC’s dereliction of its duties and obligations to prevent harm to the local indigenous communities.

The investigation, by theCompliance Advisor Ombudsman (CAO), was prompted by affected communities filing [a case in 2015](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=241), alleging significant social and human rights impacts, including project-related conflict, resulting in the death, serious injury and imprisonment of community members linked to an IFC investment.

CAO concludes, **“*Though aware of project impacts during the period of financing, IFC did not engage with its client to ensure that residual impacts of the project were assessed, reduced, mitigated, or compensated for, as appropriate, including at project closure, as required by the Performance Standards and the Sustainability Policy.”[[1]](#footnote-1)***

***“In these circumstances, contrary to the intent of IFC’s Sustainability Policy, adverse impacts have been left to fall on the community.”[[2]](#footnote-2)***

IFC has protections in place to ensure its investments “do no harm” and ensure “that the costs of economic development do not fall disproportionately on those who are poor and vulnerable.”[[3]](#footnote-3) However, IFC has struggled to ensure its financial intermediary (FI) clients, who now make up around 62% of IFC’s total lending portfolio (as opposed to direct project finance) apply its environmental and social standards.[[4]](#footnote-4)

IFC invested in the USA-based Corporación Interamericana para el Financiamiento de Infraestructura (CIFI) in 2008[[5]](#footnote-5), which in turn funded the Canbalam dam in Huehuetenango, Guatemala, in 2011.[[6]](#footnote-6) The local population there is predominately indigenous, many living in poverty or extreme poverty. Huehuetenango experienced significant violence during the Guatemalan civil war from 1960 to 1996, with more than 10,000 people killed, a majority of them indigenous.

The 52-page CAO investigation catalogues a series of failures by the IFC to uphold its own policies and to ensure no harm befell the communities of Santa Cruz Barillas, Huehuetenango, despite the high-risk post-conflict context and the presence of vulnerable indigenous communities. While accepting some of the CAO’s findings, the IFC’s response to the investigation denies the project’s link to the violence and repression suffered by local communities. IFC therefore takes no responsibility and offers no remedy in its response.

**CAO findings**

CAO finds that **IFC failed to uphold its own policies and procedures in relation to due diligence, monitoring and supervision, breaching its Sustainability Policy and its Performance Standards**, especially as regards indigenous peoples, consultation, and use of security guards:

1. **When CIFI filed a serious incident report to IFC, following the fatal shooting of local peasant farmer Andrés Pedro Miguel, IFC failed to respond or follow through**. The first time CIFI communicated with the IFC about the impacts of the Canbalam project was in its serious incident report of June 2012. CAO notes, *“There is no record of IFC following up with the client in relation to the incident report,”*[[7]](#footnote-7) despite the fact that, *“Once the client informed IFC in June 2012 of the violent incidents of May 2012, IFC had a duty to respond.”* Specifically, IFC’s obligations included ensuring an analysis of the root causes of the problem and plans to prevent it happening again.[[8]](#footnote-8) [[9]](#footnote-9)
2. CAO concludes: “***IFC did not take measures … to ensure that the client was properly applying the Performance Standards to the project, following the violent incidents of May 2012.”*** CAO notes, *“Specifically, IFC did not: (a) schedule a site visit to the client or the project; (b) document a review of the client-commissioned Social Monitoring Report; (c) review the client’s ESMS [Environmental and Social Monitoring System] implementation in relation to the project; (d) ensure the client had in place an adequate remedial action plan for the project; and (e) remain informed of ongoing implementation of project-level remedial actions.”*[[10]](#footnote-10)
3. **Because IFC did not engage with CIFI at this stage, IFC failed to ensure the project could meet its Performance Standards**, specifically regarding the use of security forces (PS4), and assessment on impacts on indigenous peoples (PS1 and PS7). In particular, CAO notes that IFC failed to *“address project impacts throughout the project cycle including at project closure (PS1 para. 6)”.*
4. **Despite being informed about significant violence and problems at the project site, IFC only engaged with CIFI once about social and environmental issues**. IFC’s only recorded engagement with CIFI about the Canbalam project was in March 2013, in relation to concerns around the quality of the project’s environmental and social review.[[11]](#footnote-11) [[12]](#footnote-12)
5. **Despite being aware that CIFI repeatedly failed to meet IFC’s standards and lacked the capacity to ensure social and environmental protections were applied at project level, IFC did not take effective action to address these shortcomings.** As a result, the CAO concludes, “*Nine years after making its investment, IFC has yet to assure itself that the client is operating the ESMS as envisaged at the time of appraisal or that its client has applied the applicable performance requirements to their sub-projects.”*

**The IFC’s response**

The management of the World Bank and IFC have taken a long time to respond officially to this report. Completed in December 2018, the CAO’s investigation was initially replied to by the IFC in early 2019. This response then got delayed by passing through the offices of 2019’s three World Bank Presidents, before a Board meeting in October 2019 and another in February 2020 requested the IFC to revise its response.[[13]](#footnote-13)

Affected communities, who initially filed the complaint in July 2015, have had to wait five years to hear the result.

Was it worth it?

On the one hand, the CAO vindicates the communities’ concerns: that they suffered violence, intimidation and repression after this project began, and that significant social impacts remain to this day; and also that the IFC failed in its duties and obligations to ensure that its investments did no harm, especially in the context of poor and vulnerable communities in a high risk, post-conflict context. On the other hand, however, the IFC takes a different view. Its response rests on four arguments:

* The first, that many of the issues raised by the CAO – for example, risk management and contextual risk analysis - **have been addressed by IFC in its reforms over the last 12 years** since project construction started. This is to some degree true – the IFC has indeed made significant and much-needed reforms to its financial intermediary lending. But these reforms come too late to address the harms suffered by the communities of Santa Cruz Barillas.
* The second, that this was an *indirect investment*, so **IFC cannot be expected to respond in the same way it would to a direct investment**. CAO claims that when CIFI filed a serious incident report to IFC, following the fatal shooting of local peasant Andrés Pedro Miguel, IFC failed to respond or follow through, though it had a duty to do so. In response, IFC argues that this duty to respond only applied to its *direct* investments, and in this case, it believes its client responded effectively. This is cold comfort to community members whose partners were injured and imprisoned or who suffer ongoing health issues.
* The third argument is that in future, **IFC will learn lessons in terms of responding to serious incidents, and how to exit investments responsibly**. This is welcome and will perhaps help in addressing problems encountered in future projects. Systemic reforms based on lessons learned are fundamentally important in avoiding repeating the same mistakes over and over. But future learning of lessons does not address the impacts suffered and still being suffered by communities affected by the Canbalam project today.
* Which brings us to the IFC’s final argument: that **the Canbalam project is not responsible for the terror, violence and repression that convulsed communities around the project site from 2012**. [[14]](#footnote-14) The IFC argues that there is nothing to link the project and the company building the dam (Hidro Santa Cruz or HSC) with the upsurge in repression and the state of siege declared by the Guatemalan government in May 2012. This last argument is insulting to the affected communities and frankly absurd. By denying this link, IFC can wash its hands of any responsibility for the suffering of local communities then and now – and therefore refuse to do anything about it in its response.

In denying that the project is associated with the violence and repression that was visited on local communities, the IFC relies on a 2013 report on Guatemala by the United Nations (UN) High Commissioner for Human Rights.[[15]](#footnote-15) IFC quotes the UN several times in its defence: “*The United Nations investigations did not identify HSC as responsible for any abuses”* and *“The United Nations review did not identify HSC as a responsible party.”* Presumably, the United Nations report to which the IFC refers comprised an in-depth investigation by the UN of the causes of the violence in Barillas? On the contrary: the UN report in fact highlights instances of human rights abuses in Guatemala, including in Barillas; expresses concern over the impacts on indigenous peoples; calls for the actions of non-state actors including companies to be investigated; and appeals to companies to respect the rights of indigenous peoples.[[16]](#footnote-16) **The UN report never set out to investigate the role of HSC in the abuses suffered by local people, but does draw attention to their plight. By using that report as a means of exculpating HSC and by extension itself, the IFC is stooping to a new low.**

**Residual harm**

CAO points out that although the project was abandoned in December 2016, **“available evidence supports the complainants’ assertion that residual impacts remain.”[[17]](#footnote-17)** Local communities have continued to call for justice and for the impacts of the project on their communities to be remedied. In particular, the violent and repressive response to the protests against the project continues to traumatise communities today.

From as early as July 2009, there was significant community opposition to the project,[[18]](#footnote-18) and in April 2012, 4,000 local people demonstrated against the dam.[[19]](#footnote-19) Following the fatal shooting of Andrés Pedro Miguel and severe injuries to two others in May 2012, the Guatemalan government declared a state of siege in the area. During this time, the affected communities in Barillas suffered a state of terror. CAO writes “The declaration of a state of siege brought a significant presence of military and national police in Barillas; reports range in figures from 500 to 900 combined deployment of police and military. During the 18 days that the state of siege was in effect, it was reported that the military and police carried out numerous house searches and raids, at times with no warrants, questioning the residents including children, which were accompanied by the use of excessive force, material confiscation, threats, and insults.”[[20]](#footnote-20)

CAO notes that in October 2012, CIFI’s own consultant reported on the significant negative impacts of the project on local communities. The consultant “noted that misconceptions among local communities regarding the project combined with insufficient and inadequate communication between HSC, local communities, and other stakeholders had led to growing opposition to the project. The report stated that these issues were compounded by regional and national political issues such as indigenous rights, the use of military in response to project-level incidents, and the role of international private investment in rural indigenous areas of Guatemala. **The report concluded that the development of the project had generated significant negative impacts in the social context of the project area**.”[[21]](#footnote-21)

**Failure to meet Performance Standards**

CAO notes that the CIFI consultant’s report found evidence that the project had not ensured Free Prior and Informed Consent of indigenous peoples, had not respected the result of local community consultations, had used public and private security personnel improperly, and that security forces were allegedly involved in violent crime.[[22]](#footnote-22)

In terms of whether the Canbalam project met IFC’s Performance Standards, CIFI’s own due diligence report noted the absence of a social impact assessment or socio-economic baseline study*. “This type of information is required in order to assess the impact of a greenfield hydropower project such as Hidro Santa Cruz in accordance with the Performance Standards.”* Without this information, CAO notes, *“it is not possible to determine the project’s alignment with the Performance Standards requirements regarding consultation (under PS1 and PS7) or assessment of impacts on Indigenous Peoples (under PS7). Further, neither project documentation nor the client’s ESDD [Environmental and Social Due Diligence] commented on the project’s approach to security (as required by PS4).”[[23]](#footnote-23)*

**Due diligence failings**

CAO finds that IFC failed to carry out its duties and obligations regarding its due diligence on its financial intermediary client, CIFI: *“IFC’s review and supervision of its investment in CIFI were not sufficient to provide assurance that CIFI was consistently applying the Performance Standards to its investments“*[[24]](#footnote-24) and *“IFC’s pre-investment E&S review was not commensurate to risk*.”

As a financial intermediary investment, IFC had to ensure that CIFI would have the capacity to meet IFC’s social and environmental protection standards.[[25]](#footnote-25) The CAO finds that the IFC failed to do so:

* CIFI did not have any staff dedicated to environmental and social issues: this job was covered by an investment officer.[[26]](#footnote-26) Although CIFI had 26 high and medium risk projects in its portfolio, IFC did not consider whether it was appropriate for its client to have no staff solely responsible for environmental and social risk management;[[27]](#footnote-27)
* Though IFC checked that CIFI had policies in place on environmental and social protection, IFC did not check whether CIFI could actually put those policies into practice;[[28]](#footnote-28)
* IFC did not look at CIFI’s track record of assessing, monitoring or implementing environmental and social protections.[[29]](#footnote-29)

CAO concludes, ***“As a result, IFC did not have assurance that the client’s ESMS implementation was sufficient to ensure that higher risk investments it planned to finance, such as Canbalam I, would meet the requirements of the Performance Standards”.[[30]](#footnote-30)***

**Post-investment supervision shortcomings:**

 ***“From August 2008 through April 2010, IFC made a series of disbursements to the client despite indications of non-compliance with IFC’s E&S requirements.”[[31]](#footnote-31)***

CAO notes that, *“IFC did not take any action to address reported gaps in the client’s ESMS implementation prior to completing its first disbursement in August 2008, a key point of leverage as noted by IFC E&S staff at the time.”*

IFC’s review of CIFI’s 2010 annual report classified it as ‘partly unsatisfactory’, since CIFI had failed to ensure environmental and social protections were implemented in projects it supported, it had misclassified a high risk project as lower risk, and when “very significant” problems had occurred, CIFI had not taken action. In total, the IFC had to engage CIFI about 15 of its investments where there were problems.[[32]](#footnote-32) By the time of its review of CIFI’s 2011 report, IFC assessed its client as ‘unsatisfactory’ – the lowest rating a client can receive.[[33]](#footnote-33) Not only had CIFI failed to implement IFC’s recommendations, but a third party consultant had found that a majority of CIFI’s projects were failing to meet environmental and social standards. CIFI scored ‘partly unsatisfactory’ in the two subsequent IFC reviews of 2012 and 2013. IFC noted that in nine of CIFI’s investments, there had been no reporting on environmental and social impacts.[[34]](#footnote-34)

Therefore, over the period in which its investment was disbursed, ***“CAO finds that IFC did not meet the requirements of the Sustainability Policy (para. 26) for project supervision, particularly requirements to identify and correct non-compliance with IFC’s E&S requirements.”***

Even when IFC noted problems, it did not work with the client to produce a corrective action plan until 2015 – and even then, did not check whether it was actually being implemented.[[35]](#footnote-35)

***“Nine years after making its investment, IFC has yet to assure itself that the client is “operating the ESMS as envisaged at the time of appraisal” or that its client has “applied the applicable performance requirements to their sub-projects”*** (ESRP 9.2.6). ***Further, CAO finds that IFC has taken insufficient action in a timely manner to support its client in establishing compliance with IFC’s requirements*** (Sustainability Policy, para. 26).**”[[36]](#footnote-36)**

**Responsible Exit**

The IFC’s response does admit some failures, for example in contextual risk analysis, monitoring of its client, and Environmental and Social supervision. Its Action Plan offers to address some systemic issues highlighted by the CIFI case: for example, by defining IFC’s approach to ‘responsible exit,’ developing guidance on incident response for FI clients and improvement of Environmental and Social Review Procedures. Such systemic efforts are welcome, as are the many reforms IFC has undertaken to improve its E&S risk management in the 12 years since IFC’s investment in CIFI.

However, since IFC denies any link between the project and the intense violence and repression suffered by local communities, it accepts no responsibility and offers no remedy for the harms that occurred and that continue to affect communities today. In its response to the CAO audit, the IFC argues that there is nothing to connect the project and the company building the dam (HSC) with the upsurge in repression and the state of siege declared by the Guatemalan government in May 2012. By denying this link, IFC can wash its hands of any responsibility for the suffering of local communities then and now – and therefore refuse to do anything about it in its Action Plan.

**For IFC to exit responsibly from this project, it must revise its Action Plan and offer remedy to affected communities for the harms they have suffered. The IFC must do this in consultation with the affected communities, so that their needs and wishes can be heard and addressed appropriately.**

**Recourse is calling on the Board of the World Bank to ensure that IFC revises its position.**

1. See P 40. [↑](#footnote-ref-1)
2. See P 52 [↑](#footnote-ref-2)
3. IFC Sustainability Policy (2006) and Performance Standards. [↑](#footnote-ref-3)
4. https://www.inclusivedevelopment.net/campaign/campaign-to-reform-development-lending-through-financial-intermediaries/ [↑](#footnote-ref-4)
5. The 2008 IFC investment comprised a $10 million equity investment in CIFI for a 15% stake, a $20 million loan and in addition IFC helped arrange a $48.5 million syndicated loan to CIFI. See P 10. [↑](#footnote-ref-5)
6. CIFI and Norfund together made debt and mezzanine finance investments of up to US$10.6 million to support the development of the Canbalam project. The lenders made an initial disbursement of US$3.5 million in 2011. The remaining US$7.1 million were never disbursed due to unresolved social conflicts around the project. See P 10. [↑](#footnote-ref-6)
7. See P 38. [↑](#footnote-ref-7)
8. See P 39. [↑](#footnote-ref-8)
9. In its response the IFC claims that it set up a phone call with its client, but there is no record of that conversation. In addition, the IFC says the obligation to respond to serious incidents only applies to its direct not indirect investments, so it was only obliged to supervise its client’s response. [↑](#footnote-ref-9)
10. See P 42. [↑](#footnote-ref-10)
11. See P 38. [↑](#footnote-ref-11)
12. Again the IFC claims in its response to have had several interactions with its client, but that its error lay in not recording those interactions. [↑](#footnote-ref-12)
13. https://www.devex.com/news/first-test-for-world-bank-board-s-new-accountability-powers-96501 [↑](#footnote-ref-13)
14. The IFC’s response claims: “Management is deeply troubled by the impacts that stemmed from the civil unrest and subsequent state of siege in Santa Cruz Barillas, while noting that these impacts have not been attributed to HSC.” [↑](#footnote-ref-14)
15. Annual report of the United Nations High Commissioner for Human Rights, Addendum Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala (January 7, 2013). [↑](#footnote-ref-15)
16. See paras 27, 28 and 50 of the Annual report of the United Nations High Commissioner for Human Rights, Addendum Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala (January 7, 2013). [↑](#footnote-ref-16)
17. See P 40. [↑](#footnote-ref-17)
18. See P 31: Project Timeline. [↑](#footnote-ref-18)
19. See P 34. [↑](#footnote-ref-19)
20. See P 34 and See Guatemala: Derechos humanos e hidroeléctricas (2017), and Hegoa Instituto de Estudios sobre Desarrollo y Cooperación Internacional & Universidad del País Vasco (2012) La presencia de Hidro Santa Cruz en Barillas: Una historia de imposición y violencia; available at: https://goo.gl/7qKji0. [↑](#footnote-ref-20)
21. See P 35. [↑](#footnote-ref-21)
22. See pages 35-36. [↑](#footnote-ref-22)
23. The IFC’s response states “Management agrees with CAO that a formal Environmental and Social Action Plan (ESAP) should have been included in the legal documentation but notes that alternative contractual provisions were included to the same effect.” “In hindsight, the social baseline study should have been more extensive in assessing indigenous communities living in the area.” [↑](#footnote-ref-23)
24. See P 38. [↑](#footnote-ref-24)
25. See P 19-20. [↑](#footnote-ref-25)
26. P 19: “At the time, CAO notes that the client did not have a dedicated E&S officer. Rather, investment staff had responsibility for implementing the ESMS.” [↑](#footnote-ref-26)
27. P 20: “In the context where the client had 26 medium to high E&S risk investments, IFC did not consider whether: (a) the client had sufficient staff capacity to implement its ESMS; or (b) giving investment staff responsibility for ESMS oversight risk presented a conflict of interest.” [↑](#footnote-ref-27)
28. P 19: “IFC did not document a review of the adequacy of CIFI’s E&S assessments or its monitoring of its portfolio. IFC did not conduct a review of the client’s capacity to implement its ESMS.” [↑](#footnote-ref-28)
29. P 20: IFC’s E&S review did not include a documented assessment of the client’s ESMS implementation track record…. IFC did not document a review of client track record of assessing and monitoring E&S risk.” [↑](#footnote-ref-29)
30. The IFC’s response states, “Management agrees that its environmental and social due diligence of CIFI could have been better documented. But contends: “Management is of the view that IFC’s due diligence of CIFI’s ESMS track record was in accordance with procedures at that time and commensurate with the E&S risks identified.” Evidence offered for this: “A sample of environmental and social due diligence (ESDD) reports conducted by CIFI on its sub-project investments was reviewed by IFC, consistent with the practice codified in the E&S review procedures at the time.” [↑](#footnote-ref-30)
31. See P 27. [↑](#footnote-ref-31)
32. P 25: “IFC raised concerns that the client: (a) invested in a number of projects without requiring E&S reporting; (b) disbursed to several projects where the E&S assessment of the project was incomplete and/or E&S requirements had not been fulfilled prior to disbursement; (c) classified one project Category B, while IFC categorized it as Category A; and (d) had taken insufficient action in response to very significant E&S non-compliances with some of its projects. IFC also raised concerns regarding the recommendation made by the client’s E&S consultant, that the client apply the PS to project finance transactions and high-risk projects, rather than across all investments. IFC noted that accepting this recommendation would violate IFC’s legal agreement with the client. Subsequently, IFC followed up with the client in relation to 15 projects where E&S compliance concerns were noted.” [↑](#footnote-ref-32)
33. P 25: “In its review, IFC noted a deterioration in the client’s E&S performance and provided an ESRR score of F4-Unsatisfactory. IFC noted that feedback provided to the client following IFC’s 2010 AEPR Review had not been implemented.” [↑](#footnote-ref-33)
34. P 26: “IFC raised concern that nine client investments did not provide E&S reporting to the client and 25 investments had potentially significant E&S issues.” [↑](#footnote-ref-34)
35. P 28: “While IFC provided feedback to the client on its AEPR and met on several occasions to discuss its E&S performance, these interactions did not result in the development of an agreed corrective action plan. While a corrective action plan was agreed in late 2015, IFC has not assured itself that this was fully implemented…” [↑](#footnote-ref-35)
36. The IFC’s response claims “Management notes that, despite identified performance issues along the way, CIFI’s E&S risk management systems and capacity improved significantly between 2008 when IFC invested and 2019 when it exited.” [↑](#footnote-ref-36)