



## CAO ASSESSMENT REPORT

**Regarding the first complaint and concerns in relation to  
IFC's Alto Maipo project (#31632) in Cajón del Maipo, Chile**

October 2017

Office of the Compliance Advisor Ombudsman  
*for*  
International Finance Corporation  
Multilateral Investment Guarantee Agency  
[www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## **About the CAO**

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

**TABLE OF CONTENTS**

LIST OF ACRONYMS ..... IV

1. OVERVIEW ..... 1

2. BACKGROUND ..... 1

    2.1. The Project ..... 1

    2.2. The Complaint ..... 2

3. ASSESSMENT SUMMARY ..... 2

    3.1. Methodology ..... 2

    3.2. Summary of Views ..... 3

4. NEXT STEPS ..... 12

ANNEX A. CAO COMPLAINTS HANDLING PROCESS ..... 13

## **LIST OF ACRONYMS**

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
ESIA	Environmental and Social Impact Assessment

## 1. OVERVIEW

In January 2017, CAO received a complaint filed by a local organization, La Coordinadora Ciudadana No Alto Maipo, and Ecosistemas, a Chilean environmental NGO focused on ecological and socio-cultural concerns at the national and international level, on behalf of 28 affected community members (the “Complainants”). The Complainants live in different communities that constitute the Municipality of San José de Maipo, in the Cajón del Maipo area of Chile. The complaint pertains to the IFC’s Alto Maipo project, which will be operated by Alto Maipo SpA, a subsidiary of IFC’s Project Sponsor, AES Gener (the “Project Sponsor”), and alleges that the project will lead to diversions of the Maipo River resulting in negative impacts on water access and quality, farming, tourism, and the environment. Further, the complaint raises concerns about the inadequacy of the impact assessment studies conducted for the project and alleges that project construction activities have resulted in negative impacts on neighboring communities.

CAO determined that the complaint met its three eligibility criteria in March 2017. The complaint was also filed with the Independent Mechanism for Consultation and Investigation (MICI – *Mecanismo Independiente de Consulta e Investigación*) of the Inter-American Development Bank (IDB). CAO and MICI coordinated their activities during the assessment phase to avoid, as far as possible, duplication of tasks or an excessive charge for the Complainants and the Project Sponsor.

CAO’s assessment concluded with the Complainants’ decision to have the case referred to CAO’s Compliance function for appraisal.

## 2. BACKGROUND

### 2.1 The Project

IFC has an active project with the Project Sponsor. According to IFC, the Alto Maipo project, which will be operated by Alto Maipo SpA (the “Company”), consists of two separate high-head, run-of-river hydropower facilities located about 50 km southeast of Santiago in the Maipo River basin area.<sup>1</sup>

As per information disclosed in IFC’s Summary of Investment Information on July 29, 2013, the construction of the project will take place over approximately five years, and will require the excavation of about 67 km of tunnels. Approximately 90 percent of all project civil works are expected to be underground (underground facilities will include powerhouses, siphons, access tunnels, and water conveyance systems). The underground facilities traverse two protected areas (a nature sanctuary and a national monument) at several hundreds of meters of depth, although no surface works are foreseen in any of these protected areas. The project will include a 17-km transmission line to connect it with existing electricity transmission infrastructure, and will not require the construction of dams or reservoirs, or the resettlement of people. Surface infrastructure will include intakes, delivery canals, forebay structures, a new electrical substation, new bridges, and access roads. The total permanent surface infrastructure will occupy 85 hectares (ha) – with an additional 20 ha of temporary facilities – and 61.25 ha for the transmission line.<sup>2</sup>

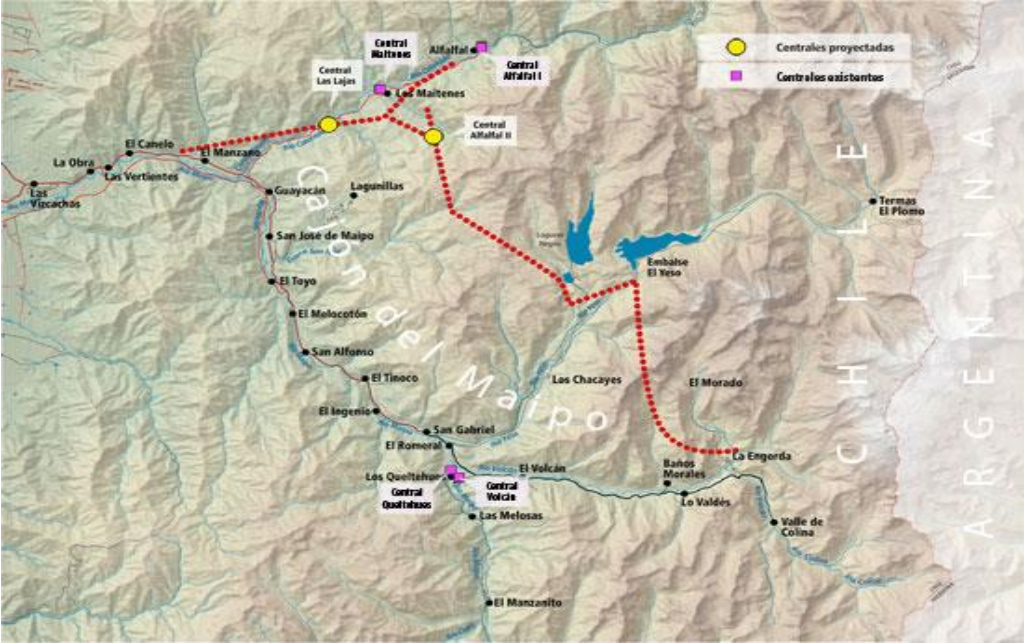
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<sup>1</sup> See: <https://disclosures.ifc.org/#/projectDetail/SII/31632> Last accessed on August 20, 2017.

<sup>2</sup> See: <https://disclosures.ifc.org/#/projectDetail/ESRS/31632> Last accessed on August 20, 2017.

The IFC investment is a US\$145 million A Loan for IFC's own account.

The location of the project is shown below:<sup>3</sup>



## 2.2 The Complaint

The complaint raises concerns about a number of environmental and social impacts, including dramatic limitations in water access for the population of Santiago and in the project's neighboring communities and areas, significant erosion of the Maipo River riverbed, acceleration of the desertification process in the Cajón del Maipo area, and impacts on protected areas and tourism.

Additionally, the Complainants allege that the environmental and social impact assessment (ESIA) conducted for this project was incomplete, inadequate, and irregular. According to the Complainants, the ESIA did not take into account the impact of climate change on the water level of the Maipo River, did not contain a proper hydrogeological study to assess the impact of the construction of tunnels on water and the ecosystem, and did not properly identify the project's zone of influence.

The Complainants also allege that some communities, notably El Alfalfal and Los Maitenes, suffer from noise pollution from the vibrations of trucks involved in construction of the Alto Maipo project.

Finally, the Complainants raise concerns about social impacts, including poor working conditions onsite, a decrease in tourism and recreational activities, and the creation of divisions within the communities.

<sup>3</sup> See: <http://www.altomaipo.com/proyecto-alto-maipo/Localizacion%20del%20proyecto/Paginas/default.aspx> Last accessed on August 20, 2017.

### **3. ASSESSMENT SUMMARY**

#### **3.1 Methodology**

The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, gather information on how other stakeholders see the situation, and determine whether the Complainants and the Company would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution or if the complaint should be referred to CAO Compliance for an appraisal of IFC's due diligence of the project. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

In this case, CAO's assessment of the complaint included:

- a desk review of IFC's project documentation;
- telephone conversations and meetings with the Complainants in Cajón del Maipo, Chile;
- meetings with a number of community members, suggested by the Complainants, who are allegedly affected by the Alto Maipo project – including Complainants and some who are not complainants to this complaint but still wanted to share their concerns;
- a meeting with representatives of non-governmental organizations (NGOs) supporting the complaint, as well as other NGOs, foundations, and individual professionals that are involved and concerned with the protection of the environment in Chile;
- a meeting with IFC's project team;
- telephone conversations and meetings with representatives of the Company;
- meetings with community members who support the project, suggested by the Company and authorities from Cajón del Maipo, Chile; and
- a visit to some areas of the Alto Maipo project site.

#### **3.2 Summary of Views**

##### *Complainants' perspective*

From the Complainants' point of view, the project does not comply with applicable international conventions related to the protection of the environment. Furthermore, they believe that this project has decreased the quality of life for the inhabitants of Cajón del Maipo (the "Cajoninos").

The Complainants assert that the institutions that are providing financing to the Project Sponsor for the development of the project are responsible for the severe environmental impacts on the main basin of the Metropolitan Region and, ultimately, on the communities that live there and depend on the Maipo River for development of agriculture, tourism, and athletic, recreational, and cultural activities.

The Complainants say that they feel frustrated and sad, and believe that the community's rights are not being respected. They state that the Project Sponsor, the Company, governmental authorities, and financial institutions are not paying attention to their concerns. The Complainants emphasize that the high degree of intervention that is taking place in the three sub-catchments of the Maipo River amounts to a massive intervention in the Maipo River basin, and they emphasize that they are extremely concerned with the impacts, both direct and indirect, that the Alto Maipo project will have on the sustainability of public and private protected areas that exist in the basin, particularly the El Morado Natural Monument.

They add that there is a lack of consistency between the actions of the Chilean government and its alleged respect for, and implementation of, international conservation and biodiversity conventions. On the one hand, the Chilean government promulgates and enacts relevant standards, and designates protected areas, under different regimes for the conservation and protection of Cajón del Maipo, yet on the other hand, they approve mega-projects, such as Alto Maipo, that contradict these conventions and place protected areas at risk. They argue that the basin of the Maipo River has been degraded for decades as a result of poor socio-environmental management, and that it urgently needs to be restored to ensure the sustainability of the vital ecological functions and environmental services that it provides.

The Complainants state that many community members do not trust the Company, saying that they have tried to enter into a dialogue with its representatives, and have requested information and attempted to work with them (for example, interactions that the Company had with community members like the group that represents equestrian tourism and the association of canal users<sup>4</sup>). In these instances, however, the Complainants feel that their problems have been minimized, ignored, and even ridiculed.

The Complainants have also encountered difficulties in gaining access to information related to the project. They say that the Company does not respond to their requests for information, and that it is very hard to access information from the web page. The Complainants assert that the Company only associates with organizations and people who support the project, disregarding the observations and criticisms of the project's opponents.

The Complainants indicate that the problems brought before the CAO regarding the impacts of the project are not new, and have been raised previously with the Company, government, and financial institutions. These problems and irregularities were investigated in 2009 by an investigative commission of the Chamber of Deputies of the National Congress of Chile, the Commission of Natural Resources, National Assets and the Environment.<sup>5</sup> This Commission came to the conclusion that the project should not have been authorized, based on the inadequate assessment conducted by the Company.<sup>6</sup> The Complainants allege (based on legal proceedings under way before national courts, as well as on information published in the media) that there is corruption and influence peddling going on between the private sector and the public sector. They also state that there is a lack of oversight and supervision on the part of the government regarding the environmental and social impacts of the project.

The Complainants indicate that the 100 kilometers of the Maipo River that will be subject to intervention is where most of the residents of Cajón del Maipo live. They state that the Maipo River will be affected by a serious reduction of its flow due to capture of its main tributaries and of the ground water in the tunnels. They assert that construction and operation will accelerate the process of desertification<sup>7</sup> that the basin is undergoing, causing a shortage of water and severely impacting the flora and fauna in the area. According to the Complainants, there have been 10 straight years of drought in Chile's central region, and specifically in the Maipo River basin. The Complainants have reached the conclusion that the construction of mega-projects such as the Alto Maipo project is an end on its own to generate business for suppliers (of cement, dry goods, iron for construction, turbines, generators), contractors, and consultants,

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<sup>4</sup> The canal users ("canalistas") are communities that have constituted legal entities in accordance with the Water Code. In 1827, the canal users founded an association of canal users (called Company of the Maipo Canal), that aims at extracting water from the Maipo River, dividing it up between its members, and preserving the aqueducts it administers. See: <https://www.scmaipo.cl/canalistas/>

<sup>5</sup> In Spanish, the name of the Commission is: "Comisión de Recursos Naturales, Bienes Nacionales y Medio Ambiente".

<sup>6</sup> See: <https://www.camara.cl/sala/doc2.aspx?DOCID=1834> Pages 77 – 87. Last accessed on September 12, 2017.

<sup>7</sup> See: [http://transparencia.minagri.gob.cl/descargas/2015/Actos\\_y\\_Resoluciones/Resolución%20Exenta%20N°%20122.pdf](http://transparencia.minagri.gob.cl/descargas/2015/Actos_y_Resoluciones/Resolución%20Exenta%20N°%20122.pdf)  
The resolution establishes a state of agriculture emergency due to a severe hydric deficit affecting municipalities in the Metropolitan Region, including San José de Maipo.



among others. They say that these businesses give rise to an inertia toward building mega-projects regardless of what business or services they entail for the future (energy in this situation). They also feel that the Alto Maipo project will open the door to allow other investments to take place in this fragile area.

The Complainants indicate that the delay in construction of infrastructure for the Alto Maipo project has entailed maintaining, for an indefinite period and without assessment, the various impacts on the local population and the environment. In the opinion of the Complainants, the Alto Maipo project should have been suspended and reassessed in its entirety, including all variables and social, economic, technical, and ecological contexts that have not been taken into account. They add that, if the Alto Maipo project had been assessed based on comprehensive, neutral, and technically and scientifically appropriate studies, it would have been rejected. They state that they have asserted for years that the Alto Maipo project is extremely risky in financial terms, and note that the project's technical lack of viability, combined with its financial lack of viability, has led to cost overruns and a significant delay in construction.

The Complainants indicate that, since 2010 and throughout the entire construction of this project, they have experienced the following socio-economic impacts:

- Traffic accidents and congestion have increased due to a rise in the number of trucks and vans on the road and their high speeds. In addition, the Company's cars park along the narrow area of the road. The Complainants allege that, although the Company does control its vehicles in terms of the speed at which they drive, there is still a problem, because the road is completely saturated by traffic from residents' vehicles, tourists, trucks carrying limestone and gypsum, and all other vehicles that use the highway. They indicate that the resulting traffic is serious and highly risky, and constitutes a genuine invasion to the Cajoninos.
- A lack of safety, given that trucks are carrying explosives without adequate protection and control. In addition, they cite the high risk that this poses for community members and domestic and wild animals passing near the area where explosives are being detonated on the mountain.
- The community is not duly informed or alerted about detonations in the various areas of the three sub-catchments where blasting is done. A sign installed by the Company indicates that explosions occur seven days a week, without taking into consideration that the highest influx of tourists occurs on weekends and holidays. This has also given rise to a situation where people can no longer take children on school trips to the area. The Complainants also express their concern about the detonations and the impacts on the El Morado glacier, given its proximity to the underground construction of the tunnel.
- Impacts on tourism in the area. The Complainants indicate that tourism is the main economic activity of Cajón del Maipo, and that there has been a decrease in the number of local and international tourists visiting the area to enjoy traditional and cultural activities, such as kayaking, rafting, mountain climbing, excursions on horseback, recreational fishing, and goat breeding. Until the arrival of the Alto Maipo project, the numbers for visitors were climbing, whereas at present they have fallen, due to the risk of accidents on congested highways, and the closing down of the valleys and emblematic heritage sites. This has had an impact on the local economy and on employment. Community members say: "We depend on the river to live." They add that the high risk of accidents on the highways is due to the exponential increase in vehicles and heavy machinery belonging to companies working on the project's construction. The Complainants express their disapproval of the difficulties they face to get into the Valley, since this clashes with the traditional concept of "free or open mountains" that has always existed in the Cajón del Maipo.

- The community is divided between those who support the project and those who are opposed to it, as well as between those who have received benefits and those who are still waiting to receive them. The Complainants believe that, in various ways, the Company has deliberately created division within the communities to allow the project to go forward.
- Complainants state that the community well-being is being affected by the increase in drugs, prostitution, and theft in the area due to immigrant workers. The Complainants say that the influx of outside workers into Cajón del Maipo is leading to tension, conflicts, and altercations with the Cajoninos, because of differences in their culture and habits. Some of these workers are living there permanently, rather than in temporary camps, as was stipulated in the Resolution of Environmental Qualification (RCA – *Resolución de Calificación Ambiental*).
- Complainants allege limited local hiring due to discriminatory practices. Some of the Complainants reported discrimination of various kinds regarding contracts, as well as actual treatment on the ground, and even assaults and anti-union practices as a means of subjugation and intimidation on the part of the representatives of the hiring companies toward workers, who demand dignified working conditions. In addition, they indicate that they are worried about working conditions and the lack of respect for workers. There are complaints regarding the hierarchical treatment of workers, with local workers at the lowest level. The workers have publicly denounced “inhuman working conditions,” bad food, and precarious housing. They allege that reprisals for their complaints have included dismissals and other forms of intimidation.
- The Complainants indicate that the Company is requiring workers to take drug tests, even though they are prohibited from doing so by law. They say this is a vicious cycle, given that the project has increased the use of drugs and prostitution in the area.
- Lack of access to areas of paleontological cultural value, such as Valle de las Arenas. These areas are not protected from the impact of the project’s construction. Community access to these areas is also limited by agreements between the Company and private owners.
- Greater demand for housing, which has led to an increase in rents in the area, resulting in local residents having to leave Cajón. From their point of view, this situation should have been avoided, given that the RCA required project workers to live in temporary encampments.
- A collapse of local services, including hospitals and health care services. According to the Complainants, the RCA has left a gap with regard to this issue.

The Complainants also express concerns regarding management of and impacts on the area’s water resources. In their opinion, the problems include:

- a lack of hydrological studies conducted by reliable and legitimate sources;
- a lack of studies analyzing the extensive impacts affecting or degrading the environmental services provided by the basin and the river throughout its course, which reaches the coast of Chile;
- a lack of studies on climate change impacts;
- a lack of consideration of these impacts in the project’s Environmental Impact Assessment (EIA), particularly in relation to the accelerated melting of glaciers, the process of desertification, and flooding;
- a lack of studies on impacts on the ecological flow of the river;
- impacts on the sustainability of local flora and fauna;
- interruption and contamination of the tributaries of the Maipo River, such as the Colorado River, by piles of mineral-containing rubble from excavations that, according to the Complainants, are deposited by the Company at the edge of the river without any precaution or containment, even though heavy rains cause this rubble to run into the river, clouding it;

- leakage of water and negative impacts on sub-catchments through water transfer resulting from underground work;
- conflicts of interest between the use of water for health services and energy generation; and
- a lack of proper treatment of waste, including crushed stone laden with heavy metals not exposed to oxygenation that is extracted from tunnels and spread throughout the entire basin in the form of rubble and untreated liquid effluents, as well as those from processing plants. The piles of rubble extracted from tunnels and other construction are deposited in different places in the three sub-catchments and scattered by rains to marshes and rivers. This lack of control can contaminate potable water for the Metropolitan Region and negatively impact agricultural irrigation (approximately 120,000 hectares), as well as food security.

The Complainants also raise environmental concerns about ecological or minimum flow of the river. They raise concerns about the credibility and strength of environmental studies, including the EIAS, because cumulative impacts are not included. The Complainants speak of “anti-ecological flow,” because they believe that the estimation of “ecological” flow is arbitrary, reductionist, and linear. They say that the only ecological flow is one that keeps the river moving at all times, in all seasons. They also express concern about charges of environmental non-compliance with conditions established in the RCA, which were detected in January 2017 by the Superintendent of the Environment (SMA – Superintendencia del Medio Ambiente), as well as the report of company compliance that, according to the Complainants, is scarcely transparent with regards to how those 14 charges (nine of them serious, five minor) are to be addressed.

They express concern that impacts on the flow of the river will lead to:

- acceleration of the process of desertification through the cutting down of native species, which the Company has done for certain construction projects;
- impacts on the landscape;
- impacts on wetlands and meadows; and
- impacts on biodiversity (flora and fauna) and bird migration.

A group of the Complainants, who reside in the Alfafal community, also raise a number of specific complaints regarding impacts on their community:

- They are concerned about the general lack of direct communication between the Company and the community. They explain that their community is made up of 34 families, comprising approximately 120 people. According to them, the Company has divided the community between those that oppose the project and those that support it, and this has been very difficult for this small community. They state that the community is now fragmented and that the peace that they had before the project will never be restored. They state that the social commitments in an official agreement signed by the Company have not been respected or fully implemented.
- They denounce the fact that the Company did not provide information on the containment wall for the construction work that it was planning to install, fencing in the entire perimeter of the community and isolating it from the surrounding area. They indicate that to leave town they have to wait for the trucks and heavy machinery to pass. In addition, they state that the Company argues that this wall was installed to seal out the noises made by machinery; however, these noises are heard around the clock.
- They also express their concern with respect to dust and the potential impact on the health of children, as well as the constant noise and movement of equipment on weekends. They complain about the constant lack of respect from the Company’s contractors. They say that the Company “stole” the river from them, and that their actions are destroying the landscape, the tranquility and beauty of their surroundings,

and their quality of life, and limiting their access to clean air, silence, and the sounds of nature. Furthermore, they complain of a serious problem with the sewage system installed by the Company in new or renovated houses, since it does not function properly, is subject to overflow, and emits foul smells.

The members of the Alfalfal community that are part of the Complainant group had initially indicated that a dialogue with the Company under the auspices of the CAO would be beneficial to discuss their concerns and request compensation for the harm, if such a process could take place within a limited period. However, they decided they didn't want to pursue this conversation with the Company at this point in time, and their final decision is for the case to be referred to CAO Compliance, along with all other issues raised in the complaint.

The Complainants collectively indicate that they would prefer for this case to be referred to CAO Compliance.

### *Company's perspective*

The Company states that it has been operating in the Cajón del Maipo region for more than 90 years, since the first power plant, Maitenes, commenced operations in this area in 1923. It was followed by the Queltehues plant in 1928, Volcán in 1944, and the Alfalfal plant in 1991. The Company notes that these four power plants are all hydro-electric run-of-river (ROR) plants, without dams, which return 100 percent of the water used to generate electricity to the river basin.

The Company indicates that the project is made up of two run-of-river plants: Alfalfal II and Las Lajas. It explains that it is a project in which it will be possible to generate renewable and sustainable energy, and to supply the growing demand for electricity in the country. It adds that, to generate energy, it will appropriate part of the waters of the rivers Volcán, Yeso, and Colorado, which will be completely returned before the intakes that feed the treatment plant for potable water that supplies the city of Santiago and the extractions for canal users (*canalistas*).<sup>8</sup> They state that this operation will not affect the supply of water for the Metropolitan Region, or the use of water for irrigation or sporting activities conducted around the Maipo River. They also state that the project's power transmission line will only be 17 kilometers long, due to the proximity that these plants would have to the existing centers of energy consumption in Cajón del Maipo and to the possibility of using existing transmission infrastructure.

The Company states that, parallel to a long and exhaustive environmental technical process focused on the environmental evaluation of the Alto Maipo hydroelectric run-of-river project, a constructive experience of dialogue and social engagement between the Company and the community of San José de Maipo was developed.

The most concrete and objective result of this process of dialogue and social engagement, which spanned more than a year and a half, was that the Company, the municipality, and the Community Union of Neighborhood Boards, together with other social organizations, formally signed a Social Agreement in 2009, in an effort to ensure that the inhabitants of the Municipality of San José de Maipo would benefit from the project.

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<sup>8</sup> Per information provided by the Company, the canal users (*canalistas*) constitute several associations that administer three intakes located in the Maipo River, downstream of the point where the project returns the water to the Maipo River. These intakes include Intake La Sirena, Intake Clarillo, and Intake United Canals of Buin. At the same time, these intakes feed a series of channels used for irrigation and power generation, with each channel having an association of users. These associations include Channel of Mirror Association, Channel Santa Cruz Association, Channel Calera of Tango Association, Channel San Vicente Association, Channel Ochagavía Association, Channel Huidobro Association, and Chanel Users of Pirque Association.

According to the Company, this agreement was the first of its kind in Chile, formalized before obtaining environmental approval for a large investment project, with all parties expressing their confidence in the technical environmental resolution to be followed by the competent authorities. The Company notes that, at least in the power industry, there is typically community resistance to electricity generation projects, which becomes very difficult to reverse in later stages. In this case, the Company indicates the agreement was reached with a very wide base of local support, including the full support of the Municipal Council (all councilors, from various political tendencies) and dozens of other social organizations. The agreement was voluntarily incorporated by parties' decision as part of the Environmental Rating Resolution (RCA – Resolución de Calificación Ambiental).

In August of 2010, the Rules of Procedure for this agreement were signed, establishing the foundations of two beneficial programs for the community:

- **A program to promote local employment and the contracting of local suppliers:** For this program, the Company opened an in-house office to manage labor intermediation, in conjunction with the Municipal Office of Labor Intermediation (OMIL). In addition, the company included in the construction contracts with its contractors a scheme of fines and incentives to ensure that at least 15 percent of their joint hires during the construction years are local labor (To date, the cumulative figure for employability is 16.79 percent.) A specialized team is creating a database on project employment, as well as a database of local suppliers and contractors. This program also includes the establishment of procedures for local suppliers with the project contractors and sub-contractors for contracting services and/or purchasing materials, incorporating into contracts a system of fines and incentives to achieve a minimum level of 15 percent local contracting. Cumulatively, the figure comes to US\$ 63,154,820 in direct payments to local suppliers. It also includes the obligation to circulate at the local level any tenders for services or job offers that may arise. The Company adds that different employment training programs have been designed and implemented, creating alliances with a variety of centers close to the zone; 423 people from the community have participated in these programs.
- **A social program to support existing organizations and provide scholarships to support students of academic excellence from vulnerable families:** This program includes a grant fund that, for a period of 30 years, will finance projects in the domain of education and training; social, tourism, and cultural development; infrastructure for community use; promotion and development of productive activities or services that empower the zone; and support for a variety of different athletic activities. The Company states that the fund has registered a total of 188 admissible projects since its establishment. The Company adds that, although AES Gener is the institution in charge of administering the fund, decisions regarding ground rules and determination of the winning projects are reached by a local council. This local council includes representatives of the Government of Cordillera Province, the mayor of the Municipality of San José de Maipo, a councilman elected by the Municipal Council, the president of the Community Union of Neighborhood Boards, the president of the soccer league of the Municipality, the president of the Citizen's Defense Committee of Cajón del Maipo, the president of the Communal Association of Huasos<sup>9</sup> of San José de Maipo, the manager of AES Gener Cordillera Complex, and an executive of AES Gener appointed by the Company.

The Company contends that it has a mechanism for receiving complaints that has been working since 2013. As of February 2017, the project had received a total of 265 inquiries

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<sup>9</sup> A huaso is a person who lives in the central or southern region of Chile who performs tasks or activities relating to the old farming ways in this part of the country. It also refers to the peasants in this region.

involving questions and/or complaints; of these, 261 have been resolved and four are still in process. Most of the complaints, 50 percent and more, the Company reports, are job-related issues, while 22.3 percent involve the community, and 18.5 percent relate to suppliers.

The Company adds that, with the aim of fostering trust in the community regarding concerns that had been expressed prior to the start of the project's construction phase, they created a program for participatory monitoring by an agency that is open to the community. Community members can participate in the monitoring on an ongoing basis, at any time. In a process that included community members from different localities of the municipality and the project, four monitoring panels were established based on topics of greatest interest to the community, including:

- **Water and environment** – addressing issues relating to the quality of water discharged into waterways, ecological flow, the functioning of water treatment plants, the placement of intakes, afforestation, recovery programs of native vegetation, and environmental commitments in general;
- **Local employment and suppliers** – involving issues relating to commitments to job creation and local suppliers, and the quality of the work they perform;
- **Highway safety** – having to do with issues relating to speed control for the Company's own vehicles and those of contractors associated with the project, respect for parking areas used by the residents, control of documentation, accidents, and the Company's responses to the situation of highway risks; and
- **Social welfare commitments** – working on follow-up to the commitments the Company has made regarding social welfare.

The Company explains that these panels provide a space to observe project activities, allow citizens to follow up on the obligations established by the RCA, address questions, and manage related problems. Decisions by each of these panels are reached through consensus, according to the Company. Those who take part in the monitoring process meet from time to time, and spokespeople for each issue explain the results of the process in plenary assemblies. Moreover, the Company adds, the activities of the panels include training for participants, based on what they know about the subject to be monitored, as well as making site visits proposed by residents and by the Company, keeping a record of proceedings, and following up on commitments made.

The Company adds that, in 2016, based on a review of the community relations mechanisms, improvements were implemented in the development of the participatory monitoring program. One of these improvements involved the appointment of new panel coordinators, and a request for support from other project areas to make use of staff from other departments with specific knowledge. According to the Company, this restructuring made it possible to strengthen the work of each panel.

With regard to the identification and assessment of impacts on areas that are legally protected, the Company notes that there are three protected areas in Cajón del Maipo: the Cascade of the Animas Nature Sanctuary, the San Francisco of Lagunillas and Quillayal Sanctuary, and El Morado Natural Monument (the latter two are glaciers). The Company clarifies that the two sanctuaries are privately owned and also protected areas, while the natural monument is government property. Although the El Morado Natural Monument and the San Francisco of Lagunillas and Quillayal Sanctuary are located within the project's area of influence, the construction in this sector is underground (with an average depth of 1,000 and 450 meters below the surface, respectively). In addition, the Company notes that a glaciological study was conducted which included a measurement of the thickness of the San Francisco and El Morado glaciers and determined that, given the depth of the construction for the project, they would not be affected.

With regard to the acquisition of land, the Company notes that the project undertook acquisition of property and established rights-of-way by approaching the owners, favoring processes of negotiation and voluntary agreements. For those properties where it was not possible to reach agreements, the Company has established rights-of-way through an electricity concession granted by the State through the Ministry of Energy. The ministry appointed a Council of Wise Men,<sup>10</sup> made up of three professionals (an architect, an engineer, and an attorney), to set the amounts of compensation to be paid to each owner. Depending on the kind of legal measure regulating the acquisition of property, the project established: 1) a right-of-way for the electricity concession, 2) a contract of sale, and 3) a voluntary right-of-way. They stated that, in accordance with the Chilean legal framework, with rights-of-way the land owner continues to be the owner, so that they can use, enjoy, and dispose of the land, with the sole restriction that they cannot hamper the exercise of the right-of-way in question. They underscore that most of the construction for the project is underground and does not affect the surface of the property lots, and that about 70 percent of the land belongs to the Government of Chile, with 28 percent privately owned and two percent belonging to AES Gener.

On the concerns about cumulative impacts, the Company contends that a report on cumulative impacts was produced and concluded that the project does not have significant impacts on uses of water in the Maipo River, sediment transport, climate change, or landscape. Furthermore, it asserts that traffic congestion and highway safety have been affected by the project's period of construction in a way that is of little significance, due to the fact that transport of the material from excavations is done inside the zones where construction is being done. It adds that truck traffic is prohibited on weekends and holidays, so that it does not affect tourist activities. It notes that the project has undertaken to perform periodic monitoring of vehicle flows and accidents in the Municipality of San José de Maipo, and implement permanent improvements based on the results of that monitoring.

The Company reiterates that it produced a report on the use and users of water in the zone where the project will be operating, and that its results indicated that the extractions of flows that the project will execute for the operation of its units (Alfalfal II and Las Lajas) will not alter current uses of water, nor any uses that users decide to perform to satisfy the requirements of their rights as identified in the project's area of influence in the Volcán, Yeso, Colorado, and Maipo rivers. It refutes the claim that the project will affect the supply of potable water for the capital, given that the principal construction for the intake of AguasAndinas<sup>11</sup> for the city of Santiago's supply of potable water is located 5.9 kilometers below the discharge of the project into the Maipo River. Furthermore, it adds that the hydrogeological studies show that the construction of the project's tunnels will not alter the availability of water for human consumption or for irrigation.

For tourism activities, from the Company's point of view, the project will not affect tourist or recreational activities conducted around the Maipo River (kayaking, rafting, and camping). The Company reiterates that 82 percent of the catchment area that feeds the stretches of the Maipo River with water where these activities are performed is not used by the project. Moreover, the Company states that it has used an eco-hydraulic methodology to study the flow of water, which indicates that the necessary ecological flow will be maintained to preserve the biodiversity and that the recreational activities can continue to be performed. It adds that the project is committed to working with the General Water Bureau (GWB) to install six fluvimetric stations, connected with GWB's network of public stations, to measure the flow and verify the catchment restrictions and the permanent availability of the ecological flows. These stations include: one in La Engorda estuary, downstream from the location of the four intakes located

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<sup>10</sup> In Chile, the name in Spanish for this Council of Experts is: *Comisión de hombres buenos*.

<sup>11</sup> A Chilean company engaged in the provision of sanitation services. It supplies drinking water and sewage systems to most of the city of Santiago, Chile. See: <https://www.aguasandinas.cl/inicio> Last accessed on July 13, 2017.

at the top of the project; one in the Volcán River; one in the Yeso River; one in the Colorado River; and two in the Maipo River, both before and after the return of the waters.

The Company also highlights the work it has been doing in the nursery, such as an experiment in vegetative reproduction that AES Gener has been carrying out since 2009 to save and reproduce the zone's native species. As the Company notes, the nursery, which is located in the Maitenes area, is tasked with producing both the number as well as the type of species that will be necessary for reforestation and revegetation of the areas where the project is under construction, creating a plan for genetic and reproductive rescue of the zone's indigenous vegetation. The Company states that, to date, this initiative has planted more than 35 hectares of forest and 35 hectares of native shrubbery, specifically in the areas of El Durazno, Los Piches, and Quelitehues. The nursery has also been a source of training and jobs for residents of San José de Maipo, especially women who perform important work on the plant breeding cycles.

With respect to the specific allegations of those Complainants who live within the community of Alfalfal, the Company states that it maintains an ongoing dialogue with all the residents of that community, as it does with all the communities of San José de Maipo, in particular with their communal organizations. The Company notes that there are spaces for meeting and periodic exchanges of information regarding all aspects of the project – including contractual, environmental, employment, and operational issues – through a community relations team on the ground that is specially designated for this purpose.

Finally, with respect to the mention that is made of the document issued in 2009 by the Commission of Natural Resources, National Assets and the Environment, the Company states that none of that document's conclusions describe "irregularities." The Company adds that the 2015 decree of the Ministry of Agriculture that the Complainants mention is no longer in force.

The Company has expressed interest in entering a dialogue with those who also have an interest in dialogue. Under the auspices of the CAO, the Company expressed willingness to hold a dialogue with the group of Complainants from Community of Alfalfal, but understands that the Complainants collectively prefer the case be referred to CAO's Compliance function.

#### **4. NEXT STEPS**

Given the voluntary principle guiding participation in a CAO dispute-resolution process, and the Complainants' preference for the complaint to be referred to CAO's Compliance function, CAO is referring the complaint to its Compliance function. In accordance with its Operational Guidelines, CAO will conduct a compliance appraisal of IFC's environmental and social performance related to the project.



## Annex A. CAO Complaints Handling Process

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,<sup>12</sup> the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint.

Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).

Step 3: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's dispute-resolution process is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.<sup>13</sup>

OR

**Compliance Appraisal/Investigation**: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

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<sup>12</sup> For more details on the role and work of CAO, please refer to the full Operational Guidelines: [http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines\\_2013.pdf](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf)

<sup>13</sup> Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.