

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BUDHA ISMAIL JAM,

et al.,

Plaintiffs,

v.

INTERNATIONAL FINANCE CORPORATION,

Defendant.

Civil Action No. 15-cv-00612 (JDB)

DECLARATION OF KRISTEN GENOVESE

I, Kristen Genovese declare and state as follows:

1. I am a senior researcher at Stichting Onderzoek Multinationale Ondernemingen (Center for Research on Multinational Corporations) (SOMO) in Amsterdam, the Netherlands.
2. My qualifications are as follows:
 - a. I received my law degree from New York University School of Law in 2004 and my B.S. in Environmental Policy and Behavior from the University of Michigan's School of Natural Resources and the Environment in 1999. I was admitted to the New York Bar in 2008.
 - b. For the last eight years, I have advocated for improved environmental and social policies and effective independent accountability mechanisms (IAMs) at development finance institutions (DFIs). I have supported communities and workers in filing complaints to the IAMs. I have participated in the periodic reviews of the IAMs by submitting written comments and providing oral interventions during consultations. I have provided training to civil society organizations worldwide on using IAMs and have given presentations about the complaints with which I have

been involved at international symposia, universities, meetings with World Bank Executive Directors, and at the World Bank Group's civil society forum held during its Spring and Fall meetings.

- c. Before joining SOMO, I was the Director of the People, Land and Resources Program at the Center for International Environmental Law (CIEL). During my time at CIEL, I successfully advocated for the review of the Inter-American Development Bank's independent accountability mechanism and provided input that significantly influenced the policy creating the new Independent Consultation and Investigation Mechanism. I was part of a small group of civil society organizations (CSOs) that was consulted on the design and procedures for the Independent Complaints Mechanism of the Dutch and German development banks. I also supported multiple communities in filing complaints to the U.S. Overseas Private Investment Corporation's Office of Accountability, the World Bank's Inspection Panel, and the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency. I co-organized meetings between CSOs and the Independent Accountability Mechanisms Network during its annual meetings.
- d. I have supported communities and workers in Nicaragua, Colombia, Panama, Bolivia, Turkey and Kosovo to file complaints with the IAMs. I have also provided advice to CSOs and communities in India, Honduras, Uganda, Armenia, Mongolia and Poland, among others, regarding their complaints. The complainants with whom I work have ranged from labor unions to indigenous communities. Their complaints describe the adverse affects to their health, livelihoods, culture, and environment caused by activities financed by DFIs, including mines, hydro-electric dams, and

coal-fired power plants.

- e. Specifically, I have supported the Comité por la Defensa del Agua y el Paramo de Santurbán file a complaint to the CAO in 2012, regarding IFC's investment in Eco Oro, a Canadian company that is developing a gold mine in Colombian paramo, a fragile, high-mountain wetland ecosystem. That case is currently in the investigation stage. In 2011, I supported a labor union in Kosovo file a complaint to the CAO regarding the advice IFC provided to the Government of Kosovo on the privatization of the electricity distribution functions of Kosovo Energy Corporation. The investigation report in that case was published in 2013, finding that IFC was in material compliance with its policies but that those policies provided insufficient guidance for IFC's Advisory Services activities. In 2008, I supported the Asociación Chichigalpa por la Vida (ASOCHIVIDA) and community members in Leon, Nicaragua file a complaint to the CAO regarding the health and other impacts from its investment in Nicaragua Sugar Estates Limited (NSEL). The CAO facilitated a successful mediation in that case, which was closed, without investigation, in August 2015.
- f. I contributed to, "The Patchwork of Non-Judicial Grievance Mechanisms Addressing the limitations of the current landscape," published by SOMO; and wrote a chapter on non-judicial grievance mechanisms, including the IAMs, in a forthcoming textbook on business and human rights.

3. I began working at SOMO in January 2014. I am the program coordinator of SOMO's Human Rights & Grievance Mechanisms (HRGM) Programme. The Programme: 1) trains CSOs and communities on the use of non-judicial grievance mechanisms (NJGMs); 2) supports communities and workers in filing complaints to NJGMs; 3) conducts research on the effectiveness

of NJGMs; and 4) advocates for reforms to improve the effectiveness of NJGMs. The Programme focuses mostly on the IAMs and the National Contact Points under the OECD Guidelines for Multinational Enterprises.

4. SOMO is an independent, not-for-profit research and network organization working on social, ecological and economic issues related to sustainable development. Since 1973, the organization has investigated multinational corporations and the consequences of their activities for people and the environment.

5. SOMO's mission is to seek global economic development that is sustainable and fair and the elimination of the structural causes of poverty, environmental problems, exploitation and inequality. Through research targeted at achieving sustainable change and strengthening cooperation, SOMO seeks to offer social organizations worldwide, especially those in developing countries, the opportunity to promote sustainable alternatives and to provide a counterweight to unsustainable strategies and practices of multinational corporations.

6. SOMO works to strengthen the position of civil society organizations, workers and local communities by integrating knowledge and action. SOMO provides civil society with access to reliable information, strengthens networks, builds the capacity of CSOs to conduct critical research and integrate the resulting knowledge with action, and engages with government policy makers, corporate board members and managers, and other stakeholders with prospects for action.

7. As part of a series of brochures on NJGMs, the HRGM Programme published a brochure on the CAO, describing the complaint process for CSOs and communities adversely affected by IFC/MIGA-financed activities. I have also invited CAO staff to participate in trainings we have organized for CSOs because I find that people are more comfortable filing a complaint when they know who will be handling it. The HRGM Programme is currently leading a collective research project with other CSOs to assess the effectiveness of all of the IAMs, including the CAO. The

report will be published later this year.

8. The matters stated below are based on my own personal knowledge and experience, and are set forth to the best of my knowledge and understanding.

9. I have also read the Complaint in the case of *Budha Ismail Jam, et al. v International Finance Corporation* and am familiar with the allegations made in it. I have also reviewed the IFC's Motion to Dismiss and am familiar with the arguments made in it.

10. I have been asked to provide some of my experiences working with communities affected by IFC-funded projects and with the Office of the Compliance Advisor/Ombudsman (CAO).

11. I intend to discuss how the CAO's limited mandate prevents it from fulfilling its mission to hold the IFC accountable for its actions or omissions and, ultimately, ensuring that the environmental and social outcomes of IFC/MIGA projects are consistent with the IFC/MIGA's mission and policy objectives.

12. I attach the following documents, which are referenced in this declaration:

- CAO Dispute Resolution Conclusion Report – Nicaragua Sugar Estates Limited-01, August 2015, attached hereto as Ex. 1
- Letter from CSOs to President Kim, "Re: Learning from Failure: Management Action Plans Needed in Response to Inspection Panel and CAO Investigations," 12 November 2013, attached hereto as Ex. 2
- CAO Stakeholder Assessment Report: Regarding Community and Civil Society concerns in relation to activities of the Nicaragua Sugar Estates Limited (NSEL), Nicaragua, December 2008, attached hereto as Ex. 3.

13. CAO is one of the most, if not the most, effective IAMs. As an accountability mechanism, the CAO is supposed to hold IFC accountable to its commitments and obligations, in particular that the projects it funds do no harm to the people whom IFC is meant to benefit. But the mandate

given to the CAO falls short of what is necessary to achieve that aim. In the end, the CAO can only signal when and how far the IFC/MIGA is falling short of its obligations, but can do nothing to ensure that it meets them.

14. When individuals affected by an IFC/MIGA-financed activity file a complaint to the CAO, they can request the CAO's dispute resolution function, its compliance investigation function, or in limited circumstances, both. Should the complainants choose dispute resolution, the CAO will attempt to convene a dialogue between the complainant and IFC/MIGA's client to resolve the conflict. Issues that are successfully addressed through dispute resolution cannot be the subject of a compliance investigation. If dispute resolution fails or if the complainants choose a compliance investigation, the CAO will first undertake an appraisal to determine if a full investigation is warranted. In a full investigation, the CAO assesses how the IFC/MIGA assured itself that the project complied with relevant policies and commitments. Unlike the accountability mechanisms of other DFIs, the CAO does not allow complainants to engage in dispute resolution following a compliance investigation.

15. The CAO's mandate cannot compel IFC to participate in its dispute resolution process, nor can it order IFC to take specific actions to address findings of non-compliance in its investigation reports. It remains completely within the discretion of the IFC and its Board whether and how it will respond to complaints filed with the CAO. The repeated failure of the IFC and the World Bank to respond to the findings of the CAO and Inspection Panel, respectively, led CSOs around the world to send a letter that I authored to Present Kim, demanding that the World Bank Group commit to correcting non-compliance when identified by the CAO or Inspection Panel. Ex. 2.

16. The CAO's dispute resolution process can result in concrete benefits for complainants. When it does, it is the result of the hard work of both parties and the CAO staff, not because of the involvement or support of IFC staff. IFC staff rarely, if ever, participates in the dispute

resolution process. If the dispute resolution process fails or if the agreements reached still leave complainants in need, the IFC does not provide any support to them. The dispute resolution process, then, is not an adequate process through which the IFC can be held accountable to the people who are affected by the activities it finances.

17. In my experience, complainants that file complaints with the CAO or other IAMs are doing so as a last resort. They have often tried other avenues to no avail. Some complainants enter into dispute resolution, recognizing that the playing field is not level but knowing that there is no other option. Others reject the CAO's dispute resolution function, believing that there is no incentive for the other party to engage meaningfully. This is especially true when the IFC/MIGA's client has significant economic and political power in the complainant's country. However, a CAO investigation report can also leave complainants without remedy when the IFC/MIGA fails to respond meaningfully to the CAO's findings of non-compliance.

18. IFC contends that IFC clients would be less willing to work with the CAO if they knew that a CAO investigation could result in a legal cause of action. Zeidan Decl. at para. 61. The legal cause of action that plaintiffs request here is against the IFC, not its client. IFC's clients cannot claim immunity for their actions. Allowing plaintiffs a cause of action against the IFC would only strengthen the CAO's process by giving complainants a real alternative and providing the IFC the incentive to meet its responsibilities to support activities that contribute, not undermine, sustainable development.

19. The dispute resolution process that was undertaken as a result of a complaint to the CAO from an association of former sugarcane workers demonstrates the above points. In 2006, the IFC provided a loan to Nicaragua Sugar Estates Limited (NSEL). Although the cause was not known, it was clear at that time of IFC's investment that workers from the company were dying from chronic kidney disease. Yet despite the seriousness of the epidemic, the IFC's environmental and social

review summary for the project did not identify it as a potential risk.

20. The following year, I met with ASOCHIVIDA and others to inform them about the IFC's investment and the possibility of filing a complaint with the CAO. They had already exhausted all of the strategies they could identify, including protests and lawsuits, without finding an adequate solution. ASOCHIVIDA was willing to file a complaint because it was the only option left to them.

21. The CAO responded immediately and met with the parties to understand the issues involved. The resulting Stakeholder Assessment Report proposed activities designed to resolve the conflict, including mediation between the ASOCHIVIDA and the company on the topic of chronic kidney disease and a meeting between the complainants and IFC staff to discuss their concerns. Ex. 3 at 10.

22. The mediation was governed by a framework agreement. Some of the language requested by the company during the negotiation of the framework agreement raised concerns, but ASOCHIVIDA signed the agreement. One of the leaders told me that he knew they would have to be more flexible than the company. I understood him to mean that he recognized that the process might not be fair, but that it was their only chance.

23. The mediation took place from 2009-2012 with more than 15 dialogue sessions. The dialogue focused on two issues: determining and addressing the cause of the epidemic of chronic kidney disease; and providing improved health and social services to those affected by it. The agreements, detailed in the CAO's Conclusion Report, resulted in significant improvements to the lives of those with the disease, including improved health care, economic opportunities for those affected and their families, and monthly food support. Ex. 1 at 5-7. Research commissioned by the parties and undertaken by Boston University School of Public Health contributed to improved knowledge of the disease, but has not yet definitively identified the causes of the disease. Ex. 1 at 3-4. The CAO invested considerable human and financial resources to ensure the success of the

dialogue process.

24. The research confirmed that the epidemic was not only present at NSEL but at other sugar companies and in other industries throughout the Pacific coast of Central America. Although BU has not yet identified all of the factors that contribute to the disease, BU's results provided evidence that one or more of the risk factors are occupational. Heat stress is one likely factor, but there may be others. Ex. 1 at 4.

25. Despite the growing evidence that there was an occupational link between the disease and the sugar sector, IFC made an investment in another Nicaraguan sugar company. In its environmental and social review summary for that investment, IFC mischaracterized BU's findings and said that "[n]o direct relationship between the sugar sector and the disease has been established." Neither did IFC require its client to take any preventative measures. In fact, IFC has invested in sugar companies throughout Central America but has not mobilized its clients to contribute to finding the cause of the disease or developed best practice protocols, informed by BU's research, to try to prevent the disease. Ex. 1 at 9.

26. Although the results of the mediation were significant, they were insufficient to address the needs of ASOCHIVIDA's 2500 members. Because the CAO can only respond to the individuals who submit a complaint, the dialogue process, by definition, did not result in benefits to the workers at IFC's other clients in the sugar sector who are also suffering from chronic kidney disease.

27. Complainants, the CAO, and I repeatedly requested that IFC contribute something to address ASOCHIVIDA's unmet needs and develop a comprehensive approach to all of its investments in the sugar sector, but the IFC has done nothing. The IFC even refused the CAO's initial suggestion that it meet with complainants to discuss their concerns. In contrast, the German development bank, DEG, which had also invested in NSEL, has contributed almost \$300,000 to support improvements in health services and provide economic opportunities to the families of

those affected by the disease. Ex. 1 at FN 9. The Inter-American Development Bank, which has no connection to the project, has also contributed to provide new housing to members of ASOCHIVIDA who were living in conditions that prevented them from receiving in-home dialysis treatment. Ex. 1 at 7.

28. Because of the CAO's Operational Guidelines in effect at the time the complaint was filed, the successful conclusion of the dialogue process in this case prevented the complaint from being transferred to CAO compliance for investigation.

29. ASOCHIVIDA and I are not claiming that the IFC should have been responsible for addressing all of their needs. We were only requesting that IFC contributes its share. These workers are the people who are supposed to benefit from IFC's investments, and yet the IFC has done nothing for them. Despite the CAO's best efforts to persuade IFC to meet its responsibilities to the members of ASOCHIVIDA and to hold IFC accountable to its commitments, it was unable to do so. The CAO closed the case in August 2015.

30. I believe the threat of a suit would have encouraged IFC to engage in the CAO's dispute resolution process in this case. Had IFC participated in the dialogue, it could—but not necessarily would—have contributed to and strengthened the sustainable development outcomes achieved through the CAO-convened dialogue. Nothing short of a binding, legal requirement will guarantee that IFC/MIGA meets its obligations to those harmed by the activities it finances.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed in Washington, D.C. on the September 13, 2015

By:

A handwritten signature in black ink, appearing to be 'K. Genovese', written over a horizontal line.

Kristen Genovese

Declaration of Kristen Genovese

Exhibit 1



DISPUTE RESOLUTION CONCLUSION REPORT–NICARAGUA SUGAR ESTATES LIMITED-01

This report summarizes the CAO dispute resolution process in relation to a complaint received by CAO regarding IFC's investment in Nicaragua Sugar Estates Limited (NSEL).

SUMMARY

In 2008, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint from former workers of Nicaragua Sugar Estates Limited (NSEL)—a client of the International Finance Corporation (IFC) and operator of a sugar production and processing facility in northwest Nicaragua. The complainants claimed they were suffering and dying from Chronic Kidney Disease (CKD), which they believed had developed while they were working for NSEL at the San Antonio Sugar Mill. It was also a disease about which they had little information, and their ability to feed their families, generate income, or improve their living conditions was severely compromised because of the disease and its progression.

A cycle of mistrust and mutual recrimination characterized the relationship between the complainants and NSEL. Tensions were running high among groups of former NSEL workers, who were pitched in protests outside the company facility, and several court actions had been filed against NSEL by community members.

The complainants requested CAO's intervention to provide an opportunity for dialogue to address these issues with NSEL. The company expressed concern about the impacts of the CKD over their workforce, emphasized that workers were temporary, rejected accusations that its work practices were to blame, and accepted CAO's invitation to participate in a dialogue process to find a solution to the dispute.

From 2008 until 2015, CAO worked with the complainants and company to initiate and sustain a dialogue process focused on finding joint solutions on the cause of the disease and ways to improve livelihoods and living conditions for the complainants, their families, and communities. This report summarizes the CAO dialogue process, its outcomes, IFC's role, and insights from CAO's perspective.



ASOCHIVIDA members who have lost their husbands or other family members to CKD

CAO DIALOGUE PROCESS: OUTCOMES

1. Independent study by Boston University School of Public Health to investigate the cause of Chronic Kidney Disease (CKD) in the area.
2. Improvements in care for those suffering from CKD:
 - Medical needs assessment
 - Improvements to local health center
 - Medication and supplies
 - Short-term healthcare initiatives
3. Alternate means of livelihood and support for families affected by CKD:
 - Food aid
 - Microcredit fund
 - Local business initiatives
 - Poultry production project
 - Housing; and other donations

BACKGROUND: THE PROJECT, COMPLAINT, AND SEARCH FOR SOLUTIONS

The IFC Project

Nicaragua Sugar Estates Limited (NSEL) is the owner of the San Antonio sugar mill, an agro-energy complex located northwest of Managua, in the departments of León and Chinandega, Nicaragua. IFC invested in the project in 2006 to allow NSEL to expand production and processing of sugar cane, partly by purchasing land and introducing sugar cane cultivation into new areas.

The Complaint

In March 2008, 673 residents of communities in León and Chinandega filed a complaint at CAO with the support of the Center for International Environmental Law (CIEL), a civil society organization based in Washington, D.C. Many of these residents are members of the *Asociación Chichigalpa por la Vida* (ASOCHIVIDA), a local organization created by former workers of the San Antonio sugar mill who are suffering from Chronic Kidney Disease (CKD) and reside in the town of Chichigalpa.¹

The complaint raised concerns related to health impacts on local communities, including CKD and respiratory problems, which complainants claimed were a result of sugar cane activities; labor and working conditions; land acquisition in relation to Indigenous communities; offsite environmental impacts, including water contamination, air pollution, and pesticide effluents; and compliance with IFC Performance Standards, policies, and procedures.

The CAO Process

After finding the complaint eligible for assessment, CAO conducted three visits to Nicaragua between June and November 2008. Organizations involved had wanted the CAO to undertake a compliance review of the project, however at the time of the assessment, CAO's practice was that reaching a settlement meant the case would be closed after CAO's dispute resolution intervention and no compliance review would take place. During assessment, both NSEL and ASOCHIVIDA expressed their willingness to participate in a dispute resolution process (dialogue) facilitated by



Workers harvesting sugar cane for the NSEL agro-energy complex

CAO to seek solutions to the CKD issue.² In November 2008, the parties signed a Framework Agreement, which outlined two areas of focus for the dialogue process:

1. Determining and addressing the causes of CKD in the locality.
2. Finding options to support local communities where CKD is prevalent.

From February 2009 to June 2012, CAO facilitated regular dialogue meetings between NSEL and ASOCHIVIDA to discuss and reach agreements on the issues defined in the Framework Agreement. CAO worked with both NSEL and ASOCHIVIDA through bilateral meetings and plenary sessions to learn about their needs, better understand each party's perspective, and help them find joint solutions to address the issues. The CAO mediation team comprised a highly skilled mediator with experience in helping to resolve community-company conflicts, and two technical experts that helped build the parties' capacity to engage on scientific and health matters being explored through the dialogue process. Each dialogue session provided an opportunity for NSEL and ASOCHIVIDA to reach a new agreement and implement it together. After more than 15 joint meetings over a three-year period, the process resulted in a signed agreement on June 28, 2012³ between ASOCHIVIDA and

NSEL, which represented the conclusion of the mediated dialogue process convened by the CAO. In the agreement, the parties detailed the commitments they had made as a result of the three-and-a-half-year process and stated their willingness to continue direct dialogue to find further collaborative options to address CKD.

CAO concluded its facilitation of the dialogue process, and began monitoring implementation of the agreement and helped parties overcome any difficulties. In June 2015, after verifying the completion of all actionable items during a three-year monitoring period, CAO concluded its involvement in the case. The outcomes reached through the CAO dialogue process are summarized below.



Dialogue table meeting to discuss health and livelihood concerns related to chronic kidney disease

OUTCOMES OF THE DIALOGUE PROCESS

An Independent Study to Investigate the Cause of CKD

A critical concern for the parties was to understand the causes of CKD. To this end, the dialogue participants jointly considered research proposals from nine highly qualified institutions. The parties chose Boston University (BU) School of Public Health to conduct a set of independent research activities that were agreed by the dialogue participants. CAO facilitated the competitive

evaluation and selection process.

The BU team first conducted a scoping study in 2009 to summarize the available information on CKD in the region, identify data gaps, and recommend research activities to address those gaps. To follow up, the BU team completed six other research activities between 2009 and 2012:

1. Industrial hygiene/Occupational health assessment (August 2010)
2. Preliminary investigation of water quality (August 2010)
3. Qualitative analysis of interviews with physicians and pharmacists (September 2011)
4. Pilot study of feasibility of conducting a retrospective cohort study of current and former workers at the San Antonio sugar mill (February 2012)
5. Investigation of biomarkers in workers (April 2012)
6. Investigation of urinary biomarkers in adolescents (June 2012)

With the agreement of ASOCHIVIDA and NSEL, BU's research activities were co-financed by the CAO and the *Comité Nacional de Productores de Azúcar de Nicaragua*⁴ (the National Association of Sugar Producers from Nicaragua- CNPA). The CAO administered the funds and BU reported to the dialogue table. CNPA had no role in the design or implementation of the studies. In total, about US\$1 million for research on the cause of CKD was marshaled at the initial stage, which has since been followed by nearly \$1.7 million from CNPA and *Los Azucareros del Istmo Centroamericano*⁵ (Central American Sugar Producers - AICA) to continue and expand ongoing research discussed below.

BU found that, due to its unique characteristics, the type of CKD found in Nicaragua, and also present in other countries of Central America, has been referred to by some researchers as the "Mesoamerican Nephropathy" and by others as CKD of "nontraditional or unknown etiology". The cause of this kind of CKD is still unknown, but ongoing research by institutions in the region is analyzing a combination of risk factors.

BU's results provided evidence that one or more

of these risk factors are occupational, and more research is needed to identify them specifically. Heat stress—the stress on the body related to strenuous work at high temperatures—is one factor that is likely to play a role in the development of this type of CKD. Although heat stress on its own is an unlikely explanation for this type of the disease, it may magnify the effect of low-level exposures to agents that can be toxic for the kidneys, but alone would not result in CKD. Such low-level exposures to toxic agents could occur at work or away from work, and susceptibility could potentially vary due to genetic factors. The potential role of non-occupational factors was supported by BU's finding that adolescents who had not yet entered the workforce showed biomarkers of kidney injury.

BU's research efforts, along with the efforts of other researchers during the past five years, have helped improve understanding of where CKD has been occurring in Nicaragua and in Central America. Though most of BU's work focused on Nicaraguan sugarcane workers, where the problem has been well described, BU also found evidence that CKD with these similar unique characteristics is also present in workers in other industries, such as mining, construction, and ports. Mortality data and the work of other investigators have shown that this disease is prevalent along the west coast of Central America – particularly in the Guanacaste region of Costa Rica and the Bajo Lempa region of El Salvador - and in other countries, such as India and Sri Lanka.



Boston University team informing ASOCHIVIDA's General Assembly about their research activities.

Consistent with the idea that multiple factors are likely interacting to cause this type of CKD, BU is actively continuing to investigate both

occupational and non-occupational factors with a broader geographic scope. To support these new research projects, CNPA and AICA have donated funds to the United States Centers for Disease Control and Prevention (CDC) Foundation—CDC's non-profit, independent foundation. The Foundation in turn serves as the central administrative and coordinating lead for these research activities, and distributes funds to the various institutions involved. BU serves as the technical lead, assuming the primary responsibility for developing all study protocols, conducting the field investigations, analyzing the data, and disseminating the results. Additionally, Subject Matter Experts at CDC are providing technical assistance.

BU is developing a protocol to conduct a comprehensive, longitudinal study of CKD among Central American workers with the funding from AICA. A pilot study is being conducted to provide a preliminary assessment of workers' exposure to agrichemicals and to assess whether it is possible to follow the health of these workers over time. This pilot study will include 50 sugar cane workers who participated in the original biomarkers study conducted by BU as part of the CAO dialogue process.

With the funding from CNPA, BU is pursuing two lines of inquiry. First, through a combination of study designs, BU is investigating the possibility that a relatively common genetic variant exists that may accentuate the effect of other environmental or occupational exposures. Second, BU will also build on the results of the adolescent study by re-testing participants in the prior study and enrolling new participants in different geographic areas, and with a wider age range (age 7-17).

Rather than wait for specific causal factors of CKD to be confirmed, BU has emphasized that there are sufficient reasons to improve work practices to reduce risks to workers' health. BU made specific recommendations for such improvements in the Industrial Hygiene report released in 2010. According to NSEL, the company has implemented many of the recommended changes, including regular hydration, mandatory rest breaks, a two-week acclimatization period at the beginning of the harvest, and tents to provide shade. Additionally, NSEL has acquired a mobile clinic to routinely monitor the health of the workforce.

Improvements in Care for CKD Sufferers

Medical needs for CKD sufferers in Chichigalpa are profound, particularly in light of limited access to medication, dialysis, and kidney transplant opportunities. At the CAO dialogue table, ASOCHIVIDA and NSEL agreed that looking for opportunities to improve the quality of local health care services was a priority.

In 2010, CAO commissioned a medical needs assessment conducted by independent local and international medical experts (Dr. Norman Jirón, Dr. Juan José Amador, Dr. Martha Pastora, and Dr. David Silver). After consulting with more than 20 local physicians and health authorities, the study recommended immediate improvements in the capacity of the Julio Durán Local Health Center, related to infrastructure, human resources, equipment, and supplies. The medical needs assessment also discussed options to improve care in the medium to long term.

In 2011, the German Investment Corporation (DEG),⁶ one of NSEL's financiers, became aware of the outcomes of the dialogue process and decided to make its own financial contributions to complement NSEL's efforts. One of the joint initiatives has been a commitment of nearly \$320,000 by NSEL and DEG to the Nicaraguan Ministry of Health (MINSa) to make necessary improvements at the local health center. Subsequently, MINSa decided it would build a new primary hospital in Chichigalpa. A project was designed by public health experts to use the NSEL-DEG funds to install a renal health clinic alongside the general hospital that could offer dialysis services. The project never received final approval by MINSa and the renal health clinic was not built. Almost four years later, in 2015 MINSa finally authorized the original project to improve the local health center. Works have begun in July of 2015.

While progress with MINSa has been slow, the parties have implemented other short-term healthcare initiatives, with funding from NSEL:

- As a first step, ultrasound equipment and the services of a radiologist were provided to the local health center.

- In cooperation with the organization *Instituto de Acción Social Juan XXIII*,⁷ ASOCHIVIDA sells low-cost medications to its members. For each dollar that ASOCHIVIDA puts into the program, NSEL contributes three dollars.
- In coordination with the local health center, ASOCHIVIDA provides free CKD medication, as long as members show a prescription from the local physician in charge.
- ASOCHIVIDA offers its members the daily services of a nurse for ASOCHIVIDA members who provides assistance with injections, serum, and blood pressure tests.
- ASOCHIVIDA provides economic support to cover transportation costs for 44 members who are under hemodialysis treatment.
- ASOCHIVIDA implemented a peritoneal⁸ dialysis pilot project aimed at raising awareness about the benefits of this kind of treatment. Although the project included improvement of hygiene conditions at patients' houses and training for their families, the project did not deliver the expected results and highlighted the need to develop the capacity of local surgeons to adequately perform catheter implants for peritoneal dialysis. This need is being addressed through support from the Pan American Health Organization (PAHO).
- A dental care unit from *Universidad Nacional Autónoma de Nicaragua* (UNAN)-León visits ASOCHIVIDA on a weekly basis to provide services to members.

Alternate Means of Livelihood and Support for Families Affected by CKD

Through the CAO dialogue table, ASOCHIVIDA and NSEL agreed to address the urgent need to support community members who are sick and unable to work, or are survivors of workers who have died. Support provided for the community by NSEL has included food aid, development of a microcredit and microleasing program, improvements to housing, and alternative income generation projects for ASOCHIVIDA members.



ASOCHIVIDA's General Assembly, which met frequently to discuss ways to help members deal with CKD.

Alongside NSEL, DEG has provided technical assistance to support entrepreneurial initiatives by ASOCHIVIDA members (implemented by a local development organization, NITLAPAN) and to support further capacity building and transformation of ASOCHIVIDA into a stronger and more mature organization.⁹ A business development and institutional capacity-building expert has been providing support to the parties since January 2010 to help identify income-generating activities. This expert assistance was provided under CAO's auspices for four years and was taken on board by DEG in 2014. These activities are described in more detail below.

Food Aid

Since June 2009, responding to ASOCHIVIDA's request, NSEL has provided a monthly basic food allotment for ASOCHIVIDA's members, beginning with 1,100 and now reaching over 2,500 families (as well as school supplies for 1,545 children at the start of the school year). To date under this program, NSEL has provided over \$4 million in food aid to community members.



ASOCHIVIDA member transporting food aid support.

Microcredit Fund and Local Business Initiatives

ASOCHIVIDA controls \$165,000 in funding that was donated by NSEL to be granted to its members for microcredit projects under favorable conditions (low interest rates and long payback periods). The fund is managed solely by a local microfinance institution, *Centro de Promoción del Desarrollo Local*¹⁰ (CEPRODEL) on behalf of ASOCHIVIDA. While nearly 350 families have benefitted from this program, only around 100 have repeatedly taken loans and paid them back. In light of this, a shift from microcredit to microleasing was adopted in 2011 with better results.

NSEL and DEG each provided half the financial support—about \$87,000 each—to implement a project designed and directed by a local micro-leasing organization, NITLAPAN, to support ASOCHIVIDA members in designing and developing business initiatives. Microleasing support has been extended to 125 families for their business initiatives. The model has been very successful, with only four percent of beneficiaries experiencing delays in making lease payments.



A bakery project, one of many small projects initiated to help ASOCHIVIDA members (Felix Davy/CAO)

Poultry Production Project

In 2012, NSEL purchased an industrial poultry production facility for \$253,500 and since June that year, all profits generated by the facility have accrued to ASOCHIVIDA. Since 2013, this project has been generating a monthly profit of \$1,500 for ASOCHIVIDA. This profit, soon expected to increase to \$2,000, is used by ASOCHIVIDA to grow its medication fund, support members going through hemodialysis, helping those who have lost a family member, and general operational costs of the organization. NSEL will eventually transfer full ownership and administration of the facility to ASOCHIVIDA.



The poultry project initiative to support ASOCHIVIDA members

Housing

With joint contributions from NSEL, the Inter-American Development Bank (IADB), the

Colmena Foundation,¹¹ the National Housing Institute (INVUR), and the Municipality of Chichigalpa, 100 new houses have been built for members of ASOCHIVIDA who had lived in poor conditions. In addition, materials have been periodically to members to repair their existing homes. According to NSEL, the total budget for the project is in excess of \$600,000.



Houses constructed for ASOCHIVIDA members in Chichigalpa.

Other Donations

Through the American Nicaraguan Foundation,¹² a charitable foundation established by the Pellas family, every semester ASOCHIVIDA receives donations of clothes, powdered milk, and personal hygiene items, among other items. According to NSEL, total donations have amounted to over \$100,000.

IFC'S ROLE IN THE PROCESS

The degree to which IFC plays a role in CAO dispute resolution processes varies, and in significant part depends on whether the parties request IFC's participation. In this case, the complainants expressed the desire to have direct interactions with IFC from an early stage to have the opportunity to ask questions. Later in the process, the parties sought institutional support

from IFC to enhance the sustainability of the agreements made through financial and technical support. The parties have expressed some frustration at IFC's responsiveness to these requests.

Early requests for IFC to play a role were reflected in CAO's assessment report issued in late 2008. Here, CAO urged representatives from IFC's due diligence team to meet with community representatives under the auspices of the CAO to discuss their procedures, explain how decisions are made, and seek a better understanding of opportunities to improve IFC's procedures. The CAO offered its facilitation support for such a meeting to be held in a neutral location in Nicaragua and under agreed ground rules for participation. But no expression of interest from the IFC was received by the CAO for this meeting to take place.

As agreements began to be reached through the CAO dialogue process as early as 2009 and resources were needed to implement them, NSEL and ASOCHIVIDA asked CAO to engage with IFC and other development institutions for assistance. CAO thus approached IFC regarding various opportunities for engagement.

In 2009, IFC's Corporate Advice and Supply Chains Unit conducted an assessment of the potential for an income generation project for the community. IFC met bilaterally with NSEL and ASOCHIVIDA and recommended hiring a business development expert to assist ASOCHIVIDA. CAO hired the expert in January 2010 and paid for their services until 2014. Thereon, DEG assumed responsibility for contracting ongoing support from the expert while continuing to finance health care and local development initiatives.

DEG's participation was welcomed by ASOCHIVIDA and NSEL. They hoped that IFC would engage in a similar way to help address the other initiatives related to CKD that they were working on. Despite attempts by CAO to help facilitate IFC's engagement with the parties over a five-year period, IFC's involvement at the time of writing has been limited to the following scope:

- Social specialists from IFC's Advisory Services team assigned to the NSEL project undertook a pilot scoping visit to Nicaragua in January 2013 to assess whether there were opportunities for continued IFC involvement and capacity building support for

ASOCHIVIDA following CAO's exit. IFC indicated that the rationale for this visit was to explore how IFC involvement could be continued after the case had been mediated to ensure that final outcomes could be sustained. In July 2013, IFC presented a proposal to NSEL. In April 2014, IFC reported that it had provided advice to NSEL on the poultry production project to make the operation financially self-sustainable. IFC sent an industry expert to review the project, who concluded that the poultry unit was doing well, but that opportunities for scaling up and/or replicating the business were not obvious at this stage.

- Based on lessons learned from CAO's dialogue process and BU's research, IFC states that CKD management is now an explicit part of IFC's due diligence in all its agribusiness and non-agribusiness investments in Central America, with a strong focus on preventive and remedial measures, where applicable. IFC also states that its Occupational Health and Safety (OHS) appraisal now includes an evaluation of pre-employment screening for CKD; monitoring and management of the disease during employment; and procedures to address prevention, education, and mitigation of CKD in the workforce and in the supply chain. IFC indicates that, in accordance with its Performance Standards, it also requires the implementation of employee and community grievance mechanisms.
- IFC reports that it has developed a set of best practices and behaviors related to CKD based on measures implemented by clients in Nicaragua and inputs from IFC specialists, with the aim of raising awareness and improving outcomes and quality of life for those living with CKD. Currently, IFC is in discussions with DEG to develop an educational tool to prevent and control risk factors for CKD and improve overall management of the disease.

CAO has not monitored or verified IFC's action items relating to implementation of improvements on OHS in future IFC projects as they were not a result of engagement with the parties through the CAO dispute resolution process.

It is noted that beyond the action items indicated by IFC, in 2013, well into the CAO process in Nicaragua, IFC decided to make a new investment

in the Nicaraguan sugar sector without reaching out to CAO or the BU team for guidance or lessons learned. IFC's Environmental and Social Review Summary did refer to preventive measures at the workplace for workers potentially at risk. However, different national and international stakeholders expressed their concern that IFC was misrepresenting BU's findings by stating that "(n)o direct relationship between the sugar sector and the disease has been established."¹³ In a context of heated controversy about the causes of CKD, IFC's statement was received by various groups working on this issue as dismissive of ongoing research efforts, the CAO process, and potential impacts of IFC's investment in the same sector and region.

INSIGHTS FROM THE PROCESS

Addressing Needs that Go Beyond a Local Dispute: Laying the Foundation for a Broader Institutional Engagement and a Public Policy Response

CAO's dispute resolution function provides a neutral space for project-affected communities and IFC clients to find collaborative, sustainable solutions to environmental and social concerns, and more broadly to turn project risks and impacts into opportunities.

Early in the CAO dialogue process, it became apparent that the geographic scope of CKD and the needs of those affected were much broader than the company-community dispute CAO was asked to mediate. Although the outcomes of the CAO process were substantial for ASOCHIVIDA and NSEL, the needs of those suffering from the disease are wider and deeper than what can be addressed by a single and local process. CKD touches upon issues related to access to and quality of health care, employment opportunities, socioeconomic development, and medical research, many of which are dependent on the involvement of the government of Nicaragua and other regional and international actors. The case highlighted the need for broader support to move research forward, dramatically expand health care services, and introduce changes in work practices to reduce risks. It became evident that the need to address this systemic health issue impacting a group of poor people in a marginalized community called for a broader engagement in which

Nicaraguan government agencies and the international community needed to be at the center.

As early as 2008, CAO approached MINSA about the problem. But catalyzing action beyond the involvement of the direct parties has been challenging, as the local needs in Chichigalpa had to be weighed against constrained budgets and competing priorities. CAO therefore tried to involve and partner with other national, regional, and international agencies, including the IFC and the World Bank. However, CAO encountered greater challenges getting traction on the issues with these entities than anticipated. This represented a particular challenge for the CAO, who has had to carefully manage expectations about its facilitating role—both to ensure that ASOCHIVIDA and other parties understand the limits of CAO's mandate, but also to leave in place as much support as possible to ensure sustainable outcomes from the process.

DEG quickly understood the role of the CAO, saw the value of the CAO-convened process and has substantially engaged in the search for solutions with its client and affected community members. DEG's support has been central to the sustainability of outcomes on the ground.

After concluding its mediation role in June 2012, the CAO continued attempting to involve development cooperation organizations. The CAO began to look for opportunities to support a transition towards a public policy response according to the scale of the problem and led by national and international institutions with the appropriate mandate. In June 2013, PAHO took up a decisive role. With a regional mandate to address CKD, its new representative in Nicaragua has taken an active stance, supporting various initiatives in close coordination with MINSA and in cooperation with all stakeholders. The results of the dialogue process represented an important stepping-stone for PAHO's efforts and positive impacts are beginning to be seen:

- Access to hemodialysis for CKD patients has expanded. Today, 44 members of ASOCHIVIDA are under treatment. Hemodialysis services are now available in Chinandega and will soon be available in Chichigalpa's hospital, which will significantly reduce travel efforts for patients.

- MINSA has approved stem-cell treatment for 20 patients with financial support from the Pellas Group.
- The United Nations system in Nicaragua is structuring a multiagency program to address CKD and support families suffering from it.
- MINSA is starting to set up a CKD surveillance system in order to collect reliable data about morbidity, mortality and prevalence.
- The services of a nephrologist are once again available in the Department of Chinandega.
- ASOCHIVIDA will soon receive a grant from PAHO to visit a group of CKD patients in Guanacaste and learn from their experience in peritoneal dialysis.

As the CAO brings its involvement to a close, even when much remains to be done, these initiatives (and others still in their very early stages) are gradually shaping a public policy response that fits the size of the challenge.

The Role of Scientific Research in the Context of a Dispute

By 2008, ASOCHIVIDA members had repeatedly been deceived by unscrupulous local leaders or lawyers who would assure them that the cause of their disease was already known and that proof of cause was being hidden from them. Therefore, when ASOCHIVIDA and NSEL jointly chose BU to respond to their questions about the causes of the disease, most ASOCHIVIDA members were expecting scientists to easily deliver evidence that would back their demand for economic compensation.



From this desk, ASOCHIVIDA tracks and allocates food supplies to 2,000 members each month.

BU research efforts catalyzed by the dialogue process were unprecedented in scope and resources. But the outcomes of the research into the disease revealed a more complex scenario than ASOCHIVIDA was hoping for. Early in the

process, BU noted that the disease was likely to be the result of a combination of occupational and non-occupational factors, and determining which specific factors are at play would take additional time, resources, and more research. BU also stated that even if the specific causal factors are not yet known, there was sufficient reason to introduce changes in work practices to reduce risks to workers' health. NSEL has reported taking important steps in this regard, as described above. ASOCHIVIDA appreciated the honesty and consistent effort made under the CAO process to safeguard members' right to learn what is known and not known about CKD. But it has been difficult for them to understand why the research has taken so long to find the cause of a disease that is affecting so many people.

In this difficult setting, and conscious of the long path that lies ahead, all research efforts triggered and conducted as a result of the CAO dialogue process between NSEL and ASOCHIVIDA have been an essential contribution toward transforming the dispute into an opportunity for constructive engagement and highlighting the need for a more comprehensive public policy response to this problem.

Building Collaborative Relationships in a Complex and Highly Charged Setting

One of the most powerful outcomes of a dispute resolution process is its ability to redefine and transform relationships. This case is a strong example of this potential. It is the CAO's belief that cooperative relationships need to be built among multiple actors to effectively tackle the complex challenges posed by a chronic issue, in this case the highly sensitive health impacts of CKD.

The dialogue process gave both parties—ASOCHIVIDA and NSEL—an opportunity to move beyond blame and start looking for joint solutions. A channel of communication between these two groups was created, enabling discussions that led to an opportunity to agree on tangible outcomes, but also to gain a deeper understanding of the concerns, needs, and constraints those suffering from CKD were facing in the short, medium, and long term.



CAO team with ASOCHIVIDA and NSEL dialogue table participants after signing closure agreement in June 2012

As a result of its participation in the dialogue process, ASOCHIVIDA grew institutionally and in size. Its membership went from around 600 people to more than 2500. But growth also brought challenges. Its membership is in the process of becoming more cohesive. Building trust among members and with NSEL will require a sustained long-term effort. Also, there are CKD-affected former workers in Chichigalpa who do not belong to ASOCHIVIDA, either because they chose not to or because they were not directly hired by NSEL, and who expect to receive similar benefits.

Beyond all difficulties, while CKD in Central America is becoming a priority for national and international public health institutions, and scientists continue to advance in the search for the causes, NSEL and ASOCHIVIDA representatives continue to meet regularly and work together to devise solutions that can address the severe needs of families affected by CKD.

NOTES

¹ The complaint included community members from Goyena and Abangasca, in the department of León, who raised concerns related to water, Indigenous Peoples' land, and the project grievance redress mechanism. These issues were closed in April 2010. Details of these issues can be found in the closure report posted on CAO's website: http://www.cao-ombudsman.org/cases/document-links/documents/NSELissuesGoyenaandAbangasca_ConclusionReport.April2010.English.pdf.

² The other issues raised in the complaint were addressed separately. See note 1.

³ The agreement can be found at http://www.cao-ombudsman.org/cases/document-links/documents/NSEL_ASOCHIVIDA_CAO_SignedAgreement_June282012_eng.pdf.

⁴ CNPA is a civil nonprofit association whose purpose is to promote the entrepreneurial activity of the Nicaraguan sugar industry. Sugar mills that make up the CNPA are SER San Antonio, Monte Rosa, South Sugar Company, and Montelimar. See <http://www.cnpa.com.ni/>.

⁵ AICA is a civil nonprofit association whose purpose is to promote the entrepreneurial activity of the sugar industry in Central America.

⁶ DEG is a member of the KfW German Development Bank. DEG's stated mission is to promote business initiatives in developing and emerging market countries as a contribution to sustainable growth and improved living conditions of the local population. See <https://www.deginvest.de>.

⁷ Instituto de Acción Social Juan XXIII is a social action institute of the Central American University (UCA), a Jesuit university that promotes social justice and helps solve affordable housing, health, and development problems in Nicaragua. See <http://www.juanxxiii.org.ni/index.php>.

⁸ See <https://www.kidney.org/atoz/content/peritoneal>

⁹ DEG has extended \$299,050 in technical assistance to improve the health situation for patients suffering from CKD in the municipalities of Chichigalpa and Chinandega. Activities include: 1) technical assistance for entrepreneurial and human development in agribusiness and other areas for local income generation (September 2012–August 2013); 2) the first phase of support (setting up a revolving credit fund) and capacity building for entrepreneurial initiatives for ASOCHIVIDA members in Chichigalpa and Chinandega (September 2012–August 2014); 3) the second phase of support (a capital increase for the revolving credit fund) and capacity building for entrepreneurial initiatives for ASOCHIVIDA members in Chichigalpa and Chinandega (September 2014–August 2016); and 4) support for the services of a business development expert, Rogerio Cuadra, to continue promoting income generation activities for ASOCHIVIDA and its members (July 2014–April 2015).

¹⁰ CEPRODEL's mission is to promote local sustainable development, facilitating vulnerable groups' economics, organizational and technological options to overcome poverty based on its creative potential. See <http://www.ceprodel.org.ni/index.php?lang=es>

¹¹ Colmena Foundation is a nonprofit organization whose main objective is to develop housing programs and living conditions in the service of communities in Nicaragua. See <http://fundacioncolmena.org/fc/>.

¹² ANF was founded by Alfredo Pellas Jr., Theresa Pellas, and Father León Pallais to help mitigate the effects of poverty in Nicaragua. See <http://www.anfnicaragua.org/index.php?lang=en>.

¹³ See the IFC Environmental & Social Review Summary for Ingenio Montelimar at <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/c9aba76ed1df1938852571c400727d66/d310031ddbb9e71485257b260077f706?opendocument>.

Photo credits: CAO, David Atkins, Felix Davy, and Juan Dumas.

All documentation related to this case, including the research studies by Boston University School of Public Health, is available on the CAO website:
www.cao-ombudsman.org

Declaration of Kristen Genovese

Exhibit 2

November 12, 2013

Dr. Jim Yong Kim, President
World Bank Group
1818 H St. NW
Washington, D.C. 20433
United States

Re: Learning from Failure: Management Action Plans Needed in Response to
Inspection Panel and CAO Investigations

Dear President Kim:

We are writing to express our concern about the trend by World Bank Group (WBG) Management to refute, deny or otherwise fail to act on critical findings of its accountability mechanisms—the Inspection Panel and the Compliance Advisor Ombudsman (CAO).

This trend is in stark contrast to your commitments¹ to learn from failure and ensure that the voices of all citizens can be heard. Communities often take great personal risks to bring complaints about harm from WBG projects. When their complaints result in findings of non-compliance with WBG policies, they deserve a response that addresses them. We urge you to direct Management to respond to Inspection Panel and CAO investigations not by denying or refuting non-compliance findings, but by committing to address all such instances of non-compliance, remedy any harm that resulted from non-compliance, and correct any implicated practices to prevent future non-compliance.

The new WBG Strategy commits to solicit citizen feedback in order to “gain insights on the results ordinary people most value, suggestions about potential risks and ways to address them, and feedback on the effectiveness of WBG-supported programs.”² But through its accountability mechanisms, the WBG has had citizen feedback mechanisms in place for years. The Inspection Panel and the CAO enable those who have borne the cost of risky projects to raise their concerns to the highest levels of the institution. However, in a number of recent cases, the WBG has responded to findings by denying or refuting the adverse impact of its funding and failing to learn from those problems or correct them:

- **Tata Mundra Project in India:** The International Finance Corporation’s (IFC) October 2013 response, which you approved, to the CAO’s investigation of its investment in Coastal Gujarat Power Limited, a subsidiary of Tata Power, in Mundra, Gujarat, India, did not include an action plan to address the CAO’s findings of harm caused by non-compliance. Rather it was in large part devoted to refuting the findings of the investigation with information that the CAO had already taken into consideration when making its independent findings.
- **Financial Intermediary Investment:** IFC’s initial response, in January 2013, to CAO’s investigation of its investments in financial intermediaries did not include an action plan

¹ Jim Yong Kim, Address to the Boards of Governors of the World Bank Group at the Joint Annual Discussion (Oct. 12, 2012) available at: <http://www.imf.org/external/am/2012/speeches/pr04e.pdf>.

² World Bank Group, *World Bank Group Strategy* ¶ 59 (2013).

to address the CAO's findings. It was only when CODE intervened that IFC developed an action plan, approved in September 2013.

- **Eskom Energy Project in South Africa:** The Bank Management's March 2012 response to the Inspection Panel's investigation of the Eskom project in South Africa refuted the Panel's findings of policy violations and did not develop an action plan. Bank Management only prepared a "supplemental note" after a request from Board members. In May 2012, Management refuted the Panel's conclusion that the Bank failed to ensure sufficient water for scrubbers to minimize sulfur dioxide (SO₂) emissions. The fact that a year later Eskom began the process to request an exemption from meeting new South African regulations on Minimum Emissions Standards for SO₂, arguing there is insufficient water to operate such scrubbers,³ only confirms the Panel's conclusion.

The new WBG Strategy calls for "an accountability mechanism that complements compliance with a focus on outcomes."⁴ It has always been Bank Management's responsibility, in responding to Panel or CAO findings, to ensure that an investigation improves the outcomes for those affected by WBG-funded activities. The failure to produce better outcomes in the cases mentioned above and others, is not the fault of the mechanisms, which are only one half of the accountability system at the WBG, but the result of Management's failure to fulfill its responsibility to remedy the harms its own accountability mechanisms have determined it bears responsibility for.

An upcoming test of Management's commitment to meet its responsibility is the CAO's report, currently before Management, on IFC's investment in Corporación Dinant, in Honduras. According to a report by the National Human Rights Commissioner of Honduras, 92 people were killed in land disputes in Bajo Aguán from 2009 through 2012. Most of the victims have been active members of peasant organizations. According to a March 2013 report,⁵ in only seven cases have investigations been brought before a judge, and not a single case has resulted in a conviction. The CAO's report was triggered by allegations that Corporación Dinant "conducted, facilitated or supported forced evictions of farmers in the Bajo Aguan region," where Dinant operates palm oil plantations, and that violence against farmers occurred "due to inappropriate use" of "security forces under the control or influence"⁶ of Dinant. Dinant denies any wrongdoing. We urge you to ensure the expeditious release of a constructive and self-critical response to the findings of the CAO investigation, in order to send a clear signal that IFC funding will only be provided in a manner that respects and protects human rights and that is consistent with the performance standards implicated in this investigation and the IFC's sustainability framework.

³ Eskom, Application for Exemption from the Minimum Emissions Standards for the Medupi Power Station (2013), available at: <http://www.iliso.com/EMES/PDF/EMedupi.pdf>.

⁴ World Bank Group, *supra* ¶ 65.

⁵ Comisión Interamericana de Derechos Humanos, Informe Anual, Capítulo IV Desarrollo de los derechos humanos en la Región, Honduras, ¶ 193, OEA/Ser.L/V/II.147 (2013) available at: <http://www.oas.org/es/cidh/docs/anual/2012/indice.asp>.

⁶ Compliance Advisor Ombudsman, *Appraisal Report, Corporación Dinant S.A. de C.V.*, 1 (2013), available at: http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalReport_Dinant_August132012.pdf

You were recently quoted as saying, “[i]f you have a spectacular failure, the only thing that I would be disappointed about is if we didn’t ensure we learned from that failure.”⁷ The WBG can only achieve this if you ensure that Management prepares and implements constructive action plans in response to every investigation by the Inspection Panel and the CAO where instances of harm and non-compliance are found. At the twentieth anniversary of the Inspection Panel, you emphasized that communities will not bear the cost of the risks taken by the WBG. We are waiting for your actions to match your words.

Sincerely,

Accountability Counsel
Bank Information Center
Bretton Woods Project
CEE Bankwatch Network
Center for Human Rights and Environment - CEDHA
Center for International Environmental Law
CNCD-11.11.11, Centre National de Coopération au Développement
Crude Accountability
Friends of the Earth – US
Forest Peoples Programme
Global Initiative for Economic, Social and Cultural Rights
Human Rights Watch
Inclusive Development International
Institute for Policy Studies, Climate Policy Program
Interamerican Association for Environmental Defense - AIDA
International Accountability Project
International Rivers
Jamaa Resource Initiatives
KOSID, Kosovo Civil Society Consortium for Sustainable Development
Oxfam
Pacific Environment
Social Justice Committee of Montreal
SOMO, The Centre for Research on Multinational Corporations
Trocaire
Urgewald
We Effect
11.11.11- Coalition of the Flemish North-South Movement

cc: Jin-Yong Cai, Executive Vice President and CEO, IFC
Sanjay Pradhan, Vice President for Change, Knowledge and Learning, World Bank
Meg Taylor, Vice President and CAO, IFC
Eimi Watanabe, Chair of the Inspection Panel, World Bank
Juan José Bravo Moisés, Executive Director and Chair of the Committee on Development Effectiveness

⁷ Annie Lowrey, *World Bank, Rooted in Bureaucracy, Proposes a Sweeping Reorganization*, Int. N.Y. Times, Oct. 6, 2013, available at: <http://www.nytimes.com/2013/10/07/business/international/world-bank-rooted-in-bureaucracy-proposes-a-sweeping-reorganization.html?adxnnl=1&adxnnlx=1382526627-3KHfMkAT0nEt65B30XhJug&r=0>.

Declaration of Kristen Genovese

Exhibit 3



STAKEHOLDER ASSESSMENT REPORT

**Regarding Community and Civil Society concerns in relation to activities of the
Nicaragua Sugar Estates Limited (NSEL), Nicaragua**

December 2008

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

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LIST OF ACRONYMS

CAO	Office of Compliance Advisor/Ombudsman
CRI	Chronic Renal Insufficiency
IFC	International Finance Corporation
ISA	San Antonio Sugar Mill or <i>Ingenio San Antonio</i>
IWRM	Integrated Water Resources Management
MAGFOR	Ministry of Animal Husbandry and Forestry
MARENA	Ministry of Environment and Natural Resource
MIGA	Multilateral Investment Guarantee Agency
NSEL	Nicaragua Sugar Estates Limited

1. Introduction

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

This document is a 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.

1.1. The complaint

On March 31, 2008 the CAO received a complaint on behalf of communities from the Department of León and Chinandega raising concerns about impacts to the health, environment, and livelihoods of community members, believed to be caused by the activities of the Nicaragua Sugar Estates Limited (NSEL), a client of IFC.

The complaint was screened for eligibility on April 18, 2008 and confirmation sent to the complainants and IFC project team in order for them to notify NSEL that the complaint met all three of the CAO's eligibility criteria for further assessment:

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.

The complaint raised a number of concerns of social and environmental issues, including:

- The association between NSEL's activities and Chronic Renal Insufficiency (CRI);
- Concerns relating to rights of association and restriction on the formation of a labor union;
- Labour conditions, including concerns of child labour, handling of chemicals, respiratory issues, and access to water and basic hygiene facilities; and
- Offsite environmental effects, including pesticide run-off to farms and impacts to indigenous Sutiaba lands, water competition and water contamination, and air pollution and associated respiratory problems as a result of sugarcane burning.

The complainants' concerns are based on information gathered from different sources and stakeholders such as a field investigation on water quality in the Department of Leon and Chinandega, administrative orders issued by local environmental authorities requesting NSEL to comply with national law and complaints (*denuncias*) from affected communities.

1.2. The project

The complainants reference an IFC loan, approved in October of 2006, of US\$ 55 million to NSEL for expansion and intensification of sugarcane cultivation and processing, including the construction of a plant to produce and export ethanol. The full investment includes a US\$ 25 million category A loan for IFC's own account, and a syndicated category B loan for up to US\$ 30 million.

According to the projects' Summary of Proposed Investment and Investment Review, NSEL was founded in 1890, and is one of the largest sugar mill in Nicaragua, and the leading sugar producers in Central America¹. It supplies raw and refined sugar to the domestic market in Nicaragua, and exports raw sugar to the world market, including the United States.

NSEL owns and operates the agro-industrial complex San Antonio Sugar Mill (*Ingenio San Antonio* or ISA), located in Nicaragua's Pacific Northwest with an effective capacity to process 16,000 tons of sugar cane per day. The company owns 11,000 ha of sugar cane that, together with the leased land, supply 70% of its needs, being the other 30% supplied by independent cane growers. ISA's principal activities include:

- growing, processing and commercialization of raw and refined sugars and by-products such as molasses and ethanol using approximately 24,222.81 Ha of cane field, of which 15,105.95 Ha is owned or leased land;
- production and sale of electrical energy to the national grid; and production of shrimp.

NSEL is owned primarily by the Grupo Pellas, one of the largest and more diversified conglomerates in Central America. They are based in Nicaragua with stakes, *inter alia*, in the energy sector, sugar, ethanol, automobile, banking, cable TV, health, and credit card companies².

As for policies and guidelines applicable for this project IFC referred in the Environmental and Social Clearance Memorandum that IFC had identified³ the following applicable policies and guidelines: a) under the new IFC policies and performance standards it was applicable PS1 – Social and Environmental Assessment and Management systems; PS2 – Labor and Working Conditions; PS3 – Pollution Prevention and Abatement; PS4 – Community Health, Safety and Security; PS5 Land Acquisition and Involuntary Resettlement; and PS6 Biodiversity Conservation and Sustainable Natural Resources Management; and b) under the guidelines it was applicable the Sugar Manufacturing Guidelines (July 1998); General Environmental Guidelines (July 1998); Occupational Health and Safety Guidelines (June 2003); Hazardous

¹ Summary of Proposed Investment (SPI) Project ID # 25331 22 September, 2006; PDS Investment Review Project ID # 15331 23 September, 2006.

² Summary of Proposed Investment (SPI) Project ID # 25331 22 September, 2006; PDS Investment Review Project ID # 15331 23 September, 2006.

³ Environmental and Social Clearance Memorandum (ESCM), October 25, 2006.

Materials Management Guidelines (December 2001); Plantations Guidelines (July 1998); and Pesticides Handling and Application Guidelines (July 1998).

2. CAO Assessment

2.1 Site visit itinerary

As part of its assessment process, a CAO Ombudsman team visited NSEL in Nicaragua, as well as communities in Leon and Chichigalpa to discuss their interest and perspectives on the issues raised in the complaint in June 2008. Additionally, the CAO Ombudsman team held meetings with other stakeholders to get a broad view of the situation and issues at stake. The itinerary was the following:

Monday, 23 June – Chichigalpa, Department of Chinandega

16:00 – 18:30 Drive from Managua to Chichigalpa.

18:30 – 20:30 Meeting with NSEL Executives: Mr. Alvaro Bermudez Castillo, Administrative Manager; Mrs. Zela Porras Díaz, Legal Manager; Mr. Ariel Granera, Communication, Information and CSR Director; and Ms. Claudia Serrano, IT/Office of Communication.

Tuesday, 24 June – Leon, Department of Leon

9:00 – 13:00 Meeting with complainants and affected community leaders from Sutiaba communities of Goyena and Abangasca, ASOCHIVIDA, and community members of Chichigalpa.

Between leaders and community members, there were 15 people present at the meeting.

14:15 – 15:00 Drive from Leon to the communities of Goyena and Abangasca.

15:00 – 18:00 Meeting with members of Sutiaba Indigenous community, community members of Goyena and Abangasca, and complainants.

Approximately 30 people were present at the meeting.

18:00 – 18:45 Return to Leon.

Wednesday, 25 June – Chichigalpa, Department of Chinandega

Parallel meetings were held in the morning hours of Wednesday with different stakeholders. The CAO Ombudsman team was divided in order to participate on both.

9:00 – 13:00 Meeting with NSELs' staff: Dr. Félix Zelaya; Dr. Mauricio Jarquín; Dr. Alejandro Marín; Engineer Ramón Sánchez; Engineer Luis Cepeda; Engineer Luis Enrique Martínez; Engineer Ivette Reyes; Mr. Norman Meza; Mr. Ariel Granera; Ms. Claudia Serrano; Mrs. Zela Porras; and Mr. Álvaro Bermúdez.

During this meeting a detailed visit was conducted to NSEL hospital, school facilities and company's installations.

9:00 – 10:30 Meeting with Mayor of Chichigalpa, Mr. Wilfredo Rostran.

11:00 – 13:00 Meeting with Former Mayor of Chichigalpa, Mr. Victor Sevilla.

14:00 – 17:30 Meeting with members of ASOCHIVIDA.

100 people participated in this meeting, including residents of Chichigalpa, former NSEL employees, widows from former NSEL employees that have died of CRI, and their children.

19:00 – 20:30 Meeting with the President of the Sutiaba Indigenous Community, Mr. Roger Mario Montoya.

Thursday, 26 June – Leon, Department of Leon

9:00 – 10:00 Meeting with Mobile Clinic Project, Mr. Octavio Perez, and Director of the ISALIS-Leon.

11:00 – 12:30 Meeting with Engineers from the Institute of National Forestry (INAFOR), Mr. Ramiro Velazquez Lanuza, Mr. Oscar Toruño Espinoza, and Mr. Pedro José Ramirez Centeno.

12:45 – 14:00 Wrap up meeting with complainants.

14:30 – 16:00 Meeting with Leon officials from the Ministry of Environment and Natural Resources (MARENA), Mrs. Yaniree Alvarez, Municipal Director; Mr. Cairo Díaz, Environmental Inspector; Mr. Carlos Ruiz Vasquez, Legal Advisor; Mrs. Carmen Carillo, Environmental Technical Advisor; and Mr. Oswaldo Tellez, Environmental Department Coordinator.

16:00 – 18:30 Return to Managua

18:30 – 19:30 Meeting in Managua with the Procurator's Office, Mr. Hernán Talavera Corea, Executive Secretary of the Inter-institutional Investment Commission.

Friday, 27 June – Managua

8:30 – 11:30 Discussion with NSEL staff in Managua: Mr. Alvaro Bermudez Castillo, Administrative Manager; Mr. Joaquin Zavala, Vice Executive Director; Mrs. Zela Porras Díaz, Legal Manager; Mr. Ricardo Barrios, Financial Director; Mr. Tito Silva, Agro-industrial Manager; Mrs. Katya Gómez de Rappacciolo, Financial Resources Manager; Mr. Ariel Granera, Communication, Information and CSR Director; and Ms. Claudia Serrano, IT/Office of Communication.

2.2 Findings

Based on discussions and information received during the assessment period from affected communities' members, ASOCHIVIDA, complainants, NSEL staff and IFC, the issues explained in the complaint to the CAO appear to fall within four topic areas, elaborated below.

Before stating the findings, it is important to underline that there is not a general rejection to the presence of NSEL in the areas of Leon and Chinandega, but rather there is an expressed desire to work together in solving or mitigating mutual concerns.

Topic area 1: Issues related to the work force of NSEL, health impact by CRI and working conditions

The issue of CRI was raised by members of an association named ASOCHIVIDA, which represents approximately 1,000 people that are either affected by CRI or are kin of affected individuals, among them women and children. Some in this group state that they would like to see NSEL be more responsive to the CRI issue affecting people that have worked for several years for the company and have become ill; some believe that they have been dismissed after the chronic condition began to affect their health. Others express that they would like to see proper support from NSEL towards the families of those affected by CRI. They state that once diagnosed with CRI their health starts to deteriorate significantly over approximately 6 years. Many in the group express they would like to know what causes the disease in order to avoid future generations from suffering the same harm.

NSEL recognizes how difficult this issue is for individuals, families, the community, and the Company itself. They affirm that they were the first to know and raise awareness of how CRI was affecting their work force. They note that there are no studies at the moment proving the existence of a direct causal link between sugar mill activities and CRI. From their perspective, even when the causes are unknown, they have been and are currently investing in significant efforts to support their work force affected with CRI by providing medical and hospital assistance. Furthermore, NSEL expressed that they will be willing to support serious and systematic research to find out the causes of this chronic condition.

According to all stakeholders met during the field trip, there is a wide social concern in the region regarding CRI and how it is affecting a large number of people and families, both within the areas of operation of NSEL, and more widely. There is a broad acknowledgment that in the last few years a number of associations and organizations have been formed to advocate for this matter, and different research efforts have been initiated to find out the causes without achieving conclusive findings. ASOCHIVIDA, represents many people and families affected by this chronic illness. An important question now is how this issue can be address properly both in the short and in the longer-term to provide the adequate medical support for those who have been impacted by CRI, and how to prevent it.

Topic area 2: Issues related to environmental impacts, and water quality and distribution

(Members of Sutiaba Indigenous community and community members of Goyena and Abangasca)

The community members raise the issue of water quality and environmental impact. They cite issues such as air contamination as a consequence of cane burning, which they believe has resulted in some cases of pneumonia and respiratory difficulties. Additional examples regarding the water quality included changes in the texture and odor of the water. In the last few years, they believe that some of their livestock have aborted as a consequence of drinking contaminated water waste coming from NSEL activities; members of the community state that they have presented formal complaints before legal local authorities to resolve some of these issues⁴. On water distribution,

⁴ Formal complaints against NSEL were presented before the local representative of the Ministry of Environment and Natural Resource (MARENA), the Ministry of Animal Husbandry and Forestry (MAGFOR), and the Environmental Procurator Office.

community members express the difficulties they have had to access water for their farms, emphasizing that some of the water wells have little water volume compared to the levels present 6 or 7 years ago. From their perspective the company does not act diligently regarding usage of water, resulting in residents suffering from shortages.

NSEL notes that on a frequent basis the quality of water is tested through independent and specialized processes. They state there are no reports showing that NSEL activities are contaminating potable water, plus from their point of view the practices used in their activities are equivalent to the practices implemented in other sugar mills around the world. In the same line of practices, they state that they use small dosages of fertilizers and herbicides with no contaminating effects or harm. NSEL manifest openness in trying to explain to the affected communities what it is being tested and how it is done. They also express openness about bringing an independent and professional third party to run the tests. From their perspective it appears positive to improve communication with residents of areas where they operate. As for water competition, NSEL believes that there is plenty of water. They state that water wells have been used for over 30 years, and have maintained the same water level. NSEL expresses that they would like to improve and achieve a more efficient usage of superficial water, which would otherwise simply flow into the sea.

In addressing the issue of the water quality and distribution, NSEL is willing to consider options that would enhance the communities' usage of water in general. This topic would require discussion about the involvement of environmental regulators, in coordination with other relevant national and local government institutions.

Topic area 3: Issues related to grievances raised by community members and leaders living in the surrounding areas of the ISA

Residents of communities in Goyena and Abangasca, as well as some residents of Chichigalpa raise the issue of the difficulties they encounter when they need to discuss any day-to-day issue with NSEL. Some within the group provide examples of those difficulties. They explain that NSEL's property lacks fences that would prevent their livestock from entering NSEL's property. When the livestock enters NSEL sugar plantations some residents have found it difficult to have their animals released. They explain that it involves the presentation of the animal's birth-certificate to prove ownership, plus the payment of certain amount of money to symbolize a fine. Another example of the day-to-day issues they encounter is related to the sugar cane burning process. From their perspective it is disturbing that the fire and burning process takes place in the proximities of their houses, which they believe causes the residents' respiratory problems, affects their livestock, and affects the environment overall. Additionally, community members explain the difficulties they have had with NSEL's security system, which on occasion has escalated very quickly rather than being resolved on the spot.

NSEL state that there are common issues they have to face with residents, and they express openness to improve their interaction with the community. In the last year, in order to address some of those issues, they hired people from the communities of Goyena and Abangasca to work in the company's security forces. Plus, they have hired a full time employee dedicated to work on these matters, and he has initiated a process to register grievances. From their point of view, there is space for improvement, and they welcome support to improve and strengthen the interaction with the communities in their areas of operation, and their existing mechanisms to address grievances.

Topic area 4: Land acquisition in relation to the Sutiaba communities of Goyana and Abangasca

Some members of the Sutiaba communities in Goyana and Abangasca have expressed concern over the usage and acquisition of land they believe belongs, under royal title, to the Sutiaba indigenous community. The territories concerned are expansive, covering a broad area to the west of, and including part of, Leon. The NSEL facilities are one of many private as well as public entities that have purchased or occupied land over the last century that falls in this category. Sutiaba communities disagree about which authority has the right to approve the sale and lease of Sutiaba land, and surveillance of contractual commitments. In this context, some Sutiaba community members are petitioning for reform at the National Assembly and elsewhere.

NSEL has responded that it believes its practices of land acquisition are fully compliant with accepted legal norms in Nicaragua. It is concerned about the precedent of opening negotiations on land and does not believe this is appropriate. NSEL is therefore not willing to enter negotiations on land issues outside of the formal legal process.

Topic area 5: Labor and working conditions

Former workers of NSEL raised concerns over the possibility to exercise their rights of association within the company's work force. In May 2008 an agreement between former employees and the Company was reached on this particular matter.

Complainants raised the following concerns about labor conditions at NSEL:

- Access to lavatory facilities and water is restricted;
- Access to appropriate safety equipment and protection from agrichemicals is not sufficient;
- Labor conditions result in dehydration and exhaustion.

NSEL has provided documentary evidence to the CAO in response to each of these concerns, and has explained its supervision of worker health and safety.

Topic area 6: Issues related to the IFC

The NSEL complaint raises multiple concerns and questions about IFC's due diligence and appraisal processes with respect to application of its social and environmental policies. One approach may be for IFC to respond to these assertions line-by-line. However, this is likely to result in an adversarial outcome. CAO's suggestion is to address these concerns substantively through a process of enquiry, one which seeks to identify opportunities for improved engagement between IFC, the Sponsor and host communities. We urge representatives from IFC's due diligence team to meet with community representatives under the auspices of the CAO to discuss these procedures, explain how decisions are made, and seek a better understanding of opportunities to improve. Based on the issues raised in the complaint, this meeting should include discussion of the following topics:

1. Better understanding of how IFC social and environmental appraisals are done.
2. Clarification of which standards apply, and rationale for their inclusion/exclusion: particularly the case with IP's.

3. What are opportunities to improve local awareness of IFC's involvement in the project, disclosure and consultation with affected communities?
4. What can be done when issues are not identified in the Impact Assessment?
5. Are there opportunities to increase transparency and participation so that locally affected people are able to understand impacts and mitigation efforts by the project better?

This meeting could be held at a neutral location in Nicaragua under agreed ground rules for participation, and with facilitation provided by the CAO.

3. Next Steps

Our understanding leads us to identify three common objectives relating to the various stakeholders' needs to:

- identify the causes of CRI and receive appropriate support to address the effects of the disease affecting the community around the San Antonio Sugar Mill;
- discuss options to monitor water quality, and distribution within a trustworthy process; and
- enhance the existing mechanisms to address worker as well as community grievances.

In addition to these three objectives, which relate directly to the NSEL as the Sponsor, CAO proposed to convene a meeting between IFC and local community leaders to address the procedural concerns raised in the complaint (see Topic 4 above).

The proposed framework

To achieve those common objectives, which address topic areas 1, 2 and 3 explained above, we propose three themes, which should be implemented over a 6 month period starting on November 16, 2008.

Theme 1: Addressing concerns in relation to CRI. There are two approaches that stakeholders spoke with us about: (a) opportunities to assist the parties in identifying the causes of CRI through a credible study; and (b) exploration of options of support to communities that are afflicted by CRI.

a) Identifying causes

Currently, there is no conclusive study that helps to understand the causes of CRI. Both NSEL and community groups such as ASOCHIVIDA appear to want such a study, but have been clear that any study must be trustworthy and credible to them and their stakeholders. Neither party wishes to embark on a study only to find that it is not fully accepted by the other.

Under these circumstances, CAO proposes to help parties jointly define the criteria or principles a study on CRI causes must have for its outcome to be trustworthy. The parties should be willing to discuss what kind of feasible solutions would address the study's outcome. In addition, CAO will encourage both parties to consider which other stakeholders must be involved in this process to ensure that it is fully effective.

The above will ensure that: (a) both parties are able to express what criteria would make them feel confident that credible results on the causes of CRI can be reached; and b) both views are appropriately taken into account when exploring possible research under progress. A key outcome of this part of the theme is identification of the terms a study must have to ensure that both parties are bound by its final conclusion on the causes of CRI.

There may be existing studies or initiatives within Nicaragua or in the region that will meet the criteria for credibility identified by these stakeholders. CAO will identify whether there are existing academic and health institutes which may have expertise

and credibility in this field. Ideally, it may be possible to identify an existing local research facility that can become the focal point for this work.

b) Options for support to local communities where there is a prevalence of CRI

It is accepted that CRI has high prevalence among communities local to the San Antonio facility. NSEL seems to have medical facilities and services which provide a level of care and assistance to workers, and other members of the community. In addition, local government health authorities also provide public health services. Based on CAO's discussions with these private, public and community stakeholders, there is clearly concern about appropriate opportunities to enhance support to families that have been impacted by CRI, including widows and children of those individuals affected by this chronic condition. This may take the form of further collaboration between the public health agencies and NSEL to ensure better services. Additionally, there is interest in understanding what additional support could be effective to those that are most in need.

CAO proposes that it convenes discussions between NSEL, local health providers and affected community members to explore these options in more detail and make recommendations for improvements.

Theme 2: Addressing concerns over water quality and quantity (November 2008)

All stakeholders mentioned access to water as an important priority.

On the one hand, community members expressed their concerns about perceived impacts of NSEL activities on water quality and quantity in the area. On the other, NSEL believes its water management processes meet appropriate standards, preventing pollution and ensuring sufficient water flows for community needs.

No information, trustworthy to all stakeholders, seems to be available to determine potential impacts of NSEL activities on water quality or on the water quantity needed to ensure resilience of river basins.

Furthermore, no public decision-making mechanism seems to be in place to build multi-sector consensus on key water management aspects, such as land use planning, equitable allocation of water resources, pricing, and subsidies.

Under these circumstances, CAO proposes that claims over water pollution and access are discussed with the ultimate goal to build a trustworthy process. The CAO suggests, as one option, a framework of an integrated water resources management⁵ (IWRM) process for the basins where NSEL operates.

CAO considers that the process could be convened and lead by the Ministry of Environment and Natural Resources (Ministerio del Medio Ambiente y Recursos Naturales/MARENA), in tight coordination with other relevant national and local

⁵ According to the Global Water Partnership, IWRM is "a process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems." An IWRM approach is an open, flexible process, ensuring access to relevant information, bringing all stakeholders across the various sectors that impact water resources to the table, and applying effective and efficient decision-making mechanisms to set policy and make sound, balanced decisions in response to specific water challenges faced.

government institutions. Should there be an expression of interest from all stakeholders, and especially from governmental authorities, CAO is willing to provide some technical and financial support to design and begin to conduct an IWRM process. Yet, successful implementation requires a long-term commitment from government and other stakeholders to provide financial and human resources support.

CAO believes that government institutions, local communities and NSEL would highly benefit from such an approach. CAO would also like to explore NSEL's willingness to act as a co-funder of this initiative, which could serve its interests in two ways: helping strengthen NSEL's relationship with neighboring communities and ensuring good, cheaper and dispute-free access to water for its business. Annex 1 contains a list of criteria for successful IWRM processes.

The CAO understands that both parties have agreed that they are willing to discuss options for implementation of a trustworthy process that addresses the concerns relating to water quality and quantity.

Theme 3: Strengthening the mechanism to address grievances (November 2008)

The CAO has grouped worker conditions and community grievances in this section. With respect to worker conditions, the CAO suggests that:

- NSEL shares information on worker conditions, expected norms, and supervision with the complainants;*
- NSEL considers opportunities to improve and enhance worker conditions and supervision, reporting back to the parties on an agreed timetable.*

With respect to local community grievances the CAO suggests that NSEL attend a meeting with villagers, mediated by the CAO. Specifically, Goyena and Abangasca communities raised the following specific concerns which should be the topics for discussion:

- Burning of sugarcane;*
- Use of security forces by NSEL;*
- Actions taken by NSEL in the event of livestock trespassing on its land;*
- Concern about crop damage as a result of agricultural activities.*
- Maintenance of a buffer zone between sugar cane and community land.*

In addition to this facilitated meeting, CAO will share with NSEL and local stakeholders the Spanish version of an Advisory Note from CAO, "A Guide to Designing and Implementing Grievance Mechanisms for Development Projects". CAO is willing to provide a short training workshop on grievance mechanisms to support NSEL's efforts, and further support to implement it.

4. Implementation of proposals towards resolution

Progress on these three themes would address the issues raised by community members to NSEL and CAO. These proposals have been shared with all parties, and feedback has been inserted in the final version of the document.

The present document intends to be a framework agreement or Memorandum of Understanding under which parties agree to start discussions on the three themes. The time frame to reach a work plan is currently 6 months; however parties may decide that additional time is necessary to reach the identified common objectives. CAO maintains flexibility on the time frame to work on each one of these proposals. Within this Framework Agreement, stakeholders confirm their intention of reaching and implementing a further detailed work plan as part of this process.

On November 18, 2008 the CAO's Ombudsman assessment process will be close to allow implementation of the proposed next steps.

Annex 1 List of criteria for successful IWRM processes

- IWRM should be applied at catchment level. The catchment is the smallest complete hydrological unit of analysis and management. Integrated catchment management (ICM), therefore, becomes the practical operating approach. Although this approach is obviously sound and finds wide acceptance, too narrow an interpretation should be avoided. This alternative viewpoint is dealt with in Section 4.3 (Integrated Urban Water Management).
- It is critical to integrate water and environmental management. This principle is widely and strongly supported. IWRM can be strengthened through the integration of Environmental Impact Assessments (EIA's), water resources modeling and land use planning. It should also be understood that a catchment or watershed approach implies that water should be managed alongside the management of codependent natural resources, namely soil, forests, air and biota.
- A systems approach. A true systems approach recognizes the individual components as well as the linkages between them, and that a disturbance at one point in the system will be translated to other parts of the system. Sometimes the effect on another part of the system may be indirect, and may be damped out due to natural resilience and disturbance. Sometimes the effect will be direct, significant and may increase in degree as it moves through the system. While systems analysis is appropriate, analyses and models that are too complex to be translated into useful knowledge should be avoided.
- Full participation by all stakeholders, including workers and the community. This will involve new institutional arrangements. There must be a high level of autonomy, but this must at the same time be associated with transparency and accountability for all decisions. Care should be taken to ensure that those participating in any catchment management structure do indeed represent a designated group or sector of society. It is also important to ensure that representatives provide feedback to the constituencies they represent. IWRM seeks to combine interests, priorities and disciplines as a multi-stakeholder planning and management process for natural resources within the catchment ecosystem, centered on water. Driven bottom-up by local needs and priorities, and top-down by regulatory responsibilities, it must be adaptive, evolving dynamically with changing conditions.
- Attention to social dimensions. This requires attention to, amongst other things, the use of social impact assessments, workplace indicators and other tools to ensure that the social dimension of a sustainable water policy is implemented. This will include the promotion of equitable access, enhanced role of women, and the employment and income implications of change.
- Capacity building. At many levels in the process – even at the governmental level - stakeholders lack the necessary knowledge and skills for full application of IWRM. Community stakeholders may not be familiar with the concept of water resource management, catchment management, corporate governance, and their role in these. The water stakeholders must, therefore, collaborate in designing and implementing strategic elements of capacity building as part of the evolving IWRM process. Capacity building categories include education and awareness raising about water; information resources for policy making;

- Availability of information and the capacity to use it to make policy and predict responses. This implies, firstly, sufficient information on hydrological, bio-physical, economic, social and environmental characteristics of a catchment to allow informed policy choices to be made; and secondly, some ability to predict the most important responses of the catchment system to factors such as effluent discharges, diffuse pollution, changes in agricultural or other land use practices and the building of water retaining structures. The latter hinges on the adequacy of scientific models: Models should be as complex as the problem requires and no more so. It is recognized that predicting ecosystem response to perturbation with reasonable confidence is severely taxing current scientific capabilities, stimulating ongoing research.
- Full-cost pricing complemented by targeted subsidies. This principle was strongly urged by the World Water Council at The Hague, the rationale being that users do not value water provided free or almost free and have no incentives to conserve water. Wide support for this principle was engendered, but also significant opposition from those who felt that the interests of the poor might not be sufficiently protected, even under an associated subsidy system, however well designed. Opposing views held that full-cost pricing, when applied in its narrowest sense, offends the principle that water is a public good, a human right, and not simply an economic good. Reiterating: The economic sustainability of water and sanitation services depends largely and appropriately on the recovery of costs through user fees or tariffs that are equitably assigned based on ability-to-pay.
- Central government support through the creation and maintenance of an enabling environment. The role of central government in ICM should be one of leadership, aimed at facilitating and coordinating the development and transfer of skills, and assisting with the provision of technical advice and financial support, to local groups and individuals. Where specific areas of responsibility fall outside the mandate of a single government department, appropriate institutional arrangements are required to ensure effective inter-departmental collaboration. Effective IWRM is a top-down meets bottom-up process.
- Adoption of the best existing technologies and practices. This includes management instruments. Professional associations like IWA are primary sources of knowledge on BMPs (best management practices), and BAATs (best appropriate affordable technologies). Multi-stakeholder, consensus-oriented forums for IWRM should avoid lowest-common-denominator solutions through adherence to BMPs and BAATs that are adaptive to local needs.
- Reliable and sustained financing. In order to ensure successful implementation of IWRM approaches, there should be a clear and long-term commitment from government to provide financial and human resources support. This is complemented by income from a healthy water and sanitation market, especially when local providers of goods and services that support the water sector are active players, and when there is active reinvestment in the sector.
- Equitable allocation of water resources. This implies improved decision-making, which is technically and scientifically informed, and can facilitate the resolution of

conflicts over contentious issues. There are existing tools (e.g. multi-criteria analysis) to help decision-making in terms of balancing social, ecological and economic considerations. These should be tested and applied.

- The recognition of water as an economic good. The recognition of water as an economic good is central to achieving equitable allocation and sustainable usage. Water allocations should be optimized by benefit and cost, and aim to maximize water benefits to society per unit cost. For example, low value uses could be reallocated to higher value uses such as basic drinking water supplies, if water quality permits. Similarly, lower quality water can be allocated to agricultural or industrial use.
- Strengthening the role of women in water management. A review by the World Bank of 121 water projects showed that ensuring women's participation in decision-making positively affects both project quality and sustainability.