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## APPRAISAL REPORT

CAO Compliance Appraisal

Ref: C-I-R9-Y12-F172

June 28, 2013

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### Eco Oro Minerals Corp: Colombia

#### **Complaint from:**

*Comité por la Defensa del Agua y el Páramo de Santurbán*

#### ***Summary***

In June 2012, CAO received a complaint from the *Comité por la Defensa del Agua y el Páramo de Santurbán* (the Committee). The complaint raises concerns in relation to environmental and social aspects of IFC's investment in Eco Oro Minerals Corp, including the project's anticipated impact on water quality and quantity in the watershed that supplies the town of Bucaramanga, and its anticipated impact on the páramo, an alpine ecosystem of significant biodiversity recognized under Colombian legislation.

Eco Oro Minerals Corp (formerly Greystar Resources Ltd) (the Company) is a publicly listed junior mining company headquartered in Canada which owns the Angostura gold and silver exploration project in the Santander region of Colombia. In March 2011, the Company announced that it had decided not to pursue an open pit mine as originally envisaged, but instead to conduct a new pre-feasibility study for an underground operation.

In March 2009, the IFC Board approved an equity investment of up to US\$20m in the Company to fund completion of a Bankable Feasibility Study, an Environmental and Social Impact Assessment (ESIA) and other ground works to prepare for project development. Following this decision, in March 2009, IFC made an initial equity investment of approximately US\$12.1m and in January 2010, IFC exercised warrants to purchase shares in the Company for an additional US\$6.1m.

The issues raised in the complaint in relation to IFC's 2006 Policy on Social and Environmental Sustainability include the timing of the investment, categorization of the investment, and IFC's assessment of client capacity and commitment. The issues raised in the complaint in relation to IFC's Performance Standards on Social and Environmental Sustainability include

- Performance Standard 1 (System of Social and Environmental Management and Assessment) – compliance with national law, assessment of cumulative impact and adequacy of community consultation;
- Performance Standard 4 (Community Health, Safety and Security) – water quality and quantity and the role of armed security guards;
- Performance Standard 6 (Biodiversity Conservation and Sustainable Natural Resource Management) – impact on endangered fauna and the páramo ecosystem.

In relation to timing of the investment, CAO finds that while IFC's decision to invest was made on the basis of sufficient information to reach a conclusion that the Project *narrowly defined* could be expected to meet the performance standards over a reasonable period of time, it is unclear if the same conclusion could be supported regarding the Project's potential longer term impacts.

In relation to categorization, CAO has questions as to whether the approach taken was consistent with IFC policy statements on its long-term involvement in such investments and on categorization of IFC projects generally.

In relation to client capacity and commitment, it remains unclear to CAO whether the regulatory actions referred to by the Complainants were drawn to IFC's attention. However, it is also unclear whether these regulatory actions would have had a material impact on IFC's assessment of the Company's commitment and capacity, had they been disclosed.

CAO makes a number of findings in relation to PS1. Given that the investment remains in the pre-feasibility stage, and that no formal decision has been made by the Colombian government regarding páramo boundaries, CAO finds that the question of whether IFC took adequate measures to assure itself of compliance with E&S requirements remains open at this stage. Further, CAO is unclear as to whether the interests of the Bucaramanga community in the Project were adequately treated at appraisal by IFC. Finally, CAO notes that IFC would be expected to ensure that the issues of cumulative impact and regional / sectoral assessment are adequately addressed as required by PS1 as the preparation of Eco Oro's revised design and ESIA proceeds.

Regarding PS4, CAO finds that it is not possible to ascertain the likely impact of the proposed mine on water quality and quantity at this point in time. It notes that IFC will need to ensure that appropriate attention is paid to water issues in the development of the new proposal and attendant ESIA. In relation to security concerns, CAO finds that the adequacy of IFC's review of the security risk assessment is unclear, and that there is insufficient material in the documentation to assess whether IFC's supervision of these risks was sufficient.

On PS6, CAO is unclear as to the adequacy of IFC supervision in relation to protection and conservation of biodiversity. In addition, it is not yet clear what impacts the new proposal for an underground mine may have on biodiversity. CAO emphasizes the need for IFC to ensure that appropriate attention is paid to PS6 in the development of the new proposal and attendant ESIA.

On the basis of the above, CAO will conduct a Compliance Investigation into IFC's investment in Eco Oro. As the possibility for a discussion of outcomes is limited by the current stage of development of the Project, the CAO compliance process will necessarily focus on IFC's approach to E&S review and supervision. Questions which arise in this context include whether IFC's approach to the definition of the Project and the assessment of its E&S risks and impacts was adequate. This is a central question as the assessment of risk and impact at appraisal guides IFC's approach to E&S categorization, the level of E&S review required, as well as the extent of community consultation which the client must undertake. CAO will also investigate whether the structure of this investment and the approach taken to its supervision paid sufficient regard to the potential long-term E&S impacts of the investment, and the way in which its risk profile was likely to change over time. The objectives and scope of the investigation will be defined in terms of reference which will be disclosed in accordance with the CAO Operational Guidelines.



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## About the CAO

*The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

The CAO (Office of the Compliance Advisor/Ombudsman) is an independent post that reports directly to the president of the World Bank Group. The CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)



## 1. Overview of the CAO Compliance Appraisal process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred to CAO's dispute resolution arm, CAO Ombudsman, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If CAO Ombudsman concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to CAO Compliance for Appraisal and potential Compliance Investigation.

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a Compliance Investigation is warranted, CAO Compliance first conducts a Compliance Appraisal. The purpose of the appraisal process is to ensure that Compliance Investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the appraisal process, the CAO applies several basic criteria. These criteria test the value of undertaking a Compliance Investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the Appraisal, CAO will hold discussions with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a Compliance Investigation is the appropriate response. After a Compliance Appraisal has been completed, the CAO can close the case or initiate a Compliance Investigation of IFC or MIGA.

Once CAO concludes an Appraisal, it will advise IFC/MIGA, the President, and the Board in writing. If an Appraisal results from a case transferred from CAO's Dispute Resolution role, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a Compliance Investigation as a result of the Compliance Appraisal, CAO will draw up Terms of Reference for the Compliance Investigation in accordance with CAO's Operational Guidelines.



## 2. Background

### ***Investment***

Eco Oro Minerals Corp (formerly Greystar Resources Ltd) (the Company) is a publicly listed junior mining company headquartered in Canada. Eco Oro owns the Angostura gold and silver exploration project, 55 kilometers north of Bucaramanga, in the Santander region of Colombia. The Company has acquired concessions covering approximately 30,000 hectares over a 15-year timeline, and the results of an intensive drilling program show large undeveloped gold resources. The exploration remains at the pre-feasibility stage.

In March 2009, the IFC Board approved an equity investment of up to US\$20m in the Company to fund completion of a Bankable Feasibility Study, an Environmental and Social Impact Assessment (ESIA) and other ground works to prepare for project development. Following this decision, in March 2009, IFC made an initial equity investment of approximately US\$12.1m. IFC also received warrants to purchase additional shares. In January 2010, IFC exercised half of its warrants to purchase shares in the Company for an additional US\$6.1m. IFC continues to hold warrants from the initial investment and may purchase additional shares in the future.

The Equity and Warranty Subscription Agreement between the Company and IFC dated 16 March 2009 noted that the Company's intention was to raise equity to fund its studies and other associated work in preparation for raising financing for the development of its Angostura deposit. The studies to be completed included the bankable feasibility study and environmental and social impact assessments, focused in part on the mine design and planning, metallurgical process, and site infrastructure.

IFC's Environmental and Social Review Summary notes that this is a Category B project based on expected social and environmental impacts. The rationale for this categorization is discussed further below.

In 2009, the Company requested a separate IFC Advisory Services project to help the local governments of California, Vetas and Surata municipalities (all within the area of influence of the Angostura project) to prepare for the management of royalties from the mine. In the context of social opposition in Bucaramanga (the capital of Santander), and a new Colombian law which reduces the flow of royalties going directly to municipalities where extractive industries are to be located, in 2012 the Advisory Services Project was amended to incorporate a Stakeholder Engagement component. This Advisory Services project is ongoing.

### ***Complaint***

In June 2012, CAO received a complaint from the *Comité por la Defensa del Agua y el Páramo de Santurbán* (the Committee). The Committee is a coalition of social, union, environmentalist and student organizations and individuals in the district of Bucaramanga. The complaint was filed with the support of the Inter-American Association for the Defense of the Environment, the Center for International Environmental Law, and MiningWatch Canada.

The complaint raises a number of environmental and social issues in relation to the Eco Oro investment, including its anticipated impact on water quality and quantity in the watershed that supplies Bucaramanga, and its anticipated impact on the páramo, an alpine ecosystem of



significant biodiversity recognized under Colombian legislation. The Complainants contend that the investment does not comply with IFC's social and environmental policies. A more detailed summary of concerns is set out under 'Scope of Appraisal' below.

### ***Ombudsman assessment report***

The Ombudsman Assessment Report was published in November 2012.<sup>1</sup> CAO concluded that the complaint was eligible. As the Complainants opted not to engage in a dispute resolution process facilitated by CAO, this complaint was referred to CAO Compliance to determine whether the case merits an environmental and social Compliance Investigation.

### ***New pre-feasibility study for underground operation***

CAO notes at the outset that in March 2011, the Company announced that it had decided not to pursue an open pit mine as originally envisaged, but instead to conduct a new pre-feasibility study for an underground operation. In April 2011, the Company released a positive scoping study regarding the proposed underground operations.

In August 2011, the Company announced that it had awarded technical contracts and set a time line for a feasibility study for an underground only operation. It anticipated that a pre-feasibility study would be completed during the third quarter of 2012 and that a feasibility study would be completed during the fourth quarter of 2012. A consultant had been engaged for the hydrology and hydrological studies. One of the advantages of an underground mine was said to be greatly reduced impact on the environment compared to an open pit mine.<sup>2</sup>

As of the date of CAO's appraisal, the new pre-feasibility study was not available. The lack of certainty about project design affects CAO's ability to make findings about some aspects of compliance at this point in time. As the possibility for a discussion of outcomes is limited by the current stage of development of the Project, the CAO compliance process will necessarily focus on IFC's approach to E&S review and supervision.

### **3. Scope of the Appraisal for a Compliance Investigation of IFC**

In cases referred by CAO Ombudsman, the scope of the appraisal is defined by issues raised in the complaint and identified during the CAO assessment phase.

The letter of complaint raises the following issues in relation to IFC's Policy on Social and Environmental Sustainability:

- Timing of investment – the Complainants claim that IFC's investment before the completion of an Environmental and Social Impact Assessment (ESIA), and before review of the ESIA by Colombian authorities, constituted a breach of the Policy.
- Categorization of investment – the Complainants claim that the investment should have been categorized as A rather than B because of potential significant adverse social and environmental impacts.

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<sup>1</sup> <http://www.cao-ombudsman.org/cases/document-links/documents/EcoOroAssessmentReportENG.pdf>

<sup>2</sup> Greystar, News Release, 'Greystar Awards Contracts and Sets Time Line for Angostura Feasibility Study', 11 August 2011 ([http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570416&\\_Type=News-Releases&\\_Title=Greystar-Awards-Contracts-and-Sets-Time-Line-for-Angostura-Feasibility-Stud...](http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570416&_Type=News-Releases&_Title=Greystar-Awards-Contracts-and-Sets-Time-Line-for-Angostura-Feasibility-Stud...)).



- Assessment of client capacity and commitment – the Complainants claim that the Company has not complied with Colombian law in the past, and has limited capacity as a junior mining company.

The letter of complaint raises the following issues in relation to IFC's Performance Standards on Social and Environmental Sustainability:

- Performance Standard 1 (System of Social and Environmental Management and Assessment) – the Complainants claim that the proposed mine is located in the páramo and that mining is prohibited in the páramo under Colombian law. In addition, the Complainants claim that the Company failed to take into account the cumulative impact of mining projects in the region and did not engage in effective community consultation.
- Performance Standard 4 (Community Health, Safety and Security) – the Committee raises concerns about water quality and quantity, and the role of armed security guards on the Project site.
- Performance Standard 6 (Biodiversity Conservation and Sustainable Natural Resource Management) – the Committee claims that the Project negatively impacts upon endangered fauna and the páramo ecosystem. It also asserts that IFC's investment is inconsistent with projects financed by the World Bank Group to conserve the páramo.

In an update provided on 16 May 2013, the Complainants state that the Company was removed from both the S&P/TSX Small Cap Index and the Market Vectors Junior Gold Miners Index in late 2012.

CAO notes that some of issues raised by the Complainants relate to the prospective design, development and operation of the mine rather than to specific actions taken during the pre-feasibility and feasibility stages.

From the perspective of the CAO compliance mandate, the general question raised is whether IFC exercised due diligence in its review and supervision of environmental and social (E&S) aspects of the investment, particularly as they relate to the issues listed above.

#### 4. Findings

##### ***IFC guidelines and standards***

IFC's investments were made in the context of the 2006 Policy and Performance Standards on Social and Environmental Sustainability. The ESRPs relevant to the initial investment were those issued in July 2007 and February 2009 (the proposal went to the Board in March 2009).

##### ***IFC Policy***

IFC's Policy on Social and Environmental Sustainability sets out IFC's roles and responsibilities in relation to managing social and environmental risks in IFC projects. IFC's role is to review the client's assessment of social and environmental risks and impacts; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts; to categorize the project; to help identify opportunities to improve social and environmental outcomes; and to monitor the client's social and environmental performance throughout the life of IFC's investment.



The Complainants make claims relating to the timing of the investment, its categorization and IFC's assessment of client capacity and commitment.

#### Timing

The Complainants contend that because IFC invested before the Company completed its ESIA, and before knowing whether the Colombian authorities would approve the ESIA, IFC failed to comply with the 2006 Policy on Social and Environmental Sustainability.

The 2006 Policy provides that '[w]hen a project is proposed for financing, IFC conducts a social and environmental review of the project as part of its overall due diligence'. This review includes the social and environmental risks and impacts as assessed by the client, the commitment and the capacity of the client to manage expected impacts, and consideration of the role of third parties in the project's compliance with the Performance Standards. IFC bases its review on the client's Social and Environmental Assessment.

The social and environmental review required under the 2006 Policy is not a comprehensive Environmental and Social Impact Assessment (ESIA). Rather, it is a process by which IFC assures itself that a project can be expected to meet the Performance Standards. The 2006 Policy states that IFC should conduct an E&S review that is appropriate to the 'nature and scale of the project and commensurate to social and environmental risks and impacts.' IFC further commits not to 'finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time'. According to Performance Standard 1 (PS1) 'projects with significant adverse impacts that are diverse, irreversible or unprecedented will have comprehensive ESIA.s.' The 2006 Policy does not, however, prevent IFC from investing before a full ESIA has been prepared.

The substance of E&S due diligence undertaken prior to the decision to invest was recorded in an Appraisal Mission Back to Office (BTO) Report prepared by IFC CES staff dated 21 January 2008, the Environmental and Social Review Summary (ESRS) disclosed publicly on 9 February 2009, and the attached Environmental and Social Action Plan (ESAP). These documents assessed the Company's Environmental Impact Management Plan (originally prepared for the regional environmental authority) and an Environmental Baseline Assessment prepared by consultants to the Company.

The Appraisal Mission BTO Report was based on a site visit and meetings with stakeholders as well as review of relevant documents. It identified applicable Performance Standards as 1-6 and 8. It noted that an assessment of Broad Community Support was not necessary, and indicated that the purpose of the investment was to ensure a Performance Standard compliant ESIA that would be consulted on and disclosed before any substantive mine development. It concluded that this was an opportune moment to engage with the Company to ensure that both the baseline and the ESIA complied with the Performance Standards.

The ESRS considered issues raised under Performance Standards 1-6 and 8, making reference to water quality, security personnel and biodiversity in the páramo. IFC also reviewed the terms of reference for a Phase II baseline study and identified additional issues for inclusion to ensure compliance with the Performance Standards, in particular PS6. The timeline for preparation of the ESIA as identified in the ESAP was March to September 2009.



The IFC Board documentation recommending the investment emphasized E&S additionality and identified E&S risks. The Board documentation specifically addressed the issue of timing, indicating that an advantage of early engagement was that IFC would have greater influence over ongoing environmental assessment and the design of mitigation measures for later development phases. The Equity and Warranty Subscription Agreement incorporated provisions, as recommended by IFC's Environment and Social Development Department (CES), relating to E&S compliance and reporting. The ESAP was scheduled to the Equity and Warranty Subscription Agreement.

In December 2009, the Company submitted an Environmental Impact Assessment (EIA) to the Colombian Ministry for the Environment, accompanying an application for an environmental licence to mine. The EIA was prepared in accordance with requirements set out by the Ministry for the Environment. It was not the Company's ESIA for the purposes of IFC, but did subsequently form the basis for an ESIA.

CAO recognizes that there may be benefits to IFC's early engagement in projects, prior to the completion of a full ESIA. Early investment allows IFC to engage with a client on E&S issues, particularly in the preparation of an ESIA. In this case, the fundamental purpose of IFC's investment in the Company was to fund a full ESIA that complied with the 2006 Performance Standards. On the other hand CAO also recognizes that investment early in the project cycle poses challenges in terms of IFC's commitment not to finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time.

On reviewing IFC's E&S pre-commitment due diligence, CAO finds that IFC's decision to invest was made on the basis of sufficient information to reach a conclusion that the project *narrowly defined* could be expected to meet the performance standards over a reasonable period of time. The project narrowly defined was the completion of a Bankable Feasibility Study, an Environmental and Social Impact Assessment (ESIA) and other works to prepare for the project development stage. The project narrowly defined thus had a limited environmental and social footprint. At the same time CAO has questions as to whether there was sufficient information available to reach a reasonable determination as to whether the project *broadly defined* (taking into consideration the longer-term potential impact of an open pit gold mine located in or near a fragile ecosystem) could have been expected to meet the Performance Standards over a reasonable period of time.

### Categorization

The Complainants contend that this investment ought to have been Category A, based on 'the impacts associated with the Angostura mining project', rather than Category B.

Under the 2006 Policy, IFC's system of environmental and social categorization is intended to reflect the magnitude of risks and impacts of the investment and specify institutional disclosure requirements. In the 2006 Policy, Category A projects were those 'with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented'. Category B projects were those 'with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures'.



This investment illustrates some of the challenges inherent in applying IFC's E&S requirements to potentially high risk projects at an early (ie pre-feasibility, feasibility, or pre-development) stage. In reviewing this decision, CAO notes that IFC views its role in early or exploration stage mining as 'long term',<sup>3</sup> stating that '[I]deally, IFC looks to be involved throughout the project cycle, providing further equity and debt as the mine goes into development'.<sup>4</sup> IFC does not get involved in purely speculative projects, but aims to take 'a well informed bet that the property will be developed'.<sup>5</sup> One benefit IFC offers early equity clients is assistance managing E&S risk.<sup>6</sup> As a general proposition, CAO endorses IFC's view that partnering with clients at an early stage of a mining project can add value in terms of environmental and social risk management throughout the life of the investment.

IFC categorized this investment as B. The 2009 Board documentation indicated that if the Project were to proceed to mine development, the full requirements of IFC's Performance Standards would need to be met, regardless of initial characterization. IFC Early Review documentation identified that additional Performance Standards were likely to become applicable if and when a mine was developed. However, the 2009 Board documentation also stated that 'IFC's environmental categorization evaluates actual project risks, where the project is defined as the scope of work funded by IFC's investment'. As such, categorization did not take into account impacts beyond the feasibility stage of the investment.

CAO has questions as to whether the current approach to categorization of early equity mining investments is consistent with IFC policy statements on its long-term involvement in such investments and on categorization of IFC projects generally. This becomes more relevant when considering the social and environmental risks of the investment and the appropriate level of (early) engagement with the community. In addition, CAO is unclear about the process for changing categorization during the course of an investment.

#### Capacity and Commitment of Client

The Complainants contend that IFC failed to carry out an adequate assessment of the Company's capacity and commitment to comply with IFC E&S standards. They state that the Company has been found to violate Colombian law and lacks relevant experience. Specifically, they allege that the Company was penalized by the *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga* (CDMB, the local government environmental authority) for breaches of the Colombian environmental law in 2006 and 2010.

As noted above, the social and environmental review required under the 2006 Policy includes consideration of the commitment and capacity of the client to manage expected social and environmental impacts. The 2006 Policy does not require a client to be in full compliance at the point of investment. Rather, IFC makes a judgment about whether the client can be expected to

<sup>3</sup> *Global Mining Overview*, available at:

<http://www1.ifc.org/wps/wcm/connect/434c0a0049a5f8cda3d0e3a8c6a8312a/IFC+Mining+Overview.pdf?MOD=AJPERES>

<sup>4</sup> *IFC Mining Background Note*:

[http://ifcnet.ifc.org/intranet/infrastructure.nsf/AttachmentsByTitle/IFC+Mining+%E2%80%93+Background+Note/\\$FILE/IFC+Mining+2010+-+Background+Note.docx](http://ifcnet.ifc.org/intranet/infrastructure.nsf/AttachmentsByTitle/IFC+Mining+%E2%80%93+Background+Note/$FILE/IFC+Mining+2010+-+Background+Note.docx)

<sup>5</sup> Ibid.

<sup>6</sup> See *Global Mining Overview* (above).



meet the Performance Standards over a reasonable period of time. As such, weak client capacity does not preclude IFC investment.

The 2006 Performance Standards also require clients to comply with applicable national laws.<sup>7</sup> Evidence of any previous breach of national law by a prospective client will be relevant to, but not determinative of, IFC's decision whether to invest. In reviewing a project proposed for financing, the 2006 Policy focuses on a client's ability to meet the Performance Standards going forward.

IFC has adopted a deliberate strategy to invest in junior mining companies with projects at the early equity stage.<sup>8</sup> In relation to junior companies, 'IFC's funding is important, in addition to being able to provide E&S advice and support to companies that typically have little internal capacity'.<sup>9</sup>

CAO has reviewed CDMB's Resolution 1248 (22 October 2010), referred to by the Complainants. It suggests that an approved Environment Management Plan for Angostura was established by Resolution 568 (4 June 1997). Visits to the site by CDMB in 2006 identified areas of non-compliance with the Environment Management Plan, which were recorded in Resolution 488 (23 May 2006). These included changing the final disposal system for drilling slurry from surface platforms; not completing septic systems for most sites requiring them; the SNETE (a system treating effluent) was not working, therefore direct dumping was occurring; in the field, there were no logs for environmental intervention and follow-up. Consequently, CDMB imposed a preventative suspension of certain activities relating to the exploration project. Visits by CDMB in 2008 found the Company to be generally in compliance, but further visits in 2010 found the Company in breach again. Resolution 1248 (22 October 2010) identified breaches of sections 1, 2, 5, 7 and 11 of Resolution 568 (4 June 1997). The Company was fined, but the preventative measures imposed by Resolution 488 (23 May 2006) were lifted.

IFC's Board approved an equity investment in Eco Oro in March 2009. The appraisal information for IFC's investment does not appear to make reference to the 2006 suspension. IFC's supervision documents (for example, the Company's AMRs and IFC's AMR reviews) do not appear to make reference to either the 2006 suspension or the 2010 fine.

This raises questions relating to the adequacy of due diligence undertaken by IFC. It is unclear to CAO whether the structure of the AMRs, as presented to the Company by IFC, was designed to prompt disclosure of regulatory activity relevant to IFC's ongoing assessment of client capacity and commitment. However, it is also unclear whether the regulatory actions referred to by the Complainants would have had a material impact on IFC's assessment of the Company's commitment and capacity, had they been disclosed. This is particularly the case given that at the time when IFC invested, CDMB had found the Company to be generally in compliance with the Environmental Management Plan.

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<sup>7</sup> Introduction to Performance Standards [3], Performance Standard 1 [4].

<sup>8</sup> See *IFC Mining Background Note*, above.

<sup>9</sup> Ibid.



## ***IFC Performance Standards***

IFC applies the Performance Standards to manage social and environmental risks and impacts and to enhance development opportunities. IFC supervises clients' compliance with the Performance Standards.

The Equity and Warranty Subscription Agreement between IFC and the Company requires the Company to comply with applicable Performance Standards while IFC holds at least a particular number of shares in the Company. It also states that the Company must, 'prior to any construction ... provide to IFC copies of the relevant ESIA'.

The Complainants make claims relating to the adequacy of IFC's supervision of the Company in relation to PS1, PS4 and PS6.

### **Supervision of compliance with Performance Standards**

IFC's supervision of the Company's compliance with the Performance Standards is recorded in its Supervision Site Visit reports and reviews of the Company's Annual Monitoring Reports (AMR).

An AMR Review document dated 15 April 2011 reviews the Company's AMR for the period 1 January 2009 to 30 June 2010.<sup>10</sup> In relation to PS1, it indicates that the Company was in compliance with local environmental permits and was acting in accordance with the potential environmental impacts of its operations. It noted disclosure activities such as public hearings. It also noted that the most recent ESRR was 3 (partly unsatisfactory), as of 5 July 2011.<sup>11</sup> No informational or technical deficiencies were identified that required follow-up.

A Supervision Site Visit Report was prepared on 14 April 2011, relating to a visit conducted from 7-11 June 2010. The report appears to be incomplete. It notes that the project site was partially located in the páramo, and that the Company needed to significantly strengthen its E&S capability and give greater consideration to important biodiversity related impacts. It stated that the most recent ESRR score was 2 (satisfactory), as of 8 August 2010.

A further Supervision Site Visit Report was prepared on 18 March 2011, relating to a visit conducted from 11-16 November 2010. As part of the visit, IFC staff attended public hearings in relation to the environmental permit for the Project. The Report notes strong support for the proposed project, but that acceptance of the environmental impacts was not demonstrated. It also notes that it was unfortunate that residents of Bucaramanga had not been able to participate. A list of pending commitments is noted, including provision of the ESIA gap analysis, and a timeline and action plan for updating the ESIA in accordance with the Performance Standards.. The ESRR was recorded as 2 (satisfactory).

A further AMR Review document dated 14 September 2012 reviews the Company's AMR for the period 1 January 2011 to 31 December 2011. It noted the Company's new plans for an underground mine and briefly addressed each of the Performance Standards, summarizing the

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<sup>10</sup> Note: this does not correspond with the actual dates of the AMR which extended through December 2010.

<sup>11</sup> Note: this date appears to be incorrect, as it post-dates the AMR Review.



information provided in the Company's 2011 AMR. It noted that the most recent ESRR score was 3, as of 5 July 2011 and noted that the new ESRR score was 2 (satisfactory). No informational or technical deficiencies are identified that required follow-up.

The most recent documentation of supervision on file at the time of writing was a Supervision Site Visit report dated 15 January 2013. It relates to a Supervision Site Visit conducted 27 to 30 November 2012 and provides a detailed assessment of the baseline activities undertaken for the new underground project. It identifies key obstacles to implementation of the proposed new project, including the pending definition of a regional park and the pending declaration of páramo boundaries. The report recommends that additional capacity be developed for the Company's corporate social responsibility staff; that a stakeholder engagement plan be developed; that a social investment strategy be developed; that a socio-economic needs assessment be undertaken; and that an inflow management plan be prepared. The most recent ESRR score was 3, as of 5 July 2011 and the new ESRR was 2 (satisfactory). The report concluded that the Company was in compliance with environmental requirements, but that it needed to strengthen the social dimension of its management. No informational or technical deficiencies were identified that required follow-up.

CAO has also reviewed extensive correspondence between IFC and the Company in relation to E&S issues. Comments provided by IFC relate to preparation of the table of contents for the ESIA; preparation of the EIA gap analysis; discussion of critical habitat considerations; recommendations for expert assistance with net positive impact analysis and a biodiversity offset; suggestions to undertake a hydrogeological study; proposals for stakeholder outreach; organizational capacity; and arrangements for security services.

Having reviewed the supervision material, CAO finds that significant efforts were made by IFC to supervise the Company in relation to E&S considerations. However, the formal documentation relating to compliance does not fully capture the supervision work that is evident from the extensive communications between IFC and the Company. CAO is thus unclear as to the adequacy of supervision from a compliance perspective.

#### Performance Standard 1 – Social and Environmental Assessment and Management Systems

In relation to PS1, the Complainants raise concerns regarding IFC's supervision of the Company's compliance with national law, the geographic scope of the impact assessment and the extent of community consultation.

##### *Compliance with national law*

The Complainants contend that the proposed mine is located in the páramo and that national laws prohibit mining in the páramo. The Performance Standards require clients to comply with applicable national laws.

In May 2011, despite efforts by the Company to withdraw its application for an environmental permit, the Ministry of the Environment rejected the Company's application, ostensibly on the basis of the proposed mine's location in the páramo. In June 2011, the Colombian Congress enacted the National Development Plan which prohibited mining activities in the páramo. It also required the Colombian Government to determine the boundaries of páramo ecosystems based on technical, social, environmental and economic criteria. The National Development Plan



provided that the Atlas of Páramos issued by the Von Humboldt Institute would be the minimum reference for páramo ecosystems, with the Government ultimately determining the boundaries.

In August 2012, the National Mining Agency determined that 54% of the Company's principal mining title (3452) was located in Santurban páramo and therefore only approved the Company's application for an extension of the exploration phase for the remaining 46% of the title. The portion not extended contains most of the Angostura deposit. The Company appealed the decision and the National Mining Agency granted the extension sought for the full concession, noting that the Company must not conduct certain activities until the ultimate boundaries of the páramo have been determined. In December 2011, the Ministry of Mines and Energy issued a non-binding opinion recommending the exclusion of the Angostura deposit from any regional park.

In January 2013, CDMB announced the boundaries of the Regional Park of Santurbán. The Company's initial assessment was that the officially declared boundaries do not impede development of the Angostura Project.<sup>12</sup> In their update, the Complainants note their view that the Park Santurban as declared is insufficient to protect the Santurban páramo and guarantee drinking water for the departments of Santander and Norte de Santander.

As at the date of this appraisal, the Colombian Government had not yet determined the boundaries of the páramo. CAO finds that the Company has received conflicting views from Colombian authorities as to whether the proposed Angostura mine is located in the páramo. Given that the investment remains in the pre-feasibility stage, and no formal decision has been made by the Colombian government regarding páramo boundaries, CAO finds that the question of whether IFC has ensured compliance with PS1 requirements remains open at this stage. CAO notes, however, that requisite approvals from Colombian authorities will need to be secured before the proposed mine proceeds to development.

#### *Geographic scope of impact assessment*

The Complainants contend that IFC's social and environmental review was conducted in a fragmented way and failed to take into account the cumulative impacts of the proposed mine.

PS1 requires the client to prepare a Social and Environmental Assessment covering the project's 'area of influence' which must be reviewed by IFC prior to investing. Under PS1, the project's 'area of influence' includes 'areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the Social and Environmental Assessment is undertaken'.

IFC Guidance for the 2006 Performance Standards suggests that '[t]he combination of multiple impacts from existing projects, the proposed project, and/or anticipated future projects may result in significant adverse and/or beneficial impacts that would not be expected in case of a stand-alone project'. It also states that '[i]n terms of anticipated future projects, priority should be given to assessing cumulative impacts stemming from the proposed project, such as further planned development of the project and other project-related future developments that are

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<sup>12</sup> Eco Oro, News Release, 'Development of Eco Oro's Angostura Project not restricted by official Park boundaries', 17 January 2013 (<http://www.eco-oro.com/s/NewsDetails.asp?id=122487>).



realistically defined at the time of the Assessment (for example, an anticipated future development for which licenses or permits have been issued should be included, even if it is not yet in implementation).<sup>13</sup>

Under the 2006 Performance Standards, PS1 also states that for projects with potential significant adverse impacts that are diverse, irreversible or unprecedented, in exceptional circumstances, a 'regional, sectoral or strategic assessment' may be necessary.<sup>14</sup> IFC Guidance for the 2006 Performance Standards suggests that '[i]n situations where cumulative impacts are likely to occur from activities by third parties in the project region, a regional or sectoral assessment may be appropriate'. A sectoral assessment is described as 'useful where several projects are proposed in the same or related sector ... in the same country, either by the client alone or by the client and others'.<sup>15</sup>

A Technical Review dated 22 January 2009 noted the existence of other significant mining projects in the region, including one major project abutting the proposed Angostura Project. The Appraisal Mission BTO Report 2009, ESRS and Board documentation recognized the significance of the páramo ecosystem in which the proposed mine is located. The ESRD stated that a cumulative impact assessment was not necessary, though no reason for this was given.

CAO finds that given the importance of the páramo and the extensive exploration being undertaken by the Company and other junior mining companies, it is arguable that greater attention to the cumulative impacts of the proposed mine together with other actual or proposed mining projects in the area, particularly in relation to impacts on water resources, was warranted. CAO notes that under the applicable (2006) Performance Standards, consideration of a regional or sectoral assessment would become a relevant consideration if the Project was considered to be one with potential significant adverse impacts that are diverse, irreversible or unprecedented.

CAO assumes that as with the preparation of the ESIA for the open pit mine, IFC will play a significant role in reviewing terms of reference for the ESIA for the proposed underground mine operation. At that point IFC would be expected to ensure that the issues of cumulative impact and regional / sectoral assessment are adequately addressed as required by PS1.

In relation to the claim that IFC has take an 'fragmented' approach to the impact assessment, the Complainants point to an application by the Company to Colombian authorities for an environmental license for supplementary infrastructure, under a different environmental license process to the original EIA process. CAO notes that the manner in which clients apply for licenses from local or national authorities is not prescribed by IFC's Performance Standards. The question will thus return to IFC's supervision of the forthcoming design and attendant ESIA.

<sup>13</sup> CAO notes that IFC released a draft Good Practice Note on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets for public comment in January 2013.

<sup>14</sup> Note: the 2012 Performance Standards have been amended on this point, stating that cumulative, regional, sectoral or strategic assessments *prepared by third parties* may need to be taken into account.

<sup>15</sup> Guidance Note 1 (2007), [G31].



### *Community engagement*

The Complainants contend that communities were not adequately consulted and lacked suitable opportunities to participate in the assessment and approval process. In particular, the complaint focuses on the ability of the citizens of Bucaramanga to participate in the consultation process.

PS1 requires an ongoing process of community engagement. When local communities may be affected by risks or adverse impacts from a project, the engagement process must include consultation with them. The nature and frequency of community engagement reflects the project's risks to and adverse impacts upon the affected communities. Clients are required to undertake consultation with affected communities, providing them with an opportunity to express their views on 'project risks, impacts, and mitigation measures'. For projects with significant adverse impacts of affected communities, the consultation process must ensure their free, prior and informed consultation and facilitate their informed participation.

IFC's review of the proposed investment identified four communities situated within the Project area of influence. This did not include the city of Bucaramanga. In 2010, the Colombian Ministry for the Environment, Housing and Territorial Development held information meetings and a public hearing for affected communities about the Company's application for an environmental permit. The Ministry for the Environment then held an additional public hearing in Bucaramanga in March 2011, on the basis that residents had been unable to attend the earlier hearing. The public hearing in Bucaramanga was closed prematurely due to disruptions during the event. CAO is unclear as to why the interests of the Bucaramanga community in the Project were not identified in the original IFC appraisal.

In March 2011, the Company announced that in response to concerns raised by the Bucaramanga community in the public hearing, and regional and national governments, it had decided to pursue a pre-feasibility study for an underground operation instead of an open pit mine. It sought to withdraw its applications to the Ministry for the Environment, Housing and Territorial Development for an environmental permit, and to the Ministry of Mines and Energy for a work and investment plan for the development of an open pit mine.

The Company's decision to abandon its proposal for an open pit mine and instead develop a pre-feasibility study for an underground mine means that it is not yet clear what community consultation will be undertaken in relation to the new proposal. The Company has emphasized that it will 'maintain its efforts to keep citizens fully informed about the proposed mining projects'.<sup>16</sup> The update provided by the Complainants suggests that they have not been involved in any consultation to date on the new proposal. The Complainants note that it is difficult to follow the activities of the Company given that the information provided on its website is in English only. In this context CAO is unclear whether IFC's approach to the issue of community engagement and consultation was sufficient.

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<sup>16</sup> Eco Oro, News Release, 'Greystar Resources to study viability of alternate project at Angostura', 18 March 2011 ([http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570805&\\_Type=News-Releases&\\_Title=Greystar-Resources-to-study-viability-of-alternate-project-at-Angostura](http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570805&_Type=News-Releases&_Title=Greystar-Resources-to-study-viability-of-alternate-project-at-Angostura)).



#### Performance Standard 4 – Community Health, Safety and Security

In relation to PS4, the Complainants raise issues regarding water quality and quantity and arrangements for security at the site.

##### *Water quality and quantity*

The Complainants argue that the proposed mine may have a negative impact on the supply and quality of water in the region. They contend that water generated within the Santurban Páramo supplies the aqueducts of urban centers in over 20 municipalities in North Santander and Santander departments, as well as the irrigation districts, a thermoelectric plan and the farming sector. They claim that some two million people depend on the water supply. The Complainants also raise concerns about treatment of acid water, drainage from tunnels and leachates from dumps, and waste water.

Concerns regarding the proposed mine's impact on water quality and quantity can be characterized as arising primarily under PS4 (noting that water quality issues may also arise under PS3 and PS6). In the 2006 Policy, PS4 states that '[t]he client will avoid or minimize adverse impacts due to project activities on soil, water and other natural resources in use by the affected communities'.

The potential impact of a proposed mine on water quality and quantity was acknowledged during IFC's initial assessment, with reference made to water sampling undertaken as part of the baseline study. No water quality exceedances were found to be related to the Company's exploration activities. Issues relating to water use were also addressed in the Company's EIA submitted to the Colombian authorities in December 2009. The Company's AMRs provided to IFC report regular water quality monitoring, measured against IFC requirements. The most recent Supervision Site Visit Report dated January 2013 records that the Company began a regular water quality monitoring plan in 2009 and that in 2013, the Company anticipates increasing the water sampling and establishing participatory monitoring.

The Company's ESIA for the proposed open pit project was not complete when the Company decided to abandon this proposal and instead develop a pre-feasibility study for an underground mine. The new proposal means that it is not yet clear what impacts the proposed mine will have on water. In announcing that it would pursue an alternative proposal, the Company stated that it would 'complete all necessary steps to ensure that its Project will not affect the quality of the water supply to the town of Bucaramanga, the surrounding metropolitan area, or the North Soto Province'.<sup>17</sup>

CAO finds that it is not possible to ascertain the likely impact of the proposed mine on water quality and quantity at this point in time. It notes that IFC will need to ensure that appropriate attention is paid to water issues in the development of the new proposal and attendant ESIA.

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<sup>17</sup> Eco Oro, News Release, 'Greystar Resources to study viability of alternate project at Angostura', 18 March 2011 ([http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570805&\\_Type=News-Releases&\\_Title=Greystar-Resources-to-study-viability-of-alternate-project-at-Angostura](http://www.eco-oro.com/s/NewsReleases.asp?ReportID=570805&_Type=News-Releases&_Title=Greystar-Resources-to-study-viability-of-alternate-project-at-Angostura)).



## *Security*

The Complainants contend that social risks were not adequately assessed, in particular in relation to private security guards at the Project site. They assert that there were instances of violence in the area where the Project is located after 2003, and claim that that 'it is not certain that violence has ended in this area due to military presence'.

This issue also arises under PS4, which sets out rules governing the provision of security to safeguard a client's personnel and property. PS4 requires that if government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, and communicate its intent that the security personnel act in a manner consistent with principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring and applicable law. The client must also investigate any credible allegations of unlawful or abusive acts of security personnel, take action to prevent recurrence, and report unlawful and abusive acts to public authorities where appropriate.

The ESRS noted that the Company's exploration activities were interrupted between 2000 and 2003 as a result of adverse security conditions in the region. In 2003, the Colombian Government made arrangements to provide military protection to the Project operations. The Appraisal Mission BTO Report stated that security for the Company was provided by security guards from a private security firm, security staff directly employed by the Company as well as by national military security forces with whom the Company had a contract outlining the conditions of cooperation and the permitted use of payments from the Company.

The ESRS stated that '[m]ilitary security forces have a significant presence in the Project area and the surrounding regions' and indicated that as part of the Project, 'the company will upgrade their current practices as needed to ensure they operate in accordance with the UN Voluntary Principles of Security and Human Rights'.

The 2009 IFC Board documentation indicated that IFC had engaged a human rights expert to review the use of security forces by the Company and assist in incorporating international good practice based on the Voluntary Principles for Security and Human Rights into the Company's procedures. It also suggested that following a period of adverse security conditions, the region where the Project is located was now enjoying a period of peace and stability. The Board documentation stated that IFC consulted local stakeholders, including an international human rights non-government organization, to ensure that local communities had not encountered any problems with the use of security forces. The ESAP required the Company to 'upgrade its procedures as needed to reflect the UN Voluntary Principles for Security and Human Rights' by June 2009.

The Equity and Warranty Subscription Agreement included a provision requiring the Company to 'comply with the Voluntary Principles on Security and Human Rights in connection with its operations in the Republic of Colombia'.

In late 2010, the Company provided IFC with a copy of an updated contract with security forces for review. IFC indicated that it had reviewed the contract and concluded that it properly addressed key issues. The two Annual Monitoring Reports and the minimal Supervision Site Visit reports available provide very little information on this point, with the January 2011 – December 2011 AMR stating that this action item is 'in implementation'.



CAO finds that IFC considered security risks as part of its E&S review. CAO is, however, not able to reach a view as to the adequacy of this review at this stage. Further, CAO finds that there is insufficient material in the documentation to assess whether IFC's supervision of these risks has been sufficient.

#### Performance Standard 6 – Biodiversity Conservation and Sustainable Natural Resource Management

The Complainants contend that the area proposed for the mine contains several endangered fauna species. They also contend that IFC's investment is inconsistent with World Bank programs financing projects to conserve páramo.

PS6 recognizes that protecting and conserving biodiversity and its ability to change and evolve is fundamental to sustainable development. Clients must assess the significance of Project impacts on all levels of biodiversity, as well as identifying impacts on 'ecosystem services'. Where critical habitat is involved, the Client must retain qualified and experienced external experts to assist in conducting the assessment.

The Appraisal Mission BTO Report and the ESRS prepared by IFC recognized the ecological significance of páramo. It referred to the baseline studies undertaken by a consultant to the Company and considered the potential impact of the proposed mine on the nearby Sisavita Regional Park. The 2009 IFC Board documentation identified páramo as 'a habitat of key importance' that is 'widespread in the region'. It stated that the páramo habitat and associated biodiversity would be fully assessed in both the Phase II baseline assessment and the ESIA in accordance with PS6. The Board documentation also stated that '[t]he project is in the altitude range where páramo is endemic, so there is potential for the eventual mine to affect the páramo habitat'.

In July 2010, IFC CES provided the Company with draft recommendations as 'follow up action' to a site visit. Recommendations included a Biodiversity Policy (including a critical habitat report to be prepared in accordance with a Project Guidance Note developed for the Company in February 2010), a biodiversity offset program, an assessment of the project impacts on the páramo 'ecosystem services', a Net Positive Impact Analysis, a hydrogeological study, a biodiversity monitoring program and a stakeholder mapping exercise and outreach program. Recommendations were also made for the Company to consider restructuring its Environmental Management Structure. Based on the material available to CAO, the extent to which these recommendations were implemented remains unclear.

CAO notes that to the extent the World Bank Group may have had some involvement in projects to protect and manage the biodiversity of the páramo ecosystem, this would not of itself give rise to an inconsistency with IFC's investment in the Company. IFC has been aware from the outset of the proximity of the proposed mine to páramo ecosystems. CAO has questions about the adequacy of IFC supervision in relation to protection and conservation of biodiversity. However, the boundaries of the páramo are yet to be determined by the Colombian Government. In addition, the Company's decision to abandon its proposal for an open pit mine and instead develop a pre-feasibility study for an underground mine means that it is not yet clear what impacts the proposed mine may have on biodiversity. CAO emphasizes the need for



IFC to ensure that appropriate attention is paid to PS6 in the development of the new proposal and attendant ESIA.

## 5. Decision

The decision about whether CAO should initiate a compliance investigation requires the weighing of a number of factors including the likely social and environmental impact of a project, a preliminary appraisal of IFC's E&S performance, as well as a more general assessment of whether there is an argument for the value of a compliance investigation for project-related or systemic reasons.

The Complainants raise concerns regarding the potential long-term E&S impact of the investment, in particular its effects on biodiversity and water quality and quantity. On the other hand, responding to E&S concerns, the Company has decided to abandon its earlier open pit proposal and develop a new proposal and ESIA for an underground operation. The substantive validity of many of the Complainants' concerns is not possible to evaluate at present given that neither a design (pre-feasibility study) nor an ESIA for the underground mine is available. As noted above, IFC would be expected to engage with its client around E&S aspects of the new design for the mine as details become available.

As the possibility for a discussion of outcomes is limited by the current stage of development of the Project, the CAO compliance process will necessarily focus on IFC's approach to E&S review and supervision. Questions which arise in this context include whether IFC's approach to the definition of the Project and the assessment of its E&S risks and impacts was adequate. This is a central question as the assessment of risk and impact at appraisal guides IFC's approach to E&S categorization, the level of E&S review required, as well as the extent of community consultation which the client must undertake. CAO will also investigate whether the structure of this investment and the approach taken to its supervision paid sufficient regard to the potential long-term E&S impacts of the investment, and the way in which its risk profile was likely to change over time.

CAO will therefore conduct a Compliance Investigation into IFC's investment in Eco Oro. The objectives and scope of the investigation will be defined in terms of reference which will be disclosed in accordance with the CAO Operational Guidelines.