

**Public Consultation on Draft IFC/MIGA
Independent Accountability Mechanism (CAO) Policy**

**FRANCOPHONE SUB-SAHARAN AFRICA REGION
DAKAR CONSULTATION**

**Virtual Stakeholder Meeting April 27, 2021
Facilitators' Report**

I. SUMMARY

In August 2020, IFC and MIGA Boards of Directors (“Boards”) released the report of the *External Review of IFC’s/MIGA’s Environmental and Social Accountability, including the Compliance Advisor Ombudsman’s (CAO) Role and Effectiveness* (the **External Review**). In response to recommendations from the External Review, the Boards tasked a Joint CAO/IFC/MIGA Working Group (the “Working Group”) to develop a draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“CAO Policy”).

The draft policy outlines the CAO’s purpose, mandate and functions; core principles; governance; and operating procedures and is available for public consultation between April 5 and May 19, 2021. The public consultation phase comprises nine virtual consultations sessions covering all regions of the world. The process also allows for written comments on the draft policy to be shared by email or using an online feedback form available on the dedicated website for the consultation process.

This report summarizes the outcomes of the session held for Francophone Sub-Saharan African countries on April 27, 2021 at 12:00 pm Dakar time. The session was designed to obtain feedback from community members, civil society, private sector, and representatives of international finance institutions (IFIs) including their respective independent accountability mechanisms (IAMs). Nine (9) participants attended the meeting.

The session was conducted in French by a team of professional facilitators, with support from note-takers and French-English interpreters. Members of the CAO/IFC/MIGA Working Group responsible for drafting the policy presented background on the process to date, the key elements of the draft CAO Policy, including enhancements to CAO’s processes, and next steps in the process toward finalizing the policy for approval by the IFC and MIGA Boards in June 2021¹. Participants were asked to provide their input and questions on the topics they wished to focus on. This report covers the comments and questions from participants and summarizes answers from members of the Working Group. The agenda for the session is attached as Annex I.

II. STAKEHOLDER FEEDBACK AND QUESTIONS

Using an anonymous Zoom poll, participants were asked to select the order in which they wished to discuss the different sections of the draft policy: 1) Purpose, Mandate, Functions and Core Principles (including Remedy); 2) Governance; 3) Eligibility of Complaints; 4) Assessment; 5) Dispute

¹ The presentation can be found and downloaded [here](#). IFC/MIGA also presented on other actions they are developing to [strengthen environmental and social accountability](#) as well as on their work program on [enabling remedial solutions](#).

Resolution; 6) Compliance; 7) Advisory; 8) Threats and Reprisals; 9) Outreach; and 10) Access to Information and Disclosure.

The topics prioritized by the participants were:

- Dispute Resolution (80%)
- Eligibility of Complaints (80%)
- Purpose, Mandate & Functions, Core Principles (including Remedy) (60%)
- Compliance (60%)
- Threats & Reprisals (40%)
- Assessment (20%)
- Outreach (20%)
- Access to Information & Disclosure (20%)
- Advisory (0%)
- Governance (0%)

For the top four selected topics, a space of 15-minutes maximum was opened to listen to stakeholder input and questions. Since participants had different levels of knowledge of, and exposure to CAO, for most part, the conversation followed a question and answer format. While the focus was on the selected topics, related issues were also raised in the subsequent questions and inputs from stakeholders.

Dispute Resolution

Early resolution/prevention mechanisms: A stakeholder wanted to understand the link between CAO's dispute resolution (DR) process and the internal complaints mechanisms that can usually be found within companies for prevention and resolution of conflicts with communities. The Working Group explained that there are several levels and mechanisms that can be used to address complaints. Complainants have the option to approach the complaints mechanisms at the project-level, IFC/MIGA directly, or to approach CAO. They further explained that the draft Policy allows for all options while encouraging the use of the option that is closest to the complainants. The Working Group also clarified that based on experience, CAO, IFC and MIGA are conscious that complainants often feel that they are at risk of, or subject to, threats when making complaints, and that the number of complainants expressing concerns about reprisals is increasing. This often results in complainants being more comfortable with using external complaints mechanisms than project-level grievance redress mechanisms.

Legal frameworks for resettlement: After remarking that many cases are linked to compensation and viability of resettlement frameworks, one stakeholder asked how CAO and the project complaints mechanisms address legal frameworks around resettlement. The stakeholder further clarified that the question was being asked with consideration that in many cases the policies of the World Bank Group are more evolved than those of states. The Working Group confirmed that many complaints are linked to resettlement and that the World Bank Group's policies often provide more protection than those of states. They reiterated that this is precisely one of the reasons why such policies exist.

Difference between DR and Compliance functions: A question was asked regarding the difference between CAO's Compliance and Dispute Resolution functions. The Working Group explained that the DR process is a voluntary one that aims to seek solutions revolving around the parties on the

ground. The compliance process is focused on assessing whether the IFC and MIGA followed their environmental and social policies.

Role for independent third parties: A stakeholder was interested in knowing whether there was a role for independent third parties in supporting the CAO DR process. The Working Group responded that CAO hires independent third parties, such as mediators, to support dispute resolution processes at the local level.

Transfer of unresolved complaints from DR to compliance: A stakeholder wanted to know why there was no longer an automatic transfer of unresolved complaints from DR to compliance. They commented that compliance issues should be investigated independently of the wish of complainants, notably because the DR process may not resolve structural issues. The CAO team explained that the draft Policy reinforces the complainants' choice and assures that they are in agreement with the complaint going to compliance. In doing so, it does not prevent IFC/MIGA from examining questions raised in the complaint, and goes further by providing the opportunity for the CAO Director-General, the President of the World Bank Group, or the Boards to request a compliance process even without a complaint in defined circumstances.²

Eligibility of Complaints

The role of legal representatives: Stakeholders wanted to know the role of legal representatives, including companies and associations, with regard to eligibility of complaints. Questions were asked whether such legal representatives could approach CAO on behalf of complainants or even directly if they felt affected by a project. The Working Group explained that a key criterion for a case to be eligible is the existence of an individual(s) directly affected by the project. They clarified that it is often the case that legal representatives, particularly non-governmental organizations (NGOs), support complainants, but that complaints filed by legal representatives would not be eligible if they are not acting on behalf of the affected persons. CAO further clarified that it has never accepted a case from a company that felt impacted by an IFC/MIGA project.

Limited timeframe after IFC/MIGA exit: Stakeholders expressed concern for the fate of affected communities with the 15-month limit for eligibility of complaints after IFC/MIGA's exit found in the draft Policy. They were interested in knowing the thinking behind this decision. They also provided recommendations that could help ensure that the 15-month period would be respected. These included giving importance to proper consultations, presenting the project to direct beneficiaries, civil society, and the national assembly. The Working Group confirmed their understanding of the potential for projects to have an impact on affected communities that is only visible after IFC/MIGA's exit. They shared that the draft Policy represents a positive change, as previously complaints were not eligible at all after IFC/MIGA had exited a project. The Working Group further explained that the 15-month timeframe represents the current consensus, and they will continue to examine the results over time to see if this is adequate. Similarly, the team clarified that IFC and MIGA will continue discussions external to the Policy with regard to corrective actions and possible leverage on their clients to avoid negative impacts on affected communities post-project exit.

² An internal request for a compliance appraisal may be made: "... where: (i) an appraisal is deemed necessary to review environmental and social compliance issues of systemic importance to IFC/MIGA; (ii) concerns exist regarding particularly severe Harm; or (iii) Project-affected people may be subject to, or fear, reprisals preventing them from lodging a complaint to CAO" [see Draft Policy para. IX.B.1].

Indirect negative impact on communities: Questions and comments from stakeholders, directly and indirectly, suggested that the draft Policy was unclear regarding eligibility of a complaint in cases where an individual is not directly impacted. There was also a concern raised from one stakeholder's experience of a CAO case, that the previous criteria allowing for eligibility of cases of indirect impact was very broad, allowing for issues that should not be treated by a complaints mechanism such as CAO to be considered eligible. They asked whether complaints that do not directly impact an individual, such as those related to destruction of historical heritage or an endangered species, are eligible. The Working Group explained that if a community complains that their environment [or social conditions] have been or may be impacted by a project, the complaint is eligible. They highlighted that CAO conducts an assessment process after finding a complaint eligible, which allows for more detailed exploration of the complaint. The Working Group also shared that CAO, through the CAO Director-General, retains the capacity to initiate a compliance process independently, through the appraisal trigger by the DG as discussed above.

Compliance

Remedy: A stakeholder commented that complainants have nothing more to expect in terms of resolution or compensation once a case goes to compliance. They stated that it is incumbent on those financing the project, and who have been involved in its implementation and completion, to use their influence on their clients. They further commented that if there is no agreement in DR, it could then otherwise appear that IFC and MIGA are protecting their clients to the detriment of the communities. The Working Group explained that discussions around remedy were a priority with the draft Policy, and the results can be found in several sections of the document. They further explained that CAO conducts the compliance investigation and provides a report with findings and recommendations. IFC/MIGA management, in collaboration with their client, translates these recommendations into corrective actions. The Working Group also shared an example that investigations have taken into consideration negative impacts on affected communities and the corrective measures proposed in the Management Action Plan focus on responding to such impacts.

Consultations with affected communities: A stakeholder made a request for more effective project consultations with affected communities. They shared their concern that current consultations often addressed at local/central authorities (heads of villages, notables, prefects, mayors, ministers etc.) as representatives of affected communities, yet these same individuals could be a cause of the problem, and/or at times contested by the people that fall under their administration. In addition, they explained that the location, manner (methodology), language, interpreters and channels for consultations could be sources of exclusion. They described the exclusionary effect on local communities of holding consultations in luxurious hotels in big towns or cities and locations that are too far, although the affected communities do not have means for transport. The Working Group confirmed that consultations should reflect different points of view and that reflections on ensuring consultations are more inclusive would be ongoing.

Impact of compliance on DR: A stakeholder raised a concern regarding the dissociation between the results of compliance investigations and the dispute resolution process. They felt there is more value for the parties if a DR process includes the results from a compliance process, which essentially decides the validity of some issues raised in the complaint. They also shared that they considered it important that the community was informed about the two options.

The role of third-party professionals/independents: A stakeholder asked how third-party professionals/independents could be involved in compliance processes if they occurred in their geographic regions. The Working Group explained that in order to assure the independence and

confidentiality of the process, CAO mediators are never involved in compliance cases, however, the CAO compliance function regularly engages third-party experts to provide technical inputs into its compliance work.

CAO recourse to trigger compliance investigations: A stakeholder commented that those on the ground are in a better position to fully understand the risks and reprisals and raise them accordingly. Those internal to CAO may not be aware of the risks. Considering this, they wanted to know why direct requests for compliance could only come internally from CAO. The Working Group explained that CAO has a comprehensive approach to risk issues, including how they are managed. The Team further explained that CAO takes measures to reduce risk and reprisals, giving an example of how protection is offered through maintaining anonymity. It is noted that CAO-triggered compliance processes make up only a small minority of compliance cases, with complainant-initiated processes making up more than 95 percent of CAO's caseload.

III. NEXT STEPS

The Working Group closed the meeting reflecting on the issues raised and thanking participants for their contributions. In terms of next steps, the Working Group will carefully consider written and verbal feedback received during the consultation period as they finalize the draft CAO policy for consideration and approval by the IFC and MIGA Boards in June 2021. In addition to a summary report from each regional and global consultation meeting, a consolidated consultation report that summarizes feedback received during the public consultation period and indicates how feedback was addressed in the final CAO policy will be released.

ANNEX I: AGENDA

Agenda for Public Consultation Meetings on Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy

Dakar, April 27, 2021 – 12:00 PM

TIME	TOPIC
30 MINUTES	<ul style="list-style-type: none">• Welcome, background and purpose of the meeting• Overview of drafting cycle of the new Draft CAO Policy• Key changes to CAO's Operations brought about by the new Draft Policy.• Update on IFC/MIGA efforts on non-policy actions to strengthen environmental and social accountability in their work program regarding a framework for remedial solutions.
10 MINUTES	Questions from Participants
75 MINUTES	Comments and Questions from Participants on Draft CAO Policy
5 MINUTES	Closing remarks and Next Steps