

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

**SUB-SAHARAN AFRICA REGION
NAIROBI¹ CONSULTATION**

**Virtual Stakeholder Meeting April 29, 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 Sub-Saharan Africa region on April 29, 2021 at 3 p.m. Nairobi 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). Fifty-two (52) participants attended the meeting.

The session was conducted in English by a team of professional facilitators, with support from note-takers. 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 2021². 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

¹ The city corresponds to the location where the session would have taken place if it had been held in person rather than virtually.

² 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](#).

(including Remedy); 2) Governance; 3) Eligibility of Complaints; 4) Assessment; 5) Dispute Resolution; 6) Compliance; 7) Advisory; 8) Threats and Reprisals; 9) Outreach; and 10) Access to Information and Disclosure.

The order of topics prioritized by the participants were:

- Compliance (55%);
- Purpose, Mandate, Functions and Core Principles (including Remedy) (48%);
- Governance (48%);
- Access to Information and Disclosure (48%);
- Threats and Reprisals (45%);
- Dispute Resolution (42%);
- Eligibility of Complaints (35%);
- Assessment (35%)
- Advisory (13%)
- Outreach (13%)

For each of the selected topics, a 15-minute space 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.

Compliance

Transfer from Dispute Resolution: One stakeholder commented that it is a good practice to get a complainants' consent before transferring a case from the Dispute Resolution (DR) to Compliance function, but the process of getting consent should be simple and efficient.

Deferral of decision to investigate: The input provided by a stakeholder on the deferral of a decision to investigate was that it may unnecessarily delay investigations. In response, the Working Group informed the participants that both the review and appraisal are time bound activities, and that the deferral process is time-limited to facilitate rapid resolution. Also, the draft policy includes reduced timeframes for specific actions. For example, there are timelines provided for the preparation of the appraisal, review of the report and incorporation of comments.

Board review of decision to investigate: One stakeholder suggested that there is a risk that the Board review process infringes on CAO's independence.

Human rights: One stakeholder commented that the human rights or the concept of severe human rights impact has not been explicitly stated. In the compliance investigation process, the International Bill of Rights, which is a foundation reference framework for the United Nations Guiding Principles (UNGPs) on Business and Human Rights, is not included as a non-compliance area. The comment was that the draft Policy is not thorough on requirements of human rights obligations related to environmental and social responsibility.

Public list of compliance cases on CAO website: One stakeholder asked if CAO would have a dedicated website with a regularly (not quarterly or annually) updated list of compliance cases and their status. The Working Group informed meeting participants that CAO has a website where case information and reports are available, and that the CAO website is currently being redesigned and updated to provide aggregated data sorted by issues, regions and type of complaints.

Comments to draft investigation report: To a question on how comments on a draft investigation report would be obtained, the Working Group explained that the draft report will go to IFC/MIGA for their comments. IFC/MIGA can share it with their clients and their responses will be included as part of IFC/MIGA comments. The process to share findings with complainants and obtain their comments is still to be developed.

Purpose, Mandate, Functions and Core Principles (including Remedy)

Human rights: One stakeholder commented that human rights including concepts of severe human rights impacts are not explicitly stated in the draft policy and that it should be made clear that CAO will be guided by respect for human rights. A specific suggestion was made to add the corporate responsibility to respect human rights under the Core Principles. A practical outcome of the inclusion of this would be to conduct focused human rights impact assessments (HRIA), for example, of concerns related to security and human rights or gender-based violence and harassment (GBVH).

Remedy framework: Stakeholders welcomed the reference to remedy in the CAO draft policy. An argument provided was that there have been extreme examples where operation of an IFC-funded project has led to fatal impacts. Therefore, stakeholders look forward to engaging in IFC/MIGA's consultations on the remedy framework as it is developed. A stakeholder commented that money and expedited timelines are required for remedy and asked how fast a remedy process would go through and who would pay.

The Working Group explained that IFC and MIGA have initiated a process studying remedial solutions and that in their process they are looking into international instruments and best practices. The UNGPs allude to compensation, that is not solely monetary. IFC/MIGA can use their leverage with clients to get them more involved to resolve issues of concern. IFC/MIGA will run a specific stakeholder consultation process on a remedy "Issues and Options" paper that it is developing.

The Working Group also explained that IFC already has a Stakeholder Grievance Response (SGR) Unit to address complaints that come directly to or are referred to IFC. The goal is for the process to become more streamlined, complementing project grievance mechanisms.

Governance

Reporting line: One stakeholder commented that the previous reporting line to World Bank Group president gave CAO more independence and asked what influenced the change in reporting line. The Working Group explained that the External Review conducted on the effectiveness of IFC's and MIGA's accountability system strongly recommended changing CAO's reporting line from the President to the Board, mostly because the focus should be on governance and oversight rather than an operational focus. The new reporting line involves the highest governance body in the institution and is also aligned with other independent functions that CAO interacts with. The Working Group added that the shift in governance is also linked to the effectiveness of CAO's Compliance function, as it provides an opportunity to update the Boards on progress of the implementation of Management Action Plans (MAPs) in response to compliance investigations. Another stakeholder asked if the change in reporting line means that investigation reports will be published without the WBG President's approval or will that still be a requirement. The Working Group explained that the President will no longer have a role in relation to CAO's work.

Ongoing cases: A stakeholder asked what the changes related to CAO's governance mean for active and ongoing cases. In response, the Working Group There explained that there is a need to develop a plan for transition of current cases to the new policy and that parties will be notified accordingly.

Access to Information and Disclosure, and Outreach

Raising awareness about CAO: In response to a question, IFC/MIGA explained their approach with clients is to disclose CAO information on their website and provide project level access to CAO IFC/MIGA is also working with CAO on ways to make CAO better known, both at project and institutional levels

Threats and reprisals and Dispute Resolution

Imbalance of power: A stakeholder asked how CAO protects complainants in a dispute resolution process from the power imbalance with big companies against which complaints are filed and emphasized potential threats and intimidation stem from this power imbalance.

Protection of complainants: Another stakeholder asked what action IFC/MIGA take beyond a statement of zero tolerance to threats and intimidation going on to state that threats and intimidation do happen and prevent complainants from coming forward or from feeling fully safe in a dispute resolution process. A recommendation was put forward for IFC/MIGA to map out non-governmental organizations (NGOs) who can provide support in protecting individuals who have raised complaints.

Human rights: In response to a question from a participant, CAO and IFC confirmed that they have consulted with the UN's Office of the High Commissioner on Human Rights (OHCHR) regarding the situation of human rights defenders. It is good practice to obtain complainants' consent for dispute resolution (DR), but the process can be slow. The Working Group informed participants that CAO tries to strike a good balance between recognizing good practice and recognizing that some complainants can struggle or be under pressure to consent. There is a provision in the new draft policy that should expedite the process without explicit consent.

The Working Group acknowledged that these are difficult questions and situations. During the assessment stage, CAO evaluates whether it is possible to create an environment conducive to dialogue. If complainants feel safe opting for a dispute resolution process, CAO provides capacity-building opportunities for all parties to ensure that all are working for the same outcome and engages professional mediators who are as locally based as possible. In some situations, it is not possible to level the playing field and CAO is not a judicial system or a security agency that can offer protection to complainants.

Eligibility of Complaints

More inclusive eligibility criteria: One stakeholder welcomed the inclusion of criteria related to primary suppliers and their subcontractors and to complaints received after IFC/MIGA Exit.

Multiple complaints: In response to a question about how many complaints CAO needs to receive to initiate an investigation, the Working Group explained that a single complaint is sufficient and that the CAO's decision on eligibility of such complaint is final.

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

Nairobi, April 29, 2021 – 3:00 PM

TIME	TOPIC
35 MIN	Welcome, background and purpose of the meeting Presentation on IFC/MIGA efforts on non-policy actions and remedy Overview of cycle to complete new Policy and key changes to CAO's Operations brought about by the new Draft Policy.
70 MIN	Questions and Comments from Participants on the new Draft Policy
15 MIN	Questions and comments from Participants Closing remarks and next steps