

**CAO Statement  
IFC/MIGA Consultation Draft Approach to Remedial Action  
March 2, 2023**

CAO welcomes IFC and MIGA’s draft Approach to Remedial Action as part of ongoing efforts to strengthen accountability and respond to recommendations from the [External Review of IFC/MIGA’s E&S Accountability, including CAO’s Role and Effectiveness](#). CAO recognizes IFC/MIGA’s leadership in being the first Development Finance Institution (DFI) to consult on a draft remedy approach. Once finalized and implemented, it will constitute an integral and critical part of IFC’s and MIGA’s Environmental and Social (E&S) risk management and accountability framework.

IFC’s and MIGA’s proposed approach contains several aspects that promise to result in more effective remedy for impacted communities. CAO welcomes the holistic nature of the approach, its focus on access to remedy, and elements that focus on planning and client preparedness. At the same time, there are aspects of the approach that require more clarity, for example in the “exceptional circumstances” under which IFC and MIGA may contribute to remedy. CAO hopes these aspects will be discussed and developed further with stakeholder input during the consultations, and before IFC/MIGA pilot the approach.

A robust approach to remedial action promises to benefit project-affected people, project operators, and lenders alike by avoiding situations where adverse impacts occur that no one is prepared to remediate. It is understandable that lenders wish to design remedy frameworks cautiously in a way that sets the right incentives for clients to avoid harm, placing the burden and cost of remediation on those whose actions can best avoid it. Lenders are concerned about getting this wrong. However, in discussions about the limits or scope of remedy frameworks it is critically important to remember that absent or weak frameworks shift the risks to affected communities. It is these communities who are shouldering the burden and cost of unaddressed project impacts and associated harm.

The draft Approach to Remedial Action is rightly anchored in IFC’s/MIGA’s [Sustainability Framework](#), which already sets out the intent to “do no harm” and requires clients to manage E&S risks proactively, address stakeholder grievances, and remediate adverse project impacts. Even with the best of intentions and supporting systems, DFI financed projects will sometimes lead to adverse project impacts. The creation of CAO itself is a recognition of that fact. There should be a clear path provided for affected people to raise their concerns and find ways to address them.

In assessing the effectiveness of IFC’s and MIGA’s accountability system, including the role of CAO, the Board-led [External Review](#) dedicated considerable attention to the question of whether complainants are seeing their concerns addressed effectively and harms remediated. The review highlighted shortcomings that left project-related harm to communities unaddressed even after the conclusion of a CAO process. The review formulated specific recommendations to close this “remedy gap” and create a stronger framework for remedial action at IFC and MIGA, both within and outside the context of a CAO process.

Following the conclusion of the review, the [new IFC/MIGA Independent Accountability Mechanism Policy \(CAO Policy\)](#), effective July 1, 2021, enshrines facilitating access to remedy as a core purpose of CAO and provides several avenues to strengthen remedial responses to CAO complaints. There is an emphasis on early and proactive responsiveness by IFC, MIGA, and their clients through referrals of complaints, support

for dispute resolution processes, deferrals of investigations to enable early remedial action, and mandatory remedial Management Action Plans to respond to CAO non-compliance findings and related harm, all under Board oversight. These enhancements represent new and additional opportunities for remedy.

IFC/MIGA's Approach to Remedial Action, once finalized and approved by the Board, will govern institutional responses to CAO and non-CAO complaints. Its robustness will be a significant factor in determining the effectiveness of the IFC/MIGA accountability systems.

Policy coherence across IFC's and MIGA's Sustainability Frameworks, CAO's Policy, and the Approach to Remedial Action must be a central objective in developing the approach.

IFC's and MIGA's proposed approach contains several aspects that promise to contribute to more effective remedy for impacted communities. CAO welcomes the following aspects of the draft approach:

- ***The holistic nature of the approach.*** CAO supports that IFC/MIGA seek to facilitate and support remedial responses both through CAO dispute resolution processes and in response to compliance investigations, as well as outside the context of a CAO process, and throughout the project cycle.
- ***Access to remedy.*** CAO recognizes IFC's/MIGA's commitment in the approach to enhance access to remedy by making grievance redress options, including CAO, known to affected communities. The planned support for more effective implementation of project-level grievance mechanisms and engagement by clients in CAO processes is equally welcome.
- ***Planning for remedy and client preparedness.*** It is appropriate that, in most circumstances, the project operator should be responsible for remediating adverse impacts as an integral part of the project's E&S risk management activities. IFC's/MIGA's emphasis on preparing clients for remedy signals realism—that they will need to be prepared for the possibility that adverse project impacts will happen and will need addressing. New efforts, such as costing out of Environmental and Social Action Plans (ESAPs) and deploying new contractual triggers and contingency financing mechanisms, promise to clarify client expectations and enhance preparedness. Efforts to build effective leverage throughout the project cycle, and to make adequate resources available for remedy, are equally promising if implemented consistently.

While the approach offers these important areas of progress, the following aspects require more clarity:

- ***All business enterprises, including financiers/investors, are expected to provide, contribute to, or enable remedy to the extent of their linkage to the harm.*** IFC/MIGA's consultation draft proposes to follow the "remedy ecosystem approach." The ecosystem concept has emerged from policy discussions and practices amongst business enterprises and policy makers as a practical way to explain roles and responsibilities of various stakeholders in relation to remedying business-

related harm<sup>1</sup>. According to the ecosystem approach, all stakeholders have a role to play in bringing about remedy, but the greatest responsibility for remedy is placed on those who have caused the harm. Stakeholders that contributed to the harm are also responsible for contributing to remedy. Stakeholders who are directly linked to the harm have a responsibility to get involved—using their leverage or whatever means they have available—to help bring about remedy. In the ecosystem approach, responsibility is thus linked both to the stakeholder’s relative role in the harm and their ability to help bring about remedy. Thereby, embedded in the ecosystem approach is the expectation that financiers do at times contribute to remedy where they have contributed to harm or where they are able to, as it is the only means of achieving remedy for people impacted by their investment. The consultation draft lacks clarity about IFC’s and MIGA’s role and responsibility to contribute to remedy.

- ***The “exceptional circumstances” under which IFC/MIGA will consider contributing to remedy need to be clearer.*** The IFC/MIGA draft approach appropriately places emphasis on the responsibility of project operators to provide remedy, with IFC/MIGA playing a role in enabling remedy via their work with other actors. There will, however, be circumstances that will require IFC/MIGA to contribute to remedy. The consultation draft does not rule out such a contribution and makes provision for this in “exceptional circumstances”. Clarity is needed about what these exceptional circumstances would be to provide more predictability in this context. It would also help to establish coherence with IFC’s/MIGA’s Sustainability Policy and the CAO Policy. For example, the CAO Policy requires IFC/MIGA management to prepare for Board review remedial actions in a Management Action Plan (MAP) in response to findings and recommendations made in a CAO compliance investigation report.
- ***IFC’s/MIGA’s institutional responses to stakeholder concerns need to provide complainants with choice.*** CAO recognizes reference in the approach to IFC/MIGA enhancing access to remedy by making available grievance mechanisms, including CAO, known to affected communities, including supporting more effective implementation of client grievance mechanisms and meaningful engagement with stakeholders. CAO supports complainant choice in this respect. However, as IFC and MIGA become more proactive and involved in addressing stakeholder complaints outside a CAO process (“non-CAO complaints”), some important aspects require clarification. When will a complaint be considered resolved? Is it sufficient for IFC/MIGA to provide assurance to complainants of their clients’ compliance in the context of a complaint? What happens when a complainant is not reassured by IFC’s/MIGA’s perspective or actions? How will complainants be made aware of their right of access to CAO as an independent avenue to seek redress? How will complainants be involved in determining what constitutes adequate remedy? We look forward to further discussion on these aspects and clarity about how IFC and MIGA will do this.

We acknowledge and thank the IFC/MIGA team working on the development of the proposed approach to remedial action for the opportunity to engage with them and contribute to the conceptual

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<sup>1</sup> See, for example, the [“Dutch Banking Sector Agreement on international responsible business conduct regarding human rights”](#) or OHCHR (Office of the High Commissioner for Human Rights)’s [“Remedy in Development Finance: Guidance and Practice”](#)

underpinnings. We look forward to ongoing collaboration with IFC and MIGA to help strengthen the approach based on consultation inputs and work towards effective implementation.