



February 8th, 2007

**Compliance Advisor Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW  
Room F11K-232  
Washington, DC 20433 USA**

The International Accountability Project (IAP) welcomes the opportunity to submit comments on the revised Operational Guidelines for the Compliance Advisor Ombudsman (CAO) of the IFC and MIGA.

The IAP appreciates the good faith effort of the CAO to revise its Operational Guidelines with a view to enhancing the independence, effectiveness and clarity of the CAO process. While the revised guidelines demonstrate positive progress overall, there are several key areas where additional improvements are needed to ensure that the goals set out for this revision are achieved. We trust the CAO will consider the substance of these comments and recommendations, thereby helping to ensure that the new Operational Guidelines enable the CAO to more effectively fulfill its mandate of enhancing the development impact, sustainability and accountability of IFC and MIGA.

***Transfer from Ombudsman to Compliance Audit***

We recognize that the newly proposed process for transferring complaints from the Ombudsman to the Compliance Audit function represents an attempt to separate the process of seeking resolution of a complaint from the process of judging the complaint's merits. Such a separation represents a significant change from the original CAO Operational Guidelines and thus warrants careful consideration. While this change may have potentially positive effects, as currently written several elements of the process remain vague and thus raise concern:

- The guidelines do not clearly state whether or not complainants can directly request a Compliance Audit and thereby bypass the Ombudsman process. It is essential that complainants have this option, as cases may arise in which complainants are certain for a variety of legitimate reasons that engagement in dialogue with the sponsor will not be productive. **We recommend the insertion of a fourth bullet point in section 6.1 "Initiating a compliance audit" (p. 15) that explicitly states that complainants who wish to bypass the Ombudsman process and go directly to a Compliance Audit can do so by submitting a request in writing.**

- **This statement should be accompanied by additional language that describes how the CAO will actively support complainants to make free and informed decisions about whether to directly request a Compliance Audit.** Specifically, we envision that the Ombudsman could play a role in ensuring that complainants are making an informed decision in cases where they are choosing to bypass the Ombudsman process, and that they fully understand their options and the consequences of each choice.

### *Defining and Monitoring Compliance*

- In section 5.1 “Introduction and purpose of compliance audit” (p. 14), the guidelines state, “The primary focus of compliance auditing will be on IFC, MIGA and project sponsors.” This explicit inclusion of project sponsors within the scope of an audit is essential for the CAO to have the ability to perform meaningful compliance audits. **We strongly support this inclusion, and recommend additional language clarifying that the performance of the project sponsor is a major focus of both compliance audits and subsequent monitoring, if required.**
- Currently the guidelines have minimal language about the CAO’s process for evaluating the conditions at the project site that indicate compliance. While auditing the due diligence of IFC and MIGA is essential for ensuring institutional integrity and accountability, it should not be the sole focus of the CAO’s audits. Rather, the CAO should also audit sponsor compliance and on-site conditions when compliance issues are relevant to the conflict. Such a focus on required social and environmental *outcomes* is consistent with the CAO’s problem-solving approach to addressing complaints, the CAO’s mandate to enhance the development impact and sustainability of IFC and MIGA projects, and the outcome-oriented approach of the IFC’s new Performance Standards. For these reasons, **explicit language should be added to clarify that conditions at the project site and in project-affected areas will be a central criterion on which project compliance is determined and monitored, in the case of projects found to be out of compliance. In addition, the guidelines should also state that compliance of project sponsors should be monitored if MoU’s and settlement agreements that result from the Ombudsman process include such provisions.**

### *Monitoring, Reporting and Disclosure of Reports*

- While the guidelines state that the CAO will produce an annual report, there are insufficient guidelines and requirements for reporting on the status of individual cases and the results of ongoing compliance monitoring. The monitoring process must be rigorous and transparent to ensure the CAO fulfills its mandate. **Explicit language should be added that requires quarterly reporting by the CAO on the status of each project/case, along with the reasons why a monitored project has been found to be in or out of compliance. The guidelines should**

**also specify that the CAO will make these reports public and communicate their findings in a meaningful and accessible way to complainants and other project-affected people.**

- In section 8.1 “Report preparation” (p. 19), the guidelines outline the required process through which audit reports will be drafted, reviewed and publicly disclosed. We find it highly problematic that the public release of audit reports is dependent upon clearance from the World Bank Group President. Such a requirement runs the risk of compromising the independence of the CAO process and causing undue delays. While we understand that it is appropriate for the draft audit report to first be circulated to Senior Management and relevant departments for comments, we are strongly opposed to the requirement that the President’s Office provide clearance of the final report at its discretion. Such an onerous clearance process can become subject to political processes and associated lengthy delays, as has occurred in at least one prior case. **To avoid such undue delays we strongly recommend that the guidelines specify that the President’s Office will not have discretion over when or if the final report is released. More specifically, the guidelines should state that audit reports will be publicly disclosed at the end of a 15-day period after the audit report has been forwarded to the President’s Office—regardless of any reactions on the part of the President’s Office.**
  - Ensuring CAO independence is essential. The above recommendation to specify and uphold the timeline for disclosure of final audit reports is essential for protecting the audit reports from political pressures within the WBG and helping to ensure an independent CAO audit process.

### ***Independence and Impartiality***

- Under section 1.3 “Independence and Impartiality” (p. 5), **we recommend the inclusion of an additional bullet point that states that CAO staff will be barred from employment with IFC or MIGA for a period of two years following termination of employment with the CAO.**

### ***Eligibility Criteria***

- In outlining “Grounds for complaint” (section 2.2, p. 8), the guidelines should more explicitly include complaints based on perceived violations of disclosure and consultation requirements. The guidelines should clarify that while the Disclosure Policy Advisor will address more systemic/ institutional issues related to information, the CAO will address project-related grievances in relation to social and environmental impacts that resulted from inadequate consultation and disclosure. **We recommend that the first bullet point under section 2.2 “Grounds for complaint” (p. 8) be amended as follows: “Processes followed in preparation of a project, including those related to consultation and information disclosure.”**

## *Defining 'Sustainability'*

- Finally, we encourage the CAO to accept complaints on IFC/MIGA projects even after the institutions have divested from these projects. Such an approach would help create incentives within IFC/MIGA and project sponsors for genuine long-term sustainability planning and provisions. This long term commitment is particularly important in the case of extractive industry projects, for which the worst environmental and health impacts often manifest many years after the project has been initiated. We recognize that in such cases the CAO would be limited without the cooperation of the sponsor; nonetheless, allowing post-divestment complaints would send a clear message that IFC's and MIGA's commitment to sustainability goes beyond the short period of time over which the institutions have been involved in the project.

We hope these comments are helpful to the CAO in its effort to enhance its Operational Guidelines and ability to promote sustainability and accountability of IFC and MIGA projects.

Sincerely,

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