

Briefing for European Executive Directors
Review of IFC/MIGA's Environmental and Social Accountability Framework &
Accountability Mechanism Secretary Selection Process
26 October 2020

These last two years have seen an intense discussion on accountability with the Board, the Inspection Panel, the Compliance Advisor Ombudsman (CAO), Bank and IFC management, and civil society organizations (CSOs). It would be tempting, and understandable, to move on to other pressing matters, but it is important not to let momentum fade. The operating procedures of the new Accountability Mechanism (AM) need to be drafted and the AM Secretary selected. The more immediate concern, from our perspective, is whether and how the recommendations from the External Review Report on IFC/MIGA's Environmental and Social Accountability Framework will be implemented.

Our questions for the European members of the Board of Directors are:

1. What is the process by which the Board will decide which recommendations in the External Review Report are *not* implemented?
2. How will the Board prevent reopening the issues addressed in the External Review Report?
3. Management has outsized influence in negotiations around accountability reform, and a clear incentive to weaken the system, rather than strengthen it. How will the Board ensure that the views of other stakeholders--including communities, CSOs, and the CAO itself--are prioritized and that the interests and rights of communities are at the center of the reform effort?

Background

The creation of the CAO has been one of the most enduring and successful reforms at the IFC to date. It has handled dozens of cases and improved countless projects by ensuring the IFC is held accountable to communities, and by guaranteeing a platform for communities to raise concerns and seek redress. However, in recent years IFC began to raise more objections to the CAO's compliance findings, and in some cases ignored the findings altogether. This is perhaps best exemplified by its response to the CAO's report on the Tata Mundra coal-fired power plant. In that case, the IFC rejected CAO findings categorically and refused to take action that would remedy the harm suffered by poor seasonal fishing communities that relied on land and water resources destroyed by the coal plant. With nowhere else to turn, communities took the unusual step of suing the IFC in federal court in the United States.

Although the IFC and other IFIs have operated under the assumption that they enjoy absolute immunity from lawsuits filed in the United States, the U.S. Supreme Court accepted the case—known as *Jam v. IFC*—and decided that, in fact, IFC's immunity is not absolute. That case, along with a second case involving IFC palm oil investments in Honduras, continue to work their way through the courts. Although the outcomes are still uncertain, the decision has accelerated significant reform efforts already underway at the IFC. It was against this backdrop that the Board commissioned an external review in 2019.

External Review Report on IFC/MIGA’s Environmental and Social Accountability Framework

The External Review Report is path-breaking in the field of development finance accountability, both in its thoroughness and its systems-level analysis. Because of the interconnected nature of the report’s recommendations, it would be inappropriate for the institution to implement them selectively. This report should represent the floor—rather than the ceiling—of the level of reform needed at IFC/MIGA and the CAO to truly strengthen the accountability system. We urge the Board to endorse the report as the minimum required for implementation.

The report itself provides a clear path forward for implementation. It recommends that the Board trust the IFC/MIGA and CAO to draft proposals for implementation of their respective sets of recommendations and provide guidance when warranted. While a working group could assist in the planning process, forcing the parties to agree on how to implement every one of the report’s recommendations risks the success of implementation from the start. The report further recommends that CAO be tasked with taking the lead on developing a draft of the Framework Policy, with guidance from the Board and in consultation with IFC, MIGA, World Bank General Counsel, and external stakeholders. We concur with the report’s proposed implementation strategy.

In crafting their recommendations, the External Review Team received input from IFC/MIGA Management and CAO, giving them ample opportunity to argue their perspectives. Now is not the time to re-litigate the issues. Any deviations from the recommendations proposed by IFC/MIGA or CAO should only be considered if they further strengthen the accountability framework.

We also agree with the report’s recommendation that “a public stakeholder consultation process would need to be conducted on draft documents.” While the members of the Reference Group were able to share their perspectives on IFC/MIGA’s E&S accountability, they were not consulted on the draft recommendations. And the broader public has not had any opportunity to provide input. For any and all implementation plans, we expect that draft proposals will be published, no matter what type of document they are (resolution, work plan, operating procedures, etc.). Draft documents should be published with adequate time for comment.

Accountability Mechanism Secretary Selection Process

The World Bank is now undertaking an important selection process for the new Accountability Mechanism Secretary role. The hiring process matters because this position is critical to ensure the strength of the World Bank Group’s accountability system. This is a senior-level position that will have responsibility for the new dispute resolution function as well as other duties. Notably, the hiring process for this role differs from the recent process for the CAO VP in one significant respect: there are no external stakeholders on the Selection Committee, and instead the Selection Committee includes a member of Senior Management and the General Counsel. In addition, the job vacancy is only open for three weeks; when the CAO VP job vacancy was originally only open for a couple of weeks, and it was extended after civil society objected.

Questions:

1. Why is the hiring process for the Accountability Mechanism Secretary different than the process for the CAO VP?

2. Will you instruct the World Bank Group to ensure that the new Accountability Mechanism Secretary: (1) have a demonstrated commitment to communities; (2) the ability to ensure the office's independence; and (3) prior dispute resolution experience; as well as (4) embody diversity?
3. Will you commit to instructing the World Bank Group that for any future selection process for the Inspection Panel Chair, Accountability Mechanism Secretary, and Vice President of the Compliance Adviser Ombudsman, the following criteria must be met: (1) the selection process must involve external stakeholders; and (2) that the job vacancy will be posted for a minimum of four weeks?

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