

**Public Consultation on  
Proposed IFC/MIGA Approach to Remedial Action and  
Draft IFC Responsible Exit Principles**

**Civil Society Organisations (CSOs) consultation session  
Online meeting 4 April 2023**

Following the release of the proposed IFC/MIGA *Approach to Remedial Action*; and the IFCs draft *Responsible Exit Principles* in February 2023, IFC/MIGA launched a global public consultation process to elicit comments and submissions on both documents.

The consultation period began with a hybrid Informational Session on 28 February 2023, and will conclude on 20 April 2023 after a total of nine virtual consultation sessions covering all global time zones. Submissions can also be made by email to [accountabilityconsultation@worldbankgroup.org](mailto:accountabilityconsultation@worldbankgroup.org). All details appear on the dedicated consultation [webpage](#).

**Facilitators' Summary Report: Final**

**Introduction:**

This Summary Report presents inputs and comments received during the Civil Society Organisations (CSOs) consultation meeting held on 4 April 2023 at 9:00 AM Washington DC time. The session was attended by 22 participants.

The session was conducted by a team of professional facilitators in Spanish with Portuguese and English interpretation. IFC and MIGA representatives provided presentations on the process to date, which covered background to the process, the documents themselves, and next steps towards finalizing the documents for consideration by the **Committee on Development Effectiveness (CODE)** of the IFC/MIGA Board of Directors. The goal was to collect as many comments, questions, reflections, and recommendations from participants as possible and have some dialogue between participants and IFC/MIGA on key issues.

This Summary is based on comprehensive notes taken during the meeting by a team of Note-takers. It is divided into themes, some of which may overlap, and inputs intersect. The final Report, at the end of the consultation period, will elaborate on the key points.

The session was divided into two parts: the proposed IFC/MIGA Approach to Remedial Action; followed by the draft IFC Responsible Exit Principles.

**A. Approach to Remedial Action**

Participants in general welcomed an opportunity to provide comments and recommendations as well as being able to engage in dialogue with IFC/MIGA.

**1. Scope of the Approach to Remedial Action**

- A participant stated that communities are clear about the damage caused by IFC/MIGA investments and that the draft Approach to Remedial Action does not follow the 2020 External Review. The participant added that where IFC contributes to financing a project it should contribute to any reparation of harm caused, and that requests for reparation should

have a response. This should be the basis of the Approach to Remedial Action and Responsible Exit Principles, but the Approach does not satisfy that request. Throughout the drafts there is an emphasis on the Sustainability Framework, but remediation is not included. As such, the proposals neither satisfy the needs of the communities nor comply with the External Review.

- One participant commented that the documents mention the Sustainability Framework as a foundational piece, but that it is not clear what position or solution this new instrument provides when current IFC standards, such as Performance Standard 7, are below the standards of other multilateral banks such as the World Bank and Inter-American Development Bank. This participant pointed out some examples of measures that they consider more effective in the implementation of standards of other development banks, such as: the prohibition of financing projects that may involve individual titling of collective territories; the use of consultation protocols developed by Indigenous Peoples when the financed project has an impact on them; and the creation of buffer zones for Indigenous Peoples in voluntary isolation.
- A participant pointed out that both the Approach and the draft Responsible Exit Principles are focused on a preventive approach and do not address the situation when harm actually occurs, which is when remedial action needs to be addressed. The participant noted that the preventive approach is important, but emphasized that the documents should be focused on clear corrective measures to remediate harm, when the preventive approach is no longer useful.
- A participant expressed the view that there is a complete disconnect between the conclusions of the IFC accountability mechanism, the **Compliance Advisor Ombudsman (CAO)**, and the corrective measures suggested in the Approach, which seem to have been designed to strengthen IFC processes and not to remedy harm.
- Several participants pointed out that the document lacks a human rights approach, which is reflected in the language and understanding of the issues. They stressed that human rights approach should be at the basis of the Approach to Remedial Action.
- The view was also expressed that the proposal should be based on the voice of the communities.
- Several participants commented that the IFC/MIGA proposal should be implemented equally to open CAO cases, and not only to future cases.
- A participant emphasized that the Approach needs to consider that there are not only environmental and social harms, but also impacts on individual and collective rights. It was pointed out that the Approach should consider human rights-based improvements beyond the restitution to a pre-harm situation, including the social fabric and community cohesion. In addition, it is necessary to include early prevention of what may later become a violation of human rights.
- Another participant stated that it is essential to implement the United Nations Guiding Principles on Business and Human Rights, based on protection, respect and remediation, paying special attention to retaliation through the persecution and criminalization of leaders, especially women who are community leaders. The participant commented further that, in their experience with an IFC project, harm may be caused in the communities that relates to

the rupture of their social fabric, impact on communal lands and on rivers; as well as personal harm around imprisonment as a result of reprisals. The same participant went on to say that neither the people, the families nor the communities have received any kind of remedy yet; and that people who had to leave their homes are still unable to return.

- A participant emphasized the need for the Approach to take into account the land issue, since new risks are generated for the communities when the investing banks become owners of the land, recommending that issues around land need to be addressed before projects are started.

## **2. Roles and responsibilities in the remedy ecosystem**

- Some participants emphasized that IFC/MIGA is taking a very timid and lukewarm approach to their responsibility for harm and remediation, and the role of the IFC/MIGA should be clarified in the Approach. The document focuses a lot on the client's responsibility and not so much that of IFC/MIGA.
- Several participants stated that IFC cannot shirk its responsibilities and not take remedial action to address harm. They stated that the IFC/MIGA "washes its hands" of its responsibility to implement corrective measures and repair, and leaves all responsibility to its clients.
- A participant commented that the types of remediation and the role of the IFC/MIGA should be further explored, explaining better what is behind each of the measures, considering that the draft Approach should be based on international human rights law which is very relevant to the document.
- Several participants further commented that the Approach needs to define how IFC/MIGA is going to contribute to remedy, not only by influence and enabling activities, but with a fund or some other mechanism.
- One participant stated that it is important that the document is clear about the risk that arises when IFC/MIGA do their due diligence, and the role of human rights compliance.
- A participant noted a gap in the Approach about how clients who have already caused harm and affected human rights might be supported financially, indicating that these situations are repeated over and over again, and that this should be part of the preventive measures to be considered.
- Another participant commented that investments should not be made in companies that cause harm and that reparations should be made as soon as possible, taking into account consultations with the affected communities.
- Several participants suggested, in the context of their investment in financial intermediaries (FIs), that IFC/MIGA incorporate CAO's recommendation to make changes in order to prevent further negative impacts, including requiring information from the FIs as to who are the actual recipients of the financing, rather than just leaving it up to the FIs to communicate who are the recipients of the funding.

## **3. Preparation for Remedial Action**

- A participant suggested that some projects are not in compliance with the Sustainability Framework and are not currently assessed prior to project approval. The participant recommended that projects should be assessed and verified before a project is approved, thereby mitigating risks of harm.
- Some participants stressed that mechanisms which allow for community participation should be in place before projects are approved and include early warnings before approval. Specifically, it was proposed that consultation should take place during the process of identifying projects and deciding on their feasibility and, in this way, remediation should be considered from the outset.
- A participant pointed out that communities get very worn out using local grievance mechanisms where the process is too long for communities, the communities are not informed of the process and the outcomes are not in line with the interests of the communities. Remedial measures are focused on improving the banks' systems and not on changing the damage in the communities.

#### **4. Access to Remedial Action**

- A participant commented that there is a lack of clarity on what IFC/MIGA mean by access to remediation and the criteria, as well as the circumstances, in which they will implement this remediation. The participant suggested that the Approach clarify the type of remediation that will be applied, and how its effectiveness will be measured.
- Another participant described a situation, in relation to a CAO case, where the Compliance report took five years to complete by which time IFC had already withdrawn, having (supposedly) complied with the measures focused only on learning, even though there were serious reprisals and a scenario of escalating conflict. The participant related that this experience left a lot of uncertainty and open social harms after the IFC's exit. Therefore, it was pointed out that it is important to be clear about corrective measures and at what point they need to be applied to repair the social fabric.
- One participant suggested that the document should be elevated to a legal instrument so that the measures would be binding and mandatory, and thus can also be used in litigation if they are not complied with. It was pointed out that this would make it possible to bring people to justice if they do not comply with access to information and prior consultation. It was also suggested that IFC/MIGA support these processes since governments and state institutions do nothing and delay legal process; nor can the costs be assumed by affected people and communities. The need for prior consultation to be mandatory was also highlighted, so that if the client fails to comply, he can be sued in court.

#### **5. Facilitate and Support Remedial Action**

- A participant suggested that the Approach include examples about successful and unsuccessful experiences of corrective measures implemented under dispute resolution mechanisms.
- Another participant suggested IFC/MIGA consider a fund to support legal processes for those communities and individuals who raise their voices and can face reprisals against them, especially in relation to land issues.

- It was recommended that the Approach take into consideration that communities have their own ways for reconciliation and the reconstruction of the social fabric.
- A participant commented that it is fundamental that the Approach respect communities such as indigenous peoples, Afro-descendants and civil society, which have long been vulnerable and mistreated by multinational projects. It was indicated that communities have been displaced, nature has been harmed, environmental leaders have been threatened and suffered other human right violations. This is the reason why they demand that these reparations are given now and that IFC /MIGA must contribute to those reparations. They are asking for empathy for what has been experienced. It is necessary to have corrective and precautionary measures that emphasize non-repetition of harm. The participant went on to state that affected communities need support to recover their territories, as their ancestral right, and to recover their culture, peace, environment and rivers that have been taken away.
- A participant commented that the IFC/MIGA proposal should explicitly include the principle that contribution to harm means contribution to remediation. This goes beyond just facilitating and supporting clients through existing prevention and mitigation efforts and technical advice.
- It was proposed in strong terms by a participant that the Approach needs to incorporate the creation of a contingency fund as there is no time to raise funds on a case-by-case basis, or in "exceptional cases."
- It was also recommended that the Approach should apply to all clients including financial intermediaries.
- A participant stressed that it is necessary to define what are "exceptional circumstances", given that all peoples who are harmed must be remedied and that "exceptional circumstances" could mean exclusion and discrimination.
- Several participants raised a concern that the focus of the two documents is towards the future, although they are based on harm that has occurred previously. A participant suggested that, for this reason, the documents need to look at past, legacy cases through a policy that considers transition. Otherwise, IFC/MIGA will be turning their backs on communities that have already suffered harm. Participants expressed the view that the IFC/MIGA proposal should be implemented equally to existing cases, at least those that are open in the CAO, and not just in future cases.

## 6. Process

- There were several requests from participants that they be given the opportunity for further consultation with IFC/MIGA over the next draft of the Approach.
- One participant remarked that a consultation for the whole of Latin America did not allow sufficient scope to consider the interests of individual countries or territories affected by the World Bank or by the activities of specific companies [clients] operating in that space. The participant was frustrated that this Summary Report is limited to comments and suggested inputs to the Proposed Approach to Remedial Action and draft Responsible Exit Principals, and does not reflect the strong views expressed in the meeting concerning a project in a specific country.

## **B. Responsible Exit Principles**

- A participant pointed out that there should be a relationship between responsible exit and remedial actions in order to avoid parallel processes.
- One participant stated that there is almost no willingness expressed by IFC in the Responsible Exit Principles to make reparations although affected peoples are still waiting. The participant added that they will continue to fight if there is no resolution. The view was expressed that the draft proposal suggests that the IFC/MIGA is making contributions as a favour when, in fact, they have a duty to do so under the international human rights framework.
- Participants representing communities commented that the Responsible Exit Principles also fail to clarify that any IFC plan to exit would be discussed and consulted (not just analysed) with the affected communities prior to or at the start of the divestment process. Such engagement would ensure that access to remedy is the basis for a responsible exit. They recommended that these points be incorporated as an additional principle in the document.
- Another participant stressed that the Responsible Exit Principles should not only be applied when there has been a disbursement, but before it happens. Even if the IFC exits before it has disbursed, and calls in other investors, it has already given an endorsement to the project.
- A participant expressed the view that the Principles are ambiguous in the context of the legal and reputational consequences for clients when IFC decides to exit a project. The Responsible Exit Principles lack clarity with regard to the criteria applied when IFC analyses whether to exit a project or not. It was suggested that it is necessary for IFC to avoid situations in which they risk deciding to remain in a project because exit may affect a client's reputation.
- Likewise, a participant pointed out that from the moment IFC starts discussing exiting the project, it should start the conversation about exit with affected communities, in addition to the environmental and social issues. The participant stressed the fact that the communities do not know about exit and, by the time they do understand, their vulnerability will have increased.
- It was pointed out by a participant that the document states that it is the project team that decides if a consultation with communities will be done or not, which was raised as a concern. The participant stressed that there cannot be a responsible exit without participation, without listening to those who have been most affected by the project. Consultation with the communities should be mandatory and not at the discretion of the project team.
- Another participant commented that it would be important to include stakeholder engagement approach as one of the Responsible Exit Principles, not just as additional guidance; and IFC not turn its backs on the communities that have already been affected.
- It was noted with concern by one participant that there are communities that have been affected by retaliation, and that this needs to be recognised by IFC. The document has ambiguous language and is vague on some issues of concern, such as 'attention to the risk of

retaliation´ once exit is announced. Important considerations regarding the local and historical context of retaliation are not taken into account in the document.

- One participant suggested that IFC incorporate compliance insurance when exiting investments.
- A participant commented that serious and responsible corrective measures are needed. If harm is already done, there should be a right to reparation. The participant pointed out, from their experience and perspective, that affected peoples cannot support IFC´s responsible exit because there is no policy of redress on the part of the client despite the existence of flagrant violations on prior, free and informed consultation established in national and international laws, as well as damages related to land pollution, different types of retaliation, human rights violations, rupture of the social fabric including disregard of customary law.
- A participant commented that the type of exit (passive or active) does not matter for the community when there is environmental and social harm or human rights violations. The participant stressed that this is a perspective that needs to be taken into account.
- A participant noted that it is essential to understand the local structure of communities, gender aspects and historical context of each community. Also, it was noted that legal issues should be taken into account, and due diligence should be emphasized when the investment ends and IFC exits the project, which is a time when violence and retaliation tend to flare up.
- Another participant recommended that, where a CAO report is in existence prior to IFC exiting a project, any responsible exit should respond to that report. In this respect, it would be useful to look at cases of other banks.
- A participant shared the view that responsible exit should be considered from the early stages of any project, and that IFC also consider what leverage they may have with their client.
- A participant commented that IFC should be accountable for responsible exit. Whenever there is exit, there will always be risks that require urgent corrective measures.
- A participant pointed out that a responsible exit should leave people with peace of mind, and balance in the community, and reparation of all the harms, which is not the case at the present moment where there are reprisals and the harms are still being experienced.
- Several participants emphasize that without reparations, responsible exit cannot take place.
- A participant commented that the Responsible Exit Principles do not clarify that divestment cannot occur until remedial measures and effective redress are provided to affected communities, also with their consent. This context includes cases where there is an active complaint with CAO.
- Several participants emphasised the point that a gender approach is fundamental to a responsible exit.
- A participant expressed a strong view that precautionary and corrective measures be incorporated to recover ancestral land right after exit; and requested that IFC explain also

how they define the “type of measures”, “restitution of guarantees” and “non-repetition”. Also, when talking about “exceptional” actions, IFC should think about the most vulnerable groups that have lost rights.