

ANNEX 12

THE COMPLIANCE ADVISOR OMBUDSMAN OF THE INTERNATIONAL FINANCE CORPORATION AND THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

INTRODUCTION

This section assesses the Compliance Advisor Ombudsman (CAO), the independent accountability mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The assessment uses a standardised framework, based on the UNGPs, which is available in Annex 2. This assessment framework clarifies how each of the UNGP criteria was operationalised for the purpose of assessing individual mechanisms. The assessment is based on the following sources: the written policies of the IFC, MIGA and the CAO; the websites of the IFC, MIGA, and the CAO; public sources, including letters, reports and advocacy documents drafted by CSOs and affected communities in relation to the IFC, MIGA and/or the CAO; and input from four CSO representatives who have supported and/or filed complaints with the CAO (referred to as users throughout this assessment), elicited by means of online survey (see Annex 3).

MECHANISM AT A GLANCE

Established in 1999, the CAO is the independent accountability mechanism for the World Bank Group's private sector arm, the IFC and the MIGA. It was created to receive complaints from communities that were harmed, or may be harmed, by IFC and MIGA activities. The CAO has three complementary functions: ombudsman/dispute resolution, compliance, and advisory. The CAO Terms of Reference set out the mechanism's mandate,¹ while its Operational Guidelines (OGs) describe how the CAO will carry out its various roles.² The office is directed by the CAO Vice President, who reports to the president of the World Bank Group. A new CAO VP assumed office at the beginning of the research period in July 2014.

TABLE 1: CAO/IFC/MIGA CASE ATTRITION

TOTAL COMPLETED CASES	FOUND ELIGIBLE	REACHED SUBSTANTIVE PHASE	ACHIEVED RESULTS
211	116	63	46

TABLE 2: CAO/IFC/MIGA PERFORMANCE INDICATORS

	RESEARCH PERIOD	TOTAL
CASES FILED	17	246 ³
CASES CLOSED WITHOUT REACHING SUBSTANTIVE PHASE ⁴	15	148
CASES ACHIEVING RESULTS	5	49

KEY FINDINGS AND RECOMMENDATIONS

Several features of the CAO contribute to its legitimacy and accessibility. The selection process for the CAO VP, which relies on a committee made up entirely of external stakeholders, greatly increases users' confidence in the mechanism. Similarly, the CAO's use of its mandate to trigger compliance appraisals on IFC/MIGA-financed activities, particularly where it would be difficult or dangerous for directly affected communities to submit a complaint, further bolsters its legitimacy. However, the CAO's procedures with regards to compliance reviews fall short in ensuring an equitable process. The IFC/MIGA are provided with an opportunity to review the CAO's draft investigation report, but the complainant only sees it after the President of the World Bank Group approves it. The IFC/MIGA further undermines the CAO's effectiveness by refuting its findings or, when it does develop an action plan, failing to consult with complainants to determine what would address their concerns. Similarly, despite the CAO's mandate to provide IFC/MIGA with advice on improving the implementation of its policies, it is unclear what, if anything, IFC/MIGA does with it.

Table 3 contains the recommendations derived from the UNGP assessment that follows. The recommendations describe the reforms needed to the policy and practice of each actor, the IAM and the DFI. It should be noted, however, that the power to implement some of these recommendations regarding the IAM rests with the DFI's Board of Directors.

UNGP ASSESSMENT

LEGITIMACY

IAM: The legitimacy of the CAO is supported by several provisions in its OGs and Terms of Reference that guard against perceived and/or actual conflicts of interest. The CAO Vice President is a full-time employee, who reports directly to the World Bank Group President and is independent of operational management at IFC or MIGA. Additionally, CAO

TABLE 3: RECOMMENDATIONS DERIVED FROM UNGP ASSESSMENT

	CAO	IFC/MIGA
LEGITIMACY	<ul style="list-style-type: none"> Secure its legitimacy and solidify its recognised accessibility by strengthening its mandate to allow the CAO to direct IFC/MIGA staff and clients to take action to address non-compliance and remedy harm. 	<ul style="list-style-type: none"> Ensure there is adequate budget and capacity to support the CAO's mandate.
ACCESSIBILITY	<ul style="list-style-type: none"> Allow for complaints requesting compliance review to be submitted following project closure. Update website and other outreach materials in other non-English languages. 	<ul style="list-style-type: none"> Loan agreements should require clients to disclose the existence of the CAO to project-affected people, including through Stakeholder Engagement plans. Improve visibility of CAO on IFC/MIGA homepages.
PREDICTABILITY	<ul style="list-style-type: none"> Adhere to timelines. Provide complainants with regular status updates on their complaints. 	<ul style="list-style-type: none"> Prepare an action plan for every investigation report in which the CAO has made findings of non-compliance. Adopt a deadline for approving the CAO's investigation reports and IFC/MIGA's response, after which reports will be disclosed automatically.
EQUITABILITY	<ul style="list-style-type: none"> Provide complainants the opportunity to comment on draft investigation reports. Share final investigation reports with complainants at the same time they are sent to IFC/MIGA. Respect the role of complainants' advisors and representatives. 	<ul style="list-style-type: none"> Consult with complainants in the development of an action plan in response to CAO's investigation reports.

	CAO	IFC/MIGA
TRANSPARENCY	<ul style="list-style-type: none"> Publish information regarding complaints that fail to meet the eligibility requirements. 	<ul style="list-style-type: none"> Publish, in a consistent manner, more information about IFC/MIGA projects, including environmental and social assessment documentation and for financial intermediaries, sub-client names and sub-project names and locations. Publish loan agreements. Refrain from making confidentiality agreements with clients that prevent the CAO from including necessary information in its investigation reports.
RIGHTS COMPATIBILITY	<ul style="list-style-type: none"> Make recommendations to the President to prevent future harm, such as suspending a project or retracting a loan. Develop protocols on reprisals against complainants. 	<ul style="list-style-type: none"> Make an explicit commitment not to fund projects that would cause, contribute or exacerbate human rights abuses. Require clients to assess the human rights impacts of their operations. Develop measures to respond to reprisals against complainants.
LESSONS LEARNED	<ul style="list-style-type: none"> Standardise process for review of the Operational Guidelines. Revisit cases from the past to assess the true outcomes of complainants for affected communities. 	<ul style="list-style-type: none"> Publish the Management Action Tracking Record (MATR) and other monitoring tools to document what lessons it has learned from the CAO's dispute resolution, compliance, and advisory functions. Independently evaluate if and to what extent IFC/MIGA has taken on lessons learned in CAO cases and provide measures to address any systemic failures. Commit not to provide additional financing for similar activities to clients found to be in non-compliance until the non-compliance has been remedied.

professional-level staff are recruited by the CAO Vice President. They are prohibited from obtaining employment with IFC/MIGA for two years after they end their employment with the CAO. The CAO Vice President is restricted for life from obtaining employment with the World Bank Group. However, there are no formal pre-employment 'cooling off' restrictions for staff or the CAO Vice President, as required by other accountability mechanisms,⁵ but the CAO reports that in practice they observe a two-year period before hiring staff who have previously worked for the IFC/MIGA.⁶

The legitimacy of the CAO process is further bolstered by the mandate of the CAO Vice President to trigger a compliance appraisal of an IFC/MIGA project. This mandate has been triggered effectively in several cases. In addition, the CAO uses a Strategic Advisors Group, international experts who provide independent advice on how to improve the effectiveness of the CAO. Experience has shown that complainants generally trust the CAO to handle their complaints in a fair manner, noting that they perceive the CAO to be open to feedback should complainants feel the process is unfair.

DFI: The CAO Vice President is appointed through an independent recruitment process, involving a search committee consisting entirely of external stakeholders, including civil society. Experience has shown that the recruitment process is participatory and free from the undue influence of IFC/MIGA management and the World Bank Board. Despite the measures taken by the CAO, the legitimacy and effectiveness of the system are undermined when, as recent cases have demonstrated, IFC refutes the CAO's findings of non-compliance, denies evidence of wrongdoing and develops action plans that are inadequate to redress harms.⁷

ACCESSIBILITY

IAM: Several features of the CAO decrease barriers to access. Filing requirements are not onerous. The grounds on which a complaint may be made have been broadly defined in order to remove unnecessary barriers for complaints. Apart from the requirement that a complaint should be in writing, there are no format requirements for filing. As with several IAMs, an individual can file a complaint.⁸ Further, complaints can be filed in any language, and substantiating evidence is not required. Complainants determine which CAO role(s) to initiate, though they cannot determine the sequencing or request parallel dispute resolution and compliance. When complainants request both compliance and dispute resolution, the CAO will always initiate dispute resolution first. Finally, the CAO does not require that affected communities should be located in the same country as the project against which they file a complaint. Nor does the CAO require complainants to make good faith efforts to address their grievances with IFC/MIGA as a predicate to filing a complaint, unlike other IAMs. Experience has shown that the criteria for filing a complaint are not burdensome.

The CAO's 'proactive approach' to outreach further increases accessibility. The CAO has collaborated with civil society to convene outreach via telephone, including in countries

where IFC/MIGA investments are made in historically problematic sectors.⁹ The CAO website is informative, easy to navigate and contains: information on how to file a complaint, available in non-English languages;¹⁰ a complaint template; and a brochure for potential complainants.¹¹ However, several of the non-English pages of the website describing how to file a complaint are not fully functional, the complaint template appears to be available only in English, and the community outreach brochure is available only in English and French,¹² thus undermining access.

DFI: Despite the steps taken by the CAO to increase access, substantial barriers exist, due in part to the nature of the relationship between IFC/MIGA and its clients. These limitations restrict, for instance, what the CAO can disclose during a complaints process.¹³ Experience has shown that non-disclosure of project information, including in contentious contexts such as financial intermediary lending,¹⁴ has hampered the ability of communities to identify IFC funding and consequently, has limited their awareness of the CAO as a recourse mechanism. IFC and MIGA agreements are not made public, but IFC loan agreements reportedly contain a clause that allows the CAO access for the purpose of carrying out its mandate. While IFC and MIGA both provide information about the CAO on their websites, IFC/MIGA do not require their clients to disclose the availability of the CAO to project-affected communities. On the IFC website, information about the CAO is three clicks away from the project page, in a section that is not intuitively accessible. Likewise, the MIGA project website provides a link to the CAO, but, unlike IFC, no reference is made to the CAO in the project-specific Community Engagement websites. These barriers undermine access.

PREDICTABILITY

IAM: The CAO OGs set out the timeline and sequence for the handling of a complaint. In addition, the CAO staff discuss timelines and sequencing with complainants and potential complainants, and provide the status of the complaint on the online complaints registry and through a regular summary of cases published on its website. Information about timelines is also found on the CAO website, though not with the same level of specificity as in the OGs.¹⁵ Flexibility is built into the process.¹⁶ In general, complainants have reported that it is not always clear what to expect during the complaint process. Concerns have been raised about the CAO's ability to meet deadlines, with some reporting "extensive" delays in their cases.¹⁷ It also appears that predictability depends on whether a complaint is in dispute resolution or compliance, with a survey respondent noting that the "[o]utcomes for problem-solving in particular are never clear, even [for] the processes or procedures we can expect".

DFI: With respect to compliance, the lack of clarity as to the timing and transparency of management's response undermines predictability. The final CAO investigation report and the IFC's response are submitted to the President of the World Bank Group for approval before they are shared with the complainant and published online. However,

there is no deadline by which the President must make a determination, which sometimes results in a significant gap between when the report is finalised and when it is shared with complainants.

EQUITABILITY

IAM: By nature, engagement in a dispute resolution process creates the opportunity for aggrieved parties to be involved in the process of ‘deciding together’. The CAO assists with resolution by offering a wide range of approaches, in consultation with all parties, mainly: joint fact-finding; dialogue and negotiation; and mediation and conciliation. Users have expressed that the Ombudsman function does not always ensure an equitable process of mediation that takes into account the severe power imbalances between complainants, on the one hand, and the IFC and its corporate clients, on the other, who are often powerful, have abundant resources and are well-connected to local and regional elites. The CAO does provide capacity building for complainants to help them engage in the dispute resolution process. Additionally, the CAO conducts trainings for its mediators to help ensure that the CAO’s approach to dispute resolution is consistent across cases. Some CSOs serving as representatives to affected communities, however, have expressed that they do not feel that their role was always respected by the CAO and its mediators in mediation processes.

The compliance function at the CAO lacks fairness as it does not allow complainants access to draft appraisal and investigation reports. Only IFC and MIGA senior management have access to draft reports. Complainants’ access to the CAO’s findings is completely dependent on the President’s discretion to disclose both the Investigation Report and the IFC/MIGA’s response.¹⁸ Consequently, complainants may be the last to have access to the findings once they have been disclosed to IFC/MIGA, President, and Bank Board, and only if clearance has been given by the President of the Bank.

DFI: The President’s discretion to disclose reports undermines the compliance process, as IFC and MIGA operations remain inaccessible for affected parties. Management’s tendency to refute the CAO’s findings of non-compliance and deny wrongdoing further decreases accountability and the effectiveness of the mechanism. Furthermore, IFC does not appear to recognise the need or desirability to consult with complainants in the preparation of the action plan to correct non-compliance.

TRANSPARENCY

IAM: The CAO website houses a registry of complaints, which contains case documents, a synopsis of the complaint, and a ‘Case Tracker’ that shows where the case is in the process, including whether and why it is closed or ineligible.¹⁹ The Annual Report, available online, provides an overview of cases and trends, the CAO’s annual budget and information about staffing. As discussed with respect to equitability (above), however,

experience has shown that the CAO has fallen short when it comes to keeping complainants informed about the status of their complaint, including when the process deviates from that which was expected.

DFI: Both the IFC and MIGA disclose project information, in accordance with their disclosure policies. The IFC is required to disclose information, such as the categorisation of environmental and social risks and the rationale.²⁰ The IFC website contains a searchable Project Database²¹ and allows one to submit online inquiries about projects,²² in accordance with the IFC Disclosure Policy. However, it has been reported that the IFC’s online enquiries have not been met with adequate responses. Similarly, prior to Board consideration of a project, MIGA must disclose summaries of proposed guarantees and environmental and social review summaries.²³ MIGA also has a searchable database of projects on its website,²⁴ with staff contact information for disclosure requests. In practice, the availability of environmental and social impact assessments for MIGA projects can be limited. Even if project documents are available, experience has shown that the amount or specificity of information published by the IFC/MIGA is inadequate. Critical knowledge gaps prevent communities from having the information they need to understand proposed projects and their impacts early in the development process. When environmental and social documents are available, they can be very technical and rarely do they comprehensively convey the breadth of environmental and human rights impacts of projects. In relation to its financial sector portfolio, which comprises approximately 62% of its spending,²⁵ the IFC does not disclose, or require its financial intermediary clients to disclose, information about sub-projects. As a result of this lack of transparency, more than half of the IFC’s total spending goes to projects and sub-projects that may adversely affect people who have no way of knowing that the CAO is an available recourse mechanism.

The Avianca case may set a troubling precedent for future cases regarding the IFC’s use of confidentiality agreements with its clients. As described in the CAO’s investigation report in that case, the IFC and its client had a confidentiality agreement that prevented the CAO from making reference to certain non-public information belonging to the client.²⁶ The central issue in that case were allegations in the complaint about violations of the right to freedom of association (see Chapter 4 for more detail). During its supervision of the project, the IFC had commissioned “*advice from local counsel in relation to Freedom of Association issues at the client*”.²⁷ The CAO, however, was prevented from making reference to the content of that advice: “*In relation to the advice from local counsel received in September 2013, CAO notes IFC’s view that this should not be disclosed on the basis that it is subject to attorney-client privilege*”.²⁸

RIGHTS COMPATIBILITY

IAM: In its ten-year review of operations, the CAO noted that many of the complaints from communities articulated their concerns in the language of human rights.²⁹ Rights compatibility is enhanced insofar as the CAO OGs define the environmental and social

impacts associated with IFC/MIGA projects to include those related to business and human rights.³⁰ In addition, unlike the AfDB's Independent Review Mechanism,³¹ the CAO does not explicitly exclude specific human rights from the Mechanism's purview. On the other hand, the CAO OGs do not contain provisions that allow a complaint based solely on violations of human rights due to a project.³² Rights compatibility is further bolstered by the ability of the CAO to accept confidential complaints,³³ which is vital, given that complainants have reported they sometimes fear acts of retaliation because they either filed or supported communities in filing a complaint. Additionally, the mandate of the CAO to trigger an audit further bolsters the rights compatibility of the CAO insofar as it allows audits of projects in which it may be too risky for affected communities to file a complaint. Nonetheless, the CAO has real limitations in its ability to provide remedy, which stem from gaps in the environmental and social safeguard policies of the IFC and MIGA, the limitations of its mandate, and the operating environment in which it functions. There is no guarantee that a complaint will stop or prevent a project.

DFI: Neither the IFC Performance Standards nor the MIGA Policy on Environmental and Social Sustainability – the environmental and social policies applied to projects and upon which compliance is based – provide more than a limited reference to human rights.³⁴ The policies fall short of compliance with international human rights law. Neither policy includes an explicit commitment not to fund projects that would cause, contribute to, or violate human rights short of complying with international human rights law. There is no guarantee that, even upon a finding of non-compliance, the IFC, MIGA or its clients will implement an action plan that delivers adequate remedy for harms to communities. Indeed, complainants stated that they were rarely given what they deserved. Likewise, CSOs have raised concerns about the adequacy of IFC's action plans both to remedy harms and correct the systemic failures of the institutions.

LESSONS LEARNED

IAM: The CAO has conducted internal and external reviews of its work model at least three times,³⁵ and its OGs have been revised four times,³⁶ most recently in a process involving public consultation. The CAO presents lessons learned from cases in its publications. In 2010, the CAO published a review of lessons learned from its first ten years of operation. Moreover, the CAO's advisory role facilitates institutional learning insofar as it includes advice to the President and IFC/MIGA on broader environmental and social issues related to policies, standards, guidelines, procedures, resources and systems. The CAO's advice derives from insights from its dispute resolution and compliance work and aims to improve IFC and MIGA performance systemically. The CAO has reported that audit findings have informed adjustments to internal processes at the IFC.³⁷ The CAO has implemented a Monitoring and Evaluation system, which is a tool used to capture feedback from complainants.

DFI: It is unclear to what extent the IFC or MIGA facilitates learning from CAO's caseload.

The Management Action Tracking Record (MATR) tracks the actions of IFC/MIGA senior management in response to every CAO dispute resolution and compliance case. Publishing the MATR would not only provide transparency regarding the implementation of IFC's commitments, but improve its legitimacy as well. Complainants have reported that they either do not know if, or they do not believe that, the IFC/MIGA improves its practices and/or policies in response to cases. Recent CAO cases have also called into question the responsiveness of IFC management, thereby undermining not only the facilitation of learning, but also the legitimacy and equitability of the CAO. Further proof of IFC/MIGA's failure to learn lessons from CAO cases is the frequency with which it re-invest in the same or similar projects that are currently the subject of pending complaints.

ANALYSIS OF COMPLAINTS CLOSED WITHOUT REACHING A SUBSTANTIVE PHASE

According to the CAO's website, between 1 July 2014 and 30 June 2015, 15 complaints were closed without reaching the CAO's Dispute Resolution and Compliance functions.³⁸ Ten of these cases were closed because the CAO deemed them not to raise harms or concerns of the type that it is empowered to or that are appropriate for review. Three were closed because the CAO determined that complainants had failed to establish a sufficient link between IFC financing or activities and the alleged harms. Two other cases were closed without reaching a substantive phase on the ground that the concerns raised had been addressed sufficiently outside of the IAM process, either by the IFC or the project sponsors.

In May 2015, after the dispute resolution process had ended without an agreement by the parties, the CAO closed four separate complaints related to the Yanacocha Mine in Peru, on the grounds that the issues raised were not *"indicative of substantial concerns regarding the environmental and social outcomes of the project or issues of systemic importance for IFC that would merit a compliance investigation in accordance with CAO's Operational Guidelines"*.³⁹ Two of those complaints had entered the CAO's dispute resolution phase prior to closure, but the other two had not: thus two of the Yanacocha complaints (Yanacocha 6 and 7) were closed without reaching any substantive phase of the complaint process.

Six of the other complaints in this category related to one project, Harmon Hall, were consolidated by the CAO, after the parties could not reach agreement through a dispute resolution process. At the conclusion of its appraisal review, the CAO decided that a compliance investigation was not appropriate for two reasons: (1) the harms alleged in the complaints, which concerned labour conditions related to *"compensation, benefits and inadequate performance of a grievance mechanism"* did not necessarily "raise substantial concerns regarding the E&S outcomes of an IFC investment such that would merit a CAO compliance investigation" and (2) IFC was involved in ongoing supervision of the company's compliance with Performance Standard 2, regarding labour and working

conditions.⁴⁰ The cases were thus closed without reaching a substantive phase of the complaint process, principally on the ground that they concerned individual labour disputes not amenable to CAO review.

Two other cases were closed without reaching dispute resolution or compliance review because the CAO concluded that the land acquisition disputes at issue in both cases were not “indicative of substantial concerns regarding the potential E&S outcomes of the project and/or issues of systemic importance for IFC such that would merit a compliance investigation in accordance with CAO’s Operational Guidelines.”⁴¹

In two other cases, the CAO determined that the IFC did not have a financial relationship with or stake in the companies or activities that were the subject of the complaint. In one such case, the CAO determined that the loan to the project sponsor was never disbursed and was ultimately cancelled, so it declined to investigate.⁴² In the other, the IFC determined that it had no financial exposure to investments in the palm oil activities of companies operating in Honduras, companies that had at some point received financing from an IFC-sponsored financial intermediary. Because of the lack of financial link between the IFC and conduct at issue in the complaint, the CAO concluded that the case was outside its mandate.⁴³

One of the remaining complaints was closed within the research period without reaching a substantive phase because the CAO concluded that the complainants had failed to assert a sufficient connection between the alleged harms and IFC-financed activities.⁴⁴

Another complaint related to the “Harmon Hall” project, labelled “Harmon Hall 07,” was closed during the assessment period, before the case entered problem solving. According to the CAO, the dispute was resolved through direct interactions between the parties’ lawyers, outside the IAM process.⁴⁵

A fifteenth complaint was likewise closed without reaching a substantive phase because the CAO determined that the IFC had taken adequate steps to ensure that environmental and social policies and procedures were in place to identify and mitigate the effects of the mining activities at issue in the complaint, and therefore that further investigation was not warranted.⁴⁶

NOTES

- 1 Compliance Advisor/Ombudsman [CAO], Terms of Reference, http://www.cao-ombudsman.org/about/howweare/documents/TOR_CAO.pdf [hereinafter CAO Terms of Reference].
- 2 CAO Operational Guidelines (2013), <http://www.cao-ombudsman.org/howwework/2012OperationalGuidelinesUpdate.htm> [hereinafter CAO Operational Guidelines].
- 3 This number may differ from the ‘total completed cases’ in the previous table, because it includes all cases filed, including those pending a decision of the mechanism.
- 4 This row includes cases that were not registered, were found ineligible or were closed after being found eligible, but before reaching a substantive phase.
- 5 Several financial institutions impose ‘cooling off’ periods for their staff before joining the staff of their institution’s accountability mechanism.
- 6 CAO comments on draft report, received on 21 October 2015.
- 7 See, e.g., CSO Response to the CAO Investigation into IFC Investment in Corporacion Dinant, Honduras. (Jan. 20, 2014), <https://www.oxfam.org/sites/www.oxfam.org/files/cso-statement-cao-investigation-ifc-dinant-investment-20Jan2014.pdf>.
- 8 See, e.g., *infra* Annex 9, the Complaints Mechanism of the European Investment Bank.
- 9 CAO, 2014 Annual Report 24 (2014), http://www.cao-ombudsman.org/documents/CAOANNUALREPORT2014_000.pdf (highlighting that “*The CAO partnered with the international NGO, Global Rights, to conduct outreach to local civil society organizations from West and Central Africa. The CAO also participated in an outreach workshop hosted by Centre for Research on Multinational Corporations (SOMO) for civil society organizations from the Middle East region.*”).
- 10 As of June 2015, information on how to file a complaint was available in Arabic, Bengali, Mandarin, French, Hindi, Bahasa, Kannada, Portuguese, Russian, Spanish, Swahili, Tamil and Thai.
- 11 CAO, Make Your Voice Heard, http://www.cao-ombudsman.org/howwework/filecomplaint/documents/CAO_VoiceHeardBro08_A4-3_English.pdf.
- 12 As of June 2015, the “Documents” and “Useful Links” for the non-English pages on the CAO website were inactive. Also, the Khmer and Lao translations of this page are under construction.
- 13 According to the CAO Terms of Reference, the CAO is prohibited from publishing information that cannot be disclosed under the IFC or MIGA disclosure policies. See CAO Terms of Reference, *supra* note 1.
- 14 See generally Oxfam Int’l, *The Suffering of Others: the human cost of the International Finance Corporation’s lending through financial intermediaries* (Apr. 2015), https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-suffering-of-others-international-finance-corporation-020415-en.pdf [hereinafter Oxfam, *The Suffering of Others*].
- 15 At the time of writing, however, the CAO is undertaking an update of its outreach materials.
- 16 CAO Operational Guidelines, *supra* note 2, at 15, ¶ 2.4 (providing that “[i]f the nature of the complaint or special circumstances requires more flexibility, CAO, in consultation with the parties, will review the timeline for handling the complaint”).
- 17 See also *infra* Section 4.2.2 on the Avianca case study.
- 18 CAO Operational Guidelines, *supra* note 2, at ¶ 4.4.5 (Report preparation and disclosure).
- 19 CAO, Cases, <http://www.cao-ombudsman.org/cases/>.
- 20 Int’l Finance Corp. [IFC], Access to Information Policy ¶ 30 (Jan. 1, 2012) (For projects with potentially significant

adverse environmental or social risks, the policy recommends early disclosure of the environmental and social impact assessment.).

- 21 IFC, Projects Database, http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/IFC+Projects+Database/Projects/Dislosed+Projects/.
- 22 IFC, Request for Information Form, <http://ifcext.ifc.org/ifcext/corresmanage.nsf/frmlInformationRequest?OpenForm>.
- 23 Multilateral Inv. Guarantee Agency [MIGA], Access to Information Policy, ¶ III(F) (Dec. 2013).
- 24 MIGA, Projects, <https://www.miga.org/projects>.
- 25 Oxfam, The Suffering of Others, *supra* note 14, at 2.
- 26 CAO Investigation Report Avianca, 9 (18 May. 2015), <http://www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportAvianca-May182015.pdf>.
- 27 *Id.* at 11.
- 28 *Id.* at 21.
- 29 See CAO, The CAO at 10: Annual Report FY2010 and Review FY2000-10 58 (2010), http://www.cao-ombudsman.org/languages/french/documents/CAO_10Year_AR_web.pdf [hereinafter The CAO at 10] (noting that “[i]n many complaints to the CAO, communities have articulated their concerns in the language of human rights” and that within that period, a total of 76, or “62 percent alleged impact or abuse of ‘human rights’ or ‘rights’ in the original letter of the complaint”).
- 30 CAO Operational Guidelines, *supra* note 2, at ¶ I.1.
- 31 By way of comparison, the accountability mechanism of the African Development Bank is only authorised to receive Requests “involving social and economic rights alleging any action or omission on the part of the Bank Group.” See *infra* Annex 5: The Independent Review Mechanism of the African Development Bank.
- 32 By way of comparison, the Global Fund’s Human Rights Procedure allows individuals to submit a complaint to the Global Fund’s Office of the Inspector General if any of five minimum human rights standards is believed to have been violated by an implementer of Global Fund grants. See The Global Fund, Human Rights Complaint Procedure (2015), http://www.theglobalfund.org/documents/humanrights/HumanRights_2015-ComplaintsProcedure_Brochure_en/.
- 33 See CAO Operational Guidelines, *supra* note 2, at ¶ I.4 (Confidentiality and Information Disclosure). While the CAO does not accept anonymous complaints, complainants may request confidentiality of their identities. Where confidentiality is requested, a process for handling the complaint will be agreed jointly between CAO and the complainant. The CAO will indicate publicly when it has restricted disclosure of information in response to a request from a party. Furthermore, where a case in Dispute Resolution is transferred to Compliance, confidential information received during the dispute resolution process will not be shared with CAO Compliance unless explicit permission to do so is provided by the relevant parties.
- 34 See IFC, *Performance Standards on Environmental and Social Sustainability* 1 (Performance Standard 1), ¶ 3 (2012), http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffda5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES (recognising the responsibility of businesses to respect human rights, which has been interpreted to mean a responsibility “to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to”); MIGA, *Policy on Environmental and Social Sustainability* ¶ 12 (Oct. 1, 2013), http://www.miga.org/documents/Policy_Environmental_Social_Sustainability.pdf (interpreting that the responsibility to respect human rights includes “creating access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances”).
- 35 The internal and external reviews were conducted in 2003, 2005 and 2010.
- 36 The CAO Operational Guidelines were revised in 2000, 2004, 2007 and 2012.
- 37 The CAO at 10, *supra* note 29, at 42-43.
- 38 Compliance Advisor Ombudsman, CAO Cases, http://www.cao-ombudsman.org/cases/default.aspx?region_id=1 (last visited 28 July 2015).
- 39 See Yanacocha (IFC Project #2983), Complaints 04 – 07, Compliance Appraisal: Summary of Results (May 29, 2015), http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalofYanacocha_May292015_forweb_000.pdf.
- 40 See Mexico: Harmon Hall, Compliance Appraisal Report: Appraisal of IFC investment in Harmon Hall, Mexico (IFC Project #29753), CAO complaints numbered: 02 to 06 and 08 Mexico, http://www.cao-ombudsman.org/cases/document-links/documents/CAOCompliance_AppraisalReport_Mexico_HarmonHall02-06and08_Apr082015.pdf; Mexico: Harmon Hall-02/Puerto Vallarta, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=207; Mexico: Harmon Hall-03-06/Puerto Vallarta and Merida Campestre (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=210); Mexico: Harmon Hall-08/Puerto Vallarta (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=217). All six Harmon Hall complaints (02, 03, 04, 05, 06, and 08) were handled together by the CAO.
- 41 See CAO, Chile: Hidromaule/San Clemente, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=226; Compliance Appraisal: Summary of Results, http://www.cao-ombudsman.org/cases/document-links/documents/CAOCompliance_AppraisalReport_Chile_Hidromaule-01_06222015_forweb.pdf; See also CAO, India: Lafarge Surma Cement, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=211; CAO, Appraisal Report: IFC Investment in Lafarge Surma Cement (Oct. 1, 2014), <http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalReportLafargeOctober142014.pdf>.
- 42 See Papua New Guinea / AES PNG-01/Roku Village, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=228.
- 43 See Honduras: Financial Intermediary FI-01, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=231; See also CAO Assessment Report (Mar. 2015), http://www.cao-ombudsman.org/cases/document-links/documents/FinancialIntermediary_CAOSAssessmentReportMarch_2015ENGLISH.pdf.
- 44 See CAO, Guatemala: TCQ-01/Puerto Quetzal, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=219.
- 45 See CAO, Mexico: Harmon Hall 07/ San Luis Potosi, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=215.
- 46 See CAO, South Africa / Tsodilo-01/Badplaas, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=203.