

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

**Civil Society Organisations (CSOs) consultation session
Online meeting 28 March 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 ten virtual consultation sessions covering all global time zones. Submissions can also be made by email to accountabilityconsultation@worldbankgroup.org. All details appear on the dedicated consultation [webpage](#).

Facilitators' Summary Report

Introduction:

This Summary Report presents questions, inputs and comments received during a consultation meeting for **Civil Society Organisations (CSOs)** held on 28 March 2023 at 11pm Washington DC time. The session was attended by 9 participants and conducted in English without interpretation.

The session was conducted by a team of professional facilitators. IFC and MIGA representatives provided presentations on the process to date, which covered background to the process, the documents themselves and next steps towards finalising 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.

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

1. Scope of the Approach to Remedial Action

- A participant commented that they are not able to comment properly or understand the Approach properly at this time. They wanted IFC/MIGA to provide more on the reasoning behind how it was shaped. The participant felt that Remedy and Responsible Exit are interlinked and cannot be looked at separately, and that a holistic approach was needed.
- A participant noted that the Approach refers only to existing harm and new cases where “exceptional circumstances” pertain. The participant asked how “exceptional circumstances”

are defined and criteria determined by IFC/MIGA in line with international standards. Another participant commented that they remain unclear as to the meaning of “exceptional circumstances”, even after this meeting.

- Several participants commented that the idea that Remedial Action would only apply to new and future projects was not acceptable. They proposed that a second draft should at minimum include a strong commitment to remedy, provision of remedy in **Compliance Advisor Ombudsman (CAO)** “legacy” cases (37 cases) and should commit clients and/or IFC/MIGA to implementing these agreements.
- The comment on legacy cases was reiterated by another participant, stating that they too believe that this document does not reflect the recommendations of the External Review. In their view, the Approach should be applied retroactively for the same reasons mentioned before, and there must be a detailed plan for the types of remedy IFC/MIGA would provide. The participant commented that any delay in implementing remedy causes or exacerbates actual harm on the ground.
- A participant commented that financing is extremely important to CSOs, that the issue should be clarified, and that the Approach should be forward-looking.
- Another participant expressed their disappointment that the Approach will only apply to new projects. They commented that it will leave a massive gap in relation to existing and historical harm. The participant also raised the matter of the risk of reprisals against community members and proposed further consultation on this. They felt that the Approach only mentions this briefly, without addressing or proposing particular protocols. This participant also described a gap in terms of considering specific sensitives around remedy, including gender sensitive remedial actions in the Approach.
- Regarding exceptional circumstances, a participant commented that legacy cases could or should be considered to fall within the definition of exceptional circumstances. In their view, excluding legacy cases from the scope of the Approach is going back on the commitment towards remedy. The participant noted that the document itself does not explain exceptional circumstances, and asked: What would this include? When people are completely destroyed and left with no option and have been engaging with CAO for more than a decade, would that be included in exceptional circumstances?
- A participant commented that clients need to be held more accountable, that monitoring and review of projects should be enhanced and should include stakeholder engagement, the mobilization of CSOs, evidence and case documentation. The participant also commented that legal remedy is important.

2. Roles and responsibilities in the Remedy ecosystem

- A participant proposed that certain projects need to disclose detailed reports to assist the project affected people, specifically indigenous people.
- With respect to scope and roles and responsibilities, a participant commented that the External Review recommendations said that two funds should be established: a contingency fund from the client, and an IFC/MIGA remedy fund. In their opinion the Approach unfairly puts the burden on the client, and does not go as far on the issue of setting up contingency

financing. It was mentioned there was a need to have stronger commitment on IFC/MIGA provision of remedy.

3. Preparation for Remedial Action

- A participant expressed their disappointment and surprise, and commented that the Approach is not a systematic remedy framework and does not address the recommendations of the External Review. According to the participant a case-by-case approach is important, as remedy needs to be tailored. They felt that the Approach is meaningless without a commitment to Remedy.
- A participant commented that communities they work with have been negatively affected by IFC/MIGA project finance and are worse off as a result. Some have been left without a source of livelihoods, and to them an Approach to Remedial Action is very important.
- A participant proposed that IFC/MIGA should apply direct financing to the 37 CAO cases under investigation.

4. Access to Remedial Action

- A participant made specific reference to page 7 of the Approach document (on strengthening the assessment process), where it states *“IFC/MIGA would also advise Clients on how to provide stakeholders with information to access remedy, . . . IFC/MIGA would also assess the capacity and commitment of any relevant third parties,”* and asked what “relevant third parties” means in this context. In their view, there seems to be a lack of emphasis in the Approach on ensuring rights holders have capacity to access remedy.
- A participant raised issues in relation to disclosure of information to project affected communities. They commented that locals who are project affected do not get any project information and cannot access that information. Because communities are not adequately informed about projects they are unable to access the potential benefits of a project or potential Remedy.
- In relation to **Performance Standards (PSs)**, a participant commented that there is a lack of capacity amongst consultants advising clients, and this results in failures in the implementation of the PSs, especially PS5 and PS7. According to the participant, there should be independent verification on the implementation of these standards.
- A participant wished to see communities placed at the center of concern. The participant hopes to see a second draft of the Approach that puts communities central to the entire process, whether looking at constraints, process itself or steps to be taken.

5. Facilitate and Support Remedial Action

- Participants commented that the Approach does not provide sufficient guidance on ensuring meaningful engagement with people who are potentially or actually impacted and lacks detail on how community engagement will be supported by clients or IFC, or verified by IFC.

6. Process

- Regarding the consultation process, several participants raised the issue of languages. Participants commented that documentation and consultation should be available in major Asian languages.
- Participants requested to be consulted on a second draft of the Approach.

7. Other Comments

- A participant echoed the comments that existing commitments in the **Sustainability Framework** are not being implemented. The Approach and Responsible Exit Principles should consider that the existing approach is not enough and also not implemented adequately. The participant commented that a claim that the existing Sustainability Framework approach is sufficient is not reflective of practice.

B. RESPONSIBLE EXIT PRINCIPLES

- A participant commented that more information should be provided on divestment, .e.g., timelines, reasons for divestment. The participant raised the risk of reprisals, and proposed that IFC should provide support for persons with disabilities and vulnerabilities so that consultation can be more inclusive. The participant also urged IFC to include consultation with affected communities and not just with clients.
- A participant described the Responsible Exit Principles as very vague. According to the participant, the Responsible Exit Principles do not provide the sufficient detail for meaningful consultation. The participant would like a greater emphasis on the disclosure of information to communities, and a clear exclusion of cases where there are active CAO complaints or where there are existing complaints from exit.
- A participant commented that Remedy and Responsible Exit cannot be considered separately as they are interlinked, and that it is not possible to have Responsible Exit without a robust remedial approach. A holistic approach is required.
- Regarding **Financial Intermediaries (FIs)**, a participant asked whether they are or will be included or integrated into the Responsible Exit Principles. Several participants commented that the Approach and Responsible Exit Principles should apply to FI funded projects.
- A participant asked when IFC will disclose information about the current pilot project. The participant would like to know the identity of the project(s) involved, and whether the lessons learned and documented are going to be disclosed. This participant hopes and expects that there will be a second draft of the Responsible Exit Principles with wider consultation. The participant reflected that there are specific questions from their membership about whether the Responsible Exit Principles will be applied to IFC funded projects set for retirement under early retirement mechanisms.
- According to a participant, limitations on IFC's ability to disclose information should in itself be considered as an additional ground of harm to communities, and this should be addressed as part of remedial action when exiting.

- A participant proposed that remedial actions should be provided in all responsible exit cases.