

ACCOUNTABILITY COUNSEL

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***Via Electronic Mail***

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**Re: Comments on the Draft IFC Good Practice Note, Project-Level Grievance Mechanisms for Affected Communities**

To Whom It May Concern:

I am pleased to submit the following comments on the March 2009 First Draft of the IFC Good Practice Note, Project-Level Grievance Mechanisms for Affected Communities (“Good Practice Note”) for your consideration.

**I. General Comments**

I commend the IFC for providing this thoughtful and well-written guidance to its clients regarding crucial elements of project-level grievance mechanisms. Such mechanisms have the potential to be an important tool for early and rapid resolution of disputes of many kinds for the benefit of both communities and IFC clients. In addition, IFC guidance enhances the likelihood of client compliance with IFC’s grievance mechanism requirements, particularly in IFC Performance Standard 1, Paragraph 23. The IFC is to be congratulated on its commitment to its Performance Standards, the impacts of which reach throughout project finance.

Despite the worthy goal of the Good Practice Note, a first key observation is the lack of IFC coordination with the World Bank Group Compliance Advisor /Ombudsman’s (“CAO”) June 2008 Advisory Note, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects (“CAO Advisory Note”),<sup>1</sup> for which I served as a reviewer. Given that the CAO so recently released such a comprehensive document on virtually the same topic, it is perplexing why the IFC’s Good Practice Note (1) fails to mention or even reference the CAO Advisory Note; and (2) why it restates much of the Advisory Note, but in perhaps different and at times less thorough ways. Not only is such duplication exceedingly wasteful of World Bank Group resources, because the IFC Good Practice Note *does not mention* the CAO Advisory Note,

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<sup>1</sup> See <http://www.cao-ombudsman.org/html-english/documents/implemgrieveng.pdf>. A reference is particularly lacking on page ii of the Good Practice Note in the last full paragraph before Box 1.

the World Bank Group has produced two pieces that leave end users confused about which document to refer to when designing such mechanisms.

While the IFC Good Practice Note is well written in general, there are aspects of the CAO Advisory Note that are more thorough. In addition, treatment of identical topics differ in the two documents. For example, with regard to the steps for design of a grievance mechanisms,

- the Advisory Note lists the four phases as: define scope and determine goals; design; implement; and monitor, report, and learn. Within each of these categories is extensive analysis.
- The IFC Good Practice note lists the steps as: Publicizing Your Grievance Management Procedures; Receiving and Keeping Track of Grievances; Reviewing, Validating, and Investigating Grievances; Developing Resolution Options and Preparing a Response and Monitoring, Reporting, and Evaluating a Grievance Mechanism.

An ideal product for IFC clients and communities at this point would be a World Bank Group document that combines the defining scope and determining goals element of the Advisory Note and the remainder of the Good Practice Note elements, with the details merged from both documents.

Given that the Advisory Note was released in 2008 and that the Good Practice Note is still in Draft form, I recommend that the Good Practice Note be substantially revised to serve as an annex to or tool to be used alongside the Advisory Note, adding information or providing additional instruction or detail *only where it would not be redundant* so that the World Bank Group does not produce two such dramatically overlapping (and at times contradictory) pieces of advice to its clients and to communities. Where there is a difference in advice, there should be a discussion of why and how that difference is to be interpreted.

The remainder of my comments assume that the IFC will maintain its stand-alone Good Practice Note. As a result, some of these comments request changes that are already included in the CAO Advisory Note. Therefore, where changes request information already included in the Advisory Note, the Advisory Note could at a minimum be referenced in the Good Practice Note to avoid repetition.

With that in mind, I recommend that the introduction of the Good Practice Note clarify and properly frame how project-level grievance mechanisms relate to accountability systems. It is important to distinguish accountability mechanisms such as the CAO or World Bank Inspection Panel, which are independent of banking operations, from local, company-based systems where decision-makers will often have a conflict of interest in the dispute unless unusual safeguards are maintained or neutral third parties are employed. At a minimum, it seems necessary to mention that company-sponsored mechanisms do or should exist within an “accountability framework” that includes community access to courts and, where relevant, IFI

accountability mechanism or other independent dispute-resolution and accountability bodies.<sup>2</sup> While there is some discussion of this concept in parts of the Good Practice Note,<sup>3</sup> it would seem important to address this framing in its own section and toward the beginning of the document.

## II. Specific Comments

On page 9, in the box on Sector: Infrastructure, the example is used of the Bujagali Energy Limited Project in Uganda and the witness NGO InterAid. This is a questionable example to use because, as you may know, there have been public allegations in a 2005 book called *Rights in Exile* – with an introduction by Justice Albie Sachs – that the NGO InterAid has operated refugee projects in Uganda where it allegedly:

- accepted funds from the UNHCR for projects that they never completed;<sup>4</sup>
- “did little to ensure such fundamental attributes of proper status determination as fairness and impartiality, probably not appreciating their importance; nor [paying] due attention to security and respect for confidentiality”;<sup>5</sup>
- was accused of violence, intimidation and humiliation of refugees;<sup>6</sup> and
- other confidentiality breaches.<sup>7</sup>

While I have no first-hand knowledge as to the veracity of these allegations, and despite the fact that the allegations relate to refugee projects and not InterAid’s role with the Bujagali project, the allegations are of such severity that, absent a thorough investigation noted in the Good Practice Note, I would query the trust that such an organization could instill in a community (or corporation) seeking to use InterAid to “monitor [the grievance mechanism’s] impartiality.”<sup>8</sup> At a minimum, it would seem prudent not to hold out InterAid as an example in the Good Practice Note, indeed the only example, of an NGO role in a project-level grievance mechanism.

Furthermore, while there is acknowledgement that the Bujagali “project’s economic underpinning as well as its potential social and environmental impacts became the subject of extensive public scrutiny, particularly among local and international NGOs[,]” there should at least be mention that the CAO, the IFC’s own accountability mechanism, received and processed a complaint about the project (as did the World Bank Inspection Panel and African Development Bank’s accountability mechanism). While the omission itself is curious due to the fact that this is an IFC document, a possible lesson could be drawn from the example (pending investigation

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<sup>2</sup> See CAO Advisory Note at 14-15.

<sup>3</sup> See e.g. Good Practice Note at 2, the paragraph starting “This Note primarily...” and 13, the paragraph starting “An organization’s accountability...”

<sup>4</sup> Guglielmo Verdirame, Barbara E. Harrell-Bond, Zachary Lomo, Hannah Garry, Albie Sachs, *RIGHTS IN EXILE* (Berghahn Books, 2005) at 53.

<sup>5</sup> *RIGHTS IN EXILE* at 89.

<sup>6</sup> *RIGHTS IN EXILE* at 89-90.

<sup>7</sup> *RIGHTS IN EXILE* at 91.

<sup>8</sup> Good Practice Note at 9.

of the issue I raise above) that without a project-level grievance mechanism in place, the complaint escalated and required engagement at an international level.

On page 18, Box 5, regarding the second point, “Complaints constituting criminal activity and violence: Such issues should be referred to the formal justice system (for example, the police)[,]” it should be accompanied by mention of issues that would require discretion in use of this recommendation, such as where the police are involved in the violence, where confidentiality is requested, or where reporting to the police could cause retribution to the complainant.

On page 19, the paragraph starting “Depending on the circumstances...” regarding the seriousness of complaints, this should be accompanied by the point that a complaint believed “serious” to a complainant may not appear serious to the company, with guidance on how to identify this potential discrepancy and tools to operate given the perhaps valid difference of opinion.

On page 19, the paragraph starting “Some grievances...” is unclear as to why grievances would not need to undergo the “full process of review, validation, and investigation” if they are “less clear and more serious or repetitive issues, or group complaints” or “complex issues with multiple parties involved.” While I appreciate the underlying principle that streamlined screening might be used for minor or repetitive complaints, it is not obvious why more serious, complex, or group complaints deserve other than normal screening procedures.

On page 20, in the section “Appoint the right investigation team”, the point made in Section I, *infra*, regarding conflict of interest, should be addressed. It may be impossible to create a firewall within the company to deal with complaints in a manner that avoids conflict of interest, and if so, this should be acknowledged in the Good Practice Note and corresponding advice should be offered for conflict of interest disclosure and mitigation techniques.

Finally, a very minor edit. On page ii, third line down from the top, it should read “Grievance Mechanisms are...”

I appreciate the opportunity to comment on the Draft Good Practice Note and again commend the IFC on the commitment to its Performance Standards. I look forward to the release of the final version.

Sincerely,



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