



Comments on the Report &
Recommendations from the External
Review of IFC/MIGA E&S Accountability,
Including CAO's Role and Effectiveness

September 12, 2020

For thirty years, the Center for International Environmental Law (CIEL) has sought to ensure that the laws and policies that govern development activities protect not only the environment but also human rights. Our work has also focused on holding governments, corporations, and the banks that finance them accountable for their actions.

In this time, we have contributed to the creation of numerous accountability mechanisms, including the World Bank's Inspection Panel and the Compliance Advisor Ombudsman of the International Finance Corporation. As we have seen these mechanisms endeavor and evolve to fulfill their mandates, we have also witnessed an evolution at the World Bank and the IFC.

As part of our efforts, CIEL has accompanied affected communities from around the world in their efforts to voice opinions and share information with development banks to inform the design and implementation of their projects. We have also supported and accompanied communities at accountability

mechanisms when they decide to challenge or question the activities of these projects.

In 2016, CIEL and ten other organizations co-authored a report titled *Glass Half Full? The State of Accountability in Development Finance*. This report analyzed how independent accountability mechanisms (IAMS) at eleven development banks had worked to provide redress and remedy to communities. Our report also provided recommendations for improving and strengthening the IAMS so that they are better able to serve as meaningful avenues of remedy for affected communities.

During recent years, including since the publication of our report, we have had numerous exchanges with the Management and the Board of the IFC and MIGA, as well as with the CAO, to discuss our findings and recommendations. Based on these experiences, we can say with confidence that the accountability conversation has changed.

We would note that, as a member of the reference group formed by the Review Team, CIEL was interviewed at length regarding our experience and work in the field.

We take this moment to recognize the efforts of the External Review Team to ensure that the CAO continues to be a robust, responsive, and independent accountability mechanism, and we acknowledge with appreciation the opportunity to continue engaging with the IFC and MIGA Management and Board and with the CAO in this reform process.

In the following sections, we will present specific comments regarding existing recommendations from the External Review Team, as well as additional recommendations and insights based on CIEL's experience with cases filed at the Compliance Advisor Ombudsman.

CIEL also endorses two joint submissions created in collaboration with other colleagues: one regarding the overall review process and another focused specifically on the issue of remedy. Both of these joint submissions have been submitted separately.

We begin by providing a brief summary of these cases, turning in the subsequent section to our comments and recommendations.

I. Summary of cases that CIEL has accompanied at the CAO

In recent years, CIEL has had four cases at the CAO, two of which are still ongoing. In this section, we provide a brief description of each of these four cases, upon which we draw heavily in providing comments and recommendations in response to the External Review Team's Report and Recommendations in Section II, *infra*.

a. Chile / Alto Maipo-01/Cajon del Maipo

Filed in January of 2017. Ongoing.

Under construction just outside Santiago, Chile, the Alto Maipo Hydroelectric Project threatens the water supply of over 7 million Chileans while having devastating impacts on the Maipo River watershed and surrounding glaciers, as well as on ecotourism and livelihoods. International financing pushed the project forward even though residents questioned the flaws in environmental impact assessments and environmental and social due diligence for the project. The IFC approved a loan of up to US\$150 million, which was part of a US\$1.2 billion debt package, with parallel financing provided by a group of development banks (Inter-American Development Bank (IDB), Overseas Private Investment Corporation (OPIC), and KfW) and commercial banks (Banco de Credito e Inversiones, Banco del Estado de Chile, DNB, and Itaú). In 2017, a restructuring of the loan was negotiated as project cost projections increased.

Community members from the Maipo region filed complaints at the CAO and the Independent Consultation and Investigation Mechanism of the IDB. The two mechanisms coordinated efforts when carrying out their site visits to Chile, traveling to the community together on two occasions, with varying results and experiences for community

members. The IFC divested from this project in 2018 as the technical and financial flaws in the project—on which the Coordinadora Ciudadana “No Alto Maipo” based litigation and complaints—were validated. Complainants from the Maipo region still await the compliance investigation report from the CAO.

b. Nicaragua / Condor Gold-01/Santa Cruz de la India

Filed in July 2018. Closed in October 2019 after compliance appraisal.

The La India gold mine project in Nicaragua, owned by UK-based Condor Gold, threatens to destroy local ecosystems, limit access to freshwater in water-stressed areas, force the relocation of communities, and undermine the livelihoods of many who rely on artisanal mining. In 2014, IFC approved an equity investment in Condor Gold of up to US\$10 million designed to support an early exploration program and fund pre-feasibility studies to advance the La India project. In their complaint, communities pointed to the lack of proper consultation for the project as a violation of IFC’s social and environmental policies. After presenting the complaint, residents have faced escalating reprisals including criminalization, harassment, intense surveillance, and death threats, all exacerbated by the existing crisis in Nicaragua. IFC was made aware of the situation and raised these concerns with Condor Gold, while also informing World Bank Group senior management and advising its client about possible actions to take.

The IFC divested from the mining company in June 2019. Six months later, CIEL helped the Nicaraguan community of Santa Cruz de la India publicize the fact that the IFC had divested from the project. Just days later, police dressed in full riot gear went to one of the community leaders’ homes, where they assaulted members of his family and confiscated business and personal belongings. Reprisals are ongoing for community leaders. The CAO closed the case after its compliance appraisal.

c. Panama / PL IV-01/Multiple locations

Filed in June 2018. Ongoing.

Indigenous communities along Panama’s Atlantic Coast oppose the construction of Panama’s “Transmission Line IV”, advanced by the state-owned transmission company ETESA, because it would cut through their ancestral lands and territories, endanger some of the last untouched rainforests in the Mesoamerican Biological Corridor, and even open up the region to major roads and large-scale mining. Indigenous communities filed a complaint at the CAO based on concerns regarding the failure to enforce and implement

their right to Free, Prior, and Informed Consent in accordance with IFC's Performance Standards. Their goal was to enter into dispute resolution with ETESA; when this was not possible, the case went to compliance.

Communities are aware of the importance of exercising their right to be consulted at this early stage of project implementation, in order to avoid possible harm to the environment and to their own lives in the future. The COVID-19 pandemic has made the CAO compliance investigation site visit impossible at the current time. Members of the indigenous community are coordinating with the CAO for alternative virtual interviews, in order for the investigation process to continue.

d. Colombia / Eco Oro-01/Bucaramanga

Filed in June 2012. Compliance Investigation released in August 2016. Closed in June 2018 after final monitoring report.

The Santurban Páramo's rare and fragile ecosystem is a vital source of water for nearly 3 million people, and the Comité para la Defensa del Agua y del Páramo de Santurbán has been dedicated to protecting it—including through litigation and direct actions by thousands of people in Colombia—for the last decade. Though mining was legally banned in the páramo, concessions were granted in the surrounding areas, and a new delimitation of the boundaries for the páramo has been pending for several years. In 2009 the IFC Board approved an equity investment in Canada-based Eco Oro Minerals of up to US\$20 million directed at funding a feasibility study, Environmental and Social Impact Assessment including other ground work for project development. The early equity investment was made for US\$12.1 million, followed by an additional purchase of shares by IFC in January of 2010 for \$US 6.1 million. Eco Oro Minerals was ultimately denied environmental permits, thus halting the mine.

Communities filed a complaint at the CAO, which concluded in its compliance investigation report that the IFC had failed to properly enforce several of its policies. The IFC divested from Eco Oro Minerals in 2016, weeks later the company sued the Colombian State for \$746 million dollars through investor-state arbitration. Most recently, reprisals against the members of the Comité have occurred, as they have been labelled as "anti-development" by government officials. The arbitration at ICSID remains ongoing.

II. CIEL's comments regarding the IFC/MIGA External Review Report & Recommendations

In this section, we will present CIEL's comments and suggestions on the Report & Recommendations from the External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness, based on the order in which the policy recommendations appear in both the Report and in Annex A. As noted previously, our comments draw upon CIEL's experience accompanying communities in the cases at the CAO that are described in Section I, *supra*.

a. E&S Policies and Their Interpretation (Section 2)

CIEL considers this section of the Report, which details recommendations for clarification and improved care regarding due diligence processes, in order to ensure proper compliance with the Performance Standards (PS), to be critically important. The emphasis on the need for IFC/MIGA, in collaboration with its clients, to appreciate the local context early on in the project cycle is an ideal way to approach all operations. This approach is even more essential when operating in the context of fragile and conflict-affected states. The recommendation of conducting political economy and conflict analyses will also provide much-needed information regarding the realities and existing tensions in certain regions where IFC/MIGA intends to engage. Such an approach speaks directly to the need not to exacerbate situations of violence and conflict for project-affected communities, while also serving to identify information regarding the risk of retaliation for people who are key stakeholders in projects under consideration by IFC/MIGA.

Additionally, the creation of the IFC's E&S Policy and Risk Department, as well as the assignment of environmental and social experts to the Operations Vice Presidency, point to the important shift in culture that we have already begun to see and that we hope continues to take hold.

b. Financial Intermediaries (Section 3)

CIEL supports the recommendations presented by the External Review Team with regards to financial intermediaries, while also pointing to their interconnectedness with improvements in IFC's engagement with FI clients. Specifically, this includes the new transparency commitments on financial intermediaries announced by the World Bank President in March of this year. By further improving the transparency of new FI projects and encouraging IFC's peers and clients to expand their own transparency, the longstanding issues of proper identification and management of E&S risks and harms from potentially unseen subprojects can finally begin to be resolved.

c. Litigation Concerns (Section 4)

We appreciate the recommendations regarding the concerns for litigation, as from our experience it has appeared that the fears of litigation—rather than protecting the IFC/MIGA—have left it in a defensive, confrontational posture. We would reiterate here our support for the E&S Policy and Risk Department, which can definitely provide the guidance and oversight needed, not only at the policy level but also by having the authority to decide when certain projects should not be approved.

As CIEL has often expressed, the approval of projects by the IFC/MIGA gives them a seal of approval that prompts additional financing by other development banks, as well as private sector institutions. We are well aware that project finance relies on leveraging funds from a myriad of sources, but when the IFC/MIGA fails to assess potential projects properly or ceases to apply the sustainability policy and performance standards correctly, co-financing entities nevertheless rely on the IFC having upheld its own standards, when the opposite may in fact be true.

Therefore, as is well established, *ex ante* due diligence and careful assessment and consideration of all environmental, social, and contextual issues in the early stages of project design are indeed crucial.

d. Governance (Section 5)

First, regarding the Report's proposal that the Board should oversee the IFC/MIGA's implementation of the Performance Standards: CIEL supports the Report's observation, appearing on paragraph 163, that it is critical that IFC/MIGA pay greater attention to both the environmental and the social risks of projects when considering investments. We strongly support the Report's proposal that the Board take on a more active and engaged role in ensuring that IFC/MIGA Management identifies and mitigates such risks to the greatest extent possible.

Several of the cases that CIEL has accompanied at the CAO demonstrate the consequences of IFC/MIGA failures to thoroughly identify and address the environmental and social risks of projects and adequately apply the E&S Performance Standards. For example, in the case of Panama's Transmission Line IV, the CAO is currently investigating the IFC's provision of advisory services to ETESA, in order to determine whether IFC's advice was consistent with Performance Standards 1 and 7, particularly the requirements for consultation, disclosure of information, and engagement with Indigenous Peoples (IP). The complainants—members of the affected communities of Ngäbe and Bugle Indigenous Peoples—allege that they have not been adequately consulted and that their right to FPIC has not been respected in the context of this project. Such a failure to meet the appropriate duty of care required in such cases, including

through proper implementation of the relevant Performance Standards, has the potential to result in grave consequences in this case. As the CAO recognized in its Compliance Appraisal Report:

“any non-compliance with PS1 and PS7 requirements as part of IFC’s AS project is considered serious, as appropriate engagement with the IP communities within and outside the Comarca is an essential foundation for FPIC, and as a result, for a socially sustainable project. [...] As a result, CAO concludes that potential shortcomings in IFC’s advice against PS requirements, if not remedied, give rise to risks of significant adverse social outcomes in the future.” (pp. 2-3)

The complainants in this case point out that if the transmission line project goes forward without taking their views and concerns into account, it would put at risk not only one of the last intact tropical forests of Panama, but also their ancestral lands, their traditional ways of life, and their very economic, social, and cultural survival as Indigenous Peoples.

In other cases, CIEL has observed how projects have failed to identify and appropriately mitigate serious environmental risks. In the context of the increasing threats posed by climate change and ecosystem breakdown today, CIEL considers adherence to Performance Standard 4 to be particularly vital. In addition to recognizing that “project activities, equipment, and infrastructure can increase community exposure to risks and impacts”, PS 4 observes that “communities that are already subjected to impacts from climate change may also experience an acceleration and/or intensification of impacts due to project activities” (PS 4, par. 1) and that a “project’s direct impacts on priority ecosystem services may result in adverse health and safety risks and impacts to Affected Communities [...] such as adverse impacts on the quality, quantity, and availability of freshwater” (PS 4, par. 8).

CIEL has indeed seen such risks play out in various instances. In the case of the proposed Eco Oro gold mine in Colombia, the mine project—if constructed—would have endangered the Santurban páramo, one of the country’s high-altitude wetland ecosystems that together provide 70% of fresh water consumed by the Colombian population. In another case, the Alto Maipo hydroelectric project in Chile is being constructed in a region that has been beset by a mega-drought for more than a decade and that is undergoing a process of desertification as a result. Despite this highly fragile context, the Alto Maipo project seeks to reroute the main tributaries of the Maipo River, thus depriving some 100 kilometers of the Maipo’s watershed of adequate water flows, disrupting the recharge of aquifers, and damaging surrounding glaciers, ultimately putting at risk the source of water upon which some 7 million residents in the metropolitan area of Santiago depend.

In light of our experience accompanying the affected communities in these cases, CIEL fully supports the External Review Team’s observation, appearing in paragraph 163, that investments and projects “will be regarded as failures when local communities do not benefit from them, or, even worse, suffer harm from them.” CIEL considers that the above-described situations illustrate the need for the Board to take on a greater role in ensuring that adequate attention is paid to the environmental and social risks associated with all projects—particularly in order to avoid exacerbating the impacts of ecosystem breakdown and climate change on local communities and the environment.

Second, regarding the Report’s recommendation that the CAO should report to the Board: In noting this recommendation, CIEL recognizes that this significant move toward proactive accountability responses and measures will require the IFC/MIGA Board to become significantly more engaged. This responsibility comes with an added burden not only for the Board but also for the Board Committee that is proposed to be established for this purpose, if the recommendation is approved.

While the need for the members of this Board Committee to exhibit expertise on E&S standards and risks is evident, we would also point out that such expertise must also exist—and to an even greater degree—at the highest level of IFC/MIGA governance in order for the necessary institutional reforms to take hold. Sharing a common basis of knowledge and expertise can only serve to improve assessments, evaluations, and decision-making by the Board in IFC and MIGA portfolios.

e. Effectiveness of Current IFC/MIGA/CAO Processes (Section 6)

We recognize the recommendation to shorten the time frames for complaint handling. CIEL has witnessed delays in the time frames for complaint handling in several of the cases we accompany. While the impacts of these delays on community complainants vary depending on the nature of the complaint and the current status of project implementation, such delays invariably weaken the relevance of the accountability process and its outcomes. We agree that additional resources are needed for the CAO to increase its capacity to handle complaints in a timely fashion. We further agree with the recommendation that IFC/MIGA Management and staff should be required to provide information, inputs, and comments for the CAO’s processes in a timely manner.

f. Eligibility Criteria and Decisions (Section 7.1)

First, CIEL strongly supports the recommendation regarding the two-year period of post-exit complaint eligibility, i.e. that complaints could be found eligible for up to two years following the

end of IFC/MIGA's financial interest, which is included in Section 7.1. We know that affected communities frequently learn about the involvement of the IFC or the existence of the CAO well after project approval, and very often after the project is already being implemented on the ground. As we have expressed directly to the IFC in the past: when development projects result in harm to communities, this harm does not cease to exist when the IFC's financial interest ends.

As noted by the Review Team and referenced years ago in our *Glass Half Full* report, access to remedy is a foundational principle of the Guiding Principles on Business and Human Rights, which recognized that this access encompasses both substantive and procedural aspects. For communities to engage fully in a remedial process, it is essential to reduce or remove practical barriers that could otherwise block access to remedy. For this reason, recognizing the challenges faced by communities—as well as the inherent imbalances between stakeholders—is key. For example, we value the recommendations made regarding the initiation of complaints in cases where heightened vulnerability or marginalization of communities exists.

Second, we would draw attention to the proposed modification to the eligibility criteria for complaints, which would prevent complaints from being found eligible until investments are approved by the Board. CIEL would not be opposed to this recommendation in theory, as long as certain related conditions were also in place (see points i-iii, below). In this regard, even as we recognize and welcome the additional recommendation regarding the disclosure of the existence of the CAO, we would point out that the issues of disclosure and access to information are closely related to—and, indeed, determinative of—the feasibility and legitimacy of any time-bound conditionality placed on complaint eligibility at the CAO.

For communities potentially affected by projects to even contemplate filing a complaint, they must be fully aware and informed of approved investments. This assumes several things, such as that they have knowledge of project investors and financing agencies and that they understand the project approval process phase and timeline. In addition, they must be aware of the existence of accountability mechanisms at these financing agencies. Most of all, it also assumes an ability to understand information and navigate complex systems that all too often exist primarily, or exclusively, in English.

Therefore, we would again stress that the following actions are required:

- i) IFC/MIGA must ensure that clients comply with disclosure obligations contained in IFC/MIGA policies for publication of project information, including disclosure of the existence of the CAO, in the locations where project investment is to take place. Additionally, clients must also comply with access to information requirements, in full

compliance with Environmental Assessment and Environmental Impact Assessment processes, as well as other requirements established under domestic access to information laws and procedures in the country.

ii) The project information pages on the IFC/MIGA website must be updated in a timely manner, including accurate disclosures of the dates of Board vote for the proposed investment.

iii) The Board Calendar and Board and Committee Minutes must also be updated in a timely manner on the corresponding webpages of the World Bank Group.

It would be ideal if the websites and documentation for the WBG and IFC were made available in other languages, in addition to English.

We would reiterate the same point regarding the explicit cut-off date for eligibility at the end of IFC/MIGA's financial interest in the project, or project closure in cases of Advisory Services. For affected communities to be fairly expected and able to present complaints in a timely manner and within the project cycle, a corresponding commitment to transparency and disclosure of information must first exist at IFC/MIGA. Otherwise, these parameters for complaint eligibility are not realistic and will effectively erect barriers to accessing any form of solutions or remedy.

g. Complaint and Response Disclosure (Section 7.2)

CIEL notes the recommendation for the CAO to establish a registry with summaries of complaints that have been declared eligible, and we affirm that such information should continue to be publicly available online. However, we would point out that complaints are currently made available in their entirety on the CAO's website as soon as they are declared eligible, and it is possible that this proposed change arises out of concerns for reputational issues, including for IFC/MIGA clients. While recognizing that complainants have alternative methods by which to make their complaints public at any stage of the complaint process, we urge that information about complaints should not be subjected to greater limitations than is currently the case. Given the importance of access to information, reputational concerns should not become a reason to increasingly restrict when and what information the CAO makes available about the complaints that it receives.

h. CAO Assessment Process (Section 7.3)

As noted by the Review Team in paragraph 173, the CAO already undertakes a very thorough assessment process prior to entering into either dispute resolution or the compliance process.

During this assessment, complainants and the client are comprehensively informed about the CAO's functions, and it is at this time that parties decide which CAO function they wish to initiate. The recommendation for IFC/MIGA staff to engage with clients and the CAO during this assessment process seems to be a logical progression of the commitments made at the IFC to engage in a more proactive response to increase accountability throughout the project cycle.

Considering the greater level of coordination and engagement that will be required of the CAO, including with IFC/MIGA, clients, and complainants during the assessment process, the need for more staff capacity and the resulting increased budgetary requirements will need to be addressed.

i. CAO Dispute Resolution (Section 7.4)

CIEL acknowledges the faith that the IFC has put in the Dispute Resolution process at the CAO in past years. In that vein, we welcome the recommendation by the Review Team for IFC/MIGA to provide guidance and support to clients to ensure an understanding of the CAO dispute resolution process so as to engage effectively in it. In addition, the recommendations for formalizing IFC/MIGA protocols for consultation with CAO and during dispute resolution cases are useful.

We also recognize the distinction for situations that warrant higher levels of expertise and capacity on the part of mediators in fragile and conflict-affected contexts, precisely because of the efforts to continue to expand the IFC/MIGA portfolio in this area. Even so, we would recall the fact that CIEL has previously expressed its concern over involvement by the World Bank Group in FCV contexts, including through detailed comments and recommendations to its Fragility, Conflict and Violence Strategy. Moreover, CIEL has observed the violent consequences that development projects can have in fragile and conflict-affected contexts, such as in the case of the La India mine project in Nicaragua, where affected communities have been restricted from voicing their opinions freely or accessing remedy (for more information about the reprisals faced by community members in this case, see Section II(r), *infra*).

As already marginalized and vulnerable communities struggle to cope with the COVID-19 pandemic, we would merely stress the higher duty of care that exists in these settings, where institutions may be weak or non-existent. In such contexts, the CAO represents an even more important option for project-affected communities to seek remedy when things go wrong; in some cases, it may be the only such avenue available to communities.

j. Initiating a Compliance Process (Section 7.5)

With regard to the Review Team's proposal for cases in which a complaint is transferred from Dispute Resolution to Compliance, we agree with the recommendation that an appraisal process should only be started if complainants request this transfer. Leaving the decision to go forward with a compliance process in the hands of the complainants gives legitimacy to their request and the nature of community agency in their advocacy before the accountability mechanism and IFC/MIGA.

As CIEL has experienced, when the goal of complainants is to undergo a Dispute Resolution process, a community's expectations are quite different if they have a full understanding of the differences between each process. In many cases, communities may be quite adamant about their desire to sit at the table with project developers, i.e. clients of the IFC/MIGA, to solve their problems. Remarkably, CIEL has repeatedly observed that what has led complainants to go forward with a compliance process at the CAO is the fact that the Dispute Resolution process was not possible due to a refusal on the part of the client to engage in dialogue with communities.

Considering the recent changes and reforms at IFC toward a proactive response to accountability at an institutional level, we sincerely hope that a corresponding shift in culture will lead to a fuller understanding and greater promotion of the value of engaging with communities to solve problems. As stated previously, instructing and guiding IFC clients about the value of engaging in Dispute Resolution processes with complainants is worthwhile.

k. Compliance Appraisal (Section 7.6)

CIEL notes with appreciation the External Review Team's recognition of retaliation concerns as a critical factor that must be considered when determining how compliance appraisals may be triggered. We support and affirm the importance of the recommendation that the CAO VP should be able to initiate a compliance investigation in cases where, *inter alia*, affected people are subject to, or fear, retaliation. (For a more detailed discussion of issues related to retaliation concerns, see Section II(r), *infra*).

l. Compliance Investigation (Section 7.7)

CIEL supports the recommendations included in the Report's section on Compliance Investigation. We underscore the centrality of the complainants to this process; for this reason, we support in particular the recommendations related to ensuring communication with and the involvement of the complainants at various stages of the investigation process, as well as the

recommendations that would require that input and comments from the complainants be taken into account, including before the CAO finalizes its reports.

We further note with appreciation the observation of the Review Team that the CAO should be provided with adequate resources in order to comply with relevant deadlines. As noted previously, adequate funding is vital to ensure that the CAO is able to fulfill all of its duties, while meeting the highest standards of both quality and timeliness.

m. Remedial Actions in Case of CAO Findings of Non-compliance (Section 7.8.1) & IFC/MIGA Contributions to Remedy of Harm (Section 7.8.2)

Several of the cases that CIEL has accompanied at the CAO are illustrative of how even complainants who successfully navigate the CAO processes are often left without effective remedy for harm. In this regard, we welcome and strongly support the recommendations regarding remedial actions and contributions to remedy of harm. We also emphasize our endorsement of the comments and recommendations presented jointly with other civil society organizations on this topic, entitled *“Realizing the right to an effective remedy within the IFC/MIGA accountability framework”*. As such, we limit our comments here to a discussion of two points in particular: first, the problems that arise in situations where the IFC decides to divest from a project after its investments have contributed to harm and, second, the importance of including complainants’ input in the development of plans to remedy harm.

One case in which CIEL has observed this phenomenon is that of the Alto Maipo hydroelectric project in Chile. Here the IFC’s eventual decision to divest from this project in May 2018 came after significant environmental and social damage had been caused, including in the form of exacerbated water shortages, damage to aquifers, contamination of groundwater, and fissuring of surrounding glaciers, as well as social cleavages, sexual harassment experienced by local residents, and loss of adequate housing and livelihoods. As we have noted the IFC did not make any public statement about the decision nor the reasons for its divestment from Alto Maipo. Even though the ongoing CAO compliance review may result in findings of non-compliance and corresponding action plans, in this instance the IFC’s divestment could undermine the utility of any such findings and render the creation of any action plan a practical impossibility.

In relation to the External Review Team’s report, we appreciate the key recognition in paragraph 332 that “the end of the business relationship between the client and IFC/MIGA does not necessarily end IFC responsibility to contribute to remedy.” In addition, we welcome the proposal that resources be made available to remedy harm caused by IFC/MIGA projects, even after the business relationship between IFC/MIGA and the client has ended. We note that this

would cover situations in which project activities have concluded, as well as cases in which IFC/MIGA has decided to divest. We welcome in particular the proposal, appearing in paragraph 336 of the Report, that contractual obligations be established requiring “adherence to E&S Performance Standards even beyond the completion of the project, and requiring clients to provide a source of funding for remedy that would be accessible even after the other business relationships with IFC/MIGA have ended”. Such requirements would represent a significant step toward addressing the lack of accountability and access to remedy that are currently caused when the IFC decides to divest from problematic projects, such as in the case described above.

Finally, we underscore the importance of ensuring that remedy is shaped by the communities affected, in order to respond to the needs they identify. As such, we support the recommendation, appearing in paragraph 49, that Management Action Plans be prepared in response to CAO investigation findings, and that these Plans be developed in full consultation with the complainants.

n. CAO Compliance Monitoring (Section 7.9)

CIEL agrees with the recommendations presented by the External Review Team regarding CAO Compliance Monitoring. We underscore the importance of the CAO’s monitoring role, particularly in ensuring that remedial actions included in Management Action Plans are properly carried out and in fact serve to correct the non-compliance that they are designed to address.

o. Organizational Learning from E&S Experiences, Complaints, and Responses (Section 7.10)

CIEL supports the recommendations regarding organizational learning, in particular the proposal that the CAO should continue to contribute to institutional learning based on the wealth of knowledge and experience that it has derived from the many cases that it has addressed and continues to address.

p. Disclosure of Accountability Mechanisms (Section 8.1.1)

We wholeheartedly support and welcome the recommendation for a requirement to ensure that IFC/MIGA clients, including for financial intermediary sub-projects, provide information to affected communities about project-level grievance mechanisms, as well as the CAO. This need has been expressed very often by communities and civil society organizations alike, and adoption of this recommendation would constitute an important step.

It should be noted that the disclosure of accountability requires several actions by IFC/MIGA as well as their clients. For details about these actions please refer to Section II(f), *supra*.

q. Client Grievance Mechanisms (8.1.3)

Regarding client grievance mechanisms, we strongly support the recommendations from the Review Team for an increased focus by IFC/MIGA on the design, operation, and effectiveness of grievance mechanisms for every region and sector in IFC/MIGA portfolios.

r. Complaints Raised Outside of CAO Channels (Section 8.2)

CIEL notes with appreciation the External Review Team's recognition of the critical issue of retaliation in its discussion of challenges facing the new Stakeholder Grievance Response Team (SGR), where it notes that those presenting complaints should be protected against retaliation. In CIEL's view, this recognition of retaliation concerns is vital and deserves additional attention, as it relates to the work of SGR and throughout all of IFC's projects and operations. For a detailed exploration of this issue, we would refer readers to the major 2019 report on this topic, entitled *Uncalculated Risks: Threats and Attacks against Human Rights Defenders and the Role of Development Financiers*, which was published by the Coalition for Human Rights in Development in collaboration with a number of contributing organizations, including CIEL.

Throughout its years accompanying communities in presenting cases to various Independent Accountability Mechanisms, including the CAO, CIEL has witnessed numerous instances of retaliation and reprisals against those who express opposition or criticism of development projects. For instance, this phenomenon has played out with devastating consequences for the community affected by the Condor Gold mining project in Nicaragua. In this case, although the mine has yet to be built, members of the community who have organized in opposition to the proposed mine, and who filed the complaint at the CAO, were left in a position of heightened vulnerability after the IFC divested from Condor Gold in June of 2019. In addition, the CAO closed the case following compliance appraisal in October 2019. At the time of the IFC's divestment, the mine project had already provoked a pattern of retaliatory responses, such as surveillance, threats, and intimidation by Nicaraguan police against community members on multiple occasions. Prior instances of retaliation had already included significant police intimidation of the community at the time of the CAO's visit to the affected area in 2018. In the months that followed IFC's divestment, community leaders continued to face heightening reprisals. In one notable instance from late 2019, police in full riot gear raided the home of one community leader and physical and verbal harassment of his family members; this occurred just days after this community leader had taken it upon himself to make a public announcement about the IFC's

divestment. As of the time of this writing, this community leader remains in hiding, unable to return with his family to their home due to the threat of retaliation for his opposition to the Condor Gold mine. Now, the absence of any supervision of client Condor Gold by the IFC, coupled with IFC's lack of a public announcement of its own regarding the divestment, let alone the reasons therefor, have left this community leader and other local residents without this critical level of protection and oversight, despite the well-documented pattern of threats and retaliation that they continue to face.

CIEL recalls the IFC's position of *zero tolerance* for acts of retaliation, published in October 2018, as well as the World Bank Group's more recent commitments against reprisals, published in March 2020. In this regard, we appreciate the efforts undertaken by the SGR Team to date to establish internal guidance and policies to implement these commitments, as well as this Team's openness to listen to and incorporate recommendations and lessons learned from a variety of civil society organizations. At this time, we reiterate the need for IFC to incorporate its zero tolerance commitment in concrete and systemic ways across all of its operations. In particular, we emphasize that both the SGR Team and the CAO should be explicitly mandated to maintain communication with complainants who are subject to, or fear, retaliation or reprisals, even after IFC/MIGA's business relationship with the relevant client has ended, projects activities have concluded, or (in the case of the CAO) the case in question has been closed. As the case described above demonstrates, it is essential that all persons and communities who raise concerns about IFC-financed projects and activities, including especially those who present complaints to the CAO and/or SGR — and who face threats or retaliation for doing so — receive ongoing institutional support from the relevant entities at IFC/MIGA.

As always we appreciate the opportunity to engage in the review process, as well as, future implementation of recommendations. We may be contacted at: cgarcia@ciel.org or sdorman@ciel.org.

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