

Re: (Cambodia: Financial Intermediaries–04) Raising Critical Concerns regarding IFC Management’s Request for Board Review of a CAO decision

12 July 2023

To: IFC Board Members

We are writing collectively, as stakeholders in IFC’s mission and representatives of project-affected peoples, to express our alarm over IFC management’s request for Board review of the Compliance Advisor Ombudsman’s (“CAO”) decision to open a compliance investigation in the case “Cambodia: Financial Intermediaries–04”. We note with concern that this is the first time the review mechanism has been used and that it is an extraordinary measure reserved for an extremely limited review of whether the CAO Director-General’s report considered a handful of basic technical criteria.

The complaint at issue concerns IFC project investments in six Cambodian banks and microfinance institutions, either directly or through four financial intermediaries. It was filed by two NGOs—the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Equitable Cambodia—on behalf of project-affected peoples across Cambodia who allege to have borrowed from those IFC-backed funds and been harmed by predatory and deceptive lending practices, including threatening collection actions.¹ We note with alarm that publicly identified harms in this case include land dispossession, loss of land of Indigenous Peoples and threats to their cultural and spiritual identities, loss of livelihood, food insecurity, child labour, and threats to health.²

The serious negative impacts faced by project affected peoples demand access to remedy³, which is being delayed by the request for Board review. In stakeholder consultations during the drafting of the current CAO policy, concerns were raised that delays in the compliance process could have dire negative impacts on project affected peoples.⁴ As detailed below, Board review is narrowly limited to only a few technical criteria, and therefore a swift conclusion to this review is appropriate and warranted. Any extension of the Board’s period for review would be an unnecessary and dangerous delay in the compliance process that risks additional escalation in the severity and scope of the harms suffered by the very people and communities the World Bank Group is committed to serving.

I. Narrow Grounds for Review

The June 2021 revision of the IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“the 2021 Policy”) permits IFC Management to request IFC Board review of the CAO Director-General’s decision (“CAO decision”) to open an investigation, but clarifies that Board review should only be requested in *exceptional circumstances*.⁵ In addition, any request for review and the Board’s review itself are strictly limited to consideration of specific, enumerated technical criteria.⁶ The policy explicitly

¹ Compliance Advisor Ombudsman, Cambodia: Financial Intermediaries–04, <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04>

² *Ibid.*

³ See UN Guiding Principles on Business and Human Rights, 2011, at Principle 1, 22, 25

⁴ Summary of Formal Public Consultations from April 5–May 19, 2021 and Feedback on the Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy, at 8, available at <https://www.ifc.org/content/dam/ifc/doc/2023/cao-policy-consultation-summary-report-en.pdf>

⁵ IFC/MIGA Independent Accountability Mechanism (CAO) Policy, 28 June 2021, at ¶ 107.

⁶ *Ibid.* at ¶¶ 107–109

states, “The Board will not make a judgment on the merits of the complaint or on considerations that require the exercise of discretion by the CAO [Director-General] under this Policy.”⁷

The Board must make a decision or decline to make a decision and let the CAO’s decision stand within 10 business days of Management’s request for review—in this case by 17 July 2023—or grant itself an extension for a determined period of time or the CAO decision to investigate will be automatically affirmed.⁸

The explicit language of the 2021 Policy narrowly restricts Board review to a closed list of just seven technical criteria. The seven technical criteria are:

- a) If the complaint was transferred from dispute resolution, does the CAO compliance appraisal report affirm that (1) CAO initiated the transfer to compliance on the basis of explicit consent of one (or more) Complainant, or (2) CAO was aware of concerns regarding Threats and Reprisals in relation to the complaint?
- b) Does the CAO compliance appraisal report include consideration of whether there are preliminary indications of Harm or potential Harm?
- c) Does the CAO compliance appraisal report include consideration of whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies?
- d) Does the CAO compliance appraisal report include consideration of whether the alleged Harm is plausibly linked to the potential non-compliance?
- e) Does the CAO compliance appraisal report include consideration of the relevance of any judicial or non-judicial proceeding in relation to the subject matter of the complaint?
- f) In relation to a Project where an IFC/MIGA Exit has occurred prior to CAO completing its compliance appraisal, does the CAO compliance appraisal report include consideration of whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite the IFC/MIGA Exit?
- g) If CAO has previously conducted a compliance investigation in relation to the Project or Sub-Project in question, does the CAO compliance appraisal report include consideration of whether the complaint raises new issues or new evidence is available?⁹

The 2021 Policy explicitly states that Board review will be based *solely* on the seven technical criteria.¹⁰ The Board has no authority to consider additional factors in making its decision.

II. Requirement for Objectivity

The critical importance of narrowly constraining Board review to exceptional circumstances and just a few, enumerated standards is emphasised by the fact that the Board may not judge the case on its merits nor exercise discretion where that power is properly vested with the CAO and its expertise.¹¹ The 2021 Policy demands an unbiased, objective, and technical review by the Board, or for the Board to simply let the 10 days lapse and the CAO’s decision stand.

The language of the 2021 Policy also establishes guardrails to ensure that Board review is solely technical, as intended: the Board is only authorised to look at whether the CAO’s report *includes consideration of* the technical criteria.¹² Note that “consideration” is not qualified; the Board is not

⁷ *Ibid.* at ¶ 109 (emphasis added)

⁸ *Ibid.* at ¶¶ 110–111

⁹ IFC/MIGA Independent Accountability Mechanism (CAO) Policy, 28 June 2021, at ¶ 109

¹⁰ *Ibid.*; see *ibid.* at ¶ 107–108 (a request for Board review can only be based on the seven technical criteria)

¹¹ *Ibid.* at ¶ 109

¹² *Ibid.* at ¶ 109(b)–(e)

authorised to make a subjective determination as to whether it deems the CAO’s consideration correct. It may only check *whether* the CAO has considered those technical criteria. This is consistent with the explicit language of the same paragraph and throughout the 2021 Policy section on Board review: the Board may not substitute its judgment for the CAO’s.

These explicit restrictions on Board review were likely added to ensure procedural consistency and thus good practice while maintaining the independence and discretion of the CAO.¹³ During public consultation and review of the drafting of the 2021 Policy, stakeholders expressed concerns about what would constitute “exceptional circumstances” for Board review and that Board review could harm the CAO’s independence.¹⁴ Revisions to the 2021 Policy were thus made to clarify the limitations of Board review¹⁵, and those same limitations were subsequently approved by the IFC Board.

Indeed, it is difficult to imagine what “exceptional circumstances” could warrant Board Review in this case. Considering the publicly available information on the CAO’s website, the CAO appears to have applied careful diligence to ensure that IFC Management was informed of and allowed adequate time to respond to the complaint during the eight months between the eligibility and assessment processes.¹⁶ A review of the Case Tracker and Synopsis on the CAO’s website reveals that the CAO, with its specialised competencies, then allowed additional time—a *full seven months*—to conduct the compliance appraisal and thoroughly review all information in the case before rendering its decision.¹⁷

In conclusion, we appreciate your serious consideration of our concerns and of the urgency of this situation given the serious adverse social impacts faced by the project affected peoples. We look forward to a prompt conclusion of Board review that affirms procedural fairness and reinforces the CAO’s independence. We urge the commencement of the compliance investigation to finally fulfil the project affected peoples access to remedy.

¹³ See “New CAO Policy Enhances IFC and MIGA Environmental and Social Accountability”, World Bank Group, 1 July 2021, available at <https://www.worldbank.org/en/news/press-release/2021/07/01/new-cao-policy-enhances-ifc-and-miga-environmental-and-social-accountability>; “Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy: Overview of Policy, and Key Changes to CAO Process”, presented at Public Consultation Informational Session, 12 April 2021, at 7, 12, available at <https://www.ifc.org/content/dam/ifc/doc/2023/20210412-cao-policy-informational-session.pdf>

¹⁴ Summary of Formal Public Consultations from April 5–May 19, 2021 and Feedback on the Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy, at 7–8, available at <https://www.ifc.org/content/dam/ifc/doc/2023/cao-policy-consultation-summary-report-en.pdf>

¹⁵ *Ibid.* at 23

¹⁶ See, e.g., CAO Assessment Report, 11 November 2022, at 9–11, available at <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04>

¹⁷ Compliance Advisor Ombudsman, Cambodia: Financial Intermediaries–04, <https://www.cao-ombudsman.org/cases/cambodia-financial-intermediaries-04>

Sincerely,

1. Accountability Counsel, United States
2. Aksi! for gender, social and ecological justice, Indonesia
3. Alyansa Tigil Mina, Philippines
4. Asian Forum for Human Rights and Development (FORUM-ASIA), Thailand
5. Committee for the Abolition of Illegitimate Debt (CADTM), Asia
6. Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Cambodia
7. Climate Watch Thailand, Thailand
8. Derecho Ambiente y Recursos Naturales DAR, Peru
9. Equitable Cambodia (EC), Cambodia
10. FIAN, Austria
11. FIAN, Germany
12. Finnish Cambodia Friendship Association, Finland
13. GAIA, Asia Pacific
14. Gender Action, United States
15. Inclusive Development International, United States
16. International Federation for Human Rights (FIDH), France
17. Just Finance International, The Netherlands
18. Koalisi Rakyat Untuk Hak Atas Air (KRuHA), Indonesia
19. NGO Forum on ADB, Philippines
20. Recourse, The Netherlands
21. Sahmakum Teang Tnaut (STT), Cambodia
22. Stiftung Asienhaus, Germany
23. Stichting Both ENDS, The Netherlands
24. Urgewald e.V., Germany