

**BEYOND COMPLIANCE?**

**AN EXTERNAL REVIEW TEAM REPORT ON  
THE COMPLIANCE ADVISOR/OMBUDSMAN OFFICE  
OF IFC AND MIGA**

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Compliance Advisor/Ombudsman (CAO) Office of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) was created in 1999 in response to criticisms that these two institutions were not covered by the work of the World Bank's Inspection Panel. There was a widespread belief that all parts of the World Bank Group should have some sort of environmental and social accountability mechanism. The CAO was to be a more flexible, settlement-oriented and problem-solving mechanism than the Inspection Panel. The CAO was designed to work with those World Bank institutions financing and guaranteeing the private sector.

The CAO's Terms of Reference set out the Office's three roles: an independent ombudsman function to assist in resolving disputes associated with IFC and MIGA financings, a compliance audit function to examine both IFC's and MIGA's overall environmental and social performance and performance on sensitive projects, and an advisory role to assist IFC and MIGA in dealing with sensitive or controversial projects. The CAO is only a part of a much wider set of accountability mechanisms that address the work of the IFC and MIGA. The CAO has been designed to work with both the management of the IFC and MIGA and those affected by the financing of these organizations. This alone is a challenging and complex task.

In April 2003 the CAO commissioned an independent three-person external review team (ERT) to assess the effectiveness of the Office's three functions and the synergy of their integration in a single office. The CAO's institutional framework and structure, its procedures, and the processes by which results are achieved were to be examined.

The ERT has examined where overall responsibilities should lie in IFC and MIGA and within their clients' organizations in areas such as compliance with Safeguard Policies and conflict resolution.

One of the strongest views the ERT formed during its review was that "accountability for performance"—or results in line with the World Bank Group's public commitments and missions vis-à-vis environmental and social development outcomes—should rest squarely on those with the line responsibility for project assessment, approval, implementation, and supervision and for sustainable development outcomes on the ground.

***Recommendation 1:*** *The ERT recommends that the CAO support and encourage the provision of effective and credible conflict-resolution capacity, provided principally by others, in the design of IFC and MIGA projects where it is likely that conflicts will arise over the life of the project. We also believe that the CAO should carefully evaluate the willingness and ability to engage in productive problem solving of the senior management of any company where the CAO is in a problem-solving intervention.*

The CAO's three roles should be complementary—they present synergistic opportunities for positive impacts on project soundness and outcomes. They also result in challenges—there is the potential for internal conflict of interest. Independence and objectivity must be maintained by those responsible for the ombudsman and compliance functions and by those in the CAO who provide advice. The ERT's report examines whether a flexible mechanism designed to work out tensions among competing goals can be compatible both with the necessary enforcement of Safeguard Policies and the prevention of violations of World Bank requirements and internationally accepted norms.

The ombudsman role's focus on problem solving is reasonable, as is its focus on affected communities and local groups where they exist. Ombudsman interventions can be productive in improving environmental and social outcomes where a suitable dispute-resolution was not available. Focus should be on ensuring the development of participants' capacity to engage in productive dialog and making real progress in resolving complaint-related problems and underlying issues.

The CAO utilizes a wide range of techniques and tools, such as mediation, training, and other culturally accepted forms of dispute settlement. In general, the ERT has found that the CAO's exercise of this function has attracted both high praise and some criticism, particularly on the part of some complainants. One recurring theme has been a need for process certainty—this is one area where the CAO's work is compared unfavorably with that of the Inspection Panel. In the past year or so, the limited CAO ombudsman staff has been overextended; and concerns have been expressed about slow response and delays in providing complaint assessments. Recent additional CAO appointments are likely to ease time pressures.

***Recommendation 2:*** Firm timelines for responses to complaints should be maintained by the CAO, and they should be communicated to complainants. This would include a time period for launching an investigation, a time period for a complaint assessment report, and timely responses to parties' further communications. These timelines should be worked out with complainants on a case-by-case basis.

Response to a complaint must not only be timely but must address every point of the complaint.

***Recommendation 3:*** Complaint assessment must be in a form that is responsive to the complaint and covers all issues raised by the complaint. Additional issues uncovered by the investigation may be addressed but distinguished from the specific reply to issues complainants have raised. Unresponsiveness by parties to either communications by the CAO or to a field investigation should be a factor in dismissing a case.

The ERT has found the CAO's paper and electronic trails on ombudsman cases difficult to follow—no complete record of an investigation appears to be kept in the files. Although assessments seem full and unbiased, there is no interview protocol; and it would be appropriate if more complete file notes were kept.

**Recommendation 4:** *The CAO should prepare a simple investigation protocol and keep confidential notes available to ombudsman staff on all interviews and documents used in a case.*

A number of ombudsman interventions require such intensive and extensive CAO involvement that there is a danger that other matters cannot be handled expeditiously.

**Recommendation 5:** *In complex projects, the CAO should recommend the use of a multi-stakeholder dialogue (MSD) process to IFC and MIGA as a matter of preventive advice and, if the parties agree, a life-of-the-project mediator. This can save costs and even projects in the long run. With experience, this should be done as a matter of course, without pressure from the CAO. The CAO may provide training for local mediators and capacity building if circumstances warrant. This will ease some excess caseload on the CAO.*

Complaints and ombudsman investigations can provide “early warnings” for other projects; and the CAO has, on occasions, provided formal advice based on its ombudsman work.

**Recommendation 6:** *The ERT recommends that the CAO develop a systematic program to feed “lessons learned” from its handling of complaints back into the system. Its approach can include briefings, presentations, or memoranda designed so that IFC and MIGA practices that may have contributed to the problem will not be repeated.*

Where both IBRD/IDA and IFC financing, or MIGA guarantees, have been directed to the same project, there are potential problems in addressing complaints, given the different accountability mechanisms of the various institutions. The World Bank Group has to ensure that appropriate communication between the two mechanisms is achieved, without compromising the independence or confidentiality of either process.

As originally conceived, the CAO was to provide two types of advice—broad guidance, and advice on controversial or sensitive individual projects and project issues throughout the project’s life. Over time, the advisory role has evolved. The CAO has indicated it would not give project-specific advice in order not to prejudice its possible involvement in either its ombudsman or compliance role following a complaint on a project. In December 2002 the World Bank Group President indicated that the CAO’s advisory role was to become more formal and to be increasingly applied strategically.

We understand the necessity of avoiding potential conflicts concerning future complaints and also the desirability of early-warning advice that may be uniquely available from the CAO. However, responsibilities in IFC in areas such as advice provision and external contacts with civil society seem unclear and overlapping, to IFC and MIGA staff as well as those outside the institution.

**Recommendation 7:** *The ERT believes that specific pre-complaint project-specific conversations with and advice from the CAO, in the absence of any ombudsman or compliance trigger, must be very limited for two compelling reasons. The CAO must*

*avoid even the appearance of conflict that could call into question its ability to properly execute its ombudsman or compliance roles. This is also the CAO's view. In addition, the CAO's resources are limited and not intended to provide basic project assessment and project supervision services.*

There is a clear desire within IFC and MIGA that the CAO clarify its procedures and guidelines, including those covering the advisory role. When practice changes, it is essential for this to be reflected in updated documentation.

***Recommendation 8:*** *The ERT endorses the World Bank Group President's advisory role clarification that the CAO should focus more on strategic issues and trends as opposed to project-specific advice and also supports his call for clear guidance concerning the advisory role. We recommend that the CAO clarify what sort of advice they can provide and that all CAO guidance should reflect current practice in the CAO and be made available to relevant groups.*

***Recommendation 9:*** *We recommend that, as the CAO's experience in supporting the start-up of sustainable and successful mediation and other on-the-ground problem-solving tools grows, the CAO should be a source of generic advice on value-added preventive measures, based on its ombudsman and compliance work.*

Some very important lessons are to be learned by IFC and MIGA from their own project performance and from developments elsewhere. The CAO is in a good position to package lessons learned from its ombudsman and compliance activities to greatly benefit the institutions and their private-sector clients.

***Recommendation 10:*** *We recommend that lessons learned, principally from the CAO's ombudsman and compliance roles, be fed back to IFC and MIGA by the CAO in a systematic manner, so that IFC and MIGA practices and project outcomes will continuously improve.*

The ERT commends the CAO for their presumption of maximum transparency. However, the CAO should obtain management's views and consider them prior to finalizing advisory documents.

***Recommendation 11:*** *We recommend that, when the CAO prepares formal advice on a program, sector, or major issue, the CAO request management's views and consider these prior to finalization and publication with respect to any errors or omissions identified as well as perspectives on wording that could serve to improve project soundness and environmental and social development results on the ground.*

***Recommendation 12:*** *We recommend that the framework for guidelines on accepting advisory assignments for the CAO be four-fold: that clear rules regarding advisory work be drawn up and be well communicated to IFC and MIGA staff; that the CAO assure itself that it is the appropriate unit within IFC and MIGA, or even the World Bank Group, to do any particular advisory task it is asked to perform; that it assure itself that adequate resources are available; and that the task is clearly linked to the CAO's*

*ombudsman and/or compliance roles. We further recommend that the CAO carefully track resources expended in advisory interventions—both office-based and those in the field, along with an objective assessment of results and firm progress toward goals including evaluation of progress and contributions of any partners—to ensure it focuses on producing the highest payoff in improved projects and outcomes on the ground.*

The ERT has noted that, as late as 1999, the compliance audit function which now falls within the CAO's mandate was expected to be performed by the World Bank's Inspection Panel. Very little project-specific compliance work has been undertaken by the CAO to date. In part this is because a number of the complaints brought to the CAO do not centrally involve a compliance issue. The senior management of IFC and MIGA has not made requests for compliance audits. The CAO has not, generally, been staffed to undertake the audit function.

In late 2002 the CAO's option of initiating an audit on an issue which the CAO has itself identified was removed, although this audit trigger is included in the CAO's June 2002 guidance on the compliance audit role (Compliance Audit Role: Guidance on Compliance Auditing and Enhancing Outcomes, June 2002). The reason given for removing the self-initiated audit is to ensure that the compliance function is more directly supportive of the ombudsman role and to reinforce the impartiality of the audit process. The ERT believes this change is too limiting and, indeed, affects the careful balance of CAO functions which its founders sought. In practice, one of the most powerful tools available to the CAO now depends, in part, on the crafting skills of those who submit complaints. The ERT does not believe the CAO should be restricted in this way.

The ERT recognizes that the CAO self-generated audits should only be initiated if a stringent set of criteria are satisfied. The CAO should be prepared to clearly justify its decision to undertake such work, and it must not be accused of lack of clarity in its selection of projects to be audited.

***Recommendation 13:*** *The ERT recommends that the CAO's ability to self-initiate compliance audits be reinstated, together with sufficient additional tests, related to the initiation of such audits, to satisfy stringent transparency and equity requirements.*

At present, the work of the CAO, and in particular its compliance audit function, is severely underrepresented in the IFC's and MIGA's information material, in their discussions with potential clients, and in legal agreements. In particular, the implications of auditing have not been specifically addressed in legal agreements. The private sector's awareness of the CAO's existence appears to be minimal beyond those companies involved with complaints. The CAO, along with IFC, MIGA, and project sponsors, should ensure that affected communities are sufficiently aware of the CAO's ombudsman role.

***Recommendation 14:*** *The ERT recommends that reference to the CAO's various roles, including its compliance audit function, be included in all appropriate IFC and MIGA documentation, that the CAO's roles be raised with potential clients at the earliest*



*appropriate opportunity, and that suitable wording related to the CAO's compliance audit function be developed for use in legal documentation.*

The ERT has considered the mechanics of the compliance audit function within the CAO. It is considered essential that decisions on commissioning a compliance audit which arises out of an ombudsman assessment should be taken by the head of the CAO alone, unless she has had the responsibility for the relevant ombudsman investigation. In this case, the decision as to whether to commission a compliance audit should be taken by another senior staff member.

***Recommendation 15:*** *The ERT recommends that decisions relating to the commissioning of a compliance audit for a project on which an ombudsman assessment has been undertaken should be made by the Compliance Advisor/Ombudsman alone or by another senior staff member if the Compliance Advisor/Ombudsman has been responsible for the ombudsman assessment.*

When the CAO determines that a complaint raises a compliance matter, criteria are needed to determine which files may later be made available to the CAO's compliance auditor, and which must be kept confidential. Parties to a complaint need the clear assurance that what they say and what they provide in the way of written documentation will not be made available for compliance audit purposes. At the same time, to facilitate efficiencies in the way auditing is performed, and to avoid unnecessary duplication of effort, the ERT believes the CAO's complaints filing systems should be arranged in such a way as to separate out non-confidential material that can be readily made available to the auditor.

***Recommendation 16:*** *The ERT recommends that the CAO not make available to its compliance auditor any confidential information provided in the course of a complaint investigation. The CAO should create files for each ombudsman investigation that incorporate all such confidential material together with separate files covering non-confidential material that would facilitate subsequent compliance auditing.*

The ERT believes the CAO could be drawn into quasi-evaluative work because the IFC and MIGA require feedback on the environmental and social aspects of some projects well before the IFC's Operations Evaluation Group (OEG) and MIGA's Operations Evaluation Unit (OEU) typically will undertake their evaluations.

***Recommendation 17:*** *The ERT recommends that, in order to optimize available expertise, the CAO, OEG, and OEU should agree on how they should cooperate and demarcate their work on environmental and social issues in order to afford timely and rigorous feedback to the IFC and MIGA.*

The ERT concludes that, despite the initial uncertainty regarding the appropriateness of the CAO's assuming a compliance audit role, this function should be retained within the CAO. There are significant synergies between the compliance role and the ombudsman and advisory functions. The ERT believes that extending the work of the World Bank Inspection Panel to the IFC and MIGA would be inappropriate. At the same time, the

ERT believes that the CAO must have appropriate powers in the compliance auditing area and that it must exercise these powers sufficiently to enable it to demonstrate that the IFC's and MIGA's adherence to their own environmental and social requirements is being appropriately monitored.

The importance of communication has been raised with the ERT many times by contacts. This relates both to the substance of communications between the CAO and its various stakeholders, particularly those within the IFC and MIGA, and to issues of style and tone. It is challenging, and sometimes impossible, to deliver advice and findings on difficult and controversial issues in a way that some recipients will find comfortable, pleasant, and non-threatening. Nevertheless, the ERT suggests that both the CAO's style of presenting material and the way that IFC and MIGA receive advice should be reviewed.

***Recommendation 18:*** *The ERT recommends that the CAO review the style and tone of their advisory and other letters, memoranda, reports, and other communications to identify opportunities to increase the CAO's effectiveness.*

With respect to the CAO's budget, the ERT believes that it is appropriate that this should continue to come from the IFC and MIGA as a demonstration of the institutions' commitment to accountability. There is considerable incentive for IFC and MIGA to ensure that the CAO's budget is sufficient for it to function effectively.

Considering its responsibilities, the CAO has a modest-sized staff and budget. The current senior CAO staff get high marks for their intelligence, integrity, energy, grit, and commitment to the World Bank Group's goals. The ERT believes that the CAO has to have the appropriate in-house core expertise and experience.

The CAO currently reports directly to the President of the World Bank Group. The ERT does not suggest any change in this at the present time. However, there would be some advantages if the CAO were to update the World Bank Board's Committee on Development Effectiveness (CODE) twice a year on its activities rather than on an annual basis as at present. The ERT also suggests that, once the compliance audit function has been operational for some time, the CAO should revisit its reporting line for this activity to assure itself that reporting to CODE on this activity would not be more appropriate.

The ERT has been informed of the concurrent work being undertaken by the CAO's communications consultants. A two-way communications strategy that is effectively and consistently implemented in all the CAO's contacts with its diverse stakeholders is one of the keys to the CAO's success. Clarity in all written and oral communications is essential. The tone of all communications is important to achieving the best outcomes. The ERT endorses the direction and proposals of the CAO's communications consultants, including the initiation of a CAO activities update and a quarterly CAO newsletter.

***Recommendation 19:*** *The ERT recommends that the CAO ensure that all guidance—electronic and printed documents—available both to outside stakeholders and IFC and MIGA staff is up to date and incorporates official advice. Documentation should always be dated. The CAO’s website should only contain up-to-date information.*

The CAO has, in its first three years of work, proven the worth of an accountability and mediation mechanism for the IFC and MIGA. It has addressed the complaints of those directly affected by IFC and MIGA financed and guaranteed projects, and it has also effectively represented to IFC and MIGA concerns of civil society about the development impacts of IFC and MIGA activities. From our interviews with a number of internal and external stakeholders, it is clear to the ERT that the CAO is having a beneficial impact on the institutions by influencing the agenda and terms of internal debate on challenging issues central to successful development outcomes in the future.

The ERT believes the Office of the IFC/MIGA CAO is becoming increasingly effective as IFC’s and MIGA’s environmental and social accountability mechanism. The combination of roles—ombudsman, compliance auditor, and advisor on tough issues—is ambitious and challenging, but was considered necessary by the CAO’s architects. We recognize the important accomplishments of the CAO team to date, and have confidence they will identify priority opportunities in their three roles that best contribute to sounder projects and better environmental and social development outcomes on the ground. The ERT views this as an important continuing CAO management opportunity. The specific recommendations ERT has made should help the CAO build on a sound foundation

The ERT believes that, with the changes recommended in this report, which are by no means radical, most conflict-of-interest issues will be minimized and the hoped-for synergy of the CAO’s three functions can be strengthened. However, it will be necessary for the CAO to evaluate the integration of the three functions once again when the compliance function is up and running and has a base of experience, say within 6-9 months of the release of this report. Some lack of clarity regarding the CAO’s mandate and activities has been identified—the ERT has made suggestions to address this.

The ERT has given considerable thought as to how the CAO office should develop over time. A new accountability mechanism for the entire World Bank Group, that would offer both the compliance audit function of the Inspection Panel and the ombudsman and advice elements of the CAO, has its attractions but takes the ERT outside its Terms of Reference.

One future scenario would place even greater emphasis than at present on the CAO’s ombudsman and informal advisory roles, with compliance audits only to be seen as a “last resort.” This has been rejected, as it would perpetuate the current uncertainties and contrasting expectations regarding the CAO’s functions and activities, the CAO would remain overstretched, and, as at present, it would continue to be pulled in various directions.

The ERT’s preferred option would still attach the greatest importance to the CAO’s ombudsman function. The compliance function would be robust, and the CAO-

generated trigger for compliance audits would be restored. Dispute resolution would be carried out in the knowledge that a CAO compliance audit could well be one of the outcomes. Institutional audits would be undertaken by the CAO when widespread practice shortfalls so demand. The CAO's advisory role would be more formal, as set out in the World Bank Group President's December 2002 letter to the IFC's and MIGA's Executive Vice Presidents. In particular, the CAO would cease to provide any project-specific advice, however sought.

The environmental and social teams and the evaluation teams of IFC and MIGA would assume greater responsibility for the provision of certain types of advice. By clarifying roles, the potential for conflicts of responsibility and confusions over responsibilities would be reduced. The CAO would thereby be recognized as a genuine alternative to the Inspection Panel, as envisaged by its creators.

## ACRONYMS USED IN THE REPORT

ADB	–	Asian Development Bank
CAO	–	Compliance Advisor/Ombudsman (IFC/MIGA)
CCO	–	Chief Compliance Officer (EBRD)
CES	–	Environment and Social Development Department (IFC)
CODE	–	Board Committee on Development Effectiveness (WBG)
CRP	–	Compliance Review Panel (ADB)
EBRD	–	European Bank for Reconstruction and Development
ED	–	Executive Director (WBG)
ERT	–	External review team
EVP	–	Executive Vice President (IFC and MIGA)
FoEME	–	Friends of the Earth Middle East
IBRD	–	International Bank for Reconstruction and Development
IDA	–	International Development Association
IDB	–	Inter-American Development Bank
IFC	–	International Finance Corporation
IFI	–	International Financial Institution
IIM	–	Independent Investigation Mechanism (IDB)
IO	–	Investment Officer (IFC)
IP	–	Inspection Panel (IBRD/IDA)
IRM	–	Independent Recourse Mechanism (EBRD)
MIGA	–	Multilateral Investment Guarantee Agency
MIGPE	–	Policy and Environment Department (MIGA)
MSD	–	Multi-Stakeholder Dialogue
NGO	–	Non-governmental Organization
OEG	–	Operations Evaluation Group (IFC)
OEU	–	Operations Evaluation Unit (MIGA)
SP	–	Safeguard Policies (WBG)
SPF	–	Special Project Facilitator (ADB)
TOA	–	The Ombudsman Association
TOR	–	Terms of Reference
USOA	–	United States Ombudsman Association
VP	–	Vice President
WB	–	World Bank
WBG	–	World Bank Group (IBRD, IDA, IFC and MIGA)

## **CHAPTER I**

### **INTRODUCTION**

#### **A: THE GENESIS AND EVOLUTION OF THE CAO OFFICE**

Until the end of 1999, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), unlike the World Bank (WB) and some other international financial institutions (IFIs), had no environmental and social accountability mechanism. The Compliance Advisor/Ombudsman (CAO) Office was created in 1999, in the wake of an independent review of the IFC's Pangué Dam project in Chile. Various suggestions had already been made for an Inspection Panel (IP) for the IFC and MIGA similar to that of the IBRD/IDA, or for inclusion of the IFC and MIGA in the IBRD/IDA IP. IP coverage of the IFC was specifically requested in a complaint letter on the Pangué hydroelectric dam in 1995 by a Chilean non-governmental organization (NGO) to World Bank Group President James Wolfensohn who then established the independent review group, chaired by Jay Hair, to study the IFC's compliance with applicable World Bank Group (WBG) environmental and social requirements on Pangué. The group issued a report critical of the IFC, and recommended an IP for the institution.

IFC management expressed concerns regarding this proposal, and an alternative route was sought. The General Counsel, working with the IFC Executive Vice President (EVP) who was familiar with the Scandinavian ombudsman function, and Sir David Scholey of the Bankers Advisory Group, proposed a more flexible, settlement-oriented, and problem-solving approach that would be less rigid and punitive than an inspection panel, and which would be more appropriate for dealing with the private sector. It incorporated the present three functions of the CAO office: ombudsman, compliance, and advice.

A multi-stakeholder group, including a range of potentially interested parties outside IFC and MIGA, was established by the President to select the first CAO. The group's chair, Bjorn Stigson, President of the World Business Council for Sustainable Development, has stated that the search process was remarkably efficient, and that it utilized the substantial network and knowledge of the search committee and created buy-in and ownership from key stakeholder groups.

The CAO Office initially was very small: it consisted only of Meg Taylor—the Compliance Adviser/Ombudsman—and her Executive Assistant. The budget was \$800,000 in 1999. The Office has gradually grown to its present size of four senior staff, a research assistant, and three administrative staff. The 2004 budget is \$1,827,227 together with a \$1,000,000 contingency fund.

## **B: THE CAO TERMS OF REFERENCE AND SUBSEQUENT ELABORATION**

The CAO's Terms of Reference (TOR) (see Annex A) describe the CAO as "an additional pillar in building a credible and responsive structure to ensure that projects are environmentally and socially sound and enhance IFC's and MIGA's contribution to sustainable development." The TOR emphasize the independence of the ombudsman function, mandating an investigative process and flexibility in working out solutions acceptable to the parties. They also state that part of the CAO's role is "to advise and assist IFC and MIGA in dealing with sensitive or controversial projects." The audit function is described as encompassing both "IFC and MIGA's overall environmental and social performance and sensitive projects," either "on a case by case basis or in accordance with a regular program."

These broad TOR have been subject to interpretation by the CAO Office as experience has been gained. For example, an internal memorandum of September 1999 establishes physical separation and other forms of security for the Office. The CAO Operational Guidelines, published by the CAO in April 2000, and a letter from the President, dated December 12, 2002, to EVP Peter Woicke of IFC and EVP Motomichi Ikawa of MIGA further elaborate the CAO's TOR and provide clarification on and some limits to the compliance and advisory roles. In particular, the December 2002 letter limited how a compliance audit could be initiated to a request from the senior management of IFC and MIGA or arising from a complaint. The CAO no longer had the option of identifying an issue on which it could initiate an audit. The letter delineated the advisory function by stating that it will be "increasingly applied strategically to trends, issues and policy concerns...and act as an early warning system." The advisory role was made "more formal" emphasizing that no project-specific advice would be provided, to prevent conflict of interest in the event of a complaint to the ombudsman.

## **C: A THREE-YEAR REVIEW OF THE CAO**

The CAO management made a decision early in its operations to mount an independent external review after three years of operation to assess the effectiveness of the three functions of the Office and the synergy of integration under a single umbrella "to assess, against CAO objectives, the institutional framework and structure, CAO procedures and the processes by which results are achieved" (see Annex B). This decision was supported by the CAO's Reference Group, who advise the CAO, and the World Bank Board's Committee on Development Effectiveness (CODE). It was reinforced by the CAO's strategic review held in Boulder, Colorado, in August 2002. The external review team (ERT) was appointed in April 2003 (see Annex C for brief biographies of the team).

The TOR contain the following tasks:

- assess the effectiveness of [the] Ombudsman role and its operational guidelines for the ombudsman in resolving disputes and maintaining independent accountability;

- assess the Compliance Audit function and its operational guidelines in providing lessons and independent accountability;
- assess the effectiveness of the Advisory role in providing the President and Senior Management with an independent avenue of counsel.

#### **D: THE METHODOLOGY USED BY THE ERT**

The ERT began by obtaining an understanding of how the CAO's mandate has been interpreted and made operational in its three roles—ombudsman, compliance, and advice.

The ERT attended the May 1<sup>st</sup> and 2<sup>nd</sup> 2003 CAO Reference Group meeting and the May 19<sup>th</sup> 2003 CODE meeting at which the CAO's Report on Activities was presented and discussed. A study was undertaken by the ERT of current and past documentation, including case files and internal memoranda.

The ERT held interviews with CAO staff, with others in IFC and MIGA, with staff in the WBG and in other IFIs, with representatives of civil society, with some of IFC's and MIGA's project sponsors, and with other observers of the CAO's work (see Annex D). Responses to an ERT e-mail questionnaire (see Annex E) were examined; these were sent to relevant people who could not be interviewed, including NGOs, project sponsors, complainants, CAO Reference Group members, business and civil society representatives, and staff of IFC, MIGA, and other IFIs. ERT members made site visits to Yanacocha (Peru) and Pangué (Chile) where the CAO has made interventions.

The ERT has synthesized the results in an assessment of the CAO's effectiveness, including a comparison with the accountability mechanisms of other IFIs (see Annex F). Conclusions and recommendations have been identified.



## **CHAPTER II**

### **THE CONTEXT AND FUNCTIONS OF THE CAO**

#### **A: ACCOUNTABILITY**

IFC and MIGA senior management has clearly affirmed publicly the importance of the CAO as a credible and independent environmental and social “accountability” mechanism. Senior management has confirmed this to the ERT. So the ERT started and ended its work focusing on “accountability.” We support the notion of “accountability for performance” and concur with the views on accountability presented in the CAO’s recent review of IFC’s Safeguard Policies (A Review of IFC’s Safeguard Policies—Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes, January 2003) which included the following:

For there to be better integration, the rest of IFC outside CES [the environment and social development department] needs to have ownership of the environmental and social performance of individual projects and sectors of the portfolio. Management and senior management should be held accountable for specific environmental and social goals derived from performance at the project and portfolio level. There need to be clear goals at the corporate, departmental, and individual levels, with corresponding accountability extended to all levels of management and investment staff.

On the issue of accountability, the report also said:

Furthermore, the accountabilities that exist within IFC to date do not reinforce the message from the top that the Safeguard Policies and their values are everybody’s business, regardless of whether they are a staff or manager’s function. For a development bank, environmental and social performance matter as much as financial rate of return.

One of the strongest views the ERT formed during its review was that “accountability for performance” or results in line with the WBG’s public commitments and missions vis-à-vis environmental and social development outcomes should rest squarely on the management of IFC and MIGA—senior management and middle management—those with line responsibility for project assessment, approval, implementation, and supervision and for sustainable development outcomes on the ground.

A clarifying note is in order. When the ERT uses the term “senior management” referring to IFC and MIGA, we include the IFC EVP, the IFC Vice President (VP) for Operations, and the MIGA EVP. When it is used in a broader sense, or referring to the WBG, we also include the WBG President who is also President of IFC and MIGA.

When used by others in documents we examined or in interviews, there were a variety of notions within IFC and MIGA as to who was and who was not included in “senior management,” and the ERT understands that, within IFC, the term is officially used to include the six VPs and three senior Directors.

## **B: CONTEXT**

What is the context in which the CAO operates as IFC’s and MIGA’s independent social and environmental accountability mechanism? In the world in which IFC and MIGA are doing business, an increasing number of key stakeholders have increasing expectations of public and private institutions concerning public trust, social responsibility, sustainable development, equity, fairness, transparency, open communications and engagement, and respect for cultural differences. Many expect accountability for intended and unintended results today, and the pace of change is quickening. There is also a growing recognition of the emergence of competitive pressures from other IFIs.

It is not easy for any major institution—be it a multinational corporation, a government agency, or a major financial institution—to become comfortable and proficient doing business in a climate of escalating expectations regarding transparency, public trust, and accountability. This period of escalating expectations coincides with the events leading to the CAO’s formation and its start-up years.

Many people told the ERT that IFC and MIGA have not yet become comfortable operating in a climate that demands accountability, openness, and trust. While accountability and evaluation mechanisms and units have been put in place, we were told that the natural tendency is to have conversations in private. The CAO has insisted on transparency. Some have told the ERT that the CAO works in a sometimes hostile, antagonistic, reluctant environment that has difficulty learning and changing in the newer areas of accountability, openness, and trust vis-à-vis environmental and social development results.

The ERT views this as a very challenging environment for the CAO, but it is familiar to any change agent in a large institution with changes underway all around. Effecting necessary change—which is surely much of the CAO’s proper role—is tough work and takes strong individuals with different paradigms and perhaps from a different mold than others who work in IFC and MIGA. While our charge is to speak to or about the CAO and the CAO operation, we have found that we need also to address those who are accountable for leading change in IFC and MIGA. Helping facilitate necessary change is not business as usual—it is not for the timid or thin-skinned.

## **C: CHANGE AND CHALLENGE**

The IFC’s sustainability booklet (Measuring Sustainability: A Framework for Private Sector Investments, February 2003) states—and the ERT agrees:

IFC has made sustainability a corporate priority because of fundamental changes taking place that are affecting our clients, our countries, and IFC itself. The growing public awareness of corporate governance and of environmental and social issues is driving changes in consumer behavior, investment, and policy or regulatory adjustments. In addition to financial and economic pressures, private companies face a range of complex environmental, social, and governance challenges....

All signs point to continued pressure on the private sector to demonstrate that economic growth and sustainable economic, social, and governance practices are compatible.

Virtually all IFC and MIGA personnel view themselves as advocates of or partners with the private-sector clients of the organizations. At the same time, some inside IFC and MIGA, particularly at lower levels of management, view the CAO as being close—perhaps “too close”—to the NGOs and to those affected by projects, even being seen as “the NGOs’ representative inside the organization.” It seems well within the CAO’s TOR to be in close communication with affected communities and NGOs representing their interests. To an investment department director or an investment officer, the CAO might well seem “close to NGOs” or the communities affected by IFC and MIGA projects; but we view that as a strength, like bankers relating effectively to their private-sector clients in ways deemed appropriate to private-sector executives.

Several individuals told us directly and indirectly that there were, typically, no explicit social development goals for IFC projects. Perhaps this is in error or an exaggeration; but if that is the case, or if that is a fair assessment of some projects with substantial social development vulnerability, then it would seem that the CAO’s task of helping IFC improve the environmental and social development soundness of its projects and gaining good outcomes on the ground would be difficult.

In our view, what counts for the WBG and the people it is in business to serve is results—not the talk, the good words, the speeches, the documents, and the activities—but the outcomes, the performance, the results: a genuinely sound, healthy, triple bottom line. This is a challenge to most enterprises today, in both the private and the public sectors, as they cope, with varying degrees of success, with the environmental, social, economic, equity, and governance aspects of doing business.

#### **D: THE CAO’S ROLES**

The CAO could have been asked to work only as the ombudsman for the IFC and MIGA, but it was asked to fulfill three roles. This presents synergistic opportunities for greater positive impact on project soundness and outcomes, as well as challenges. An important continuing CAO management opportunity will be to focus on the highest-priority and precedent-setting tasks among the many available across the three roles.

The CAO is often described as *the* “accountability mechanism” for IFC and MIGA. However, its brief is not all-inclusive—it is the social and environmental Compliance

Advisor/Ombudsman for IFC and MIGA; and it is part of a much wider set of accountability mechanisms in the two institutions. Its role is threefold: to help settle disputes that arise on the ground, to help assure socially and environmentally sound projects with desirable development outcomes through advice and feedback, and to assure compliance with specific IFC and MIGA environmental and social policy and guidelines through independent audits. It works with both management and the affected communities. This alone is a challenging and complex task. No other IFI that the ERT has identified has created the same inclusive model of accountability as the CAO.

In order for the CAO to function as intended, these three roles must operate in a complementary manner; and, presumably, the designers intended that the structure should maintain an internal synergy and a balance. Yet issues have arisen suggesting that the structure itself may create an internal conflict of interest. In order to determine whether or not the structure or function creates synergy or the opposite—conflict of role—it has been necessary to look at each function in detail.

#### **E: WORKING WITH BOTH IFC/MIGA MANAGEMENT AND AFFECTED COMMUNITIES**

The CAO assumes a clear responsibility to work with management and the investment and guarantee officers within IFC and MIGA. But it also assumes a significant responsibility to the affected communities in the environmental and social arena. The CAO has been given a very complex task. The CAO team seems to genuinely strive to be respected by and comfortable with both senior management inside the institutions and the affected communities on the ground. This is especially important in the ombudsman role. This necessitates their being approachable and accessible and having a range of skills and the flexibility and judgment to use them effectively.

The IFC and MIGA are investment institutions that, like the other IFIs, are firmly embedded in the global market economy. Investments are expected to contribute to the development of local infrastructures and economies; and they should, at a minimum, have the potential for profitable returns, particularly in the case of the IFC and MIGA whose immediate clients are private-sector companies. These clients require loans and guarantees to invest in uncertain and higher-risk areas which afford them “insurance,” not least in their dealings with governments.

Notwithstanding its assertion that its Safeguard Policies must be “integrated” into its overall system, the WBG operates under the market economy framework. The investor’s incentive is to minimize costs to maximize financial return. This sets up a tension with the “affected community” whose desire is to maximize local sustainable social and economic benefits. If investors take a short-term and narrow view of “costs” and “benefits,” the tension is likely to be higher. When there is a desire to create sustainable development outcomes, the tensions must be acknowledged and dealt with constructively and transparently. This is especially important in the case of a development bank with the broader mandate that accompanies the use of publicly derived funds.

The IFC and MIGA differ from traditional private-sector commercial banks, and senior management stresses this. IFC's and MIGA's objectives are multi-dimensional. They are expected to look at costs and benefits long term and holistically, taking into account broad economic, social, and environmental objectives. However, the senior management of many of the leading commercial banks have demonstrably changed their views of the role of environmental, social, economic, equity, and governance with respect to how they are choosing to do business going forward, witness the fact that 12 leading global investment banks have recently subscribed to the Equator Principles. Discriminating and sophisticated corporations—private-sector companies that seek to operate successfully in uncertain environments, particularly in developing countries—understand both the challenge and the necessity of dealing more effectively and explicitly with the necessary balancing or tradeoffs among environmental, social, economic, equity, and governance aspects of their investments.

## **F: COMPANY PARTNERS**

A private-sector client company or a financial intermediary—like a public-sector institution such as IFC or MIGA—consciously chooses how it does business—how it best aligns its decisions, actions, results, and incentives with its values and its objectives. In doing this, an institution may struggle with making the hard real-world trade-offs among the environmental, social, economic, equity, and governance aspects in a transparent manner—or it may not. It may do this well—or it may not.

In any case, the institution makes conscious choices—and today more so than in past times the institution's diverse stakeholders expect the institution to be accountable for its choices, its decisions, its actions, and the consequences on the ground in time and space.

We have reviewed CAO's experience to date with on-site problem-solving interventions, including mediation and several other techniques, and we believe the Review of IFC's Safeguard Policies (January 2003) was right on target in reporting:

The most critical variable in these equations is the sponsor. Without a committed sponsor, it is extremely difficult to achieve the desired environmental and social outcomes and involves enormous costs on the part of the specialists.

Senior management of a private-sector client company—the owner or majority owner or, even more important, the on-site senior management team operating the project—will drive or contribute to the announced goals of the WBG and its operating units best when there is sufficient sophistication within the corporate and on-site team to support healthy long-term enlightened self interest. Without this, it is our view that it is difficult to obtain substantive results from voluntary problem solving.

Not all potential or active clients understand the business value of properly managing environmental and social risks and aggressively growing environmental and social opportunities. We strongly endorse productive dialog, mediation, conflict resolution, multiple-stakeholder engagement, and culturally appropriate problem solving in general

as value-adding approaches that can enable IFC and MIGA and their private-sector clients to better manage risks, grow opportunities, and produce more sustainable development results.

***Recommendation 1:*** *The ERT recommends that the CAO support and encourage the provision of effective and credible conflict-resolution capacity, provided principally by others, in the design of IFC and MIGA projects where it is likely that conflicts will arise over the life of the project. We also believe that CAO should carefully evaluate the willingness and ability to engage in productive problem solving of the senior management of any company where the CAO is involved in a problem-solving intervention.*

## **G: ADDING VALUE**

The IFC and MIGA are expected by their private-sector clients to bring substantial added value to the deal when they—the IFC and MIGA—are partners; and the IFC and MIGA state that the WBG’s environmental and social policies, guidelines, procedures, and broad global experience achieve this. The argument accepted by both the WBG and its clients is that WBG participation helps manage the range of risks likely to be encountered more effectively, and that the WBG can better identify opportunities to produce sounder projects by bringing in best practices when dealing with environmental and social issues.

Even so, projects raise sensitive issues; and disagreements may develop, particularly when there is large-scale disruption of existing ecological and social patterns. Sometimes a feasible solution cannot be found, and the project could be rejected. In cases where early rejection does not occur but problems are anticipated, conditionalities and trade-offs are proposed to produce a more feasible solution, which could be different from the initial concept. Nevertheless, tensions and poor communications may ripen into disputes or even violent protest that must be resolved. Unanticipated consequences and impacts typically develop. The problem of major unintended and unanticipated consequences can be reduced by high-quality environmental and social analysis of project options and high-quality project supervision.

It is the CAO’s view—and the ERT concurs—that its role is partially preventive, but always accountable to affected communities. It is the responsibility of IFC and MIGA management and specialists to prevent and settle disputes and, more broadly, to assure that an equitable balance is maintained among often competing goals, not by maximizing financial return at the expense of lip service to corporate social responsibility nor by maximizing social development goals at the expense of disregarding fiscal reality. Life is a series of tradeoffs.

## **H: TENSIONS**

The basic tensions between development, sustainability, and sound financial investment must, in the first instance, be a matter of IFC and MIGA senior management policy,

since they choose how any institution will do business. But the elaboration of policy and its implementation is worked out on a case-by-case basis by staff. It has been emphasized to the ERT by a variety of parties that sound projects and desirable development outcomes, advocated by all, depend on how Safeguard Policies and guidelines are interpreted, applied, and supervised more than on their mere existence.

Further, the inherent external tensions that the CAO must balance in each of its activities are paralleled by inherent tensions among its three roles. Both independence and objectivity must be maintained by the ombudsman and compliance offices and by those in CAO who provide advice to senior management.

The issue that this report addresses is whether the genius of creating a flexible mechanism designed to help work out tensions among competing goals on IFC and MIGA projects can be compatible with both the necessary enforcement of environmental and social Safeguard Policies and the prevention of violations of WBG policy and procedures and internationally accepted norms.

In the next three chapters, we analyze our findings about the performance and the perceptions of each of the CAO's roles.

## **CHAPTER III**

### **THE OMBUDSMAN ROLE**

Described most frequently as a problem-solving mechanism, the contours of what an ombudsman office does are actually quite flexible. As the Compliance Advisor/Ombudsman stated in the IFC's 2000 Annual Report:

One of the emphases which came out of our six-month long consultation on the Guidelines with all stakeholders was that we focus on solving problems rather than just attaching blame. The reality is that there is often a huge gap between the resources, power and cultures of the private sector companies which undertake IFC/MIGA projects and the communities which are impacted by them. One of our basic jobs is to help IFC and/or MIGA to bridge that gap. So we seek to resolve conflicts rather than point fingers.

#### **A: WHAT IS AN OMBUDSMAN?**

The Swedish Ombudsman, in its governmental role, has a long history. Created in 1809, it is the pioneer, although its extensive powers are far beyond the ombudsman functions in most other government departments and private institutions today. In Sweden, the Chief Parliamentary Ombudsman has jurisdiction to inspect and review all government departments, courts, prisons, police and military. The office informs the legislature of gaps in laws and regulations as well as administrative problems found in the course of an investigation. Sweden has a number of other specific ombudsman offices, such as those dealing with equal pay for men and women, consumer rights, and a children's ombudsman. It is a widely used and familiar function.

In the United States, ombudsman offices are widely found in universities, industry, the media, and business. Flexibility and problem solving are its dominant characteristics. Associations exist to provide guidance and for ombudsman offices to exchange views. For example, there is The Ombudsman Association (TOA) and the United States Ombudsman Association (USOA). While some guidelines are provided, they are very broad, with the strongest emphasis on independence and the freedom to investigate. Investigations are informal. The ombudsman umbrella is very wide, and procedures vary greatly. With some ombudsman offices, investigations may not depend on a specific complaint. Confidentiality may be maintained or waived by a complainant, depending upon the nature of the institution and complaints.

The CAO ombudsman function is in line with the principles, goals, and accepted practice of such offices generally. The CAO ombudsman utilizes a wide range of techniques and tools, such as mediation and training, the “mesa” associated with the Yanacocha project in Peru and other culturally accepted forms of dispute settlement to achieve its goals of solving problems with imagination and creativity.



## **B: OVERALL FINDINGS**

In general, the ombudsman function receives both high praise and some criticism. From the point of view of a wide range of IFC and MIGA personnel we interviewed, as well as our discussions with business executives and field visits, the ombudsman role has been successful. Senior management in IFC and MIGA especially, has expressed their view that the ombudsman office has operated as it was intended. The ombudsman role's focus on problem solving is reasonable, as is its focus on affected communities and local groups where they exist. The office is notable for the high esteem and respect for its staff and, in general, for the fairness and independence with which it operates. NGOs, particularly those involved in specific complaints, have been more critical, although at the senior international NGO level the ERT has also heard praise and respect for the CAO's ombudsman function.

The private sector's awareness of the CAO's existence appears to be minimal beyond those companies involved with complaints. The CAO, along with IFC, MIGA, and project sponsors, should ensure that affected communities are sufficiently aware of the CAO's ombudsman role.

Some of the criticism we have heard is constructive, with suggestions made for improvement. Occasionally, the desire for an IP has been voiced, but not recently by either business or IFC or MIGA management. When pressed, NGOs who are asking for the "teeth" of an inspection panel in fact want process certainty, even though they admit that the adjudicative outcome of the IP in some cases may give little satisfaction on the ground. "It would represent a victory—a moral vindication" is the gist of their comments. Some look forward to the CAO's compliance audit process to provide the same satisfaction, because they would like to see both ombudsman flexibility and audit determinacy.

Some dissatisfaction is to be expected. Success in any mediative process is rarely marked by uniform praise by the parties. In most negotiated settlements, parties are both relieved and disappointed. The criteria for success in highly charged situations are likely to depend on a balancing of the interests of all affected parties, and the long-term benefits to investors, operators, employees, and affected communities. The satisfaction of investors that a project can continue to operate, even if some increased costs and delays are incurred, and community acceptance of more limited benefits or compensation than previously hoped for, may be the most that can be expected by way of success. There is growing appreciation of the fact that risks are better managed and opportunities are identified when a problem-solving effort succeeds.

## **C: CASELOAD**

In three years of operation, the CAO ombudsman office has been involved in 13 cases related to eight different projects—the Antamina and Yanacocha mining projects in Peru, the Bulyanhulu mine in Tanzania, dam projects in Chile (Pangue) and Uganda (Bujagali), an oil-related project in Nigeria, and industrial projects in Jordan and in India. Six cases

have been listed as either “resolved” or closed. Two are currently in mediation. Two complaints were rejected by the CAO after investigation. There are three complaints pending. This may seem a limited caseload, but the labor intensity of dealing with highly complex environmental and social issues could be a task of several years of nearly full-time effort.

We believe that the limited ombudsman staff has been particularly overextended in the last year. We have heard considerable dissatisfaction both from within IFC and MIGA and from NGOs that responsiveness is slow. Yet as Table 1 indicates, there is little delay in investigations. But there was dissatisfaction in the cases of Bulyanhulu and Pangue II when complaint assessments took many months to complete. Other priorities in the CAO Office, such as the Review of IFC’s Safeguard Policies (January 2003), may have caused the work overload that led to delays.

The process of working out a settlement may be inherently slow, as parties adjust their expectations, and strands of the controversy are separated out and handled one-by-one. But the issue is not so much the duration of the mediative process itself, but the time it takes to make careful responses to specific issues, not only in the complaint, but also in the voluminous correspondence that occurs thereafter. The attention given to an issue may not be fully understood or appreciated because of the delay in responding to comments or even to the complaint itself; this was the case with Bulyanhulu. In some cases, time delays have been the result of complainants’ failure to respond.

The recent additional ombudsman staff appointment will help ease time pressures, depending upon the number of new complaints received. It remains important that the CAO leverage its resources and capabilities to ensure that its personnel assume and discharge their responsibilities and set priorities so that timelines become predictable and reliable.

***Recommendation 2:*** *Firm timelines for responses to complaints should be maintained by the CAO, and they should be communicated to complainants. This should include a time period for launching an investigation, a time period for a complaint assessment report, and timely responses to parties’ further communications. These timelines should be worked out with complainants on a case-by-case basis.*

**TABLE 1**  
**COMPLAINTS TIMETABLE**

	<b>Complaint Date</b>	<b>Acceptance Date</b>	<b>First Site Investigation Date</b>	<b>Assessment Report Date</b>	<b>Closing Date</b>	<b>Complaint Status</b>	<b>Project Status</b>
<b>Pangue 1</b>	5-Aug-00	19-Sep-00	no site visit deemed necessary	mediation started immediately	14-Aug-01	closed	on-going without IFC
<b>Antamina</b>	1-Nov-00	without delay	20-Feb-01	NOT found	end June -03	closed	on-going with MIGA
<b>Yanacocha-Choropampa</b>	30-Nov-00	13-Feb-01	25-Feb-01	1-Jul-01	*	on-going mediation	on-going with IFC
<b>Jordan Gateway 2</b>	15-Jan-01	between Jan 15 and Jan 30, 2001	30-Jan-01	5-Feb-01	28-Feb-01	closed	on-going with IFC
<b>Yanacocha FEROCAFENOP</b>	21-Mar-01	6-Apr-01	25-Feb-01	1-Jul-01	*	on-going mediation	on-going with IFC
<b>Niger Delta</b>	19-Jun-01	6-Aug-01	12-Aug-01	30-Aug-01	6-Jun-03	closed	on hold
<b>Bujagali 2</b>	19-Jun-01	28-Jun-01	1-Jul-01	1-Sep-01	*	pending	on hold
<b>Bujagali 3</b>	25-Jul-01	25-Jul-01	no visit	no report	6-Dec-01	closed	on hold
<b>Bulyanhulu</b>	15-Jan-02	28-Jan-02	21-Mar-02	21-Oct-02	2-Jan-03	closed	on-going with MIGA
<b>Chemplast</b>	19-Jun-02	25-Jun-02	no visit yet	not yet assessed	*	pending	on hold
<b>Pangue 2</b>	2-Jul-02	3-Jul-02	30-Nov-02	1-May-03	*	pending	on-going without IFC

**Notes:**

- The Bujagali 1 and the Jordan Gateway 1 complaints were rejected by the CAO.
- First site investigation date for Yanacocha FEROCAFENOP took place before complaint was received because the CAO knew a complaint was about to be submitted.

## **D: RESPONSIVENESS TO COMPLAINTS**

Response to a complaint must not only be timely, but also must address every point in the complaint, unless the complaint is dismissed for lack of jurisdiction or for failure to adhere to the operational guidelines. In such cases, the CAO can work in a flexible way with complainants to suggest how they can come forward with a valid complaint as on Jordan Gateway. Bulyanhulu was complicated because other more dramatic issues than those included in the complaint were raised during interviews and meetings in the field, and complainants made their accusations public. Distinctions can be made between an assessment of the complaint itself and facts that emerge in the process of investigation. Both can be appropriately dealt with in the complaint assessment. In Bulyanhulu, however, the complaint assessment dealt with other allegations made in the field and did not deal fully with the issues in the complaint. However, this is not the norm for the CAO. The earlier Bujagali 2 and the now-complete Pangue 2 assessment show care in responding to the complaint. We make the recommendation below to underscore the importance of this.

***Recommendation 3:*** *Complaint assessment must be in a form that is responsive to the complaint, and covers all issues raised by the complaint. Additional issues uncovered by the investigation may be addressed but distinguished from the specific reply to issues complainants have raised. Unresponsiveness by parties to either communications by the CAO or to a field investigation should be a factor in dismissing a case.*

## **E: INVESTIGATION OF COMPLAINTS**

It is very difficult to trace the process of a CAO ombudsman investigation, except by reading the complaint assessment. No complete record of the investigation is kept in the CAO files, either paper or electronic. Notes are kept by ombudsman officers conducting the investigation. We were able to find only one case in which a schedule of appointments was listed.

There seems to be no formal interview protocol, but the process does appear to follow certain patterns that lead to a full and unbiased assessment. The CAO representative goes to the field and talks to complainants, whom they may or may not have seen previously in Washington. They meet with the sponsor, and request information and documents. They question the IFC or MIGA project team and discuss issues with them. They study project documents. The investigation, as in all ombudsman operations, is not designed to be formal—quite the opposite, and has a purpose broader than fact-finding alone. It is designed also to bring trust to the process, and to pursue avenues of settlement and project improvement. New staff are inducted into the investigation methods by observation and “second teaming.” More complete file notes should be kept in case the fairness or completeness of the investigation is challenged, or if there is some need to change CAO staff or delegate part of the ongoing work.

***Recommendation 4:*** *CAO should prepare a simple investigation protocol and keep confidential notes available to ombudsman staff on all interviews and documents used in a case.*

Many cases require such intensive and extensive ombudsman involvement that they tend to tie up the limited staff for so much time that other matters cannot be handled expeditiously. In such cases, the office should have a roster of outside mediators, facilitators, and trainers to permit the CAO to exercise only a supervisory role. In complex projects, trouble may be avoided by the use of a “life-of-the-project mediator” by IFC and MIGA from the time of project initiation. This will be an experienced facilitator or mediator, preferably located in an area not far from the site of the project. That expert would be appointed after initial meetings of all the stakeholders in a multi-stakeholder dialogue (MSD) where problems can be identified and mechanisms developed to cope with them as they arise.

In Yanacocha, a variety of mediative techniques have been used effectively, and outside mediators have been employed and training utilized to increase capacity of local participants. Ombudsman interventions such as at Yanacocha can be productive in improving environmental and social outcomes where a suitable dispute-resolution was not available. Focus should be on ensuring the development of participants’ capacity to engage in productive dialog and making real progress in resolving complaint-related problems and underlying issues.

***Recommendation 5:*** *In complex projects, the CAO should recommend the use of a multi-stakeholder dialog (MSD) process to IFC and MIGA as a matter of preventive advice and, if the parties agree, a life-of-the-project mediator. This can save costs and even projects in the long run. With experience, this should be done as a matter of course, without pressure from the CAO. The CAO may provide training for local mediators and capacity building if circumstances warrant. This will ease some excess caseload on the CAO.*

These processes will be facilitated and operate more successfully if the CAO prepares a basic model for MSD, to be adjusted to the circumstances of each case, and uses outside mediators to help train and work with local mediators as it has done at Yanacocha. Such steps will also relieve the time burden on the CAO.

## **F: COMMUNICATING PROJECT LEARNING**

It was often stated to us in the course of interviews that complaints yield a great deal of information about practices and misinterpretations of policies that lead to difficult project problems. The President, in his December 2002 letter, specifically referred to advice based upon “trends, issues and policy concerns across IFC and MIGA.” The ERT believes this is very important. Experience from one project can provide “early warning” for another. We have observed that some formal advice is given, no doubt based in part on the general experience of the CAO office—for example, the recommendation by the CAO for an international advisory group for the Chad-Cameroon pipeline. As discussed

in Chapter IV, the large CAO studies such as the Review of IFC's Safeguard Policies (January 2003) and the Extractive Industries Review contribution (Extracting Sustainable Advantage?—A Review of How Sustainability Issues Have Been Dealt with in Recent IFC and MIGA Extractive Industries Projects, April 2003) were in part based upon, and stimulated by, case experience. But we conclude that IFC management would appreciate a more systematic and pointed approach by the CAO in providing “lessons learned” to investors and to those IFC and MIGA managers and units responsible for social and environmental policies and for evaluating projects. This is consistent with plans the CAO made after its 2002 strategy retreat.

***Recommendation 6:*** *The ERT recommends that the CAO develop a systematic program to feed “lessons learned” from its handling of complaints back into the system. Its approach can include briefings, presentations, or memoranda designed so that IFC and MIGA practices that may have contributed to the problem will not be repeated.*

#### **G. PROJECTS INVOLVING IBRD/IDA AND IFC AND/OR MIGA**

The ERT has heard that at least one project, Bujagali, where both the IBRD/IDA and IFC have been involved in financing, has presented a problem of potential “forum-shopping” by a complainant. Multiple funding, and the possibility of choice to bring a complaint to the CAO or to the IP, is likely to recur from time to time, given the differences between the accountability and recourse mechanisms of the two organizations. It is difficult to propose a solution to this problem. Engaging in any mediation is voluntary, and consent can be withdrawn at any time. Likewise, it would be improper to interfere with the IP process if a complainant prefers to go that route. Therefore, the most that the WBG can do, so long as there are different mechanisms, is to ensure that appropriate communication is ongoing about the processes underway or in abeyance, without compromising the independence or confidentiality of either process.

## **CHAPTER IV**

### **THE ADVISORY ROLE**

#### **A: EARLY EXPECTATIONS AND EVOLUTION OF CAO ADVISORY ROLE**

Three of the six activities in the CAO's original TOR concern the advisory role. When the CAO was created, IFC and MIGA management wanted two types of advice: broad guidance on environmental and social policies, procedures, guidelines, and systems, and also advice on controversial or sensitive individual projects and project issues from the earliest stages of project review. This advice was to be for the WBG President, IFC and MIGA management, and environmental and social staff and included a day-to-day advisory role.

In the period from CAO's formation on through 2002, there was an evolution in the nature of the CAO advisory role. Early on, CAO had regular meetings with the environmental and social review staffs of IFC and MIGA to discuss project-specific issues as projects moved through the pipeline. Advice was divided between "informal" project-specific advice and "formal" policy- and process-oriented advice. Later, CAO indicated it would not give formal advice on specific projects in order not to prejudice its possible involvement in a project as either ombudsman or compliance auditor. Subsequently, the CAO decided and announced formally that it simply does not give project-specific advice at all to avoid any perceived or potential internal conflict. This evolution was the result of the dynamic processes surrounding the overall evolution of the entire CAO Office, as it implemented programs, engaged with IFC and MIGA management and staff, listened to civil society and affected communities, gained experience, and observed results.

In December 2002, this evolution in practice was further formalized. The President formally revised and clarified the CAO's advisory role to protect CAO's independence, indicating that the advice would become more formal and be increasingly applied strategically to trends, issues, and policy concerns across IFC and/or MIGA activities and act as an early-warning system. The CAO would no longer give project-specific advice.

#### **B: PROJECT-SPECIFIC ADVICE**

The ERT has given careful consideration to what not providing project-specific advice means in practice. Some IFC and MIGA managers and specialists are eager to get early intelligence from the CAO as to how projects might be received "in the field." CAO staff state they can have informal "conversations" with CES, investment officers, and management. But when does that shade into project-specific advice? We believe it is a fine line, and there is not always clarity within the CAO office about when the line is crossed.

We understand the necessity of avoiding potential conflicts concerning future complaints and also the desirability of early-warning advice that may be uniquely available from the CAO. However, responsibilities in IFC in areas such as advice provision and external contacts with civil society seem unclear and overlapping, to IFC and MIGA staff as well as those outside the institution.

***Recommendation 7:*** *The ERT believes that specific pre-complaint project-specific conversations with and advice from the CAO, in the absence of any ombudsman or compliance trigger, must be very limited for two compelling reasons. The CAO must avoid even the appearance of conflict that could call into question its ability to properly execute its ombudsman or compliance roles. This is also the CAO's view. In addition, the CAO's resources are limited and not intended to provide basic project assessment and project supervision services.*

## **C: CLARIFICATION OF PROCEDURES**

A theme that we have heard from practically everyone with whom we met in IFC and MIGA is the desire for clarification and improved communication of the CAO's procedures and guidelines, including those covering the advisory role. In several instances, it was stated that certain procedures were clearly laid out by the CAO and had been made available to internal parties, sometimes on several occasions, but had not been taken on board. In any case, with the changes within and around IFC and MIGA and the great amount of change underway associated with the CAO's continuing evolution, we believe the CAO should evaluate the coverage and clarity of its procedures, protocols, and communications with its key internal and external stakeholders. We understand this is consistent with the recommendations of communications consultants recently retained by the CAO.

For example, in our review we encountered many instances where there was confusion as to whether a particular piece of CAO work—for example, the Extractive Industries Review report (Extracting Sustainable Advantage?, April 2003)—was a compliance audit or formal advice. In all cases, it was classified by the CAO as advice. We support the CAO's plans to produce internal operating guidance on the advisory role, a companion to the compliance and ombudsman guidelines available for IFC and MIGA staff (e.g. How to Work with the CAO: The Ombudsman Role, undated), and also to produce a publicly available document on its advisory work.

The President's clarification that the CAO should focus more on strategic issues and trends as opposed to project-specific advice has been taken to mean social and environmental issues that are both fundamental and far-reaching in the IFC's and MIGA's operations. These might, in the future, include concerns with sustainability, human rights, and compliance with international treaties.

When practice changes, it is essential for this to be reflected in updated guidelines and updates of the CAO's TOR. The ERT also believes that the CAO should, in its internal and external guidance, clarify what it can and cannot do in the area of advice. This



would help the CAO manage its caseload and focus on its highest-impact advisory tasks. This guidance should be available to internal and external stakeholders via the CAO web site and through printed documents.

***Recommendation 8:*** *The ERT endorses the WBG President’s advisory role clarification that the CAO should focus more on strategic issues and trends as opposed to project-specific advice and also supports his call for clear guidance concerning the advisory role. We recommend that the CAO clarify what sort of advice they can provide and that all CAO guidance should reflect current practice in the CAO and be made available to relevant groups.*

#### **D: VALUE OF ADVICE TO INTERNAL PLAYERS AND CIVIL SOCIETY**

Different stakeholders value different aspects of the CAO’s services, including advice. As stated to us, senior management and some middle management, and most environmental and social-development specialists, seem to particularly value whatever informal project-specific advice they can get from the CAO as an early warning. Some investment teams attach great value to the CAO as a source of intelligence on the affected communities and those who are their advocates. However, some on the investment side reportedly do not value the CAO’s advice. In the ERT’s view, this seems to have little to do with the utility of the advice, but much to do with the different views among individuals, teams, and/or departments concerning accountability, transparency, learning, and change.

IFC and MIGA management and specialists generally consider major reviews reported on by the CAO in the past year to be formal advice. Most who expressed views on these said they were supportive of the results and recommendations, but some took exception in varying degrees—strongly in some instances—to the process used. This certainly applies to views on the Review of IFC’s Safeguard Policies (January 2003) where the CAO made the draft report public at the same time that it was made available to IFC management for comment. The CAO did indicate their intent to management with regard to this on several occasions. Based on concerns about the CAO’s policy of making formal advice public, prior to receipt of management’s comments, MIGA is no longer inclined to request formal advice from the CAO.

Our work showed that NGOs and other civil society representatives are generally comfortable with the CAO’s advisory role. NGOs appreciate the considerable access they have to the CAO and CAO staff. NGOs are treated with respect by the CAO, and their views and advice are viewed as valuable by the CAO.

NGOs especially value the opportunities afforded them to see and, in some instances, comment on draft formal written advice being prepared by the CAO. NGOs view this as important concrete evidence of increased transparency on substantive matters. General advice, lessons learned, and feedback from the CAO to IFC and MIGA vis-à-vis issues, programs, and sectors—as well as complaint assessments—are generally viewed as constructive; and the ERT agrees.

## **E: PREVENTIVE AND UPSTREAM ADVICE**

We believe the provision and proper use of sound advice—from the CAO as well as the other qualified and accountable units within IFC and MIGA, including the environmental and social specialists—can improve outcomes better if it is available upstream in the project cycle. Prevention or avoidance of unnecessary environmental and social development problems or performance shortfalls will reduce compliance problems for IFC and MIGA and avoid future complaints to the CAO. But given the fact that the CAO cannot provide project-specific advice in advance of a complaint without compromising its independence as an ombudsman or compliance auditor, how is this to be accomplished?

Sound project-specific and more general advice must be sought from appropriate parties and productively used “upstream.” In addition, we believe there are high-risk types of projects where the likelihood that conflicts will arise can be anticipated from the outset, such as major regional pipelines. For such projects, we believe credible life-of-the-project dispute resolution capacity should be provided from the beginning, and a plan for resolving disputes developed at the beginning as part of the assessment and approval process.

***Recommendation 9:** We recommend that, as the CAO’s experience in supporting the start-up of sustainable and successful mediation and other on-the-ground problem-solving tools grows, the CAO should be a source of generic advice on value-added preventive measures, based on its ombudsman and compliance work. (See also Recommendation 6.)*

## **F. LESSONS LEARNED**

As also discussed in Chapter III, Section F above, it would be surprising if there were not some very important organizational-growth lessons to be learned from past and on-going difficult projects where the CAO has been involved. The ERT is convinced that an important part of the CAO’s current advisory role is designed to support healthy engagement, internal debate, and learning on difficult issues. We believe it is a proper part of the CAO’s advisory role. As a result of the CAO’s work in its ombudsman and compliance audit roles, as well as its engagement with civil society, it is in a good position to “package” lessons learned from on-going and past IFC and MIGA projects to greatly benefit the institution and its private-sector clients. This should be in addition to lessons-learned work of units in IFC and MIGA that are accountable for performance.

The ERT believes that the CAO should encourage and participate in training, and other methods of raising awareness, for key internal audiences, including management and specialists, so that these groups can do their own jobs better and not look to CAO to fill the “responsibility” and “accountability” gaps that seem so prevalent to us. By helping those who interpret policies and guidelines, shape projects, and make decisions become more effective in meeting IFC’s and MIGA’s environmental and social development goals, the CAO will save themselves a lot of time and energy in the long term.

Change and learning with respect to uncomfortable or painful issues are seldom sought out and embraced by any large institution. The only question is: will the lessons be taken on board for the future welfare of the institutions, their private-sector clients, and the people, communities, and environment affected by IFC and MIGA projects? Or will they be ignored, and problems be allowed to escalate?

Based on our meetings, the ERT believes that the President and IFC and MIGA senior management expect the institutions to learn and continuously improve their capacity to enhance social development and environmental outcomes on the ground.

***Recommendation 10:*** *We recommend that lessons learned, principally from the CAO's ombudsman and compliance roles, be fed back to IFC and MIGA by the CAO in a systematic manner, so that IFC and MIGA practices and project outcomes will continuously improve.*

## **G: TRANSPARENCY**

We commend the CAO for taking a strong and healthy position on making public those reports and that advice that is appropriate for full public disclosure—their “presumption of maximum transparency.” The ERT believes any actions—and even appearances—of a culture that over-emphasizes secrecy concerning environmental and social development impact is counter-productive, especially in an institution, such as the WBG, where transparency, openness, effective engagement with civil society, sustainable development, trust, and respect are valued and necessary for mission success.

In general, it would be appropriate for the CAO to request management's views before finalizing advisory work. We are certainly not advocating that management be invited to review the draft report and “negotiate out” wording, findings, conclusions, and recommendations more acceptable to management. In fact, that would preclude credibility.

The ERT also believes that the CAO should carefully consider on a case-by-case basis the implications and consequences of public disclosure and of the timing and amount of comment and review by management and other stakeholders in order to ensure that each decision contributes best to sound projects and sufficiently good environmental and social development outcomes on the ground. In other words, when it promotes the CAO's mission, transparency is appropriate.

***Recommendation 11:*** *We recommend that, when the CAO prepares formal advice on a program, sector, or major issue, the CAO request management's views and consider these prior to finalization and publication with respect to any errors or omissions identified as well as perspectives on wording that could serve to improve project soundness and environmental and social development results on the ground.*

## H: CRITERIA FOR SELECTING ADVISORY TASKS

There are many advisory activities in which the CAO could engage given their mandate. The staff are few in number, and the CAO budget is finite. For every activity that is pursued, the opportunity cost must be identified and considered, and especially so for large-scale advisory tasks. To maximize beneficial impacts, the CAO—like any other effective unit or team—must carefully prioritize and focus its limited resources on the most important opportunities. We believe appropriate management attention must consistently be given to the question of whether the CAO has adequate resources to perform its work to produce a high-quality product. The CAO cannot be all things to all people. The ERT believes CAO’s mission is so important that it must focus on the highest-payoff strategic tasks in each of its three roles.

***Recommendation 12:*** *We recommend that the framework for guidelines on accepting advisory assignments for the CAO be four-fold: that clear rules regarding advisory work be drawn up and be well communicated to IFC and MIGA staff; that the CAO assure itself that it is the appropriate unit within IFC and MIGA, or even the World Bank Group, to do any particular advisory task which it is asked to perform; that it assure itself that adequate resources are available; and that the task is clearly linked to the CAO’s ombudsman and/or compliance roles. We further recommend that the CAO carefully track resources expended in advisory interventions—both office-based and those in the field, along with an objective assessment of results and firm progress toward goals including evaluation of progress and contributions of any partners—to ensure it focuses on producing the highest payoff in improved projects and outcomes on the ground.*

## **CHAPTER V**

### **THE COMPLIANCE ROLE**

#### **A: GENESIS OF THE COMPLIANCE ROLE**

In the early months of 1999, an “Integrated Accountability Mechanism” for the IFC and MIGA was under discussion. Its functions would have fallen into two broad categories—an advisory role and a way of addressing complaints from adversely affected parties. The mechanism was to be called the Compliance Advisor/Ombudsman—the forward slash signified the distinction between the two roles. After the CAO had had the opportunity to address a complaint, complaining parties would then have had recourse to the IP of the WB if the complainant asserted that IFC or MIGA had failed to comply with their environmental and social policies and/or significant procedural requirements. Compliance review by the IP would have given due respect to the findings and conclusions of the CAO.

The proposal that the IP should be responsible for the compliance role for IFC and MIGA projects was not adopted. Instead, early in 2000, a paper presented to CODE by the CAO’s newly appointed management referred to the three functions of the CAO—ombudsman, compliance, and adviser. Indeed, the CAO’s TOR clarifies that one of the roles of the CAO is “to supervise audits of IFC’s and MIGA’s overall environmental and social performance and sensitive projects, in order to ensure ex-post compliance with policies, guidelines, and procedures.” As stated in the CAO’s Operational Guidelines (April 2000), “compliance audits may be triggered by Ombudsman investigations or undertaken on a case-by-case basis at the request of management or on the CAO’s own initiative.”

#### **B: CURRENT STATUS OF COMPLIANCE**

It is evident that the inclusion of the compliance audit function within the CAO’s responsibilities was not originally envisaged. Subsequent events have reinforced the view that a compliance role might sit somewhat uncomfortably alongside the CAO’s other functions. To date, only one project-specific piece of work has been undertaken by the CAO which is audit related, a February 2001 “preliminary audit review” of a copper mine in Central Peru (Preliminary Audit Review of MIGA in Relation to Compania Minera Antamina S.A.—Public Report, February 2001). However, this was confined to a desk study of a limited number of the issues associated with the Antamina mine and does not represent a suitable precedent as to the way that the CAO should undertake its compliance audit work in the future. Subsequently, the CAO has produced Guidance on Compliance Auditing and Enhancing Outcomes (June 2002) and a guide for IFC and MIGA staff on the compliance audit role (How to Work with the CAO: The Compliance Audit Role, undated) to clarify its approach to compliance auditing.

Some of the advisory work carried out by the CAO, notably the review of the application of MIGA's environmental and social review procedures (Insuring Responsible Investments?—A Review of the Application of MIGA's Environmental and Social Review Procedures, December 2002) and the review of how sustainability issues have been dealt with in recent IFC and MIGA extractive industries projects (Extracting Sustainable Advantage?, April 2003), could be seen as systemic audits of overall environmental and social performance; but they are regarded by the CAO as "advice" and have, accordingly, been addressed in Chapter IV above.

The ERT understands that there are, essentially, four reasons why so few compliance audits have been undertaken by the CAO. First, many of the complaints received by the CAO do not, in fact, raise compliance issues—rather, they are focused on simply stopping what the complainants believe is an inappropriate project for IFC/MIGA financing or they are concerned with specific management and implementation problems on projects where the IFC or MIGA have respected their own rules. Nevertheless, the ERT has identified instances, such as Jordan Gateway, Niger Delta, and, perhaps Bujagali, where the ombudsman function could usefully have given rise to a compliance investigation but where no CAO audit has taken place. Second, requests for compliance audits have not, to date, been made by the management of IFC nor MIGA. Third, the CAO has not always had the capacity to undertake or supervise compliance audits; this has been rectified by the appointment, at the beginning of 2003, of a member of staff who now has the responsibility for this area. The fourth reason—that compliance audits will no longer be undertaken if the concern is identified by the CAO alone—is discussed in the following section.

### **C: SHOULD THE CAO INITIATE COMPLIANCE AUDITS?**

The CAO finalized its Guidance on Compliance Auditing and Enhancing Outcomes in June 2002. Figure 1 in that document, a schematic diagram of the compliance audit process, shows that a compliance audit can be undertaken as a result of a request from senior management, through a complaint made to the ombudsman, or as a result of an issue identified by the CAO. However, at the CAO's retreat in August 2002, there was a discussion of the appropriate "triggers" for a CAO compliance audit.

In October 2002 the CAO wrote to the EVPs of the IFC and MIGA saying that, although the CAO's guidance had "originally made provision for the CAO to initiate an audit in response to more general project-related concerns," this option would now be removed to narrow "the focus to be more directly supportive of the Ombudsman's role" and to reinforce "the impartiality of the audit process." On December 12, 2002, the President of the WBG, in a note to the EVPs of the IFC and MIGA, clarified that the "activities undertaken under the Compliance Role are to ensure that a compliance audit is conducted to enhance a project and the development outcomes at the project level." He also stated that the Compliance Role "is not a wide and free ranging internal audit system."

The ERT has carefully considered the justification for restricting the compliance audit "triggers" but believes that the removal of the CAO self-generated audit from the

mechanisms open to the CAO is too limiting. The ERT has not seen evidence that senior management will generate a meaningful number of requests for the CAO to undertake compliance audits. This means that most, if not all, CAO compliance audits will stem from complaints. Most complaints to date have not been directly compliance-related. Although the CAO does not require that compliance be raised as an issue in a complaint for the CAO to undertake a related compliance audit, the ERT considers that the current position is unsatisfactory. One of the most powerful tools available to the CAO is, to some extent, dependent on the skills of those who submit complaints. Representatives of international NGOs have expressed considerable frustration to the ERT with respect to this situation. They believe, and the ERT concurs, that the CAO should not be limited in this way.

For example, there may be evidence that the IFC or MIGA have not complied with World Bank Safeguard Policies on habitats or on forests on a particular project and that an area of great biological or botanical importance is thereby threatened. A CAO compliance audit can only be triggered either if this is an issue of sufficient concern to locally affected people for them to be prepared to submit a complaint to the CAO, and this may not be the case, or if IFC and MIGA senior management were to request an audit on the basis of representations made to them by members of civil society.

Some issues relating, for example, to the Safeguard Policies on pest management or international waters may, on some occasions, be too complex and diffuse for a local complaint to be readily generated. Yet the issue may be of legitimate importance or concern to civil society representatives. Without a complaint brought to the CAO by locally affected people, the only way for a CAO compliance audit to be triggered in this case would be via a request from senior management, following representations from concerned but not locally affected people.

In other cases, a complaint related to a social issue, such as involuntary resettlement, cultural properties, or indigenous peoples, may be generated too late to materially assist people on the ground, whereas a CAO examination of IFC or MIGA compliance as a matter of urgency could, in principle, help to identify issues and constructive ways forward. This could, for example, occur where a reservoir will soon be filled and there are still involuntary resettlement issues to be resolved, or where a culturally important site could soon be destroyed by a mine expansion.

A fourth case would be where a private-sector client is in non-compliance with the covenants agreed with IFC or MIGA, but where there are representations made that the covenants are not being effectively enforced by IFC or MIGA.

The ERT recognizes that CAO self-generated audits should only be initiated if a stringent set of criteria are satisfied, and the CAO should be prepared to clearly justify its decision to undertake such work. The CAO must ensure that it is not open to accusations of “fishing” for audit work or of being unclear regarding its criteria for the selection of projects to be audited. The ERT has encountered criticisms of the CAO that its criteria and procedures in some areas are unclear or *ad hoc*. This issue is addressed elsewhere in this report.

Compliance auditing is an area where it is essential that criteria and procedures are not vague either in documentation or in practice. Consequently, the CAO should develop a set of conditions that need to be satisfied if an audit is to be generated by the CAO. These should include, and even go beyond, the existing audit-initiation tests. Additional tests should relate, as indicated above, to the likelihood of CAO's receiving a complaint—for example, where the compliance issue is not necessarily of concern to local people or where the concerns are complex and/or diffuse—to the urgency of undertaking a compliance audit, or to cases where there are representations made that covenants are not being effectively enforced by IFC or MIGA.

**Recommendation 13:** *The ERT recommends that the CAO's ability to self-initiate compliance audits be reinstated, together with sufficient additional tests, related to the initiation of such audits, to satisfy stringent requirements of fairness and transparency.*

#### **D: DISCLOSING INFORMATION ABOUT THE COMPLIANCE AUDIT FUNCTION**

At present, the prospect of the CAO's undertaking a compliance audit of IFC's or MIGA's adherence to their environmental and social rules on a particular project does not appear to be regularly included in the institutions' information material, in discussions with potential clients, nor in legal agreements. The ERT is surprised that, at the least, the implications of auditing have not been specifically addressed to date in legal agreements, although it is understood that steps are being taken to address this issue.

**Recommendation 14:** *The ERT recommends that reference to the CAO's various roles, including its compliance audit function, be included in all appropriate IFC and MIGA documentation, that the CAO's roles be raised with potential clients at the earliest appropriate opportunity, and that suitable wording related to the CAO's compliance audit function be developed for use in legal documentation.*

#### **E: SCOPE OF COMPLIANCE AUDITS**

The ERT has considered the appropriate limits that should be placed on the scope of the CAO's compliance auditing work. At present, audits are restricted to assessing the application of the IFC's and MIGA's agreed environmental and social policies, guidelines, and procedures; host country legal and regulatory requirements; and specific conditionality applied to a loan or guarantee. The ERT is comfortable with this and recommends no changes.

The ERT recognizes that meeting basic environmental and social policies may not achieve all of IFC/MIGA objectives. In order to achieve these objectives, higher levels of performance may be required. However, the CAO must ensure that it does not use its auditing work to push forward the frontiers of these institutions' social and environmental objectives and activities—these are properly addressed first by IFC and MIGA management, and second through the CAO's advisory function. Since IFC and MIGA management is committed to continuous improvement, it is they who should be



accountable for raising standards in response to recognized needs and the institutions' public commitments.

#### **F: THE MECHANICS OF THE CAO'S COMPLIANCE AUDIT ROLE**

Consideration has been given by the ERT to the mechanics of the compliance audit function within the CAO. Currently, it can be anticipated that most audits will develop out of ombudsman activities. It is possible that this ombudsman work could be relevant to a subsequent compliance audit. Consequently, it is essential that decisions relating to the commissioning of a compliance audit on which an ombudsman assessment has been undertaken should not be made by the member of the CAO office responsible for the ombudsman work. Normally, this decision will be made by the Compliance Advisor/Ombudsman herself. However, to avoid any perception of conflict of interest, the Compliance Advisor/Ombudsman should not have the responsibility for commissioning an audit on a project where she has been responsible for the ombudsman investigation—in this case, the decision should be taken by another senior staff member.

***Recommendation 15:** The ERT recommends that decisions relating to the commissioning of a compliance audit for a project on which an ombudsman assessment has been undertaken should be made by the Compliance Advisor/Ombudsman alone, or by another senior staff member if the Compliance Advisor/Ombudsman has been responsible for the ombudsman assessment.*

In the case of some complaints that may be received by the CAO, the ERT believes that there could be an urgent need to undertake a compliance audit. An assessment would first be needed and a report prepared—where compliance issues are apparent, this phase will need to be completed with all appropriate speed. There may be no prospect of dispute resolution, either because the parties are resolutely opposed to proceeding in this way or because the issue—for example, the loss of an important habitat—may not be one where there is a locally affected people who would enter into a mediation or other problem-solving process. In this case, a CAO compliance audit should be undertaken immediately after assessment. This should also happen if the complainant requests a compliance audit and the CAO decides that this is an appropriate course of action. In reality, each case will need to be resolved according to the specific circumstances.

#### **G: CONFIDENTIALITY OF THE OMBUDSMAN PROCESS WHEN A COMPLIANCE AUDIT IS REQUIRED**

When the CAO determines that a complaint raises a compliance matter, criteria are needed to determine which files will be made available to the compliance auditor and which files must be kept confidential. Under most circumstances, the CAO in its ombudsman role will have undertaken an investigation before making the determination that a compliance audit is necessary. Parties to a complaint need the clear assurance that what they say and what they provide in the way of written documentation will be kept confidential and not be made available for compliance audit purposes. It is absolutely essential that the problem-solving aspects of an ombudsman intervention be kept

confidential; otherwise the mediation process will be prejudiced. The ombudsman process must also be protected if an audit is undertaken, just as mediators are protected from court discovery in the United States and from judicial inquiry in some other countries.

The CAO has already considered how their filing system should be ordered to address this issue. The CAO's filing systems could and should be arranged in such a way as to separate non-confidential material that can be made available to compliance auditors—public documents, documents generated by IFC and by MIGA, any correspondence with the CAO and other documentation that the complainants agree to release, the complaint assessment if published, and a list of people contacted by the CAO—from material that is confidential to the ombudsman process. This would facilitate efficiencies in the way that the compliance auditing function is performed, and it would also avoid the auditor's having to ask people the same (non-confidential) questions that they may already have been asked during the ombudsman work.

***Recommendation 16:*** *The ERT recommends that the CAO not make available to its compliance auditor any confidential information provided in the course of a complaint investigation. The CAO should create files for each ombudsman investigation that incorporate all such confidential material together with separate files covering non-confidential material that would facilitate subsequent compliance auditing.*

## **H: DOCUMENTATION ON THE COMPLIANCE AUDITING ROLE**

The Guidance on Compliance Auditing and Enhancing Outcomes document (June 2002) needs to accurately reflect the auditing process. For example, Figure 1 in that document, referred to earlier in this chapter, should indicate that, after a draft audit report is sent to the President, and before the audit goes to the Board and is publicly disclosed, the document is sent to management and management does have an opportunity to respond.

The ERT has reviewed the CAO's ongoing work related to its compliance audit role and, in particular, its draft guidance on interpretation of the intent behind the Safeguard Policies, its draft compliance audit protocol, and its draft TOR for a compliance audit. These are important and helpful documents. It is suggested that, prior to their finalization, they be the subject of rigorous independent external peer review to ensure that they incorporate the most up-to-date thinking on these subjects.

## **I: RELATIONSHIP WITH EVALUATION WORK**

A final issue related to the compliance auditing process concerns the CAO's interface with the evaluation units of the IFC and MIGA. Compliance auditing and evaluation are separate activities. However, the ERT believes that, because neither the IFC's OEG nor MIGA's OEU will normally undertake project reviews until a minimum of five years following approval, the CAO could be drawn into quasi-evaluative work, particularly because feedback is needed on the environmental and social aspects of projects prior to the possible involvement of OEG and OEU.

***Recommendation 17:*** *The ERT recommends that, in order to optimize available expertise, the CAO, OEG, and OEU should agree on how they should cooperate and demarcate their work on environmental and social issues in order to afford timely and rigorous feedback to the IFC and MIGA.*

## **J. CONCLUSIONS**

Despite the initial uncertainty regarding the appropriateness of the CAO's assuming a compliance audit role, the ERT believes that this function is essential and should be retained within the CAO. There are significant synergies between the compliance role and the ombudsman and advisory functions. Ombudsman work will often inform compliance audits and, on occasions, it can be envisaged that a compliance audit could assist the CAO in its work with complainants. The output from audits must contribute to the CAO's advisory work, helping the CAO identify trends, issues, and policy concerns.

The alternative—the extension of the mandate of the WB IP to the IFC and MIGA—is not recommended. The ERT has not undertaken an exhaustive examination of the IP's work, and it does not seek to opine on the IP's usefulness to the IBRD and IDA. However, it is evident that those who were concerned at the time of the CAO's conception that the IP, even if modified to include greater private-sector representation, would not be an appropriate mechanism for institutions that deal solely with the private sector, were right to recommend a somewhat different approach. Time scales in the private sector are more demanding and critical than on public-sector projects. There are some genuine issues of business confidentiality that a private-sector accountability and recourse mechanism must address. Perhaps of greatest importance, though, is the emphasis placed by the CAO on enhancing social and environmental outcomes “on the ground” through its compliance audit process.

However, if the IFC and MIGA are not to be included within the IP's compliance auditing work, then the preferred alternative—the CAO—must have appropriate powers in this area and must exercise these powers sufficiently to enable it to demonstrate to a reasonable observer that the institutions' adherence to their own environmental and social policies, guidelines, and procedures is being appropriately monitored.

## **CHAPTER VI**

### **COMMUNICATING ADVICE AND FINDINGS**

#### **A: HEALTHY DEBATE ON DIFFICULT ISSUES**

Communication underlies or has contributed to much of the CAO's success in its first three years of operation. No topic came up with greater regularity than communication in the ERT's discussions with stakeholders—especially with IFC and MIGA senior management, middle managers and specialists, and other WBG personnel. There was praise, scorn, confusion, admiration, and a host of other deep feelings. We believe that style and tone have played a role in this; but the nature of CAO's work—resolving project-related conflicts on the ground and advising management on difficult issues—means there will regularly be much pressure at the interfaces between IFC and MIGA and the CAO as they seek to communicate with one another. How the CAO and senior management manage these interfaces is critical.

The CAO's TOR make it clear that IFC and MIGA should purposefully seek the CAO's expert guidance or advice on some admittedly “sensitive,” “difficult,” and “controversial” issues that they encounter. Considering the heightened importance today of transparency, trust, sustainability, and governance aspects of doing business, several sensitive, difficult and controversial issues readily come to mind.

Several in the IFC and MIGA with whom we met believe the CAO has a responsibility to facilitate healthy debate on “difficult and controversial” issues to help ensure organizational growth and appropriate tradeoffs required to produce acceptable levels of net sustainable development benefits on the ground. The ERT believes that part—and probably most—of what falls under the CAO's TOR is helping IFC and MIGA develop the capacity to deal effectively with difficult recurring and emerging issues.

From our interviews with a number of internal and external stakeholders, is clear to the ERT that the CAO is having a beneficial impact on the institutions by influencing the agenda and terms of internal debate on challenging issues central to successful development outcomes in the future.

We were told during our review—in a host of ways by many people—that sometimes the CAO's findings and advice make management recipients uncomfortable. We understand that it can be challenging and sometimes impossible—here or anywhere—to present findings or advice on some difficult issues that is viewed as comfortable, pleasant, and non-threatening by some recipients. Nevertheless, the style of presenting advice by the CAO—and of receiving advice by IFC and MIGA management—could and should be reviewed. However, the ERT is convinced that focusing on style or tone alone begs the substantive issue here: there must be a clear expectation that decisions on tough issues

must be well informed by sound advice, including that from the CAO, that is both effectively presented and effectively received and utilized.

## **B: CULTURE AND OPPORTUNITIES TO IMPROVE LEARNING AND RESULTS**

We believe findings and advice—oral or written, draft and final, formal or informal—should be presented in the most effective way given a particular organizational culture. It was explained to us by several managers that IFC senior management and management culture are “collegial” and “non-confrontational.” Others familiar with instances where difficult issues facing IFC and MIGA have been discussed with diverse viewpoints present have characterized the culture as “intolerant of dissent.” In the ERT’s view, if well-grounded, high-quality advice is presented in a constructive, professional manner and is rejected or not utilized, that is an IFC and MIGA senior management issue. It cannot be fixed by the CAO’s being “collegial” and “non-confrontational.”

The ERT was told by several people of a pattern over time whereby hard advice on difficult issues is provided by the CAO, it is then sometimes attacked openly, then its value is privately acknowledged, and then the advice is implemented. To the extent that this occurs, this is a hard way to deal with advice on “difficult and controversial” issues—hard on everyone and hardly collegial. We believe it would be useful—for the welfare of the institutions and the development results they strive to provide—for all parties to reflect on the current ways of dealing with findings and advice on difficult issues and identify ways to make communications more productive and characterized by greater trust, mutual respect, and learning.

IFC and MIGA senior leadership is composed of able people from a predominantly financing culture. CAO senior staff are able, credible with civil society and affected communities, independent, and focus on development results on the ground. Both groups have exceptional and essential—but different—gifts and talents. The ERT is convinced that, to the extent that both can focus on how best to drive the WBG’s overarching development goals as they pertain to the private sector and can accept each other’s cultures, then the long-term best interests of the institutions will be very well served.

We heard several examples where the CAO’s style or presentation—oral and written—was used by IFC and MIGA managers and other staff to seriously discount or call into question the substance, the professionalism, the validity of conclusions, and the quality of recommendations provided by the CAO. In cases where the topic is extremely difficult for management, style and tone of presentation matter even more. The CAO should always frame and deliver its advice in a way that is clear, but do this in a way that makes it easier for IFC and MIGA senior management to focus on its substance, as opposed to its style or tone. Findings and advice should then be more easily taken on board for consideration.

Improvements identified could also be applied in the preparation of ombudsman assessments and compliance reports. Style and tone utilized in informal “conversations” might be considered as well.

We believe this is a great opportunity for the CAO. It is possible that this is the most important single factor we identified that influences the CAO’s effectiveness in helping IFC and MIGA create sustainable development on the ground.

***Recommendation 18:*** *The ERT recommends that the CAO review the style and tone of their advisory and other letters, memoranda, reports, and other communications to identify opportunities to increase the CAO’s effectiveness.*

## **CHAPTER VII**

### **MANAGEMENT ISSUES**

#### **A: BUDGET**

When the Office of the Compliance Advisor/Ombudsman was established in 1999, it had a budget of \$800,000 and an initial staff of two—the CAO and an Executive Assistant. The current staff is eight—including the CAO and three specialists. For 2004, the budget is \$1,827,227, with 80% provided by IFC and 20% by MIGA. In addition, there is a \$1,000,000 contingency fund to be used where parties cannot pay for CAO-initiated activities related to the ombudsman or problem-solving role. We believe it is quite appropriate for the CAO's budget to come from IFC and MIGA, as this helps demonstrate clearly the extent of their commitment to environmental and social accountability. There is a considerable incentive for IFC and MIGA to ensure that the CAO's budget is sufficient to enable it to function effectively as their independent environmental and social development accountability mechanism.

#### **B: STAFF AND SKILLS**

The CAO staff get high marks from most stakeholders for their intelligence, integrity, energy, grit, and commitment to the WBG's goals—the ERT concurs with this. Considering the high visibility of a number of IFC and MIGA projects, the sectors and places where such projects are located, the increasing attention afforded environmental and social aspects of private-sector development projects, and the growing emphasis on corporate social responsibility, the number of CAO staff and the budget of the CAO are modest. Given the importance IFC and MIGA place on the value they add through the environmental and social Safeguard Policies, guidelines, and procedures, IFC and MIGA have a stake in the CAO's establishing and maintaining a demonstrably outstanding staff with expertise and experience in necessary core skills. We believe these include knowledge and experience in business, management, banking, IFIs, mediation and negotiation, compliance auditing, environment and social development, and communication. The staff should not be stretched too thinly.

#### **C: REPORTING LINE**

The CAO reports directly to the President of the WBG. Some believe that real or perceived independence would be enhanced if the CAO reported instead to the Board, since the President is a part of management. The ERT does not suggest that, at the present time, the CAO's reporting line be changed. We have noted that the CAO provides an annual update to the Committee on Development Effectiveness (CODE) of the Board. Given the importance of the CAO as the independent environmental and social component of IFC's and MIGA's accountability mechanism, we recommend that

the CAO consider updating CODE twice a year. After the compliance audit function has been in operation for some time, the CAO should revisit its reporting line for this activity and consider whether reporting to CODE on compliance auditing might be more appropriate, given that this route has, essentially, been chosen by all other IFIs. Over time, we suggest that the arrangement that the CAO should report to the President should be kept under review.

#### **D: COMMUNICATIONS STRATEGY**

Having an effective communications strategy that is well integrated into program delivery and that is effectively and consistently implemented in all contacts with diverse key stakeholders—external and internal including the investment side—is essential to the CAO’s success. Professionalism and clarity in all of the CAO’s written and oral communications is essential. The tone of all communications—formal and informal, draft and final, written and oral—is important to achieving the best outcomes. The CAO must be consistent in driving home its key messages to its audiences. The ERT has gained an understanding of the work and proposals of the CAO’s communications consultants, whose work has been undertaken concurrently with that of the ERT. The ERT endorses the direction and proposals of the consultants. In particular, it commends the proposed quarterly CAO activities update and the proposed quarterly CAO newsletter.

***Recommendation 19:*** *The ERT recommends that the CAO ensure that all guidance—electronic and printed documents—available both to outside stakeholders and IFC and MIGA staff is up to date and incorporates official advice. Documentation should always be dated. The CAO’s website should only contain up-to-date information.*

#### **E: THE CAO’S REFERENCE GROUP**

The CAO’s Reference Group—composed of individuals from civil society, NGOs, business, IFIs, academia, and government service—has played an important role in the CAO’s success to date, and we are confident that it will be a key asset in achieving the greater beneficial impact that the CAO can have in the future. We had the opportunity to observe the Group’s 2003 meeting as we started our review; and the intensity and quality of the healthy, collegial debate among diverse advocates were exceptional. This is an important element in properly dealing with the tough issues that need to be addressed by the CAO for continuing institutional learning and growth—its own and that of IFC and MIGA. In addition to being a credible sounding board for the CAO, the Reference Group members bring important insights to the table for a dialog with the key IFC and MIGA executives who participate in the meetings.



## **CHAPTER VIII**

### **CONCLUSIONS: THE WAY FORWARD**

The CAO has, in its first three years of work, both addressed the complaints of those directly affected by projects financed or guaranteed by these institutions and effectively represented to IFC and MIGA concerns of civil society about the development impacts of IFC and MIGA activities. The CAO runs the risk of perceptions from within the institutions that it too consistently adopts the NGO perspective, and from civil society that it represents the institutions of which it is a part. We believe the CAO has managed that fine line with great skill, even though all “constituents” are not fully satisfied all of the time. The ERT has noted that no other IFI has adopted “the CAO model” in its entirety, as discussed in Annex F.

The CAO faces the internal conflict-of-interest issue referred to throughout this report. ERT believes that with the changes recommended—which are by no means radical—most conflict-of-interest issues will be minimized, and the hoped-for synergy of the three functions can be strengthened. However, it will be necessary for the CAO to evaluate the integration of its three functions once again when the compliance function is up and running and has a base of experience, say, within 6-9 months of the release of this report.

The great majority of those with whom the ERT held discussions—internal and external to the WBG—were supportive, to varying degrees, of the concept that the CAO’s three roles will inform and complement each other. They believe the evolution in the CAO’s way of doing business has been reasonable, was generally moving in the right direction, and should definitely continue. The stakeholders concluded that there has been considerable and sometimes hard-earned experience gained by the CAO in operationalizing its roles. Some hard lessons have been learned by the CAO and, hopefully, by all other parties. Additional challenging issues remain to be dealt with and should yield significant potential benefits to all parties.

The ERT has discovered some lack of clarity regarding the CAO’s mandate and activities. It has identified work undertaken by the CAO, particularly in the advisory role, that would have been more appropriately addressed by other units within IFC and MIGA. It has found some cases, particularly in the compliance area, where the CAO could have done more to satisfy its original TOR. But in most cases, the CAO in its periodic self-examinations has shown itself fully aware of these issues and is moving to address them.

The ERT has looked into the CAO’s relationships with civil society, with the investment and guarantee teams of IFC and MIGA and with the clients of these institutions, with the IFC’s and MIGA’s environmental and social specialists, with the evaluation teams of the two organizations, and with those responsible for IFC and MIGA corporate relations. The ERT could not have examined the work and effectiveness of the CAO in isolation.

In that process, the ERT found itself exploring the way that other groups within these institutions interpret some aspects of their own work. Why is this relevant to an examination of the CAO?

The ERT believes that, since its creation, the CAO has been drawn into areas more properly the responsibility of CES and MIGPE, the evaluation units of IFC and MIGA, and the corporate relations groups in both institutions.

The result of this is that the CAO's role currently lacks some focus—both as seen from within the IFC and MIGA and as observed from outside. The CAO's willingness to respond to senior management is in some ways laudable, but many of these responses divert the CAO staff from their prime responsibilities. As pointed out in Chapter IV, it is unclear to those who interact with the CAO, and even, in some instances, to those working within the CAO, what the "ground rules" are for the provision of advice by the CAO to management.

This has led to some deterioration in institutional relationships that could have been avoided by senior management of IFC and MIGA. Reports such as those on the IFC's Safeguard Policies (Review of IFC's Safeguard Policies, January 2003), on MIGA (Insuring Responsible Investments?, December 2002), and on the Extractive Industries (Extracting Sustainable Advantage?, April 2003) may indeed have been valid vehicles for the advisory function, or might have been considered to be necessary systemic audits. But their priority seems not to have been carefully analyzed by either the CAO or by senior management. In other institutions this work would be undertaken either by the environmental and social specialists as part of their quality assurance activities or by the evaluation teams to identify "lessons learned."

The CAO and senior management have begun to deal with the issue of project-specific "upstream advice," but further clarity is needed. Although the policy against project-specific advice and intervention with no complaint has been articulated, the CAO is still seen by some investment officers as an informal source of information and advice. The CAO should not engage in pre-complaint interventions, nor get involved in the application of specific preventive measures, in order to ensure its impartiality if a complaint arises or a compliance audit is commissioned.

The ombudsman function is flexible and capable of developing constructive and imaginative solutions, but the pace of its progress often leaves the parties dissatisfied. Considerable interest has been shown by other IFIs in devising a mechanism to address complaints from affected parties. There is great interest in the ombudsman function, and it will be used by other institutions.

The CAO's compliance function has not been tested in the three years of operation, except in one desk audit review. We have made recommendations to assist this crucial function—the one that helped IFC and MIGA avoid an inspection panel—work effectively. The ERT has engaged in many discussions and considerable thought about the impact that the exercise of a robust compliance function is likely to have on the CAO, on the IFC, and on MIGA. It is possible that several compliance audits, if adverse to IFC

and MIGA in their findings, might have a somewhat “chilling” effect upon internal relationships. However, a vigorous, fair-minded exercise of the compliance function should bolster the ombudsman role rather than prejudice it. Where possible, the institutions would surely prefer to mediate and correct problems than to be held in non-compliance.

The ERT does not recommend a change in the CAO’s reporting structure at this time. There are certainly perceptions on the part of some observers that the CAO’s independence could be prejudiced by the CAO’s reporting to the President. On the other hand, this has probably led to the CAO’s receiving greater attention from senior management and to greater institutional influence. There may be advantages of independence, especially for the compliance function, of reporting to the Board. However, until the compliance function is fully operational, we do not see merit in dividing CAO’s reporting structure.

The ERT has given considerable thought as to how the CAO Office should develop over time. We have not considered at length the options of abolishing the CAO and its functions nor of replacing the CAO with a new private-sector-oriented IP or the existing IP of the IBRD/IDA. The CAO has already proven the worth of an accountability and mediation mechanism for the IFC and MIGA.

A radical alternative would be to devise a new structure for the entire WBG (IBRD, IDA, IFC, and MIGA) that would offer both the compliance audit function of the IP and the ombudsman and advice elements of the CAO. A range of complementary accountability and transparency mechanisms for the whole WBG would thereby be available in one place. Although this option takes the ERT outside its TOR, the ERT does believe that the IBRD and IDA should give consideration to establishing an ombudsman-type function to facilitate conflict resolution “on the ground” on IBRD and IDA projects, and it is understood that discussions will be held within the WBG on this subject in the near future.

One future scenario would place even greater emphasis than at present on the CAO’s ombudsman role, and it would also attach particular importance to the CAO’s informal advisory role. Compliance audits would be seen as a “last resort,” to be used only where mediation had failed. The ERT does not believe that this should be the preferred way forward for the CAO. The uncertainties and contrasting expectations regarding the CAO’s functions and activities would continue as now; and the CAO, in all probability, would remain overstretched and would continue to be pulled in various directions as at present. The confusion of roles within the IFC that the ERT has identified would not be resolved.

The ERT’s preferred option would continue to attach the greatest importance to the CAO’s ombudsman function. The compliance function would be robust, with sufficient funds available to perform independent investigations when triggered. The CAO-generated trigger for compliance audits would be restored, even though wide usage would not be expected. Dispute resolution would be carried out in the knowledge that a

CAO compliance audit could well be one of the outcomes. Institutional audits would be undertaken by the CAO when widespread practice shortfalls so demand.

Advice would be made more formal, as set out in the President's letter of December 12, 2002. The CAO would need to provide the institutions with a rationale as to why they intend to provide the advice, which would be either as a result of a pattern of complaints or following on from one or more compliance audits. In particular, the CAO would cease to provide any project-specific advice, however sought. This is a very real source of confusion within the IFC and MIGA and a potential source of conflict of interest if the CAO has an early input into or other involvement with a contentious project and then receives a formal complaint on that same project. This option does eliminate the CAO's pre-complaint project-specific advisory interventions. However, it is, in the view of the ERT, much more appropriate for the social and environmental teams within the IFC and MIGA, the CES and MIGPE, to have total responsibility for such interventions and to resolve issues "on the ground" before they develop into complaints to the CAO.

By clarifying the CAO's roles, the potential for conflicts of responsibility and confusions over responsibilities will be reduced. In addition, this way forward would head off any moves to extend the mandate of the IP to the IFC and MIGA. The CAO would be, and would be recognized as, a genuine alternative to an IP, as envisaged by its creators, but a compliance mechanism that has the very real advantages of problem solving and advising as well. This should satisfy civil society representatives, assuming that the CAO is perceived as undertaking its ombudsman and compliance auditing work in an independent and competent way. It is also the model most likely to allow the CAO to plan its work in a methodical way and to reduce work overloads on individuals.

## **ANNEX A**

### **THE CAO's TERMS OF REFERENCE**

#### **Background**

Environmental and social issues are among the most critical components of the mission of IFC and MIGA to deliver sustainable development through the private sector. To ensure that environmental and social issues are properly addressed, IFC and MIGA have continuously increased the resources and skills allocated to project reviews and have considerably strengthened the policies, guidelines and procedures that govern such reviews.

IFC and MIGA now have a centralized review and clearance function, independent from the line management of operations. IFC and MIGA realize that in this difficult and controversial area, the internal organization, however strong and independent, should be subject to outside scrutiny, regular audits and expert guidance. Furthermore, the concerns and complaints of people affected by projects financed or insured by IFC and MIGA have to be addressed in a manner that is fair, constructive and objective.

Accordingly, IFC and MIGA have decided to create a position of environmental and social Compliance Advisor/Ombudsman as an additional pillar in building a credible and responsive structure to ensure that projects are environmentally and socially sound and enhance IFC's and MIGA's contribution to sustainable development. With the addition of the Ombudsman, IFC and MIGA will have:

- Strong in-house skills and adequate resources for environmental and social reviews and monitoring of projects.
- Clearly established and enforced policies, procedures and guidelines.
- Harmonization, coordination and sharing of skills with the World Bank.
- An Ombudsman independent of operational management.

The Ombudsman will operate under the following terms of reference.

#### **Scope of Work**

The role of the Ombudsman would include the following activities:

- To advise and assist IFC and MIGA in dealing with sensitive or controversial projects, either at the request of the President or IFC's or MIGA's management or on the suggestion of the Ombudsman. In addressing such

projects, the Ombudsman would consult with the President and coordinate with IFC's or MIGA's management.

- To assist in dealing with complaints from external parties affected by IFC or MIGA projects. Outside complaints received by the Office of the President, IFC, MIGA, or the Ombudsman would be investigated by the Ombudsman, as appropriate, in consultation with affected parties, project sponsors, and IFC's or MIGA's management, following a flexible process aimed primarily at correcting project failures and achieving better results on the ground. In the course of his/her reviews, the Ombudsman may directly communicate with complainants and affected parties, while respecting the confidentiality of sensitive business information. The Ombudsman will report on his/her findings and recommendations to the President, who will determine what actions are required. The Ombudsman will also make recommendations to the President regarding to what extent and in what form the findings will be disclosed to the IFC or MIGA Board of Directors, affected parties and the public.
- To supervise audits of IFC's and MIGA's overall environmental and social performance and sensitive projects, in order to ensure ex-post compliance with policies, guidelines, and procedures. Audits would be carried out with assistance of outside experts, either on a case-by-case basis or in accordance with a regular program.
- To provide advice to management on environmental and social policies, procedures, guidelines, resources and systems established to ensure adequate review and monitoring of IFC and MIGA projects. While the responsibility for these issues clearly rests with IFC's and MIGA's managements, the Ombudsman could be asked to provide comments.
- To provide advice at the request of IFC's or MIGA's environmental and social staff on specific project issues.
- To maintain close ties with the World Bank's ESSD Council to ensure consistency and harmonization of policies, guidelines, and procedures.

## **Organization**

The Ombudsman will be appointed by the President and will report to the President.

To carry out his/her mandate, the Ombudsman would liaise directly with the management and staff of IFC and MIGA, relevant World Bank staff, and members of IFC's and MIGA's Boards of Directors, if so requested. The Ombudsman would also maintain appropriate contacts with NGOs, civil society and the business community to the extent necessary to carry out his/her duties. These contacts would include the ability to communicate directly with complainants and affected parties, while respecting the

confidentiality of sensitive business information. The Ombudsman would keep IFC or MIGA management informed of his/her contacts with complainants and affected parties. The Ombudsman will make periodic reports to the Boards on his/her activities.

The Ombudsman should be a full-time employee of IFC and MIGA at a level [e.g., Vice President level] that clearly reflects the importance of the role. He/she would be subject to the confidentiality provisions set forth in IFC's policy on disclosure of information and in the World Bank Group Staff Rules. The appointment would be for a period of three to five years, renewable by mutual consent. Since this position requires a high level of outside respect and trust by IFC's and MIGA's President, it will be at the discretion of the President to terminate the employment of the Ombudsman if the President determines that the Ombudsman can no longer exercise the function with the required level of independence and authority.

The Ombudsman will be supported by a budget decided by the President adequate to cover the expenses of his/her office (including an assistant) and to recruit consultants or constitute expert panels for audits or independent reviews of controversial projects.

### **Qualifications**

The Ombudsman will be a person of high international recognition, impeccable integrity, great interpersonal skills, empathy and sound judgment. The following qualifications would be desirable:

- A successful record of dealing with a broad range of civil society, affected communities and NGOs through negotiation, participation and consultation.
- Knowledge and experience with environmental and social issues (technical expertise would not be required).
- Substantial understanding of and experience in the private sector business environment.
- Knowledge and experience with international development organizations and relevant NGOs.
- Solid academic and professional background.
- Ability to communicate with the media.

## **ANNEX B**

### **THE CAO EXTERNAL REVIEW TEAM'S TERMS OF REFERENCE**

#### **Background**

The Office of the Compliance Advisor/Ombudsman (CAO) for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) is an independent office, reporting directly to the President of the World Bank Group, mandated

- (i) To assist IFC and MIGA, through a flexible, problem-solving approach, to address complaints of people affected by projects with a view to enhancing the social and environmental outcomes of projects in which these institutions play a role (Ombudsman role);
- (ii) To provide independent advice to the President and senior IFC/MIGA management on trends, issues and policy concerns (Advisory role);
- (iii) To oversee audits of IFC's and MIGA's social and environmental performance, both on systemic issues and in relation to sensitive projects (Compliance role).

In 2002 the CAO noted in an information session with the Committee for Development Effectiveness (CODE) and the Board of Executive Directors that it would undertake an external review after three years of operation to assess to what extent the activities of the Office were ensuring that the CAO fulfilled its mandate. As an innovation in accountability, the CAO is committed to evaluation in order to ensure its mechanisms are effective.

#### **Objectives**

The overall objectives of the External Review are as follows:

- (i) To assess, against CAO objectives, the institutional framework, and structure, CAO procedures and the processes by which results are achieved;
- (ii) To provide suggestions to the CAO to be incorporated into the CAO Strategic Plan for 2004-2009.



Specific objectives include:

1. To assess the effectiveness of Ombudsman role and its operational guidelines for the ombudsman in resolving disputes and maintaining independent accountability;
2. To assess the Compliance Audit function and its operational guidelines in providing lessons and independent accountability;
3. To assess the effectiveness of the Advisory role in providing the President and Senior Management with an independent avenue of counsel;

In order to accomplish these objectives, the External Review Team will assess the extent to which internal and external stakeholders understand the value of CAO's work and consider that CAO is achieving its objectives.

### **Membership**

The External Review Team will comprise three independent consultants with no close affiliation with the World Bank Group, the CAO, its advisors or clients. One of the team will be designated team leader. Team members are expected to function as a team and interact with each other in all aspects of their work. Team members should between them have (a) demonstrated experience with conflict resolution systems and ombudsman roles, (b) knowledge of debates on accountability with regard to IFIs, (c) thorough knowledge of the WBG, in particular IFC and MIGA; (d) experience in sustainable development especially participation and community development and involvement; (e) familiarity with compliance approaches; (f) an understanding of relevant management, budgeting and administration issues.

### **Work Schedule and Timeline**

At the beginning of the review process the team will convene to agree the final TOR and to discuss the work program with the CAO office. The Team is expected to carry out interviews in Washington D.C and in the field with all relevant stakeholders including at least two site visits to projects where complaints have been addressed by CAO. The CAO will provide background briefings and will make available reports and documents, as appropriate. The CAO will also provide administrative and logistic support to the Team. The team will be expected to work for no more than 40 days between April 30<sup>th</sup> and June 30<sup>th</sup>.

The Team will produce a final report on its findings by June 30<sup>th</sup>, 2003. The CAO will then share the report with the President and through the President with the Senior Management of IFC/MIGA. The report will be made public at this stage through the CAO's website.

## **ANNEX C**

### **THE CAO EXTERNAL REVIEW TEAM MEMBERS**

#### **Antonia Handler Chayes**

Antonia Chayes has been Adjunct Lecturer in Public Policy at the John F. Kennedy School of Government at Harvard University, and becomes Visiting Professor of International Politics and Law at the Fletcher School of Law and Diplomacy at Tufts University in September 2003. She has served as Vice Chair and Senior Advisor of Conflict Management Group (CMG), a nonprofit conflict-resolution firm. Toni Chayes served on the Board of Directors for United Technologies Corporation for 21 years and chaired the Public Issues Review Committee until retiring in 2002. During the Carter Administration, she was Assistant and later Under Secretary of the U.S. Air Force. She has served on several federal commissions, including the Vice President's White House Aviation Safety and Security Commission. Toni Chayes was one of the founding members of ENDISPUTE [later merged with the Judicial Arbitration and Mediation Service (JAMS)] and served as a mediator in complex corporate disputes. She has a BA from Harvard University, attended Yale Law School, and received her JD from George Washington University School of Law.

#### **Timothy Murphy**

Tim Murphy worked for over twenty years first as an urban planner and then as project manager and director of environmental consulting for a UK engineering consultancy working on projects in Europe, Africa, the Middle East, and Asia, and on a large number of environmental studies in the UK. He headed the Environmental Appraisal Unit at the European Bank for Reconstruction and Development from 1992 to 2001 and worked closely with IFC and IBRD on co-financed operations. Tim Murphy recently took part in the review of proposals for an Independent Recourse Mechanism for the EBRD and a review of the African Development Bank's current approach to sustainability. He holds a Bachelor of Arts degree from Oxford in Philosophy, Politics and Economics, and a Master of Philosophy in Town and Regional Planning from London University.

#### **Benjamin C. Dysart, Team Leader**

Ben Dysart is a consultant, based in Atlanta (USA), who helps private-sector senior managers understand and address business risks involving complex public-trust and social responsibility issues and diverse key stakeholders. He has been a leader in innovative win-win stakeholder engagement for over 30 years, working in a variety of sectors including chemical and petrochemical, power generation and transmission, pulp and paper/forest products, mining, refining, nuclear, and water resources development and infrastructure. He has served as a consultant to leading US and multinational corporations throughout his career and in senior advisory capacities to several federal

resource management and regulatory agencies, including the US EPA's Science Advisory Board. From 1974 to 1990 he served on the board of the National Wildlife Federation, and from 1983 to 1985 as president and chairman. He has been active in leadership of a variety of other NGO and civil-society organizations, including trustee of the Rene DuBos Center for Human Environments and president of the Association of Environmental Engineering Professors. From 1968 to 1990 he was Professor of environmental and water resources engineering at Clemson University and directed its water resources engineering graduate program. He also has full-time responsible-charge experience in the corporate world with Union Carbide Corporation and Waste Management, Inc. Ben holds a B.Engr. and M.S. in civil/environmental engineering (Vanderbilt) and a Ph.D. in civil engineering (Georgia Tech).

## **ANNEX D**

### **ACKNOWLEDGEMENTS AND LIST OF CONTACTS**

The ERT wishes to thank all those with whom it has consulted in the course of its work—the CAO’s staff and members of the CAO’s Reference Group, the management and staff of the World Bank Group and of other multilateral financial institutions, representatives of civil society including those who have submitted complaints to the CAO, the project sponsors of IFC and MIGA, and other observers of the CAO’s work. The members of the ERT have welcomed the insights and candor of those who have had an input into the team’s work. The commentary, conclusions, and recommendations in this report are, however, the ERT’s alone.

The following is a list of those with whom the ERT has held discussions; the great majority of these were face-to-face. There were others with whom the ERT had meetings who requested anonymity.

#### Compliance Advisor/Ombudsman (CAO)

Meg Taylor – Compliance Advisor/Ombudsman  
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**ANNEX E**

**THE EXTERNAL REVIEW TEAM'S STAKEHOLDERS  
QUESTIONNAIRE**

Dear \_\_\_\_\_:

You have been contacted by Meg Taylor, Compliance Advisor/Ombudsman for the IFC and MIGA units of the World Bank Group, about the independent external review of the effectiveness of her office's three roles: Ombudsman, Compliance, and Advisor. Meg indicated that the review team might be contacting you for input to their work. Meg also provided you with the external review team's terms of reference (TOR).

On behalf of the review team—consisting of Tim Murphy and Toni Chayes in addition to me—I am following up. The team is seeking input rather broadly from the CAO's diverse clients and stakeholders—including (in no particular order) affected communities where development projects are sited; complainants to CAO; World Bank Group senior management; World Bank Board members; World Bank Group environmental, social, and investment staff; both development and advocacy NGOs; IFC's and MIGA's private-sector clients; other development banks; World Bank Group evaluation units; and knowledgeable civil society influentials.

We are seeking input from several individuals in each of the groups cited above, and are using face-to-face interviews, conference calls, and email. All three types of input can help effectively inform our findings, conclusions, and recommendations. Obviously, we cannot and will not hear from everyone with a view on how effective CAO is in accomplishing its three roles as mandated in its TOR, but it is the team's intent to obtain a diverse range of views.

We would greatly appreciate your views on the six questions presented below. These are essentially the questions we have asked in our face-to-face interviews to date and the way we are organizing inputs from all sources. Feel free to insert your views after the questions to simplify the process of responding. Also, please indicate what individual is responding, position, and affiliation.

No views will be attributed in our report, and no one will have access to your response other than Tim, Toni, and me. Thank you for your help in this challenging and important review.

Ben Dysart  
For the External Review Team

## CAO Mission

The office of the Compliance Advisor/Ombudsman is committed to enhancing the development impact and sustainability of International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) projects by responding quickly and effectively to complaints from affected communities and by supporting IFC and MIGA in improving the social and environmental outcomes of their work, thereby fostering a higher level of accountability.

## Key Questions for CAO Stakeholders

1. What views do you have on how effectively the CAO office is performing its Ombudsman role (*resolving disputes and maintaining independent accountability emphasizing a problem-solving approach to address complaints of people affected by projects with a view to enhancing the social and environmental outcomes of IFC and MIGA projects*)? It would be helpful if you can cite examples.
2. What views do you have on how effectively the CAO office is performing its Advisory role (*providing the President and IFC and MIGA Senior Management with an independent avenue of counsel on trends, issues, and policy concerns*)? It would be helpful if you can cite examples.
3. What views do you have on how effectively the CAO office is performing its Compliance audit role (*providing lessons and independent accountability from audits of IFC's and MIGA's social and environmental performance, both on systemic issues and in relation to sensitive projects*)? It would be helpful if you can cite examples.
4. How well do internal (senior management as well as environmental, social, and investment staff) and external (including private-sector clients, affected communities, and development-oriented NGOs) stakeholders understand the value of CAO's work and consider that CAO is achieving its objectives? It would be helpful if you can cite examples.
5. What changes, if any, would you make in the CAO's TOR to improve its effectiveness in enhancing the social and environmental outcomes of IFC and MIGA projects?
6. Are there some specific changes in the way the CAO office does business that would, in your view, make CAO more effective in enhancing the social and environmental outcomes of IFC and MIGA projects?

## **ANNEX F**

### **INTERNATIONAL FINANCIAL INSTITUTIONS’ ACCOUNTABILITY MECHANISMS**

#### **A: INTRODUCTION**

As part of its work, the ERT has undertaken an examination of the accountability mechanisms operating in or proposed for a number of the IFC’s and MIGA’s sister organizations, the other International Financial Institutions (IFIs). These include the IP of the IBRD and IDA, the other accountability mechanism of the WBG. The ERT has also reviewed the new accountability mechanism of the Asian Development Bank (ADB), the Inter-American Development Bank’s (IDB’s) Independent Investigation Mechanism (IIM), which, the ERT understands, is about to be revised, and the newly created Independent Recourse Mechanism (IRM) of the European Bank for Reconstruction and Development (EBRD). The African Development Bank proposed an IP-type process in 1994 but this was not approved by its Board of Directors – further consideration, it is understood, is now being given by the African Development Bank to an accountability mechanism.

#### **B: THE WORLD BANK (IBRD AND IDA)**

The WB’s IP was created in 1993 to provide “people directly and adversely affected by a [WB]-financed project with an independent forum through which they can request the [WB] to act in accordance with its own policy and procedures” (World Bank Inspection Panel, Operating Procedures, 1994). The IP is an independent unit within the WB, separate from management and reporting directly to the Board of Directors. It has no ombudsman function and no overt advisory role, although its reports can, of course, be used as a source of advice by IBRD/IDA management. The IP only covers the WB’s public sector arms – the IBRD and the IDA; it was the submission of a complaint to the IP on the IFC-financed Pangué Dam in Chile and the confirmation by the IP that it had no mandate over the IFC that led, indirectly, to the establishment of the CAO.

The IP has three permanent and external members, each of whom serves for five years, including a full-time chairman. It has a permanent secretariat and an annual operating budget of about \$2.5 million. WB EDs are eligible to file claims as well as affected parties or their representatives. The IP has broad investigatory powers including access to all WB management and staff. After an investigation, the IP issues its report which, at a minimum, summarizes the relevant facts and the steps taken to conduct the investigation, draws conclusions as to whether the WB has complied with relevant policies and procedures, lists the supporting documents available for the IP, and includes statements of any separate views of any IP members.

Although the IP is widely seen as a truly independent mechanism whose processes are credible and clear, the IP has been criticized both for its failure to secure improvements “on the ground” for those affected by IBRD/IFC projects and for its lack of authority to provide post-inspection monitoring of the implementation of decisions taken as a result of its work.

### **C: THE ASIAN DEVELOPMENT BANK (ADB)**

The ADB's Board of Directors approved a new accountability mechanism for the institution on 29<sup>th</sup> May 2003. The mechanism consists of two complementary functions, a consultation phase and a compliance review phase, and replaces the ADB's Inspection Function which was established in 1995. The consultation phase is designed to assist project-affected people with specific problems caused by ADB-assisted projects through a range of informal, consensus-based methods such as consultative dialogue, good offices, or mediation. An in-house Special Project Facilitator (SPF), reporting to the ADB President and assisted by one professional staff member, will have full control of the consultation phase. The SPF may suggest different approaches, including convening meetings with various stakeholders, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation.

The compliance review phase will provide a forum in which project-affected people can air their complaints against the ADB. A three person Compliance Review Panel (CRP), established under the new mechanism, will investigate alleged violations by the ADB of its operational policies and procedures that directly, materially, and adversely affect local people. The CRP will report directly to the Board of Directors. The mechanism applies to all ADB projects and is not confined to environmental and social policies alone. The Offices of the SPF and the CRP will be physically and functionally separate from each other although they will be linked for the purposes of responding to the complaints of affected people.

The ADB's previous Inspection Function excluded the ADB's private-sector operations, which represent less than 5% of its lending activities. The ADB concluded, in its review, that “private sector projects financed by ADB can have similar impacts on project-affected people as public sector projects” (paragraph 44 of Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism). Whilst conceding that, unlike public-sector operations, judicial actions against private-sector sponsors are not barred by ADB immunity, and thus project-affected people may be able to bring their claims for harm in domestic courts, the ADB decided that its new accountability mechanism should apply to all its private-sector operations—loans, guarantees, and equity—to the extent that its operational policies apply to its private-sector operations.

### **D: THE INTER-AMERICAN DEVELOPMENT BANK (IDB)**

The IDB established its Independent Investigation Mechanism (IIM) in 1994 to address “complaints that the [IDB] has failed in the design, analysis or implementation of proposed or ongoing operations to follow its own established operational policies or norms formally adopted for the execution of those policies (including enforcement of

compliance with borrower's obligations required by such policies and/or norms), when material adverse effects have or might reasonably be expected to occur as a result of such failure by the [IDB]" (The IDB Independent Investigation Mechanism, Rules and Procedures, 2000). The IIM can make recommendations for action, but its main purpose is to assess compliance.

The IDB mechanism, like the ADB's CRP, employs a roster of independent experts to form a panel. To date, the ERT understands that the IIM has only accepted four complaints. Two of these relate to IDB private-sector projects—the IIM makes no distinction between public and private projects, but equity operations are excluded. The IIM's work is not limited to the IDB's environmental and social policies. Investigations are undertaken as a result of a Board decision on the basis of a recommendation by the IIM's Secretariat. Reports from the IIM are presented to the full Board of Directors of the IDB—it is unclear what actions the Board are expected to sanction on receipt of an IIM report.

The ERT understands that the IDB, as a result of some concerns about the way that the IIM works in practice, is currently considering changes to the IIM and that a paper is likely to be put to the IDB's Board in the near future recommending changes to the procedures.

#### **E: THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)**

The Board of Directors of the EBRD approved an Independent Recourse Mechanism (IRM) for the EBRD in April 2003; this is the EBRD's first accountability mechanism. As in the other regional development banks and the World Bank Group, the IRM provides a mechanism whereby local groups that may be directly and adversely affected by EBRD-financed projects can raise their complaints and grievances with an arm of the EBRD that is independent from project operations. The primary reason for establishing the IRM is to enhance the accountability and transparency of the institution. Approximately 90% of the EBRD's current financing is to the private sector.

The EBRD, in preparing its IRM proposals, identified two types of existing mechanism but decided to adopt neither in its entirety—the compliance-based approach of the IP, the ADB, and the IDB, and what it perceived as the problem solving or ombudsman approach of the CAO. The EBRD concluded that neither approach, in isolation, addresses all the issues; and it decided to opt for a way forward that allows for both compliance reviews and problem-solving.

The IRM will be coordinated by the EBRD's existing Chief Compliance Officer (CCO) who is not involved in operations, and who reports directly to the EBRD's President with access to the Board's Audit Committee Chairman. The CCO will initially assess complaints received from affected groups, together with an independent expert drawn from a roster. In the case of projects not yet Board approved, the CCO will submit a report and recommendations for possible further action to the President. In the case of Board-approved projects, the recommendation will go to the Board. The report may recommend that a compliance review be undertaken by an expert from the EBRD's

roster, and the CCO will also consider whether problem-solving techniques might usefully be used to resolve the issues underlying the complaint.

The IRM will only consider complaints that the EBRD has acted contrary to, or failed to act when required in accordance with, its environmental policy, which includes some social policy provisions, or with the project-specific provisions of the EBRD's Public Information Policy. No specific distinction is drawn between public- and private-sector projects.

## **F: CONCLUSIONS**

The ERT has noted that no sister organization of the IFC and MIGA has selected the "CAO model" in its entirety in their adoption of new, or their revisions to existing, accountability mechanisms. A consensus is emerging among the regional development banks that what they need is, primarily, a means of addressing complaints from affected parties, together with some kind of independent compliance mechanism that examines whether the institutions have respected their own policies and procedures in the development and implementation of projects with which they have been associated and which have attracted a valid complaint. It is of particular note that the EBRD, which, like the IFC, primarily finances projects in the private sector, has just chosen to adopt a more limited mechanism than the CAO.

Why hasn't the CAO model been adopted elsewhere? No sister organization dismisses the prospect of eventually adopting a fully "in house" accountability mechanism with a significant advisory component, but none appears willing to go this "extra mile" at the present time. They see, potentially, some problems in combining client-friendly advice with the "tougher" compliance audit function, as exemplified by the IP, and they believe there could be overlaps, or at least unclear demarcation lines, with existing functions in their institutions. However, they all see value in the CAO's ombudsman function and all seem prepared to embrace this role in one way or another. Indeed, consideration might be given by IBRD/IDA to establishing an ombudsman-type function, similar to the CAO's ombudsman role, to facilitate conflict resolution "on the ground" on IBRD and IDA projects.