



JUNE 2024

# Compliance Appraisal Report

## MIGA Guarantees for Serbia: Morava Corridor Motorway-01

MIGA Project: #14629

## About CAO

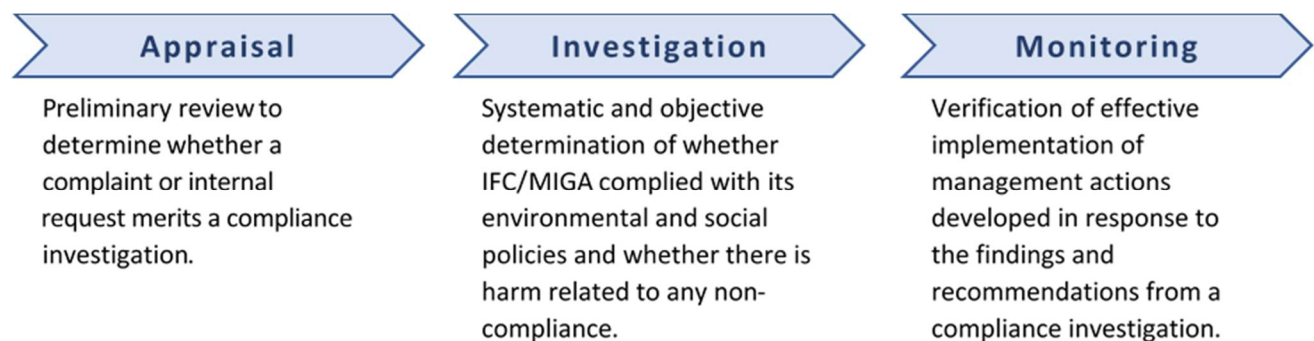
The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

## About the Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:



## Table of Contents

<b>Acronyms .....</b>	<b>1</b>
<b>Executive Summary .....</b>	<b>2</b>
<b>1. Introduction.....</b>	<b>4</b>
1.1. The Morava Project and MIGA Guarantees .....	4
1.2. Complaint Summary .....	6
1.3. MIGA Actions and Management Response .....	8
<b>2. Compliance Appraisal Scope, Methodology, and Process.....</b>	<b>10</b>
<b>3. CAO Appraisal Analysis.....</b>	<b>10</b>
3.1. Compensation Offer .....	10
3.2. Expropriation Process.....	12
<b>4. Additional Appraisal Considerations .....</b>	<b>15</b>
<b>5. CAO Decision.....</b>	<b>16</b>
<b>Appendix 1: Complaint .....</b>	<b>17</b>
<b>Appendix 2: MIGA Management Response.....</b>	<b>28</b>
<b>Appendix 3: Additional Appraisal Considerations .....</b>	<b>29</b>

## Acronyms

CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CoS	Corridor of Serbia ( <i>Koridori Srbije d.o.o. Beograd</i> )
E&S	Environmental and Social
EIA	Environmental Impact Assessment
EPC	Engineering Procurement and Construction
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESRS	Environmental and Social Review Summary
IESC	Independent Environmental and Social Consultant
GM	Grievance Mechanism
GoS	Government of Serbia
MIGA	Multilateral Investment Guarantee Agency
NHSFO	Non-Honoring of a Sovereign Financial Obligation
PS	MIGA Environmental and Social Performance Standards
PAP	Project-Affected People
RAP	Resettlement Action Plan
RLRF	Resettlement and Livelihood Restoration Framework
SP	MIGA Policy on Environmental and Social Sustainability
SMR	Environment and Social Self-Monitoring Quarterly Report

## Executive Summary

*This report documents CAO's compliance appraisal of a 2023 complaint submitted by an individual concerned about compensation levels and land expropriation procedures related to the Morava Corridor Project (the project), a 112 km highway in central Serbia. MIGA provided Non-Honoring of a Sovereign Financial Obligation (NHSFO) coverage to six international banks for their non-shareholder loans to the Government of Serbia, which owns the motorway development company. CAO finds the complaint against MIGA does not meet the criteria for a compliance investigation, for the reasons described below.*

### MIGA Guarantees and the Complaint

In March 2022, MIGA signed a contract of guarantee for EUR 411.4 million providing NHSFO coverage to several international banks for their non-shareholder loans to the Government of Serbia to develop the motorway and associated infrastructure. The project is currently under construction by Corridor of Serbia (CoS/the company), a Serbian limited liability company fully owned by the national government. In December 2023, MIGA issued a new contract of guarantee for EUR 901.1 million for an additional project loan.

MIGA's due diligence for the Morava Corridor Project began in December 2019. The 112 km motorway required expropriations and in 2020, the complainant was informed that 12.3 percent of his land was designated for the project. He submitted an initial complaint with the company's grievance mechanism in August 2020, and a claim in the local courts, before filing a complaint with MIGA in 2022 and CAO in 2023.

The complainant expressed concerns about the health of family members living on his property, due to air pollution and noise arising from the highway's construction and operation, and about the increased risk of traffic accidents due to his property's proximity to the highway boundary. The Complainant also alleged that the expropriation process was not equitable and transparent, indicating that his neighbors had received compensation for the entirety of their properties. While the landowner was to be compensated for 12 percent of his land, approximately 82 percent of the remainder was zoned to prohibit new buildings and restrict land use as a public highways safety measure.

During CAO's assessment of the complaint in December 2023, the complainant's request for full expropriation of his property, with compensation, was addressed, which resolved the issues raised in the initial complaint. However, the complainant had ongoing reservations about the compensation offer and the expropriation procedure and questioned its compliance with MIGA's Policy on Environmental and Social Sustainability (Sustainability Policy/SP) and Environmental and Social Performance Standards (PS).

In its Management Response to CAO, MIGA stated that it considered the complainant's request for full expropriation of his property to be fully addressed. MIGA added that it had engaged the property owner and the company regarding the former's ongoing concerns and confirmed that the final compensation met the full replacement cost of the land, as defined by PS5 (Land Acquisition and Involuntary Resettlement).

### CAO Findings

The CAO compliance appraisal process assesses whether a complaint warrants further

investigation. This determination is based on three criteria outlined in the CAO Policy: (a) whether there are preliminary indications of Harm or potential Harm; (b) whether there are preliminary indications of potential MIGA non-compliance with its environmental and social (E&S) policy; and (c) whether there is a plausible link between the alleged Harm and potential MIGA non-compliance.

**Based on review of available information and documents, CAO concludes the complaint does not meet the criteria for a compliance investigation on the following basis:**

a) **Preliminary indications of Harm:** Concerning the compensation offer, there are no indications of Harm or potential Harm on the basis that the value calculated by Vrnjačka Banja Municipality was also validated by a 2023 market value assessment conducted by MIGA. MIGA's assessment states that the compensation offer was deemed sufficient for either purchasing a similar property or for buying land and constructing a new structure of similar quality and value. Concerning the expropriation and relocation process, while CAO acknowledges that the complainant may have experienced uncertainty and distress resulting from the length of the expropriation process, the complainant ultimately received compensation for the entirety of his property. Further, with respect to the complainant's allegation of harm from the short relocation deadline, CAO notes that the complainant was ultimately offered a total of 75 days to vacate the property, 45 days in excess of national law requirements. Accordingly, CAO does not conclude that there are preliminary indications of harm resulting from the relocation deadline.

b) **Preliminary indications of potential MIGA non-compliance with its E&S policy:** Concerning the complainant's allegation that MIGA did not ensure the project met PS5 requirements for land acquisition, CAO finds preliminary indications that MIGA may have failed to ensure the project met all the relevant requirements of PS5. MIGA's Sustainability Policy requires MIGA to ensure that the projects it finances comply with its Performance Standards (SP para. 26). Specifically, the client's RAP does not address the impacts of restrictions on land use imposed by the protective and controlled construction zones established by the project in accordance with PS5 requirements (PS5, para. 7; GN 20).

c) **Plausible link between alleged harm and potential MIGA non-compliance:** Since there are no preliminary indications of harm, the question of a plausible link between allegations of harm and potential MIGA non-compliance cannot be established. As a result, CAO will not conduct a compliance investigation and the case is closed.

This appraisal report will be published on the CAO website and shared with the Board, the World Bank Group President, MIGA Management, the company, and the complainant.

# 1. Introduction

This section provides an overview of the MIGA investment, the landowner's complaint to CAO, and MIGA's management response. It also includes a timeline for the project and the CAO case.

## 1.1. The Morava Project and MIGA Guarantees

MIGA, a member of the World Bank Group, signed a contract of guarantee<sup>1</sup> for EUR 411.4 million (approximately US\$ 451.8 million) on March 15, 2022, to support the Morava Corridor Project. The contract provided Non-Honoring of a Sovereign Financial Obligation (NHSFO) coverage to six international banks, namely: JPMorgan Chase Bank, N.A., London Branch; CaixaBank, S.A.; Banco Santander, S.A; UBS Switzerland AG; Credit Agricole Corporate and Investment Bank; and Raiffeisen Bank International AG. Together referred to as the Guarantee Holders in this report, the banks acted through J.P. Morgan SE as the agent for their non-shareholder loans to the Government of Serbia to finance the project. On December 15, 2023, MIGA issued a new contract of guarantee for EUR 901.1 million (US\$976.7 million) for an additional project loan.

According to MIGA's Environmental and Social Review Summary (ESRS)<sup>2</sup>, the Morava Corridor Project consists of a greenfield 112 km dual-carriageway tolled motorway, within a 900 meter right of way. The planned highway is located 200 km south of Belgrade in a low-level floodplain running east/west along the West Morava River Valley. The project also includes large-scale associated infrastructure, namely: highway interchanges, bridges, culverts, and over/under passes; power lines and cables for telecommunications systems and traffic management; and river regulation works to protect the project and surrounding areas from flooding.

In this Project, the GoS is represented by the Ministry of Finance and the Ministry of Construction, Transport and Infrastructure. Corridor of Serbia (CoS), a Serbian limited liability company fully owned by the Government of Serbia is implementing the development and construction of the Morava Project. Bechtel-Enka Joint Venture is the Engineering Procurement and Construction (EPC) contractor. During the operation phase of the Project, PE Roads of Serbia, a state-owned enterprise, will serve as the operating entity.

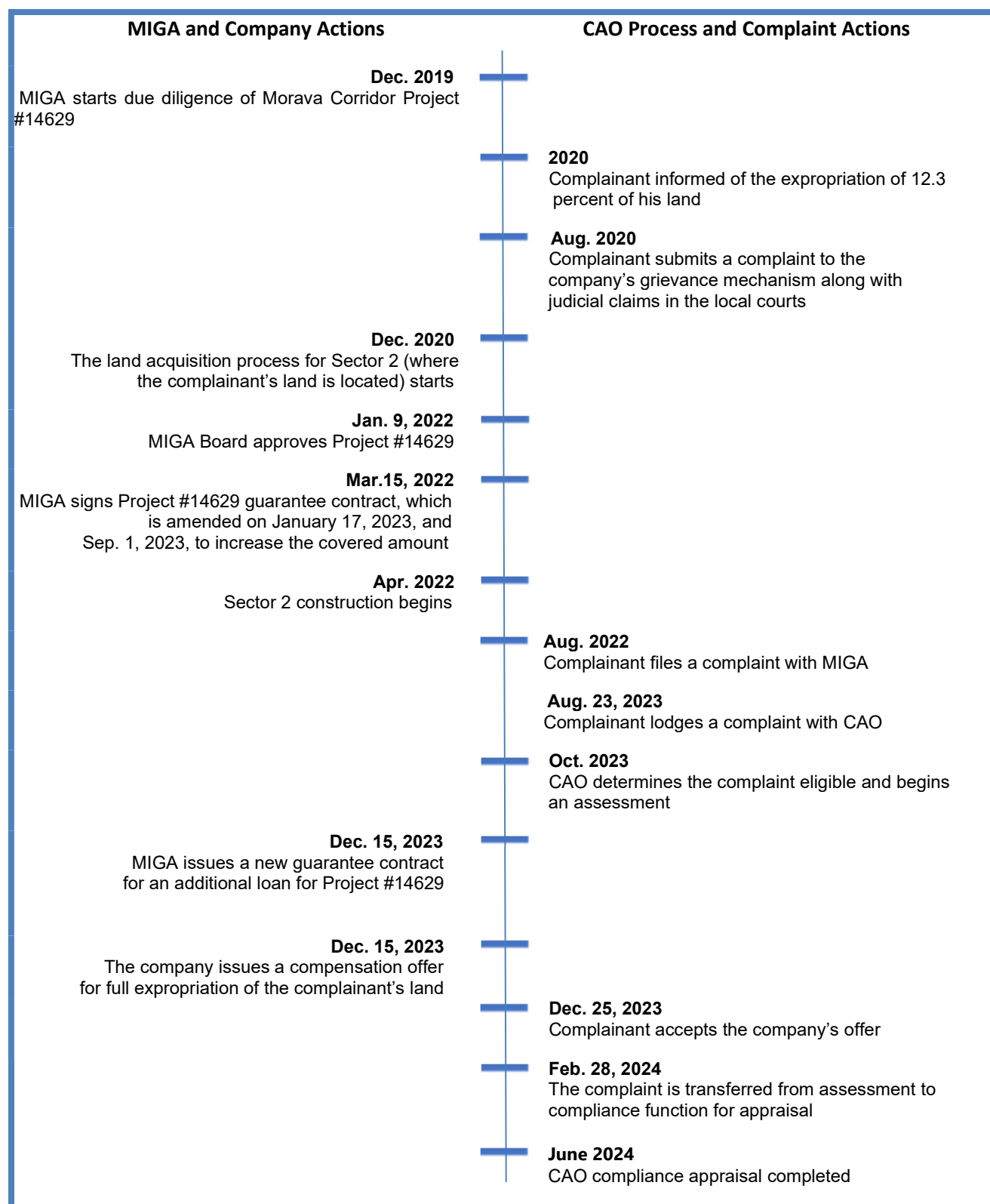
The Morava Project was classified as Category A (high risk) under MIGA's Policy on Environmental and Social Sustainability (2013). The project ESRS and Environmental and Social Action Plan (ESAP) agreed by MIGA and the company, along with a Resettlement Framework (RF) and three Resettlement Action Plans (RAPs)<sup>3</sup>, one for each section of the road, were disclosed in October 2021.

---

<sup>2</sup> MIGA Environmental and Social Review Summary, available at: [bit.ly/MoravaCorridor-ESIA](https://bit.ly/MoravaCorridor-ESIA)

<sup>3</sup> Resettlement and Livelihood Restoration Framework, July 2020, available at: <https://bit.ly/RLRF-Sector2>; Resettlement Action Plan – Sector 1, 2, and 3, available at: <https://www.miga.org/project/morava-highway-0>.

**Figure 1. Project and Complaint Timeline**





## 1.2. Complaint Summary

CAO received a complaint about the Morava Corridor Project on August 23, 2023, submitted by an affected property owner on behalf of himself and his family members. In October 2023, CAO found the complaint eligible for an assessment in relation to MIGA's guarantee for the project. After the parties expressed no interest in a CAO-facilitated dialogue, the case was transferred to CAO's compliance function for appraisal.

The complaint to CAO initially expressed concerns about economic displacement, health and safety risks, environmental impacts, and the violation of laws and standards linked to project construction. The complainant stated that the Morava Motorway would border a plot of land he owned in the Vraneši region of Serbia, on which his mother and stepfather lived.

Corridor of Serbia, the government-owned development company, had informed the complainant in 2020 that 12.3 percent of his land was designated for project expropriation and approximately 82 percent of the remainder was zoned to prohibit new buildings and restrict land use as a public highways safety measure.<sup>4</sup> However, the complainant believed that the compensation he was offered was not in line with Serbia's expropriation law and MIGA's Performance Standards. He also requested expropriation of his entire plot of land, given the loss of development opportunities, health and safety concerns, and air and noise quality issues that would affect his land due to the motorway's construction.

The Law on Expropriation of the Republic of Serbia specifically addresses the issue of partial expropriation, stating that, *"if it is determined that the owner has no economic interest in using the remaining part of the property, i.e., if his existence on the remaining part of the property is prevented or significantly hindered due to [the expropriation], the remaining part of the property will also be expropriated at his request."* The Law allows for the request to be submitted up to two years after completion of construction.

Consequently, the complainant submitted a complaint to the company's grievance mechanism in 2020, along with judicial claims in the local courts. In 2022, he also filed the same complaint with MIGA. He further exchanged emails and held conversations with CoS and with MIGA, including an in-person meeting with representatives of CoS and MIGA in July 2023.

In October 2023, an expert appointed as part of the local judicial proceedings issued a report that concluded the motorway's construction and operation would have negative environmental impacts on the complainant's land and in turn negatively affect his livelihood and economic interests. Consequently, the company offered to expropriate the complainant's entire plot of land.

---

<sup>4</sup> These zones were included in the Spatial Plan of the Special Purpose Area of the Infrastructure Corridor of Highway E-761, Pojata Preljina section, which was determined by the Decree of the Government of the Republic of Serbia in 2020. For the purposes of the functioning of the traffic road, which is the subject of the Spatial Plan, and based on the Serbia Public Highways Law, the following zones are prescribed: (i) protective strip (40m width), which is defined as a zone to ensure protection against the harmful impact of the road corridor on the environment. The construction of buildings in the protective zone is not allowed, except for the buildings that serve the purpose of the road and traffic on it., and (ii) controlled building zone (40m width), which serves as the road corridor and its unhindered functioning in space. The construction of buildings in this zone is allowed on a selective basis with the preparation of appropriate planning documentation.

The complainant was satisfied by this outcome, although frustrated that it occurred more than three years after his initial complaint. The other issues in the original complaint regarding economic displacement, health and safety, and environmental impacts were also resolved due to the expropriation of all the complainant's land. However, he expressed continued concerns about the company's compensation offer and the expropriation process.

The parties did not express an interest in engaging in a CAO-facilitated dialogue. Thus, in accordance with the CAO Policy, these two remaining issues were transferred to CAO's compliance function on February 28, 2024, for a compliance appraisal<sup>5</sup>. The complaint details are summarized below.

### **1.2.1 Compensation Offer**

The complainant's concerns regarding the compensation offer and whether it met MIGA's PS requirements are as follows:

- **Compensation for buildings:**

The company's Resettlement Action Plan (RAP), in line with PS5 (Land Acquisition and Involuntary Resettlement), defined the valuation methodology for expropriations and indicated that compensation for buildings should be based on the cost of building replacement structures of similar quality. However, the complainant raised concerns about Corridor of Serbia's calculation of such costs. In the complaint to CAO, he argues that the company's offer included much lower compensation costs than: (a) construction costs for new buildings listed on an official government website, which he stated were 3.2 times higher than the offer; (b) what his expropriated neighbors received; and (c) actual land and construction costs in the region. The complainant also alleged he was offered 3.3 times more money to compensate for his property's septic tank in July 2023 than the final offer in December 2023. He concluded that the company had applied depreciation to the septic tank's value, which he argued was not in line with MIGA's PS and the project RAP, which both indicate that depreciation should not be applied to the building costs.

- **Compensation for land:**

The complaint to CAO states that the company's 2023 offer was based on the 2020 market value for land in the region, while PS5 mandates that compensation be based on current market value. The complainant states that high inflation between 2020 and 2023 had an impact market value for land in the region and argues that this was not properly considered in the compensation offer. As a result, he claims that he was discriminated against compared to his neighbors who received compensation in 2020.

The complainant further argues that he should be compensated for the "cost of capital" for the 2020-2023 period when he was waiting for his claims to be resolved, as well as for the lawyers' fees he incurred, and the personal time spent on the issue. He alleges that the company only reimbursed a small portion of the lawyers' fees he incurred and states that he used his own

---

<sup>5</sup> CAO Case Serbia: Morava Corridor Motorway – 01. See <https://officecao.org/MoravaCorridor01>

accounting and treasury expertise, as well as working with a solicitor, to attain the expropriation he believes he was entitled to in the first place. The complainant argues that lack of compensation for these costs amounts to discrimination, since his neighbors did not incur these costs prior to achieving expropriation and compensation in 2020.

When the complainant raised these concerns with Corridor of Serbia and asked them to compare the offer with MIGA's PS5 requirements, the company stated it lacked the expertise to do so and advised him either to accept the offer or file an appeal in the courts. During appraisal, the complainant told CAO that the compensation offer might well have been in line with national standards, and that there was no point in handing the matter over to the courts, which would apply the national standards rather than the Performance Standards. He said he believed he had to accept the offer because, if he did not, the company would immediately send the case to the courts, which would cost him more time (three to seven years) and money (especially lawyers' fees). On December 25, 2023, the complainant accepted the offer and received the money a day later.

### **1.2.2 Expropriation Process**

The Complainant's concerns regarding the expropriation process are as follows:

- **Delay in the expropriation process:**

The complainant maintains that he should have been expropriated fully in 2020 instead of having to fight for three and a half years and alleges that the delayed expropriation procedure failed to adhere to the MIGA PS. He argues that the process not only demanded considerable time, financial resources, and effort but also left him in a state of discomfort and uncertainty.

- **Transparency:**

The Complainant is concerned about the lack of transparency in the expropriation process, including the lack of access to the details of the compensation offer and to the documents substantiating the adequacy of the numbers provided.

- **Relocation deadline:**

The Complainant is concerned about the 30-day deadline he was given to vacate his property in December 2023 after accepting the compensation offer, which he believes was unreasonable.

The full complaint (initial and post-expropriation) is attached to this report as Appendix 1.

### **1.3. MIGA Actions and Management Response**

MIGA's Management Response to the CAO complaint states that the company has been in dialogue since 2020 with the property owner regarding his initial concerns that he was not offered full expropriation of his property given its proximity to the planned motorway. During this time, the complainant maintained regular communication with the company, which consistently followed up with the municipality responsible for expropriation of the complainant's property.

In October 2021, the Vrnjačka Banja municipality consulted an independent expert to assess the complainant's concerns and to determine whether his land met the criteria for full expropriation under Serbian Expropriation Law. This assessment concluded that the property's current

residential use could continue without issue, thus disqualifying the Complainant for full expropriation.

In August 2022, the complainant filed a complaint with MIGA asking for full expropriation. MIGA states that it subsequently diligently engaged with the complainant and company to evaluate the concerns raised and to support Corridor of Serbia in addressing the grievance. The Management Response states that MIGA's review focused on the complainant's initial concerns regarding full expropriation. MIGA also notes that the project development company and local municipalities and courts have managed hundreds of requests for properties affected by the Morava Corridor Project to be considered for full expropriation under Serbian Expropriation Law, with a uniform procedure applied to all cases.

In October 2022, the Complainant sought a separate opinion from his own expert, which contradicted the municipality's findings, which in turn led the municipality to conduct another assessment ("Statement on Objection on Findings and Opinion" or "super assessment") in March 2023. This super assessment reaffirmed the property's viability for residential use, negating the need for expropriation. The assessment stated that the property owner could continue to reside in the house, utilize the ancillary buildings, and undertake current activities without hindrance during motorway construction. According to MIGA's Management Response, Corridor of Serbia indicated that the safety features planned for the section of road in front of the complainant's property include roadside guardrails, a noise barrier and safety fence, and a sloping embankment.

In July 2023, MIGA visited the complainant's property and facilitated a discussion with the company and complainant. MIGA then developed a corrective action plan and asked Corridor of Serbia to request the City Department of Experts to clarify potential inconsistencies in the super assessment. The complainant then filed an appeal against the super assessment, after which, on December 13, 2023, the Ministry of Finance determined that the complainant had the right to full expropriation of his property. Full compensation was offered on December 18, 2023.

From August to December 2023, MIGA was engaged with the company and complainant as part of the CAO assessment process. MIGA's Management Response states that the concerns in the initial complaint have been fully addressed and the compensation received by the complainant aligns with full replacement cost as defined in PS5. Specifically, the compensation is sufficient to either purchase a similar property or purchase land and construct new structures of similar quality and value, including transaction fees and relocation costs. To confirm alignment with PS5's compensation requirement, MIGA reviewed both the company process, as set out in the project RAP, and the outcome achieved, and confirmed that compensation standards had been applied consistently across the affected population.

Regarding the complainant's transparency concerns, MIGA states that it complied with its Access to Information Policy regarding project information disclosure and documentation of all interactions with the complainant. MIGA states that it communicated the findings of market prices directly to the complainant and explained to him the parameters given to realtors/property developers and the estimates they provided.

MIGA also points out that 30 days is the standard and legal notice period to vacate the premises included in all project-related compensation agreements. However, the complainant was granted another month by the municipality, and then an additional 15-day extension, totaling 75 days.

The full MIGA Management Response is attached to this report as Appendix 2.

## **2. Compliance Appraisal Scope, Methodology, and Process**

The scope of this CAO compliance appraisal is limited to issues raised in the complaint and CAO's Assessment Report and covers an analysis of the three appraisal criteria required to determine whether to initiate a compliance investigation. These criteria are: (a) whether there are preliminary indications of harm or potential harm; (b) whether there are preliminary indications that MIGA may not have complied with its E&S policies; and (c) whether the alleged harm is plausibly linked to the potential MIGA noncompliance.

CAO has made the appraisal decision based on the appraisal criteria and other relevant considerations contained in the CAO Policy. The appraisal involved a preliminary review of the following information:

- Documentation related to the complaint, CAO's Assessment Report, and MIGA's Management Response;
- Basic project documentation shared by MIGA and available on its website;
- Information gathered through conversations with the complainant and MIGA staff;
- Relevant publicly available documentation.

CAO extends its appreciation to all parties mentioned in this Compliance Appraisal Report who have shared their perspective, knowledge, and time with the CAO compliance team.

## **3. CAO Appraisal Analysis**

Taking into consideration the complaint, MIGA's Management Response, and available documentation and information, the appraisal analysis focused on the following: (a) the compensation offer and (b) the expropriation and relocation process. For each of these issues, CAO presents analysis followed by findings regarding preliminary indications of harm and of MIGA non-compliance, and whether any alleged harms are plausibly linked to non-compliance.

### **3.1. Compensation Offer**

On December 18, 2023, the Vrnjačka Banja Municipality made an offer to the complainant for full expropriation of his property. The offer included compensation for the land, residential and auxiliary buildings, and administrative costs. The offer also covered transaction and moving expenses, registration fees, and taxes. However, the complainant alleged that the compensation should also include a transitional allowance, compensation for inflation from 2020 to 2023, cost of capital, and legal expenses incurred as he sought full expropriation. The complainant further claimed that depreciation of the value of his septic tank was factored into the final offer.

The project's Resettlement Action Plan entitlement matrix, approved by MIGA, presents the criteria for compensation for all properties acquired to make way for the motorway. Land

valuation for expropriation purposes is conducted by the municipal tax authority, which bases its estimates on the prices from private land sales within the municipality or nearest area. For structures on the land, certified appraisers determine market value to reflect the cost of replicating the structure in the same region. Crop and plant compensation rates are set according to Serbia's Expropriation Law and are assessed by accredited experts.

MIGA's PS5 (para. 21) stipulates that in cases of physical displacement, the company will offer the choice of replacement property of equal or higher value, secure tenure, equivalent or better characteristics, and location advantages, or cash compensation where appropriate. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

Additionally, PS5 (para. 22) requires the company to compensate for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost. Based on consultations with the displaced persons, the company shall provide relocation assistance sufficient to restore their standard of living at an adequate alternative site.

In this case, the compensation offer received by the complainant was based on the cost approach, a real estate valuation method employed by the company, considering 2023 values.<sup>6</sup> The final offer presented values for the construction of a new residence and auxiliary facilities, as well as fencing, internal paved roads, sewage disposal, and a water supply source. The values also included relocation costs, fees, and charges related to connecting to the electrical power supply system, engineering project design, construction supervision, building permits, and surveying work.

In response to the complainant's objection to the final compensation offer, MIGA consulted with three independent real estate agents and property developers in Serbia to obtain the square meter price to buy a similar or better property comparable in size and quality to the complainant's in the same region. During a discussion facilitated by CAO, MIGA outlined to the complainant the criteria given to the real estate professionals and shared the range and average of the cost estimates received. MIGA declined to share the full analysis due to data privacy reasons.

According to PS5 (para. 29), transitional support should be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

MIGA's Management Response indicates that the company decided not to pay the transitional allowance to the complainant because he was deemed ineligible since there were no documented livelihood losses classifiable as economic displacement.<sup>7</sup> The complainant stated

---

<sup>6</sup> "Cost valuation methodology" or "cost approach" is a real estate valuation method that estimates the price a buyer should pay for a piece of property is equal to the cost to build an equivalent building. In the cost approach, the property's value is equal to the cost of land, plus total costs of construction, less depreciation.

<sup>7</sup> Although the RAP entitlement matrix states that project-affected persons who are subject to physical displacement are eligible for the payment of a transitional allowance, PS5 does not require transitional support in cases of physical displacement. Rather, PS5 (para. 29) requires transitional support to be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.



intentions for potential future utilization of the property, yet there is no substantiated evidence that the property is currently a source of income or subsistence activities.

## CAO Findings

With respect to the compensation offer, based on a preliminary review of available information, CAO finds:

- **No preliminary indications of harm** related to the compensation offer on the basis that the value calculated by Vrnjačka Banja Municipality was also validated by a 2023 market value assessment conducted by MIGA. MIGA's assessment states that the compensation offer was deemed sufficient for either purchasing a similar property or for buying land and constructing a new structure of similar quality and value.
- **No preliminary indications of potential MIGA noncompliance** in relation to the Sustainability Policy and PS5, as the final offer was reviewed and validated by MIGA's experts with respect to the 2023 market value, providing assurance that the complainant received full replacement cost in accordance with PS5. CAO did not independently verify this analysis during the appraisal as such verification is beyond the CAO's mandate.
- **No plausible link between the alleged harm and potential MIGA non-compliance.** Because there are no preliminary indications of harm or potential MIGA noncompliance with MIGA's E&S policy, the question of a plausible link between allegations of harm and potential noncompliance cannot be established.

## 3.2. Expropriation Process

### Delay in the Expropriation Process

The complainant maintains that he should have been expropriated fully in 2020 instead of having to fight for three and a half years. He argues that the slow process not only demanded considerable time, financial resources, and effort but also left him in a state of discomfort and uncertainty.

CAO's analysis considered MIGA's pre-investment E&S due diligence (ESDD) and supervision of the project's land acquisition process and grievance mechanism in accordance with the requirements of PS5.<sup>8</sup>

PS5 (para. 7, GN 20) mandates that if at any stage of the project, impacts on land, assets, or access to assets become significantly adverse, the client must adhere to PS5's requirements, even if there is no direct land acquisition or land use restriction. This includes the establishment of buffer zones that limit land use, such as the protective and controlled construction zones established for the Morava Corridor Project, which must be mitigated and compensated according to the requirements of PS5.

Under the Sustainability Policy (para. 26), MIGA is required to conduct due diligence that includes identifying any gaps between the client's performance and MIGA's E&S requirements.

---

<sup>8</sup> PS5 is applied when projects involve land acquisition or land use restrictions that adversely impact communities and individuals. Involuntary resettlement, which encompasses both physical (relocation or loss of shelter) and economic displacement (loss of assets or access leading to loss of income or livelihood), is involuntary when affected parties cannot refuse the land acquisition or restrictions.

Where gaps are found, MIGA identifies corresponding additional measures and actions beyond those identified by the company's existing management practices. To ensure the business activity meets the Performance Standards, MIGA includes these supplemental actions in an Environmental and Social Action Plan and makes them necessary conditions of MIGA's guarantee under an agreed time frame.

MIGA's ESDD of the Morava Corridor Project lasted from December 2019 until the contract became effective in March 2022. A project E&S Impact Assessment (ESIA) was finalized in November 2020 and was disclosed on the MIGA website in January 2021<sup>9</sup>. The ESIA identified the impact of physical displacement along the 112 km route and required the development of a Resettlement and Livelihood Restoration Framework (RLRF) and a Resettlement Action Plans (RAP) for each of the three sectors.

The RAP for the sector containing the complainant's property identifies the loss of areas for construction or agricultural use as a project impact, creating the need for expropriation. However, the RAP fails to acknowledge the existence of the protective and controlled construction zones, which impose restrictions on use and new construction as stipulated by the Serbia Public Highways Law. A preliminary review of available information suggests that MIGA may have failed to ensure the project met the relevant requirements of PS5 (para. 7), counter to its SP (para. 26) obligations.

With respect to the process of submitting grievances regarding the project, PS5 (para. 11) requires the client – in this case the government-owned motorway development company – to establish a grievance mechanism as early as possible in the project development phase. This allows the client to receive and address specific concerns about compensation and relocation raised by displaced persons or members of host communities in a timely fashion, including a recourse mechanism designed to resolve disputes in an impartial manner. Additionally, the Sustainability Policy (paras. 22 and 24) requires MIGA to work with the company to remediate project impacts.

In this case, the Corridor of Serbia's grievance mechanism was designed to accept, acknowledge, record, investigate, and respond to grievances, as well as provide a discussion of their resolution. Grievances can be communicated via email, telephone, or in person at addresses listed on the company's website.

Once the MIGA guarantee was issued, MIGA monitored implementation of the Morava Corridor Project quarterly, including a review of the grievance mechanism's effectiveness and implementation of the RAPs, through an Independent Environmental and Social Consultant (IESC). The IESC reports from 2022 noted that the complainant's allegations were not documented as grievances in the company's Environmental and Social Self-Monitoring Quarterly Reports (SMRs) to lenders. In December 2022, the IESC advised MIGA that disputes over land acquisition that escalate to legal proceedings should be recorded and communicated in the SMR, particularly when they involved issues mentioned by the complainant that are not limited to the local court's procedural considerations, such as claims unrelated to valuation reviews or

---

<sup>9</sup> Environmental and Social Impact Assessment Report, November 2020, available at: <https://www.miga.org/project/morava-highway-0>.



additional expropriation requests. The IESC recommended that such grievances, both past and ongoing, be entered into a grievance register and included in the SMR. While available information does not document MIGA's response to this recommendation, the grievances were recorded and included in the following SMR.

IESC reports from 2022 and 2023 also highlighted the slow pace at which court resolutions and the disbursement of compensation to the project were proceeding. Project-affected persons who contested the proposed compensation amounts or made additional expropriation requests were awaiting compensation pending the court's decision on their cases. In this context, the IESC suggested that the company conduct a further analysis of the situation in collaboration with MIGA to ascertain alternatives for expediting the process, as well as the feasibility of provisional payments when deemed suitable.

In February 2023, MIGA conducted a site visit to supervise the project's overall E&S performance. The site visit included meetings with the EPC contractor, Corridor of Serbia, and the Municipality of Vrnjačka Banja. In July 2023, MIGA conducted a site visit to follow up on the complainant's direct complaint to MIGA through in-person engagement with the complainant on his property and to define a corrective action plan. This included a request to the City Department of Experts to clarify potential inconsistencies in the super assessment conducted for the complainant's case. During this period, there is a record of email exchanges between MIGA and the complainant evidencing attempts to resolve issues raised by the complainant.

## **Transparency**

PS5 (para. 9) mandates that compensation standards be transparent and consistently applied to all communities and persons affected by the displacement.

The RAP and RLRF define the compensation standards and criteria for each type of property and the square meter values adopted for each project's region. For the Morava Corridor Project, these documents were disclosed in January 2021<sup>10</sup>. In July 2023, the company discussed with the complainant potential reasons for variations in compensation offers, such as differences in construction materials or the type and size of structures. However, due to data privacy concerns, the company stated it could not disclose other compensation agreements to MIGA or the complainant. This discussion is documented in MIGA's 2023 supervision documentation.

## **Relocation Deadline**

PS5 (para. 9) states that the client will take possession of acquired land and related assets only after compensation has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation.

The final compensation offer accepted by the complainant on December 25, 2023, included moving costs and stated that the complainant should vacate the property in 30 days, in accordance with national law requirements.

---

<sup>10</sup> Resettlement and Livelihood Restoration Framework, July 2020, available at: <https://bit.ly/RLRF-Sector2>; Resettlement Action Plan – Sector 1, 2, and 3, available at: <https://www.miga.org/project/morava-highway-0>.

The complainant reported to CAO that the seasonal timing of this agreement posed difficulties in securing contractors and services. In correspondence with MIGA dated January 12, 2024, the complainant noted the temperature in Vranesi was -2°C (28.4°F), highlighting the impracticality of constructing new buildings and acquiring land under such freezing conditions. Furthermore, the complainant emphasized that locating suitable land is a lengthy process.

In mid-January 2024, in response to the complainant's concerns, the municipality granted him until the end of February 2024 to vacate the premises and then, at the end of February, an additional 15-day extension. The complainant was therefore given 75 days to vacate the property, exceeding national law requirements by 45 days. According to the company, the complainant vacated the expropriated property in mid-March 2024.

### CAO Findings

With respect to the expropriation process, CAO finds:

- **No preliminary indications of harm.** While CAO acknowledges that the complainant may have experienced uncertainty and distress resulting from the length of the expropriation process, the complainant ultimately received compensation for the entirety of his property. Further, with respect to the complainant's allegation of harm from the short relocation deadline, CAO notes that the complainant was ultimately offered a total of 75 days to vacate the property, 45 days in excess of national law requirements. Accordingly, CAO does not conclude that there are preliminary indications of harm resulting from the relocation deadline.
- **Preliminary indications of potential MIGA noncompliance.** Concerning the complainant's allegation that MIGA did not ensure the project met PS5 requirements for land acquisition, CAO finds preliminary indications that MIGA may have failed to ensure the project met all the relevant requirements of PS5. MIGA's Sustainability Policy requires MIGA to ensure that the projects it finances comply with its PS (SP para. 26). Specifically, the client's RAP does not address the impacts of restrictions on land use imposed by the protective and controlled construction zones established by the project in accordance with PS5 requirements (para. 7, GN 20).
- **No plausible link between the alleged harm and potential MIGA non-compliance.** Because there are no preliminary indications of harm, a plausible link between allegations of harm and potential noncompliance cannot be established.

## 4. Additional Appraisal Considerations

As set out in the CAO Policy (para. 92), the compliance appraisal must consider a number of additional considerations, including:

- Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies; and

- Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the complainant's views, these proposed remedial actions substantively address the matters raised by the complainant.

CAO notes that in accordance with its Sustainability Policy obligation to identify and review opportunities for improving client performance (para. 43), following receipt of the complaint, MIGA reviewed the company's PS5 compliance with respect to the complainant's allegations of the right to full expropriation, the compensation offer, and the expropriation process. The result of this review was a compensation offer that available information suggests was compliant with the requirements of PS5. To ensure a transparent process, MIGA's efforts included a discussion with the complainant, in which MIGA outlined to the complainant the criteria upon which the compensation offer was based.

With respect to remedial actions, MIGA worked closely with the company and the complainant to resolve the complainant's concerns. MIGA carried out a site visit specifically to address the issues raised by the complainant and to define a corrective action plan. Throughout this time, documented email communications between MIGA and the complainant demonstrate efforts to substantively address the matters raised by the complainant.

Details are set out in Appendix 3.

## **5. CAO Decision**

CAO determines that the complaint relating to the Morava Corridor Motorway does not merit a compliance investigation and will close the case.

This Compliance Appraisal Report is shared with the Board, the World Bank Group President, MIGA Management, the company, and the complainant. CAO will publish this report as well as MIGA's Management Response on its website.

## Appendix 1: Complaint

August 23, 2023

Delivered via email: [cao@worldbankgroup.org](mailto:cao@worldbankgroup.org)

Office of the Compliance Advisor Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW Washington, DC 20433  
USA

Re: Complaint

Dear Sir/Madam,

I have a property that is located next to Morava Corridor Motorway project in Serbia. I believe that many IFC PSs are not adhered to. I.e., due to the restrictions imposed by the project I have lost my intangible asset - the right to develop. This also resulted in losing my enterprise income as the value of the property decreased so if I want to sell it I cannot sell it for its value with the development rights. My Human rights are infringed - I cannot enjoy my property - I cannot develop i.e., build a house in Buffer zone due to restrictions. The health of my family is endangered. The health of my family is endangered etc. I complained to MIGA and after 100+ email exchange and their site visit, they have concluded that everything is ok. They do not have understanding of intangible asset as they say that IFC PS are not discussing intangible assets (this is untrue as the right to firewood is intangible asset). I believe that MIGA is giving misleading assurance to the funders and as the result of that the Event of the default is not corrected. I have tried to submit the additional files, but your system is not allowing me to do so. I have detail complain that I would like to submit. Could you please review my case.

I have attached the detail complaint with additional information and MIGA summary.  
Many Thanks,

[REDACTED]

Attachment to the above email:

August 23, 2023

Complaint to the Omnibuses

IFC not adhered to

Dear Sir/Madam,

My name is [REDACTED] and I am FCCA (ACCA) and AMCT. I own the plot of the land that is located next to the Morava Corridor Motorway project (Serbia). This project is financed by the Syndicate 400,000 EUR loan that MIGA (Multilateral investment guarantee agency) gives guarantees that IFC PS (International Finance Cooperation Performance Standards) are adhered to.

Standard non-adherence will result in the Event of default that needs to be rectified within 10 days.

I have reported to MIGA my concerns that IFC PSs are not adhered to.

For more than a year, I have exchanged 100+ emails with MIGA. MIGA also visited my property, and their final conclusion is that standards were adhered to.

As the Corridors of Serbia have duty to inform funders that the Project is in line with IFC PSs on yearly basis, and MIGA is of an opinion that this is the case, I believe the funders have misleading assurance about the Morava Corridor Motorway Project. This action is resulting in my personal loss of [REDACTED].

I believe that this is an example of “truth suppressed by unrighteousness” of which Apostol Paul is talking about in Rom 1:18:

“For the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men, who <sup>[a]</sup>suppress the truth in unrighteousness”

Below are the reasons that why I believe that IFC PSs are not adhered to:

1. **Loss of Asset results in economical displacement and compensation should be paid, which was not the case.**

IFC PS5 states:

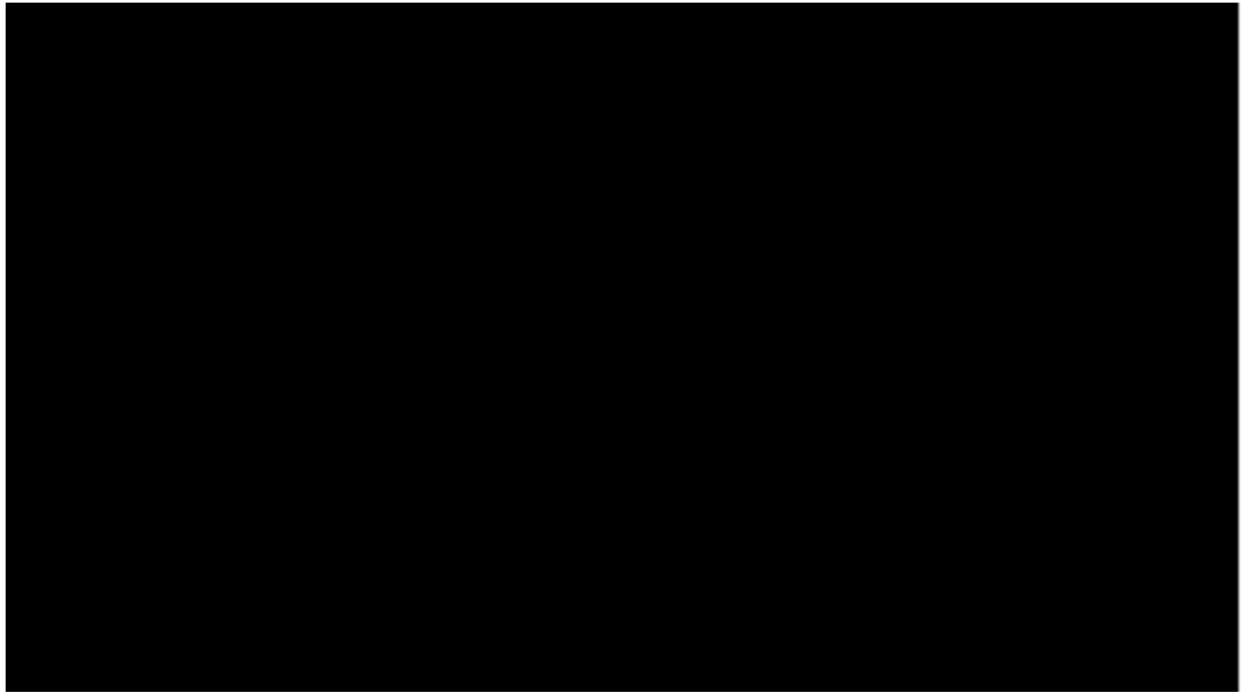
26. If land acquisition or **restrictions on land use** result in economic displacement defined as **loss of assets** and/or means of livelihood, regardless of whether or not the affected people are physically displaced, **the client will meet the requirements in paragraphs 27–29.**

27. **Economically displaced** persons who face loss of assets or access to assets will be compensated for such loss at full replacement cost. (pg 153/273 of, **37 ifc performance standards guidance**)

I had bought the plot of the land [REDACTED] few years before the Morava Corridor Project and Area plan were published. When the property was bought it was classified as Development land that means that development was allowed on this land. The development land value is 11 times more than agriculture land in Vranesi (Serbia), where the property is located.

When Area plan, that incorporates Morava Corridor project, was published, **restrictions were imposed** on my land by placing it in the Buffer/Protection zone (40m) and the Zone of Controlled development (40m). According to the Serbian Law, no construction of any buildings (houses, stables, septic tanks etc) is allowed in the Buffer zone (40m from the Motorway) and in the Zone of Controlled Development some restrictions also are imposed.

My property is located 50% (estimate) in the Buffer zone and 50% (estimate) in the Zone of controlled development:



Map from the Spatial Plan

By placing restrictions, I have lost rights to build in the Buffer zone, and my rights to build in the Zone of controlled development are also restricted (in comparison to what I could do before). Thus, my Development land become Agriculture land. The rights to build are defined as an intangible asset in accounting.

The value of these rights are as follows:

As of Jul 2023:

Value of Development land: EUR [REDACTED]

Value of Agriculture land: EUR [REDACTED]

Value of Rights to Develop (Difference): EUR [REDACTED]

The IFC PS5 States the following:

“26. If land acquisition or restrictions on land use result in economic displacement defined as **loss of assets** and/or means of livelihood, regardless of whether or not the affected people are physically displaced, **the client will meet the requirements in paragraphs 27–29**

27. **Economically displaced** persons who face loss of assets or access to assets will be compensated for such loss at full replacement cost (pg 153/273 of , **37 ifc performance standards guidance** )”

The standard states that loss of assets is enough to qualify the case as Economically displaced person and thus the compensation needs to be paid (for the whole property).

I have lost an asset due to the restriction imposed by the Motorway project and no compensation is paid.

MIGA's response to this is the following:

"MIGA explained that PS 5 does not include consideration of intangible assets. It refers to loss of access to tangible assets (e.g., firewood and fisheries) that are important for livelihood and subsistence."

This is contradictory response as it states that PS5 does not include consideration of intangible assets. And then it states that it refers to the loss of access to tangible assets (e.g., firewood and fisheries). Can somebody explain to MIGA that loss of access to tangible assets (e.g., firewood and fisheries) is defined as intangible asset from the accounting perspective, please? Thus, claim that PS5 does not include consideration of intangible assets is false.

## 2. The restriction on land use affects my enterprise income thus compensation should be paid (IFC PS5)

When I bought this property, I had it had three purposes – 1. To be used as accommodation for my family 2. To be used as accommodation for my elderly mother and step father and 3. To serve as enterprise that will generate future income via agriculture or future sale.

The estimated value of the property with development rights is as follows:

	m <sup>2</sup>	EUR/m <sup>2</sup>	
Land	██████	██████	██████
House	██████	██████	██████
Stable flat	██████	██████	██████
Stable -	██████	██████	██████
Stable under the roof	██████	██████	██████
Stable top floor	██████	██████	██████
Stable 2	██████	██████	██████
Corn Storage	██████	██████	██████
Corn Storage	██████	██████	██████
Septic Tank and installation	██████	██████	██████
Well	██████	██████	██████
Grass, Trees	██████	██████	██████
Planning permissions water, electricity, architect etc	██████	██████	██████
Fence	██████	██████	██████
Total	██████	██████	██████
Cost of capital for 3 years at 5%	██████	██████	██████
██████	██████	██████	██████

I have induced 3 years cost of capital as my capital is tied in this enterprise and this should have been sorted 3 years ago.

Thus the value is EUR ██████ (inclusive of loss on Cost of Capital).

If I want to sell the property now, I cannot do it at this price as my land is sought after location and also nobody want to live near the motorway. Thus the sale price would be probably in the region of [REDACTED] EUR.

Thus due to the restriction that is imposed on my land, my enterprise lost EUR [REDACTED].

MIGA responded that IFC PS are not considering this sort of future income. This is also inconsistent as they are stating that enterprise income is recognized:

**“GN11. Compensation alone does not guarantee the restoration or improvement of the livelihoods** and social welfare of displaced households and communities. Restoration and improvement of livelihoods often may include many interconnected assets such as access to land (productive, fallow, and pasture), marine and aquatic resources (fish stocks), access to social networks, access to natural resources such as timber and non-timber forest products, medicinal plants, hunting and gathering grounds, grazing and cropping areas, fresh water, as well as **employment, and capital**. Major challenges associated with **rural resettlement** include **restoring livelihoods based on land or natural resource use** and the need to avoid compromising the social or cultural continuity of Affected Communities, including the host communities to which the displaced population may be resettled. Resettlement in urban **or peri-urban areas** typically **affects housing, employment, and enterprises**. A major challenge associated with urban resettlement is the restoration of **wage-based or enterprise-based livelihoods** that are often tied to location (such as proximity to jobs, **customers and markets**).”

(pdf pg 135 of 273)

### 3. My Human rights are infringed

IFC PS1 states:

**3.“Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to.”**

According to the EU convention on Human Rights: Protocol 1, Article 1: Protection of property: Every natural or legal person is entitled to **the peaceful enjoyment of his possessions**.

I cannot peacefully enjoy my possessions as development is 100% prohibited on the part of my property (The buffer zone), and it is also restricted in another part that is in the Zone of Controlled Development. Thus, I cannot build any property i.e., house, grape processing plant etc., which I was allowed to do before Motorway related restrictions were imposed.

MIGA stated that according to the Super Assessment I still have access to the property, but MIGA ignores that according to the same super assessment I cannot build on my property.

### 4. IFC PS1 requires prompt resolution of the grievance

IFC PS1 states:

**“This Performance Standard supports the use of an effective grievance mechanism that can facilitate early indication of, and prompt remediation for those who believe that they have been harmed by a client’s actions.”**



The grievance handling process, which has been ongoing for **almost three years**, can hardly be described as an effective procedure that results in prompt remediation.

MIGA has stated that Corridors of Serbia are working toward resolution and that process is counted as prompt resolution. Furthermore, they stated that I am not happy with the result of the grievance and that is why it is taking so long. Finally, they stated that various government agencies are involved and that due to the lack of resources it takes so long.

Firstly, Corridors of Serbia are not solely responsible for the prompt resolution. The Loan agreement is signed between funders and Government of Serbia, that means that all Government agencies such as Tax office and Courts, should adhere to the prompt resolution of the grievance requirements.

Here is an example how they are deliberately dragging the process.

Initially (3 years ago) CoS suggested to expropriate part of my plot of land. They offered the expropriate [REDACTED]. I requested that everything should be expropriated but this was rejected, and Ministry of finance confirmed that expropriation of [REDACTED] is final. This was final on 02/Aug/2021. We complained that the initial offer did not include the septic tank that was located in the expropriation zone and also trees and fence. It took Corridors of Serbia additional 2 years to confirm that the septic tank, trees and fence are included in the expropriation zone. They finally gave the offer for all of this, but the offer for the land was not adjusted by 3 years inflation. This happened in Jul 2023. When we asked for this adjustment (as Inflation adjustment is also required by IFC PS), the Tax office ignored this and offered the same amount [REDACTED] that was offered 3 years ago. This initial expropriation compensation is very easy to calculate – One have the offer 3 years ago [REDACTED], adjust it by inflation (estimated 38%), add the valuation of septic tank (again sewage is not included in the valuation), trees, fence and grass, and we get the compensation for this initial expropriation. But for 3 years this cannot be done properly. All of this was reported to MIGA as this clearly against prompt resolution requirement but MIGA ignores this. For MIGA everything is according to the IFC PS. It is clear from this example that CoS and Agencies deliberately prolong the resolution of the grievance.

It is evident that there is **no sense of urgency** to address the issue I raised, and it appears that their intention is to delay any action until two years after the Motorway construction is completed, using that as a basis to argue that the deadline for complaints has expired. It is important for CoS (Corridors of Serbia) to understand that adherence to the IFC Performance Standards is required throughout the entire duration of the project, which spans 20 years from the signing of the loan agreement.

5. Health of people who live in the property is endangered

IFC PS3 states:

**“2. Objective**

**To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities.”**

My [REDACTED] is allergic to dust [REDACTED] has heart issues. MIGA ignored impact on my elderly parents and also the study on the impact of motorway to the surrounding area:

<https://www.lung.org/clean-air/outdoors/who-is-at-risk/highways>

Panel that looked at 700 studies round the world concluded most affected living 300 to 500m next to the road. They concluded that traffic pollution causes **asthma attacks** in children and may cause a wide range of other effects including the onset of childhood asthma, **impaired lung function, premature death and death from cardiovascular diseases and cardiovascular morbidity**. The area most affected, they concluded, was roughly the band within 0.2 to 0.3 miles (300 to 500 meters) of the highway.

Adults living closer to the road—within 300 meters—may risk **dementia**. In 2017, a study of residents of Ontario, Canada, found that those who lived close to heavy traffic had a higher risk of dementia, although not for Parkinson's disease or multiple sclerosis. Researchers found the strongest association among those **who lived closest to the roads (less than 50 meters)**, who had never moved and who lived in major cities. A study of older men in 2011 also found that long-term exposure to traffic pollution increased their **risk of having poor cognition**.

MIGA stated that “experts” concluded that everything is ok and lives of my family are not endangered.

I am also not aiming to expose my toddlers to the air pollution during the planning nor usage stage. It is concerning that the impact on my elderly parents and children was ignored as they represent the most **woundable** group.

#### **6. IFC PS4 Non existen Buffer zone that should protect environment from the impacts of the Motorway**

IFC PS4 states the following:

**“5.The client will evaluate the risks and impacts to the health and safety of the Affected Communities during the project life-cycle and will establish preventive and control measures consistent with good international industry practice (GIIP),<sup>1</sup> such as in the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines).”**

According to the law, a **40-meter buffer zone** is required between the motorway and its surroundings. This buffer zone serves to protect both the motorway and its surroundings. However, in my case, there is no buffer zone between my property and the motorway, as my property is located within the buffer zone. This situation poses a risk to both the safety of the motorway and the safety of my property.

Area plan defines the function of the Buffer zone:

A protective belt is defined as a zone to ensure protection from the harmful impact of a road corridor **on the environment**. Construction of buildings within the protective belt is not permitted except for structures that serve the road and traffic functions. The width of the protective belt is determined by legal regulations and measures 40.0 meters from the land strip. (Area plan pg7)

**“8. land use changes or the loss of natural buffer areas such as wetlands, mangroves, and upland forests that mitigate the effects of natural hazards such as flooding,...”**

The flooding issues aroused due to barrier Motorway created. My property was 10-20cm underwater. This has never happened before.

MIGA concluded that “experts” concluded that health and safety standards are adhered to and that the folding that we experienced was natural.

**7. The IFC PS require that national laws should be adhered to. Sub-division of my plot of the land was done illegally as Sub-division plan was not included in the Spatial plan.**

In order to sub-divide the plots, according to the Law on Special Procedures for the Implementation of Construction and Reconstruction Projects of Linear Infrastructure Facilities of Special Importance Article 8 Paragraph 2, the **Sub-division plan** needs to be included **in the Spatial plan**. The plots should be divided according to the sub-division plan. The GPS coordinates of the expropriation corridor and plot numbers of affected plots cannot be classified as sub-division plan as they are under the heading Border of the Spatial Plan with Detailed Elaboration which is not the Sub-division plan. The Sub-division plan should include detail map of the suggested solutions for the new plots and map after the plot is subdivided, all that together with all plot's coordinates. As Spatial plan does not contain Sub-division plan for my plot of land, Sub-division is done illegally.

MIGA is aware of this, but they are ignoring this fact as they state it is too legal. It is not too legal it is clear breaking of the law as Corridors of Serbia could not produce original Spatial plan with the Sub-division plan. Of course, if Serbian courts are asked if this subdivision is done legally, they will say it was done legally, as the courts are corrupted.

I have attached:

The final MIGA's summary: 47 B ZI Comments MIGA CoS and [REDACTED] - Summary of Meeting 12-Jul-2023 v 31 Jul 2023 FINAL (1).pdf

Loan Agreement: 19 a Loan Agreement bolji za cintanje 400.000.000 evra uz osiguranje od .pdf

IFC PSs and guidance:

27 IFC Performance standards.pdf

37 ifc performance standards guidance.pdf

People who were dealing with my complaint:

[REDACTED]

Could you review my case and inform MIGA and myself of your findings, please?

Should you require any additional information feel free to contact me.

Kind Regards

[REDACTED]

December 28, 2023

Delivered via email

CAO Assessment Team  
Office of the Compliance Advisor Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW Washington, DC 20433  
USA

Re: The complainant accepted the final offer with concerns about the number in the offer and the relocation process

Dear [REDACTED]

I am well, thank you. I hope you are doing well too.

Thank you for your query.

Yes, my understanding is that nothing will be done during this break before MIGA's call, but that was not the case.

After the meeting with You (CAO) and your advice to send a counter offer to CoS, I have emailed them my calculation (the one I shared with you), and asked them to do the gap analysis that will identify the difference between Serbian law and IFC PSs. Similar to the one I emailed you. I emailed them the calculation on 20<sup>th</sup> Dec 2023. (attached: 93 Offer Reviewed by [REDACTED]). In my view, this was a request for clarification, not an counter offer.

The following reply came from [REDACTED], from [REDACTED] on 21<sup>st</sup> Dec 2023 (translated by ChatGpt):

"Dear [REDACTED] ([REDACTED], misspelling),

I am not an expert to understand your offer! Corridors of Serbia have made an offer to you based on collected data and assessments by competent institutions and authorized experts. Therefore, we adhere to our offer, which has been adjusted in relation to your remarks regarding the assessment of the properties.

All details and objections you have stated in the letter can be emphasized in the next step, before the court if necessary. Regarding the speed of the procedure, we wanted to assist you and facilitate the relocation of your household from difficult conditions as soon as possible. In addition to the above, we are nearing the end of the calendar and budgetary year, which is why we were willing to conclude this process as soon as possible.

We would like to point out that your compensation is paid directly from the Budget of the Republic of Serbia, so it must be fully compliant with both international standards and domestic legislative procedures, which are aligned with international standards.

Finally, please inform your colleagues from Vrnjacka Banja of your final decision by the end of this week so that we can allocate funds and allow colleagues to, in accordance with the Law on General Administrative Procedure, close the case in this calendar year, either by agreement or through the appropriate procedure for continuation in the next calendar year."

This was the Thursday 21<sup>st</sup> Dec 2023. Later that day, they are informing my solicitor that as CoS rejected my counter offer (that was a request for clarification), and that they will send this case to the court so Serbian Courts will decide.

I am learning about this on Noon, Friday 22<sup>nd</sup> Dec 2023 and than accepting the offer as I am not willing to go to the Courts as Serbian laws are not in line with the requirements of IFC PSs, and potentially I the net increase will be cca [REDACTED] EUR (Inflation adjustment for the land value - extra solicitor's fees), which is not enough to motivate me to wait for another 3 to 7 years. I will elaborate on this later in this email.

**The offer I accepted was marginally different from the initial offer:**

The final offer RSD [REDACTED] (EUR [REDACTED]) is marginally different from the original offer. The difference are as follows:

The value of Residential and Auxiliary was increased by EUR [REDACTED] and Other Objects, in particular, Sewer installation, got increased by EUR [REDACTED]. The total increase was EUR [REDACTED].

As a reminder, I have requested that value of the land should be increased by 3 years inflation (as required by IFC PSs). This remained unchanged.

I have requested that the value of the septic tank is changed to the Jul 2023 valuation (from the same expert), that should have been [REDACTED] times more. This remained unchanged.

I have requested that depreciation should be excluded from the calculation. The expert has hidden the New construction cost, thus showing only depreciated values. So this also remained unchanged.

I have requested that the value of the all objects should be based on New build cost, without depreciation. Which in my opinion should be at least 100% more (according to the official statistics, it should be [REDACTED] times more). This one remained unchanged.

I have requested for solicitors and professional fees. This one remained unchanged.

**I have required for CoS to do Gap analysis to identify where their offer is not in line with IFC PS.**

As per RAP and Resettlement and Livelihood Restoration Framework (LRF), and finally IFC PSs and Loan agreement, CoS should implement the Matrix that require to identify the differences between Serbian law and IFC PSs.

I have identified for them that these are inflation adjustment and that the properties should be valued at New Build cost without depreciation (as required by RAP which follows IFC PSs).

CoS stated that they are not an expert to understand this (my offer that is gap analysis).

They stated that the offer is in line with Serbian law and International standards, as the compensation will be paid from the budget and that this is the requirement for it in order to be paid.

The offer for the buildings and other objects is in line with the Serbian law and for me to go to the Serbian court would be useless as the offer for the objects is based on the Market value. Serbian court will dismiss my argument (to adjust it to the New build cost and ignore depreciation) as the offer is legal (based on Serbian law).

The problem of inflation- yes, this might be accepted, but the total net gain would be EUR [REDACTED], which is not enough for me to wait another 3-7 years (I am already waiting 3.5 years).

So yes, their suggestion that if I am not happy, I should go to the court is in line with IFC PSs, but it is not in line with the requirement that CoS should do the gap analysis and be able to understand requirements of IFC PSs. It is also not in line with RAP and LRF which require of CoS to follow the Matrix which is prescribed there: Identify the differences between Serbian law and IFC PSs, do gap analysis and compensate for the differences. It is also not in the line with IFC PSs requirement that grievances should be resolved promptly (at the moment 3.5 years+ additional 3.5 to 7 years).

**CoS stated that the offer is in line with Serbian Law and International laws as it will be paid from the budget which have this requirement**

Their answer to my request to do the gap analysis is that the offer will be paid from the budget and the requirements must be met if is paid in this manner.

Yes, they paid what we agreed swiftly (on the 26<sup>th</sup> Dec 2023), which is good. But as per above, the offer was not in line with the IFC PSs as explained earlier. Once more, going to the Serbian court to complain about this is useless as the offer is in line with the Serbian law.

**My family was offered 1 month to leave the premises**

In the agreement, I was offered 1 month to leave the premises. I objected to this and was told that they will try to extend this. Firstly, [REDACTED] from Vrnjčka banja told me that I will have 2 months, than my solicitor got assurance from [REDACTED] (CoS) that I will have a few months (possibly by the spring).

As you are aware, I have a few things to do: find new property, buy it and organise the move during the winter. This is a big challenge but we it seems to me that CoS are willing to help us in this. The only thing is that we did not get anything in writings.

So, to summarise. The agreement was signed and CoS swiftly paid what was agreed. They also said they will extend the removal period which is good.

However, gap analysis was not done as they said they have not expertise for this, and as the result of that CoS have not compensated me for the difference between the Serbian Law and IFC PSs requirements. I was hoping that this should be clarified in MIGA/CoS meeting, but CoS were in hurry and they give their opinion without having expertise in IFC PSs. They also assured me that the offer is in line with international standards (IFC PSs included). This should be checked by CAO/MIGA, please.

Kind Regards,

[REDACTED]

**MULTILATERAL INVESTMENT GUARANTEE AGENCY**

**MANAGEMENT RESPONSE  
TO THE CAO ASSESSMENT REPORT  
ON**

**MORAVA CORRIDOR MOTORWAY  
SERBIA**

**(PROJECT No. #14629)**

**MARCH 26, 2024**

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	i
I. INTRODUCTION .....	1
II. PROJECT OVERVIEW .....	1
III. CAO COMPLAINT .....	2
IV. MANAGEMENT RESPONSE .....	3
V. CONCLUSION .....	8
ANNEX I .....	10



## ABBREVIATIONS AND ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
CoS	Koridori Srbije d.o.o. Beograd
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESRS	Environmental and Social Review Summary
GIIP	Good International Industry Practice
GoS	Government of Serbia
IESC	Independent Environmental and Social Consultant
km	Kilometer
MIGA	Multilateral Investment Guarantee Agency
MoF	Ministry of Finance
PSs	MIGA's Environmental and Social Performance Standards
RAP	Resettlement Action Plan
RLRF	Resettlement and Livelihood Restoration Framework
US\$	United States Dollar

## EXECUTIVE SUMMARY

1. This Management Response has been prepared by the Multilateral Investment Guarantee Agency (MIGA) to address the issues raised in the complaint by an individual on behalf of himself and his family members (“the Complainant”), received in August 2023 by the Office of the Compliance Advisor Ombudsman (CAO) regarding the Morava Corridor Project in Serbia, a project supported by MIGA. MIGA provided Non-Honoring of a Sovereign Financial Obligation (NHSFO) guarantees in March 2022 and December 2023 to various lenders for their loans to the Government of Serbia for the development, construction, and operation of the Morava Corridor Motorway (“the Project”).
2. The Complainant raised concerns regarding economic displacement, health and safety, environmental impacts, and violations of laws and international standards in relation to the construction of the Project. CAO determined the complaint eligible and notified MIGA in October 2023, completed an assessment of the issues in February 2024, and transferred the case to CAO’s Compliance function<sup>1</sup>.
3. MIGA has been in discussions directly with the Complainant since August 2022 when MIGA became aware of his concerns. MIGA confirmed that the complaint had been received through the project-level grievance mechanism and was diligently being processed by the relevant parties. MIGA engaged with the Complainant and Koridori Srbije d.o.o. Beograd (Corridors of Serbia (“CoS” or the “Company”) to evaluate the concerns raised by the Complainant and to support the Company in its ongoing efforts to address the grievance.
4. As part of due diligence prior to the effectiveness of the guarantee, MIGA, in close collaboration with MIGA’s guarantee holders (i.e., lenders), and their independent environmental and social consultant (IESC), reviewed the Project’s resettlement and livelihood restoration framework and resettlement action plans to assess compliance with MIGA’s Performance Standards on Environmental and Social Sustainability. Post-effectiveness of the guarantee, MIGA monitoring has included site visits and review of monitoring reports, including those prepared by the IESC. Furthermore, the Project’s Environmental and Social Action Plan requires that a resettlement completion audit be undertaken after the land acquisition process is completed.
5. After submitting the complaint to the CAO, the Complainant continued to pursue his concerns through the project-level grievance mechanism, which ultimately led to the resolution of the concerns raised in the complaint; however, additional concerns were then raised regarding the amount of compensation offered and the expropriation process, including a concern regarding the transparency of MIGA’s review of the compensation offer. In a CAO-facilitated meeting with the Complainant, MIGA explained its view and rationale that the compensation offer is consistent with full replacement cost, as required by the Performance Standards (“PS”). Following this meeting, the Complainant claimed that MIGA had not provided sufficient basis for its assessment.

---

<sup>1</sup> See the CAO website for case details: <https://www.cao-ombudsman.org/cases/serbia-morava-corridor-motorway-01>

6. MIGA Management recognizes the important contribution of complainants in bringing issues forward and of the CAO for its engagement with this case. This document clarifies and responds to the open issues raised by the Complainant.
7. MIGA followed applicable procedures for due diligence and monitoring and engaged extensively with the Complainant and the Company to address issues raised in the complaint. Actions taken by MIGA were compliant with MIGA's Sustainability Framework. Based on this and as further outlined in this Management Response, MIGA's position is that a Compliance Investigation would not meet the criteria set out in paragraph 91 of the CAO Policy.

## **I. INTRODUCTION**

1. In March 2022 and December 2023, the MIGA provided NHSFO guarantees to various lenders for their loans to the Government of Serbia for the development, construction and operation of the Project.
2. In August 2023, a complaint was filed with the CAO by the Complainant, which raised concerns regarding economic displacement, health and safety, environmental impacts, and violation of laws and international standards in relation to the construction of the Morava Corridor Motorway in Serbia.
3. The Complainant is the owner of two parcels of land which were partially affected by the Project. In the approved Spatial Plan (2020), approximately 12% of the Complainant's property was to be expropriated for the construction of the Project. The expropriated portion of the property was vacant except for a septic tank and septic mound. The remaining property included a house, where the Complainant's family was residing, and auxiliary structures. In discussion with MIGA, the Complainant confirmed that the primary objective of raising the concerns was to have his property fully expropriated.
4. Prior to submitting the complaint to CAO, the Complainant had reached out to MIGA in August 2022 with similar concerns, and MIGA has been engaging with the Complainant since then. MIGA also confirms that the complaint had been received through the project-level grievance mechanism and was actively being processed by the relevant parties, including CoS, as well as the local municipality through that mechanism.
5. In October 2023, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. CAO submitted its Assessment Report in February 2024, and the complaint was transferred to CAO's compliance appraisal function, as there was no agreement by the Complainant and CoS on a CAO-facilitated dispute resolution process.
6. This Management Response constitutes the MIGA response to the CAO Assessment Report on the complaint concerning the Morava Corridor Motorway in Serbia (Project No. #14629).

## **II. PROJECT OVERVIEW**

7. On March 15, 2022, MIGA issued a guarantee for approx. EUR 411.4 million (c.US\$ 451.8 million)<sup>2</sup>, providing Non-Honoring of a Sovereign Financial Obligation (NHSFO) coverage to (i) JPMorgan Chase Bank, N.A., London Branch, (ii) CaixaBank, S.A., (iii) Banco Santander, S.A., (iv) UBS Switzerland AG, (v) Credit Agricole Corporate and Investment Bank, and (vi) Raiffeisen Bank International AG (together, the "Guarantee Holders"), acting through J.P. Morgan SE as the agent, for their non-shareholder loans to the Government of Serbia ("GoS") for the Project. On December 15, 2023, MIGA issued a new contract of guarantee for approx. EUR 901.1 million (c. US\$976.7 million) for an additional loan for the same Project.<sup>3</sup>

---

<sup>2</sup> The initial contract of guarantee was amended to increase the covered amount, on January 17, 2023 and again on September 1, 2023. Following the amendments, the amount of coverage increased to approx. EUR511.5 million (c. US\$543.1 million).

<sup>3</sup> This new contract of guarantee has J.P. Morgan SE as the agent and Banco Santander, S.A., Credit Agricole Corporate and Investment Bank, JPMorgan Chase Bank, N.A., London Branch, and ING Bank, a branch of ING-DiBa AG., as the guarantee holders.

8. The Project consists of a greenfield 112 kilometer (km) dual-carriageway tolled motorway, within a 900 meter right of way, located approximately 200 km south of Belgrade in a low-level flood plain running east/west along the West Morava River Valley. The Project also includes (i) aboveground structures such as interchanges, bridges, culverts, and over/under passes; (ii) a telecommunications network (digital corridor) supported by power lines and communication cables to connect the telecom stations within the motorway (at rest areas, parking lots, and near traffic loops) and to manage traffic through various traffic control, surveillance, and tolling systems; and (iii) river regulation works intended to protect the Project and its surrounding areas from flooding.

9. In this Project, the GoS is represented by the Ministry of Finance. CoS, a Serbian limited liability company fully owned by GoS, implements the development and construction of the Project. During the operation phase of the Project, PE Roads of Serbia, a state-owned enterprise, will serve as the operating entity. Bechtel-Enka JV (BEJV) is the Engineering Procurement and Construction (EPC) contractor.

10. The Project was classified as Category A under MIGA's Policy on Environmental and Social Sustainability (2013). The Environmental and Social Review Summary (ESRS) and the Environmental and Social Action Plan (ESAP)<sup>4</sup> were disclosed in October 2021. A Resettlement Framework (RF) and three Resettlement Action Plans (RAPs) (one for each section of the road) were disclosed with the ESRS.

### III. CAO COMPLAINT

11. In August 2023, MIGA was notified that the CAO had received a complaint raising concerns relating to economic displacement, health and safety, environmental impacts and violations of laws and international standards in relation to the construction of the Project.

12. From August 2020, when the Complainant first engaged with CoS, to date, the concerns raised by the Complainant have evolved, and additional issues have been raised (see paragraph 18). After submitting the complaint to the CAO, the Complainant continued to pursue his complaint through CoS' project-level grievance mechanism and local court processes. A key development was that in September 2023, the Complainant raised a new concern with CoS and the municipality, which required expert review. The new expert report issued in October 2023 recommended full expropriation of the property, which CoS accepted and promptly engaged a valuation expert to prepare a compensation offer.

13. The resolution of the Complainant's request for full expropriation of his property resolved the issues raised in the original complaint regarding economic displacement, health and safety and environmental impacts. However, the Complainant continued to express concerns that the amount of compensation received, and the expropriation process were not aligned with the requirements of the PS. The Complainant thus requested to continue the CAO process in relation to the (1) compensation offer and (2) expropriation process.

14. The Complainant's concerns regarding the **compensation offer** are as follows: (i) **Compensation for buildings:** The RAP indicates that compensation for buildings should be based on the cost of building replacement structures of similar quality; and the Complainant questions whether CoS adequately calculated such costs; (ii) **Compensation for land:** The Complainant is concerned that the offer is based on the market value in 2020, and therefore feels that inflation should be considered; and (iii) **Compensation**

---

<sup>4</sup> <https://www.miga.org/project/morava-highway-0>

**for the cost of capital and ancillary fees:** The Complainant believes that he should be compensated for the period during which he was waiting for his issues to be resolved (2020 – 2023), as well as for the lawyers’ fees incurred and the time that he personally spent trying to resolve the issue.

15. The Complainant’s concerns regarding the **expropriation process** are as follows: (i) the Complainant maintains that he should have been expropriated fully in 2020; (ii) the Complainant expresses concerns about the lack of transparency of the expropriation process, including concerns about the lack of transparency from MIGA with respect to its review of the compensation offer; and (iii) the Complainant expresses concerns about the 30-day deadline to vacate the premises.

#### **IV. MANAGEMENT RESPONSE**

16. Prior to but also during CAO’s assessment, the Complainant, MIGA, and CoS continuously worked towards finding a resolution to the Complainant’s concerns. The response below is structured into three sections: a) process followed by CoS; b) process followed by MIGA; and c) review of the Complainant’s remaining concerns.

##### **Process followed by CoS**

17. CoS has been engaging with the Complainant since 2020 when he first raised his concerns with the ultimate request for full expropriation of his property during consultation on the draft Environmental and Social Impact Assessment (ESIA). Serbia’s Law on Expropriation (“the Law”) refers specifically to partial expropriation, indicating that, “if it is determined that the owner has no economic interest in using the remaining part of the property, i.e., if his existence on the remaining part of the property is prevented or significantly hindered due to [the expropriation], the remaining part of the property will also be expropriated at his request” (Article 10). The Law also allows for the request to be submitted up to two years after completion of construction (Article 30). Throughout the development of the Project, CoS, the relevant municipalities, and the local courts have managed hundreds of requests for properties affected by the Project to be considered for full expropriation per Article 10 of the Law and a consistent process was applied to all cases.

18. With respect to the Complainant’s property, from August 2020 to date, the concerns the Complainant raised with CoS have evolved. To address the concerns raised, an iterative process of review, rulings and appeals has taken place, i.e., as CoS and the local municipality reviewed issues and determined that full expropriation was not required, the Complainant would raise new issues, which then required further assessment under a new process. The underlying request has always been for full expropriation of his property. Throughout this period, the Complainant was in regular contact with CoS, and CoS consistently followed up with the municipality responsible for expropriation of the Complainant’s property (“the Municipality”) regarding the status of the case and provided any support or information requested by the Municipality in timely fashion so as not to delay the process.

19. The Municipality engaged three independent experts to review different aspects of the concerns raised by the Complainant and to evaluate whether his property should be fully expropriated per the conditions in Article 10 of the Law. The results of these reviews indicated that the activities currently taking place on the property (i.e., use as a residence) could continue unhindered, and therefore the property did not qualify for full expropriation. The Complainant also engaged his own independent expert, which provided a conflicting view, and the Municipality then ordered a ‘super assessment’, which again confirmed

in July 2023 that the remaining property was economically viable for its current use as a residence, and therefore did not need to be expropriated. As indicated in paragraph 12 above, when a new issue was raised by the Complainant in September 2023, CoS and the Municipality engaged another yet independent expert to review this issue, which led to the ultimate decision to expropriate the entire property. CoS then promptly engaged the valuation expert to prepare a compensation offer.

20. While the Complainant's grievance was being processed, the Complainant also raised issues related to construction impacts (e.g., nighttime noise; safety concerns due to lack of fencing during construction activities), which CoS relayed to BEJV, and BEJV promptly resolved them in consultation with the Complainant.

### **Process followed by MIGA**

21. MIGA, in close coordination with Guarantee Holders (i.e., lenders) and the lenders' Independent Environmental and Social Consultant (IESC), undertook extensive due diligence on the Project from December 2019 to contract effectiveness in March 2022. During due diligence and prior to disclosure of the Resettlement and Livelihood Restoration Framework (RLRF) and Resettlement Action Plans (RAPs), MIGA, lenders, and the IESC iteratively reviewed multiple drafts of the RLRF and RAPs and ultimately confirmed that the final versions of these documents outlined a process, which, if implemented appropriately, would result in an outcome consistent with the requirements of PS 5. The Law was reviewed as part of the RAP development process, and it was found to be broadly aligned with the requirements of PS 5 (refer to section 3.4 of RLRF). The few areas of non-alignment were addressed through measures in the RAPs.

22. Once MIGA issued the guarantee, MIGA regularly monitored the implementation of the Project through site visits and review of reports in line with MIGA's Sustainability Policy. The Project is also being monitored on a quarterly basis by the IESC. Monitoring comprises review of the effectiveness of the project-level grievance mechanism and implementation of the RAPs, which included the processing of claims for full expropriation under Article 10 of the Law. The outcomes of monitoring indicated that the RAPs were being appropriately implemented and compensation standards consistently applied to all affected people.

23. In addition, per the Project's ESAP, a RAP completion audit will be undertaken no later than 12 months after completion of the land acquisition process. Should the audit determine that the RAP has not been appropriately or consistently applied, or that people have been adversely affected due to protracted court cases, then corrective actions will be identified.

24. From August 2022, when the Complaint was first raised to MIGA, to July 2023, MIGA diligently engaged with the Complainant and CoS to evaluate the concerns raised by the Complainant and to support CoS in their ongoing efforts to address the grievance (see a summary of MIGA's engagement with the Complainant in Annex I). During this period, MIGA's review focused on the concerns raised by the Complainant (i.e. economic displacement (impact on livelihood), health and safety, and environmental impacts), which have now been resolved through the full expropriation of his property. In February 2023, MIGA undertook a monitoring site visit, which included discussions with CoS on the details of the case and the status of grievance. MIGA then held video calls with the Complainant to gain further insight regarding the ongoing concerns and new issues raised. In July 2023, MIGA visited the Complainant's property and facilitated a tri-party discussion with the Complainant and CoS.

25. Following the site visit, on July 27, 2023, MIGA held a call with the Complainant where MIGA explained to the Complainant that it had made every effort to respond to his concerns, and that, based on the information provided to MIGA as of July 27, 2023, the requirements of PS 5 did not indicate that the remaining part of his property should be expropriated. During this call, MIGA ensured that the Complainant was aware of the CAO as MIGA's independent accountability mechanism for people who may be affected by IFC/MIGA supported projects. A summary of the call, which included the contact details for CAO, was subsequently shared with the Complainant by e-mail on July 31, 2023.

26. Since August 2023, MIGA has continued to engage with CoS and the Complainant as part of the CAO assessment process. MIGA participated in a call with the Complainant, facilitated by the CAO, on February 1, 2024, to discuss the remaining issues (see next section).

### **Review of Remaining Issues**

27. As indicated above, the issues in the original complaint have been addressed, and therefore, this Management Response provides a detailed response to the issues which were raised during the CAO Assessment phase, specifically (1) the compensation offer, and (2) the expropriation process. The section below is structured to respond to these open issues.

### **Compensation Offer**

28. PS 5 requires compensation for land and other assets at full replacement cost, which is defined as the market value plus the transaction costs related to restoring the assets. The primary objective of 'full replacement cost' is to ensure that affected people can replace land and assets lost to a project with land and assets of similar quality and value. The entitlement matrix in the Project RAPs provides the valuation methodology for determining full replacement cost. Per the entitlement matrix and in line with the requirements of PS 5, affected people are entitled to replacement cost for the property, as well as compensation for (i) moving costs, (ii) registration and administrative fees and taxes; and (iii) transitional allowance (if applicable).

29. To confirm alignment with PS 5, MIGA reviewed both the process followed by CoS and the outcome achieved. MIGA found that CoS followed the process set out in the Project RAPs, which had been consistently applied to all properties expropriated for the Project. The valuation of the Complainant's property was completed by a nationally accredited expert in Serbia in the field of construction, and the December 2023 compensation offer includes compensation for the loss of land and structures at market value plus transaction costs including moving costs, and registration and administrative fees and taxes. The Complainant was not eligible for transitional allowance, as no livelihood losses were identified.<sup>5</sup> The initial compensation offer was provided to the Complainant in early December 2023, and it was then subject to consultation with the Complainant and revised to address some of his concerns before he accepted the final offer.

---

<sup>5</sup> The purpose of the transitional allowance is to help affected people to re-establish lost livelihoods. Consistent with MIGA's findings, the Municipality's review found that there were no livelihood impacts associated with the expropriation, and therefore, the Complainant was not entitled to transitional allowance.



30. CoS confirmed that the amount offered to the Complainant was calculated in the same way as other affected properties which does not consider depreciation of property and is in line with the amount provided for similar expropriated properties. CoS indicated that they have their own accountability mechanism which reviews the expropriation process and amount of compensation provided to confirm that CoS is consistently applying compensation standards.

31. CoS has stated that the amount of compensation received by the Complainant is sufficient not only to replace his structures but to upgrade them. To confirm this, MIGA engaged a consultant to estimate (i) the cost of purchasing a replacement property of equal or better quality and (ii) the cost of purchasing land and constructing a property of similar size with similar materials. The consultant's findings confirmed CoS' assertion. The market assessment, which used public websites to review properties for sale in the Complainant's area and surrounding areas, found that the compensation received by the Complainant was sufficient to purchase a replacement property (including land and structures) of equal or better quality. During the facilitated call in February 2024 and in e-mails prior to the call, the Complainant also concurred that he had received market value for his property, but he expressed concern that this was not equivalent with "replacement cost" as defined in the RAP (i.e. market cost of materials to build a replacement structure).<sup>6</sup> Based on quotes provided by local property developers, the cost to purchase land and construct a house (including purchase of construction materials and contractor and labor costs) was significantly less than the amount of compensation received by the Complainant. Therefore, MIGA determined that the compensation received by the Complainant was consistent with 'replacement cost' as defined in PS 5, as it would allow the Complainant to either purchase a new property or purchase land and construct a property similar to the one that is being expropriated for the Project.

32. MIGA also reviewed the website provided by the Complainant as the basis for his higher estimate of construction costs. The website provided the average sale price of newly constructed houses in the Municipality in the first half of 2023.<sup>7</sup> The market price of a newly built house is not equivalent to the cost to construct that house, and therefore, the data on the website is not an accurate indicator of the cost of land, materials, labor and contractor fees to build a replacement house. Also, the website did not include information on the location of the houses sold or the materials used in their construction, both of which can significantly affect both construction costs and market price, which makes it difficult to determine comparability with the Complainant's property.

33. The Complainant's concern regarding inflation was considered during a court proceeding that took place in August 2023. During that proceeding, the court provided an inflation adjusted valuation per square meter, which was consistent with the 2020 valuation. MIGA's review undertaken in January 2024 also confirmed that the compensation offered for the land is consistent with full replacement cost as defined by PS5, noting that the compensation is sufficient for the Complainant to restore his standard of living at an adequate alternative site.

---

<sup>6</sup> The RAP defines replacement cost as the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes).

<sup>7</sup> The website provides data for municipalities where three or more houses were sold in the first half of 2023; however, it does not provide the total number of sales that the data is based on. It also does not provide the range or median sale price or the location of the homes, which makes it difficult to draw conclusions for the broader real estate and construction markets.

34. Regarding the cost of capital, the Complainant's time and legal fees, PS 5 does not require a project or client to bear the costs of or compensate for legal expenses and time incurred in the process of attaining expropriation unless a protracted process results in impoverishment from loss of income or livelihood. Regardless, in this instance, the final compensation extended to the Complainant included a provision for lawyer fees. This amount was directly paid to the Complainant's lawyer.

### **Expropriation process**

35. **Timely resolution:** As indicated previously, the Complainant's initial grievance was subject to multiple decisions and appeals over the three years, and the Complainant has raised new concerns over time, which required review. The final expropriation decision was made in October 2023 based on a new issue raised by the Complainant in September 2023.

36. **Complainant's concern about the transparency of the expropriation process:** CoS has undertaken a process of Informed Consultation and Participation per PS 1 and PS 5. The Spatial Plan, the Project ESIA, and the RAPs were all subject to extensive consultation, and records indicate that the Complainant participated in these consultations.

37. The RAP entitlement matrix provides the methodology for calculating compensation, and this methodology was consistently applied across all properties expropriated for the Project. As indicated above, the process includes engaging a nationally accredited independent expert to value the property. CoS has indicated that the assessed values for the Complainant's property are in line with those of other properties of similar size and made of similar materials. During the site visit and meeting with the Complainant in July 2023, CoS explained why there might be differences between different compensation offers (e.g. different construction materials; different type or size of structure); however, for data privacy reason, CoS was not able to share comparable compensation agreements with MIGA or the Complainant. As indicated above, compensation offers for the Project are subject to review by an internal accountability mechanism, which confirms whether compensation standards are consistently applied across affected people.

38. **Complainant's concern about the transparency of MIGA's review:** Per MIGA's Access to Information Policy, MIGA disclosed the Project's ESRS on its website. The ESRS, which included the Project ESIA, RLRf and RAPs as attachments, provides an evaluation of the overall E&S risks and impacts of the Project, including the proposed land acquisition and resettlement process. The ESRS allows for stakeholders to have access to material information regarding the Project's E&S risks and impacts. Furthering this commitment, all interactions between MIGA and the Complainant were documented, and the records were not only kept internally but were shared with the Complainant, allowing for an open review and feedback loop. MIGA's review of market prices was grounded in data that is publicly available. MIGA communicated these findings directly to the Complainant during the call facilitated by the CAO including indicating that the data came from publicly available websites. As the Complainant concurred that his compensation was consistent with market value of his property, MIGA did not share a written summary of its market price assessment. To estimate building costs, MIGA's consultant engaged with three independent realtors and property developers in Serbia and requested a cost estimate to construct a house of similar size and quality (in terms of construction materials) to the Complainant's in the vicinity of the Complainant's property. During the call facilitated by the CAO, MIGA explained to the Complainant the parameters given to the realtors / property developers and the range and average of the estimates that they provided. The Complainant requested the name of MIGA's consultant and the names of the realtors / developers that

MIGA spoke with; however, in the interest of maintaining a respectful and safe communication environment, MIGA did not share these names.

39. **Concern about the 30-day deadline to vacate the premises:** According to CoS, the 30-day period is the standard, legal deadline included in all compensation agreements and other expropriated individuals have been able to vacate their properties within this timeline. In mid-January, the municipality granted the Complainant another month (until the end of February) to vacate the premises, and then at the end of February, a further 15-day extension was provided — for a total of 75 days. According to CoS, the Complainant vacated the property in mid-March.

## V. CONCLUSION

40. Paragraph 91 of the CAO Policy sets out three criteria for determining whether a compliance investigation is necessary: a) whether there are preliminary indications of Harm<sup>8</sup> or potential Harm; b) whether there are preliminary indications that MIGA may not have complied with its E&S Policies; and c) whether the alleged Harm is plausibly linked to the potential non-compliance.

41. Regarding compliance appraisal criteria (a) whether there are preliminary indications of Harm or potential Harm and (c) whether that Harm is plausibly linked to the potential non-compliance with MIGA's Sustainability Framework, MIGA did not find evidence to substantiate Harm. The concerns originally raised by the Complainant have been fully addressed. MIGA's review further finds that the compensation received was aligned with full replacement cost as defined in PS 5, as it is sufficient to either purchase a similar property (including transaction fees) or purchase land and construct a new structure of similar quality and value (including transaction fees and labor and contractor's fees).

42. MIGA's review also confirmed that compensation standards have been applied consistently by CoS across the affected population, as required by PS 5.

43. With respect to criterion (b), preliminary indications that MIGA may not have complied with its E&S Policies: MIGA has demonstrated that it carried out its E&S assessment during due diligence and monitoring in line with its Sustainability Framework. When the complaint was raised to MIGA, MIGA worked diligently with CoS and in consultation with the Complainant to address the concerns raised by the Complainant.

44. Based on its review, MIGA's position is that a Compliance Investigation would not meet the criteria set out in paragraph 91 of the CAO Policy.

45. MIGA is committed to mitigate environmental and social risks, support effective and efficient execution of CAO's mandate pursuant to the CAO Policy, and be accountable to the MIGA Board. MIGA will continue diligently monitoring the Project through periodic site visits, review of the Project's and IESC's respective reports as well as participation in periodic calls with lenders, CoS, BEJV, and the IESC.

---

<sup>8</sup> Defined in the CAO Policy as 'Any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project.'

46. MIGA will continue to monitor implementation of ESAP actions, including the close-out audit regarding land acquisition that will be carried out by an independent party no later than 12 months after completion of the land acquisition process. MIGA will continue to cooperate with the Complainant, CAO and CoS in an open and transparent manner. MIGA values CAO's process of complaints resolution and evaluation to enhance MIGA's E&S performance, including the opportunity to provide this Management Response, as it fosters public accountability for MIGA's commitments and helps resolve issues.

## ANNEX I

### Summary of MIGA's Engagement with the Complainant

- **August 2022 – May 2023:** Exchange of e-mails with the Complainant and CoS; receipt and review of additional information, including expert reports commissioned by the Municipality and the Complainant; IESC visits (November 2022, February 2023); and MIGA monitoring visit (February 2023).
- **June 6, 2023:** MIGA held an initial call with the Complainant to further understand the Complainant's concerns.
- **June 30, 2023:** A tripartite call was held between MIGA, CoS and the Complainant to plan for the site visit to the Complainant's plot and agree on the key issues to be discussed during the site visit and continue dialogue.
- **July 12, 2023:** CoS, MIGA and the Complainant met at the Complainant's property, toured the property to observe affected assets (the septic tank), and engaged in discussion. The focus of the discussion was on the complainant's concerns regarding Project compliance with the Performance Standards. A topline summary of the July 12, 2023 discussion was shared with the Complainant and CoS on July 19, 2023. Based on the review of the documents, site visit and discussion, MIGA determined that the expropriation process for the Complainant's property had been undertaken in line with the requirements of Performance Standard 5 (PS 5).
- **July 27, 2023:** MIGA and the Complainant had a close out call. MIGA reiterated its conclusion, that the expropriation has been in line with the requirements of PS 5. MIGA informed the Complainant that MIGA would continue to monitor and follow up with CoS, and that moving forward, MIGA would be taking a step back and letting CoS lead the ongoing expropriation process and complaint resolution. In addition, MIGA also informed the Complainant of the CAO as an alternate redress mechanism.
- **August 1, 2023:** MIGA sent a summary of the July 27 call and updated the July 12 summary to include an annex of additional points raised by the Complainant, alongside with the CAO contact information. CoS was included in this email distribution.
- **From August 1, 2023 onwards,** there were some email exchanges with the Complainant, with CoS continuing to lead on complaint resolution.
- **February 1, 2024:** MIGA held a call with the Complainant facilitated by CAO on February 1, 2024. The objective of the call was to explain to the Complainant the reason behind MIGA's position that compensation was carried out in line with PS 5.

## **Disclaimer**

This MIGA Management Response is provided in response to the Assessment Report of the Office of the Compliance Advisor Ombudsman (CAO) finding a complaint to a project supported by MIGA guarantee eligible for compliance appraisal.

Nothing in this MIGA Management Response or in the process provided for in the CAO Policy (“CAO Process”) (1) creates any legal duty, (2) asserts or waives any legal position, (3) determines any legal responsibility, liability, or wrongdoing, (4) constitutes an acknowledgment or acceptance of any factual circumstance or evidence of any mistake or wrongdoing, or (5) constitutes any waiver of any of MIGA’s rights, privileges, or immunities under its Convention, international conventions, or any other applicable law. MIGA expressly reserves all rights, privileges, and immunities. MIGA does not create, accept, or assume any legal obligation or duty, or identify or accept any allegation of breach of any legal obligation or duty by virtue of this MIGA Management Response.

While reasonable efforts have been made to determine that the information contained in this MIGA Management Response is accurate, no representation or warranty is given as to the accuracy or completeness of such information. CAO is not a judicial or legal enforcement mechanism. Its analyses, conclusions, and reports are not intended to be used in judicial or regulatory proceedings nor to attribute legal fault or liability and it does not engage in factfinding nor determine the weight that should be afforded to any evidence or information. No part of this MIGA Management Response or the CAO Process may be used or referred to in any judicial, arbitral, regulatory, or other process without MIGA’s express written consent.

## Appendix 3: Additional Appraisal Considerations

The CAO Policy provides for the compliance appraisal to take into account additional considerations, as outlined in the table below.

CAO Policy provision	Analysis for this case
For any project or sub-project where an IFC/MIGA exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA exit (para. 92a).	Not applicable.
The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).	Not applicable.
Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (para. 92c).	CAO notes that in accordance with its Sustainability Policy obligation to identify and review opportunities for improving client performance (para. 43), following receipt of the complaint, MIGA reviewed the company's PS5 compliance with respect to the complainant's allegations of the right to full expropriation, the compensation offer, and the expropriation process. The result of this review was a compensation offer that available information suggests was compliant with the requirements of PS5. MIGA's efforts included discussion (information exchange and meeting) with the complainant, in which MIGA outlined to the complainant the criteria upon which the compensation offer was based.
Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).	With respect to remedial actions, MIGA took steps to facilitate engagement between the company and the complainant to resolve the complainant's concerns. MIGA carried out a site visit specifically to address the issues raised by the complainant and to define a corrective action plan. Throughout this time, documented email communications between MIGA and the complainant demonstrate efforts to substantively address the matters raised by the complainant. Such efforts did not lead to a result considered satisfactory to the complainant.
In relation to a project or sub-project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).	Not applicable.