

U.S. Statement on the FY2016 CAO Annual Report and IFC Management Response – Committee on Development Effectiveness August 3, 2016

The United States (U.S.) thanks the Office of the Compliance Advisor Ombudsman (CAO) for its FY2016 Annual Report and Management for its response. The U.S. notes the continuing disagreement between International Finance Corporation (IFC) and CAO with respect to the preparation and scope of “action plans” in response to compliance investigations, and the U.S. wishes to provide the following observations and recommendations.

The U.S. agrees with IFC that *project-specific* actions in response to particular findings of non-compliance may not be relevant, depending on the facts and circumstances. The U.S. further agrees with IFC that, for certain findings of non-compliance, a *systemic-level* response may be most effective, and recognition should be given to systemic-level improvements to policies, procedures, and practices that have been made in response to the case under investigation.

At the same time, the U.S. agrees with CAO that accountability requires a transparent, comprehensive, and systematic response to *each* finding of non-compliance. The U.S. agrees with CAO that IFC should reflect upon *each* finding, and enumerate the actions that have been, are being, or will be taken to remedy the non-compliance and associated harm. Only with this accounting can the U.S. be assured that all findings will be adequately addressed.

Therefore, the U.S. urges IFC to implement the following:

First, an “action plan” should be prepared in response to every CAO investigation that contains findings of non-compliance – regardless of whether IFC still has a relationship with the project or with the client that gave rise to the investigation. Second, the “actions” should not be limited to actions that the client is taking, but should also include actions that IFC is taking. This is especially important, since CAO findings pertain to *IFC’s own* non-compliance. And it is particularly important when IFC believes it can no longer “compel former clients” to take meaningful action. Third, the “actions” need not be wholly forward-looking, but could also include actions already underway, or policies and procedures already adopted, that remedy the non-compliance. Fourth, noting IFC’s concern about the lack of leverage with former clients, the U.S. recommends that any new IFC engagement with a former client be conditional on completion of any action plan relating to that client.

Specifically, an action plan should articulate, for *each* finding of non-compliance:

- all of the actions (project-specific, and/or systemic) that have been, are being, and/or will be taken to address that finding of non-compliance,
- by whom (IFC, client, sub-client, other),
- and by when.

CAO could facilitate such action plans by expanding the table of “Key Findings” in its investigation reports to include a short paragraph for each finding that summarizes the information relevant to that finding. IFC could then copy this table into its Management response, comment on each finding, and enumerate the actions that have been, are being, and/or

will be taken to address each finding, by whom, and by when. This is similar to the process and format that the World Bank follows for Inspection Panel cases.

The U.S. believes this process responds to both CAO's call for greater responsiveness, transparency, and accountability; and IFC's call for recognition that, in some cases, it may be unable to compel former clients to take action or it may have already taken the actions needed to improve its environmental and social performance.

Finally, the U.S. notes the disagreement between IFC and CAO on consultation with complainants in the preparation of "action plans." The U.S. notes that there is no express requirement in the 1999 CAO Terms of Reference for such consultation. However, best practice has evolved since 1999. The U.S. is concerned by reading in paragraph 53 of the CAO Annual Report that Management declined a recent consultation request from complainants. Consultation on an action plan would not require the complainants' consent to the final plan. But it would provide an opportunity for the complainants to give feedback and help improve the action plan that is being prepared as a result of non-compliance in the very project that has adversely affected them. The U.S. urges IFC not to deny project-affected communities the opportunity to provide this input, and the President's Office to consider the extent of IFC's consultations when it reviews IFC's response and proposed action plans. The U.S. further urges that, at a minimum, the table of "Key Findings" be shared with the complainants in advance of any such consultations.