



# **CAO Evaluation**

of

## **Dispute Resolution**

and

## **Assessment Processes**

Completed by Concentric Alliance (Pty) Ltd

24 March 2023

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## Acronyms and Abbreviations

AfDB	African Development Bank
CAO	Office of the Compliance Advisor Ombudsman
CKD	Chronic Kidney Disease
DG	Director General
DR	Dispute Resolution
E&S	Environment and Social
EBRD	European Bank for Reconstruction and Development
IADB	Inter-American Development Bank
IAM	Independent Accountability Mechanisms
IFC	International Finance Corporation
IPAM	Independent Project Accountability Mechanism
IRM	Independent Review Mechanism
MICI	Independent Consultation and Investigation Mechanism
MIGA	Multilateral Investment Guarantee Agency
SGR	Stakeholder and Grievance Response Function

## Definitions

Eligibility	Once CAO receives a complaint, it is screened against the eligibility criteria of the CAO Policy. CAO's eligibility decision does not constitute a judgment on the merits of the complaint. The complaint is deemed eligible if it relates to an active project that received funding from IFC/MIGA; the issues raised pertain to CAO's mandate to address environmental and social impacts of projects; and the complainant is or may be affected by the harm raised in the complaint. An eligibility determination must be made within 15 working days, with the possibility of a 20 working day extension.
Assessment	After CAO determines a complaint is eligible, an assessment is conducted to develop a thorough understanding of the issues and concerns raised in the complaint; engage with the IFC/MIGA project team, the complainant, and the client; identify local communities and any additional stakeholders relevant to the complaint; explain CAO's different functions, scope, and possible outcomes to the stakeholders; determine whether the parties seek to initiate a DR or compliance process; and consider the status of other grievance resolution efforts. The assessment does not entail any judgment on the merits of the complaint and must be concluded within 90 working days of finding the complaint eligible. This may be extended by a further 30 working days by the Director General (DG).
Settled with partial transfer to Compliance	Where parties reach a partial agreement during a DR process but are unable to reach an agreement on other complaint issues, and the complainant explicitly wishes to transfer the unresolved complaint issues to Compliance. A partial agreement or partial transfer to Compliance can also come from the splitting of cases, between parties that agree to the DR agreement and those that do not.
Transfer to Compliance	Where parties fail to reach an agreement following a DR process, or where agreement has been reached but there has been a failure to implement the terms of an agreement, and the complainant explicitly wishes to transfer the complaint to Compliance. In situations where CAO is aware of concerns regarding threats and reprisals the CAO may transfer the complaint to Compliance without the need for explicit consent in order to protect the complainant.
Settled	If the parties have informed CAO that they have reached a settlement agreement that is mutually acceptable following a DR process, CAO will conclude the DR process and proceed to monitoring of implementation.
Closed	If the parties have informed CAO that the agreed terms of the settlement have been implemented to the parties' mutual satisfaction, CAO will close the case. The case may also close if no agreement is reached and the complainant does not want to transfer the case to Compliance.
Pending	Cases that are still in the DR process or are in the monitoring phase and therefore have not yet been closed.

## 1. Executive Summary

### 1.1. Background

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The IFC aims to promote economic development by encouraging the growth of the private sector in developing countries. MIGA aims to promote investment in developing countries by providing guarantees, through political risk insurance and credit enhancement, to investors and lenders.

In June 2020, an independent external review of IFC/MIGA's environmental and social accountability, including the CAO's role and effectiveness, was concluded under the auspices of the IFC and MIGA Boards of Executive Directors. Key recommendations from the External Review were incorporated into the development and implementation of the new IFC/MIGA Independent Accountability Mechanism (CAO) Policy. In other recommendations not addressed by the CAO Policy, the External Review further recommended that CAO should conduct a systematic, retrospective evaluation of decisions to transfer complaints from Assessment to Dispute Resolution (DR) and Compliance from FY2014 to the present, to determine what factors are most predictive of complainants' and clients' choice to pursue dispute resolution or compliance processes. The CAO has commissioned this evaluation to respond to these recommendations and other matters relating to the Assessment and DR process.

### 1.2. Methodology and Sample Size

The evaluation used a mixed methodological approach, utilising quantitative and qualitative data. Data has been accessed from numerous sources to triangulate findings and provide richness and depth to the conclusions. Data was drawn from cases active between FY2014 and FY2022. This timeframe included 100 Assessment processes and 53 DR processes. Of the assessment processes reviewed, 39 resulted in a DR process being initiated, 58 resulted in a compliance process being initiated, and three were closed. In addition, of the DR processes reviewed, 17 were pending, 14 were settled, six were settled with partial transfer to Compliance, and 16 were transferred to Compliance.

### 1.3. Key Findings

During the evaluation the following findings were made:

#### 1.3.1. Facilitating Access to Remedy

The CAO's role is to facilitate access to remedy for project-affected people. During the interview process, a cross-section of participants expressed the importance of the DR function in delivering benefits to project-affected people and IFC clients. The majority of cases, 56%, resulted in settlement or settlement with a partial transfer to compliance. These benefits included, among others:

- Building trust between parties and facilitating the growth of more regular, transparent, and sustained engagement between project-affected people and IFC clients.
- Improvements in the policies of the IFC/MIGA, the IFC/MIGA client or strengthened implementation of those policies.

- Strengthening the skills of complainants to engage with the IFC client, building their capacity to negotiate and developing their understanding of many of the highly technical issues facing their communities – often through participatory monitoring and joint-fact finding interventions.
- Facilitating remedy through environmental rehabilitation, social investments, livelihood investments and compensation.

### 1.3.2. Dispute Resolution Complexity

During the evaluation, an analysis of factors contributing to complexity was conducted. These factors included: Group Size, Dispersion, Rural/Urban Split, Jurisdiction, Threats, and Reprisals, NGO/CSO and Union Participation, Sector, and Relevant Performance Standards in Complaint. While complexity does not necessarily have an impact on DR outcomes it does seem to have an impact on DR timeframes. Of the cases closed, 20 (56%) were closed within two years, 11 (31%) were closed after four years. Of the 17 cases still pending, have on average been going on for nearly four years. There are many reasons for why these factors contribute to complexity, including:

- NGO, CSO and trade union participation strengthens the ability of complainants to engage in the DR process. However, sometimes there is misalignment between the complainants and the NGOs that must be resolved. It bears noting that NGOs, CSOs and trade unions often are stakeholders in the most complex cases, which is a key consideration in this factor. Critically, cases where NGOs participate tend to result in a settlement.
- Larger complainant groups tend to contribute to longer average length of DR processes. Complexity arises from the need for complainant groups to find alignment and often requires the need to resolve issues over leadership and representation.
- Higher levels of dispersion tend to contribute to longer average length of DR processes. Complexity arises often because there are different issues and priorities for different communities even if they are part of the same complaint. Additionally, the DR process may need to focus on different aspects of the complaint over time.
- Cases in rural areas tend to contribute to longer average length of DR processes. This is often due to the challenging logistical arrangements that are required for these cases and because the CAO works hard to accommodate the needs of complainants, including providing necessary resources to engage in the cases and accommodating the requirements of agricultural or pastoral livelihoods.
- Where cases occur in jurisdictions where rule of law is weak this can create challenges for the participants to engage and can create possible risks of Threats and Reprisal.
- Project sector, scale, and technicality can contribute substantially to complexity. This is because projects can have a substantial impact on the lives of people and complaints can entail a number of issues, especially in cases including infrastructure, agribusiness. Additionally, in cases involving Financial Intermediaries, the IFC is removed from the subject of the complaint which can often make it difficult to get them to participate in the process.

It bears noting that while the risk of Threats and Reprisal add to complexity, they result in shorter average length of DR processes. This is due in part because CAO often recommends that cases be transferred to compliance to protect stakeholders.

### 1.3.3. Dispute Resolution Choice

During interviews many participants expressed that DR is viewed as a preferable process, where possible. The average time for assessment is significantly higher for cases in which parties decided to pursue compliance, an average of 170.33 working days (Median: 149 Working Days), compared with those where dispute resolution is chosen, an average of 134.08 working days (Median: 118 Working Days). This is because there is a desire to pursue DR, even where reaching an agreement is difficult to envisage, and the parties will explore all available avenues that lead to a DR process before selecting compliance. CAO has highlighted that in some situations, if one party wants DR and the other does not, additional efforts might be made to explore DR with the party not so inclined, even if that party does not change their mind.

The context in which the assessment is taking place has an implication for DR choice. Where rule of law is weak and access to justice limited, complainants are likely to choose to pursue DR, when there exists the possibility of achieving some form of remedy.

DR will likely be the preferred option in cases where there are pre-existing long-term relationships between clients and complainants, where there is the likelihood of a long-term relationship developing and where the parties are in close proximity. It is clear that part of the interest in DR lies in establishing functional relationships with those stakeholders. There is increasing interest globally in companies securing the social license to operate. The absence of this can result in ongoing challenges with stakeholders that can be costly and time-consuming.

#### 1.3.4. Factors Contributing to Closure without Settlement

There are multiple factors for why DR processes can close without settlement. It bears noting that the length of a DR process does not appear to play a significant role in this, in fact, most DR processes extending beyond four years result in settlement. However, during interviews, it was heard that where there is a perception that where the DR process is stagnating then parties can become disillusioned, and this can result in closure without settlement. This perception may be caused by failure to meet commitments and long delays between engagements.

Where complainant groups in DR processes fragment or where there is contestation over leadership, then it becomes likely that the DR process will close without settlement. In most cases, where there is fragmentation of the complainant group, cases are then transferred to compliance.

In 6 out of the 9 cases reviewed where threats and reprisals were a factor they transferred to compliance. This is often due to concerns for the safety of the complainants. Additionally, good faith engagement is difficult if there is a concern about the complainants' safety.

Force majeure factors can substantially impact the DR process and its ability to progress and in most cases these factors are out of the CAO's control. These may include issues of political instability, financial distress of the client and, recently, the COVID-19 pandemic. However, there are myriad other factors that often cannot be accounted for by the CAO.

#### 1.3.5. Dispute Resolution Success

There are multiple factors contributing to the DR process's success. Most of these factors are within the CAO's ability to control. Included in these factors are NGO, CSO and Trade Union participation, CAO interventions and the role of mediators.

NGOs and CSOs are key factors in DR success. NGOs and CSOs contribute to creating equality between the parties by providing advice and support to complainants. Additionally, they provide important support in keeping the complainant groups aligned and coherent during the DR process. CSO- or union-supported cases account for 44% of DR processes and account for 77% of settled cases.

In the cases where the CAO provides capacity building, there is a high likelihood that the parties will reach a settlement. Capacity-building is often provided to both parties. It creates equality between the parties and a clear understanding of the CAO process.

Joint fact-finding allows parties to have a shared basis of trusted fact. Linked to this is participatory monitoring, which gives complainants access to information that can be trusted. In the cases where the CAO supports joint fact-finding, there is a high likelihood that the parties will reach a settlement. It bears noting that there is often a challenge in accessing the resources for this activity due to the client's or IFC's unwillingness to finance this intervention.

There is value for the DR process in the IFC/MIGA participating, even if only informally, by providing information and support for the process.

Mediators are critical for success within the DR process. The evaluation has found that there is generally positive feedback about the quality of the mediators that the CAO uses. They are perceived to be highly skilled and capable. The CAO supports this by providing mediators with the necessary tools, skills enhancement, and peer learning opportunities to perform their roles. Mediators are critical in helping the parties reach a settlement, and, thus, are viewed as trusted, competent, and independent third parties that are essential to ensuring that DR is successful.

#### 1.4. Recommendations

Recommendations have been divided into several sections focused on Assessment, Dispute Resolution, CAO Capacity, IFC/MIGA's role and collaborating with other Independent Accountability Mechanisms (IAMs). These recommendations are to improve the effectiveness and efficiency of the CAO's processes and strengthen the CAO in order to facilitate access to remedy for project-affected people.

##### 1.4.1. Recommendations for Assessment

Concentric Alliance recommends:

- That a CAO Compliance Officer supports the DR team during the assessment process. The function of this individual would be to make an initial assessment of the issues in the complaint and how they relate to the E&S Performance Standards and to provide advice and support on an ongoing basis during the assessment.
- Conducting a complexity assessment as part of the CAO assessment process. This would aim to identify factors that may contribute to complexity within the DR process or pose a threat to the parties during the process.



- That the CAO adopt a system of case classifications based on risk and complexity to support the allocation of resources, and personnel and the determination of appropriate timeframes.

#### 1.4.2. Recommendations for Dispute Resolution

Concentric Alliance recommends:

- The development of protocols that enable proactive case management. This should include the management of commitments and communication between the CAO and the parties.
- The establishment of soft and hard timeframes for DR processes that support the management of cases and ensure progress towards settlement.
- That the CAO strengthen the mediation process design by identifying necessary interventions by the CAO and establishing timeframes for which those should be concluded. This should be done in collaboration with the parties and should consider risks and complexity.
- Developing a regularised review of cases within the DR Function. The purpose of such review is to establish the cause of blockages to settlement and possible actions to be taken to manage parties within the process.
- That CAO strengthen its monitoring processes by establishing appropriate timelines and management systems. Monitoring should serve as a mechanism to assess the impact of interventions agreed upon during settlement and hold the parties to account for delivering on commitments.
- That the CAO strengthen its communication systems with parties and stakeholders in the DR process This should include the development of appropriate timeframes for response, regularising engagements and ensuring information is shared with all participants timeously.
- That CAO manage the documenting of cases by developing regular progress reports, compiling minutes, and documenting commitments throughout the DR process. Such documents should be provided punctually after each meeting.

#### 1.4.3. Recommendations for CAO Capacity

Concentric Alliance recommends:

- That the CAO conduct an annual assessment of its workforce and forecast the needs of the DR team.
- That the CAO reviews mediator support, training, and monitoring. This should take the form of a needs and effectiveness assessment.

#### 1.4.4. Recommendations for IFC

Concentric Alliance recommends:

- An engagement between CAO and SGR to discuss each of their processes and determine whether alignment can be improved to support efficient resource allocation and timely resolution of cases.

- That CAO engage the IFC/MIGA to, as a matter of course, be an observer of all CAO cases instead of only observing cases when requested to participate and agreeing to do so.
- That the CAO engage the IFC in establishing mechanisms to support and facilitate remedial action. Notably, the IFC and the CAO should identify options for making resources available for scientific and technical studies, which are critical for establishing a basis for fact that contributes to the success of DR.

#### 1.4.5. Recommendations for CAO and other Independent Accountability Mechanisms

Concentric Alliance recommends that the CAO engage other IAMs on how best to enable alignment when collaborating on DR processes. Where it is possible to find alignment, general principles should be established on roles and responsibilities, cost-sharing, resource allocation, timeframes, and process.

## 2. Background

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The IFC aims to promote economic development by encouraging the growth of the private sector in developing countries. MIGA aims to promote investment in developing countries by providing guarantees, through political risk insurance and credit enhancement, to investors and lenders.

The CAO's work is directed by the CAO Policy<sup>1</sup>. The CAO aims to address the concerns of IFC and MIGA project-affected communities and individuals, enhance the social and environmental outcomes and foster greater accountability of IFC and MIGA and their clients. This is achieved through three functions: (i) Dispute resolution (DR) between clients and complainants, (ii) investigating compliance of the IFC and MIGA with its E&S Standards, and (iii) providing advice to IFC/MIGA and the Boards to improve systemic performance on environmental and social sustainability and reduce the risk of harm.

In June 2020, an independent external review of IFC/MIGA's environmental and social accountability, including the CAO's role and effectiveness, was concluded under the auspices of the IFC and MIGA Boards of Executive Directors<sup>2</sup>. Key recommendations from the External Review were incorporated into the development and implementation of the new IFC/MIGA Independent Accountability Mechanism (CAO) Policy. In other recommendations not addressed by the CAO Policy, the External Review further recommended that CAO should conduct a systematic, retrospective evaluation of decisions to transfer complaints from Assessment to Dispute Resolution (DR) and Compliance from FY2014 to the present to determine what factors are most predictive of complainants' and clients' choice to pursue dispute resolution or compliance processes. The External Review also recommended that CAO should review all cases that began dispute resolution under the previous CAO Operational Guidelines and took longer than two years to resolve or transfer (partially or fully) to Compliance to determine whether it could better identify complex cases that are unlikely to be resolved through a DR process and accelerate their transfer to Compliance. The CAO has commissioned this evaluation to respond to these recommendations and other matters relating to the Assessment and DR process.

## 3. Concentric Alliance

Concentric Alliance, an Africa-based firm of conflict resolution and development practitioners, has undertaken this evaluation. The purpose of Concentric Alliance is to help build trusting and productive working relationships between the public and private sectors and with all interest groups. Concentric Alliance draws together a highly experienced team of facilitators, strategy advisors and researchers with diverse skills. A core component of Concentric Alliance's work is monitoring and evaluating the impact of institutions that have a role in managing and mitigating conflict.

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<sup>1</sup> The policy can be found [here](#).

<sup>2</sup> The external review report can be found [here](#).

## 4. Purpose and Objectives

This report aims to evaluate the efficiency and effectiveness of Assessment and DR processes, the outcomes of these processes, and provide recommendations for improvement.

This report seeks to review and conduct a quantitative and qualitative analysis of the relevant DR case portfolio (from FY2014-FY2022) to:

- Identify factors most predictive of parties' choice to pursue DR or Compliance after Assessment.
- Identify methodological approaches or improve the positive impacts of DR processes.
- Identify factors that could reduce the time required to assess whether conditions are right for DR and to resolve DR cases successfully.
- Identify indicators of whether unsuccessful DR cases could have ended earlier and indicators for establishing early in the process cases not suited to DR.

## 5. Methodological Approach

Concentric Alliance has adopted a mixed methodological approach for this evaluation, utilising quantitative and qualitative data. Data has been accessed from numerous sources to triangulate findings and provide richness and depth to our conclusions. The CAO has gathered certain data, while Concentric Alliance has gathered other data.

### 5.1. Sample of Cases

Concentric Alliance and the CAO agreed in the scoping of this evaluation that data would be drawn from cases active between financial years 2014 and 2022 (FY2014 and FY2022). This timeframe was agreed upon to enable Concentric Alliance to access and interview participants and to ensure that Concentric Alliance was observing CAO's most recent DR and assessment practices.

This timeframe meant that Concentric Alliance reviewed 100 Assessments and 53 DR processes. Of the assessment processes reviewed, 39 resulted in a DR process being initiated, 58 resulted in a compliance process being initiated, and three were closed. In addition, of the DR processes reviewed, 17 were pending, 14 were settled, six were settled with partial transfer to Compliance, and 16 were transferred to Compliance. The list of cases is available for review in Appendix A.

### 5.2. Case Review

Concentric Alliance undertook a review of all 53 DR processes. This entailed a close reading of each report conclusions and other associated documentation that was both public and internal to the CAO. This data was processed in two ways: Firstly, each case was reviewed for salient commentary, and a summary of the case was developed. Secondly, each case was coded: the variables are available in Appendix B of this evaluation. The coding has enabled Concentric Alliance to understand the impact of CAO processes and the presence of complexity factors in cases. These findings were incorporated into our quantitative and qualitative analyses.

### 5.3. Quantitative Analysis

Concentric Alliance's quantitative analysis has been used to understand the prevalence of certain variables, for instance, how often cases include capacity building or joint fact-finding. This analysis is non-probabilistic but is valuable in understanding efficiency as the time taken during a case or the prevalence of certain factors and their impact on cases. Each data set has been subjected to analysis through Microsoft Excel.

#### 5.3.1. Monitoring and Evaluation

The CAO conducts monitoring and evaluation surveys at the end of the assessment and at the end of DR. Once the assessment is concluded, the post-assessment survey is sent to the parties, and once DR is concluded, the post-DR survey is sent to the parties whether a case is transferred to compliance or settled. The data provides observations, case outcomes, processes incorporated in the case and party experiences.

#### 5.3.2. Case Statistics

The CAO provided case statistics. These included important statistics, such as time spent on cases, sector, IFC Environment and Social (E&S) Risk Ratings, time to complete assessment, DR process and DR outcomes. This has been valuable in determining case efficiency as a factor of time.

#### 5.3.3. Inclusion of Medians

Concentric Alliance's analysis of assessment and DR timeframes has focused on averages. However, it was decided in each case to provide the median value as a comparison. We believe the median values do not substantively change our evaluation or impact our recommendations. The median, as with the inclusion of standard deviation, indicates that there are, in many cases, significant outliers that influence the averages. In many cases, these outliers are possibly due to the complex factors Concentric Alliance has identified.

### 5.4. Qualitative Analysis

The qualitative analysis conducted for this evaluation includes both a documentary review and interviews. It has provided Concentric Alliance with a rich understanding of the IFC/MIGA, the CAO, other Independent Accountability Mechanisms (IAMS) and the CAO's cases.

#### 5.4.1. Key Informant Interviews

Concentric Alliance undertook 7 Key Informant Interviews with CAO DR specialists and mediators. These interviews aimed to understand the CAO's experience of DR, the challenges, the successes, and perspectives on how parties behave. Additionally, we identified areas where the participants felt CAO could strengthen its practice. It must be noted that no CAO's project team member participated in the interview process unless they were being interviewed, and the interviews remain confidential.

#### 5.4.2. Case Interviews

Concentric Alliance worked with the CAO's project team to agree on selecting cases for interviews. It was initially decided that Concentric Alliance would interview representatives from 11 cases. Representatives would include IFC/MIGA representatives, IFC/MIGA clients, complainants, and NGO/CSO advisors. Cases were selected based on the length of the DR

process and the assessment process to represent sectors and regions where the IFC operated. After several attempts to contact representatives over three months, Concentric Alliance eventually concluded interviews with individuals from 10 cases. As a result, Concentric Alliance has undertaken 27 case interviews, of which 12 were with IFC or former IFC employees, three were with clients, four included complainants, and six included international, national, or local NGOs.

In some cases, more than one representative was interviewed simultaneously; in other cases, several interviews were conducted with the same stakeholder group. In some cases, it was not possible to reach a stakeholder due to confidentiality concerns or because stakeholders could not be contacted or located. Despite this, these interviews provided diverse opinions about CAO DR processes, perspectives on the other parties, challenges and outcomes experienced by the parties. The content and participants in these interviews are confidential.

#### 5.4.3. IAM Analysis and Interviews

It was agreed between CAO and Concentric Alliance that Concentric Alliance would undertake a high-level comparative review of CAO and three other IAMs: The European Bank for Reconstruction and Development's (EBRD) Independent Project Accountability Mechanism (IPAM), the African Development Bank's (AfDB) Independent Review Mechanism (IRM), and the Inter-American Development Bank's (IADB) Independent Consultation and Investigation Mechanism (MICI). This included a review of the policies of each IAM, interviews with the heads of each IAM and a comparative analysis. While the findings of the comparative review have been included in this evaluation, a full comparison is available in Appendix C.

#### 5.5. Verification

As part of the validation of the report's findings, Concentric Alliance has held four verification workshops. These were divided into individual stakeholder groups: NGOs and CSOs, IFC E&S and investment personnel, CAO mediators and specialists, and heads of IAMs. The purpose of the verification process was to share Concentric Alliance's findings and check if there were any additional concerns or insights that participants might raise. This feedback has been integrated into the report. These conversations were treated as confidential.

#### 5.6. Limitations

This evaluation has drawn from various data sources, enabling Concentric Alliance to conduct a detailed analysis of the DR and assessment processes and generate important findings and useful recommendations. Despite this, Concentric Alliance believes it is important to be upfront about the study's limitations, which are outlined here:

##### 5.6.1. Non-Probabilistic Findings

This study is non-probabilistic. Given the limited number of cases included in this study, it would not have been possible to draw any inference with a specific level of confidence. However, the analysis that has been undertaken and the statistics present a valuable picture of the challenges, outcomes and experience of the DR and assessment processes.

##### 5.6.2. Missing Data Points

Where Concentric Alliance received data from the CAO, it is important to be aware that it does not always cover every case. Certain monitoring and evaluation processes still need to be completed, and there are several pending DR cases. Where this is the case, Concentric Alliance has attempted to be judicious in the use of this data, including it only where it seems useful or underscores a finding that has already been made. CAO has been unable to provide data which distinguishes an active DR process from monitoring, either due to the absence of data or because of the confidential nature of some cases.

#### 5.6.3. Absence of Data on MIGA

The sample only includes 7 MIGA-related cases in the 53 handled in DR and 6 MIGA-related cases of the 100 assessments. While this makes a comparison between IFC and MIGA processes difficult, the primary concern of this report is to evaluate the efficiency and effectiveness of the DR and assessment processes. Concentric Alliance has sufficient data to make generalisable findings.

#### 5.6.4. CAO Conclusion Reports

CAO has utilised data coded from conclusion reports, which sometimes exclude certain information for confidentiality reasons, so the data here may underreport the outcomes.

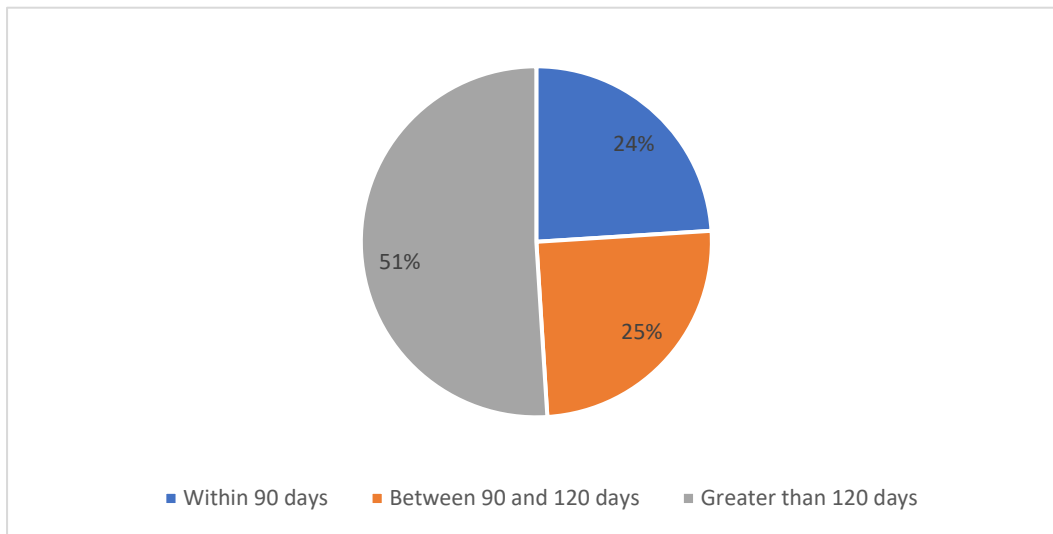
## 6. Evaluation Findings

### 6.1. Assessment Function

The assessment process aims to develop a thorough understanding of the issues and concerns raised in a complaint once it has been found to be eligible by the CAO. It allows the CAO to engage with the complainants, relevant local stakeholders, the client and the IFC/MIGA Project team. During an assessment, the CAO is able to explain the compliance and DR functions and their possible outcomes and assist the parties in determining which function the parties may wish to initiate. Since the implementation of the new CAO Policy, when a case is found eligible, parties are presented with the option of referring the matter to the IFC, where the Stakeholder and Grievance Response (SGR) handles the case or continuing with the CAO assessment. Where there is a likelihood that parties will select DR, CAO already begins the process of mediator selection. In most cases, the mediator has accompanied the Assessment team.

Under the new CAO Policy, CAO is expected to complete the assessment within 90 business days of the date that a complaint has been determined to be eligible. The CAO Director-General may extend the assessment timeframe by an additional 30 business days if the parties confirm that the resolution of the complaint is likely or if either party expresses interest in dispute resolution. Of the 100 cases under consideration, the average length of assessment is 153.80 working days with a standard deviation of 100.09 (Median: 125.50 Working Days). Only 24% of assessments were concluded within 90 working days. Assessment for the majority of cases was concluded after 120 days. It bears noting that all these Assessment processes in this sample were concluded under the previous operational guidelines. Under these assessments were expected to be completed within 120 working days.

Graph 1 Assessment Length, FY14-FY22, n=100.



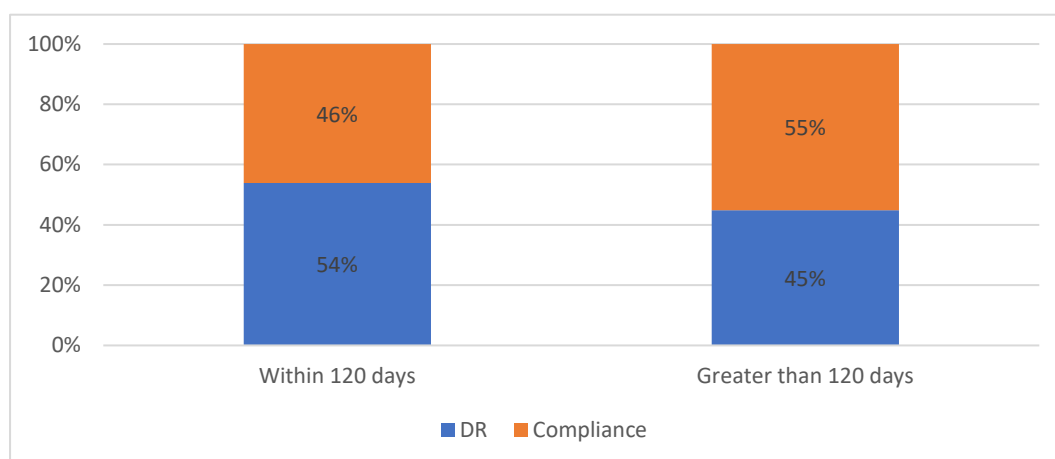
Source: CAO Public Data on Assessments

Notably, by comparison, cases in assessment involving financial intermediaries have required considerably more time to complete. On average, cases including financial intermediaries required 193.15 (Median: 156 Working Days) working days, while those including non-financial intermediaries required 147.92 working days (Median: 120 Working Days) to complete. However, only a few cases included financial intermediaries - 13 assessments in the sample of 100 assessments. While the case reports note the impact of COVID-19 in some cases, several have also referenced the difficulty in reaching stakeholders party to the complaint. Complaints against financial intermediaries present a particular challenge to the CAO, given that the IFC is one step removed from the investment in question.

Where the length of an assessment process goes well beyond the prescribed timeframe, it can negatively influence the perception of participants of the process in general. CAO has stated that often the extension is based on a request from one of the parties. During one interview, an NGO representative expressed concern about alleged political influence being exerted on a case that went well beyond the timeframe. Additionally, it bears noting that where assessment extends beyond 120 working days, a higher proportion of cases are referred to compliance.



Graph 2 Comparison of DR or Compliance Choice by Assessment Length, FY14-FY22, n=97



Source: CAO Public Data on Assessments

Where NGOs and CSOs form part of the complainant group, on average, it results in a longer assessment process than those that do not, 186.79 working days (Median: 154 Working Days) compared with 129.91 working days (Median: 113.5 Working Days). However, 24% of the 42 cases in which NGOs and CSOs participated involved complaints against financial intermediaries, which, on average, take longer than non-financial intermediary cases. NGOs and CSOs play an important role in providing technical support to complainants and advising on the best course of action.

Notably, the average time for assessment is significantly higher for cases in which parties decided to pursue compliance, an average of 170.33 working days (Median: 149 Working Days), compared with those where dispute resolution is chosen, an average of 134.08 working days (Median: 118 Working Days). During our interviews, we heard from a cross-section of participants that DR is viewed as a preferable process. Because there is a desire to pursue DR, even where reaching an agreement is difficult to envisage, the parties will explore all available avenues that lead to a DR process before selecting compliance. Concentric Alliance has also heard from CAO that in some situations, if one party wants DR and the other does not, additional efforts might be made to explore DR with the party not so inclined, even if that party does not change their mind. This results in a longer average timeframe for assessment when compliance is selected.

Finally, the context in which the assessment is taking place has an implication for the duration of the assessment. For example, in contexts where there is political instability or where the rule of law is uncertain, there is a likelihood that assessment will be delayed. When comparing Freedom House<sup>3</sup>'s Freedom of the World<sup>4</sup> ratings, the average length of assessment is

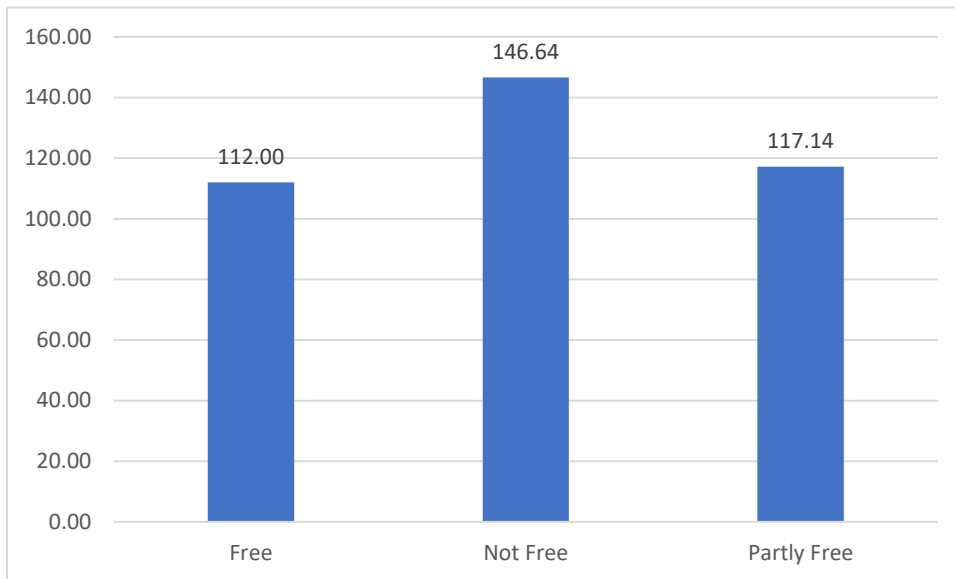
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<sup>3</sup> Freedom House produces research and reports on a number of core thematic issues related to democracy, political rights, and civil liberties.

<sup>4</sup> Freedom House. Freedom in the World. URL: <https://freedomhouse.org/explore-the-map?type=fiw&year=2022> Accessed: 28 February 2023

lengthiest in jurisdictions rated as not free, on average 146.64 working days (Median: 148 working days).

Graph 3 Average Assessment Length by Jurisdiction, FY14-FY22, n=36



Source: CAO Conclusion Reports, CAO Public Data on DR, Freedom House Freedom in the world.

Concentric Alliance’s review of assessments has illustrated that most assessments take more than 120 days to complete. As highlighted above, this is influenced by the sector in which the complaint is made, the type of complainant and the context in which the complaint is made.

## 6.2. Dispute Resolution Function

The DR function serves to help parties resolve issues raised about the environmental and social impacts of projects through a collaborative, problem-solving approach. This section provides a review of the DR Function and our findings thereof.

### 6.2.1. Facilitating Access to Remedy through Dispute Resolution

The CAO's role is to facilitate access to remedy for project-affected people. During Concentric Alliance’s interview process, a cross-section of participants expressed the importance of the DR function in delivering benefits to project-affected people and IFC clients. This section aims to investigate the impacts and outcomes of the DR function.

The CAO has played an important role in building trust between parties and facilitating the growth of more regular, transparent, and sustained engagement between project-affected people and IFC clients<sup>5</sup>. Our review of the CAO’s conclusion reports indicates that DR processes regularly result in the formation and endurance of fora for purposes of engagement, improved relationships, and greater access to information by complainants. These outcomes

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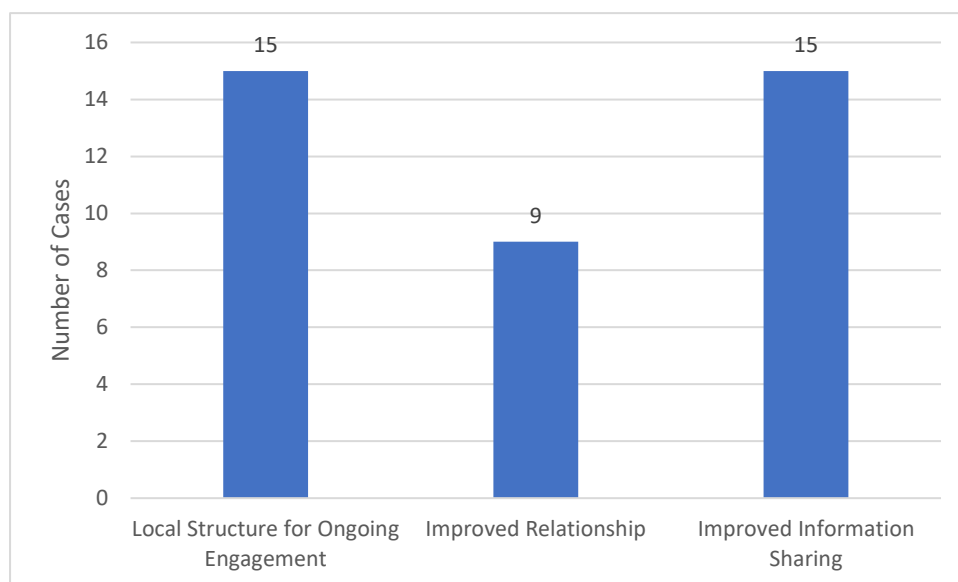
<sup>5</sup> CAO (2023). CAO in Numbers. URL: <https://www.cao-in-numbers.org/dispute-resolution> Accessed: 14 March 2023

have been reported even when cases have later been transferred to Compliance, indicating that in some cases, merely the process has a role in improving relationships between project-affected people and IFC clients. While this does not suggest that conflict will be absent in the future, how that conflict is dealt with will likely shift. In the words of one complainant:

*“Humans are communicating; animals are using their hooves and legs. That’s why it’s important to talk and communicate with people to understand each other and find ways of resolution together.”* Complainant #1

During two interviews with IFC clients, participants mentioned greater awareness of the communities needs and the opportunity to learn. Interviews with two complainant groups echoed this sentiment. However, both noted that in recent years the regularity of this engagement had begun to decline, and both mentioned the impact of the COVID-19 pandemic in this regard. One group of complainants noted that they intended to re-engage the client this year.

Graph 4 DR Process Outcomes – Relationship, FY14-FY22, n=36



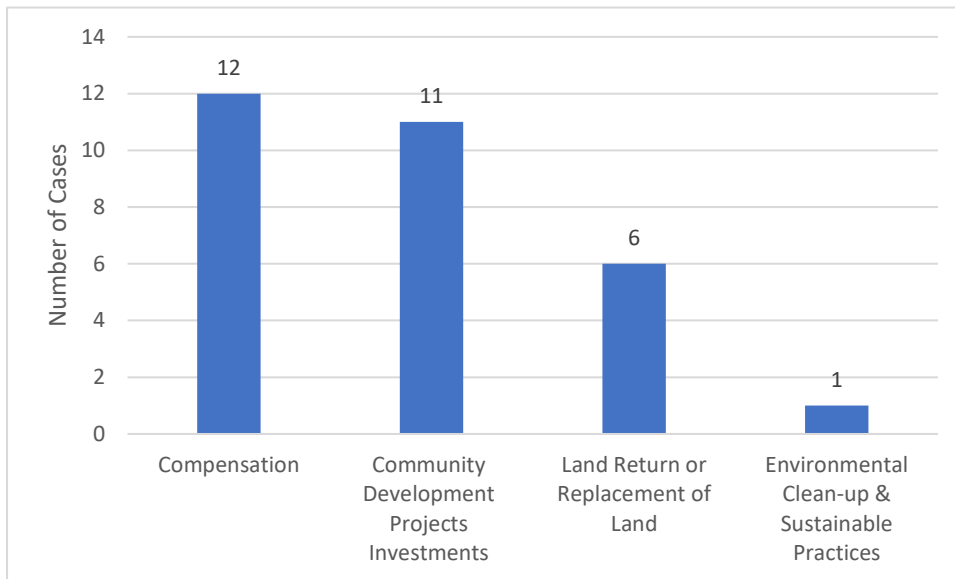
Source: CAO Public Data on Conclusion Reports

An outcome of several processes has been improvements in the policies of the IFC/MIGA client or strengthened implementation of those policies. Nine of the 36 cases reviewed reported improved policy by the company. These are often related to enhancing clients’ environmental risk management and health and safety policies. During one interview, an IFC representative noted that a DR process led to institutional learning, for example, leading the IFC to reconsider its resettlement guidelines to include issues relating to nomadic pastoralism.

In many instances, remedy includes corrective action or compensation for harm done. Of the cases reviewed, several have included remedy through environmental rehabilitation, social investments, livelihood investments and compensation. For example, during one interview, a complainant stated that they had experienced significant improvements in the client’s water management, expanding access to water for complainants through the construction of wells. Another complainant in a different case expressed satisfaction in the client’s social investments that improved livelihoods by providing access to microcredit. The complainant

also stated that the CAO was instrumental in bringing an external development institution into the agreement to support this programme.

Graph 5 DR Process Outcomes – Compensation and Reparative Action, FY14-FY22, n=36



Source: CAO Public Data on Conclusion Reports

During interviews with complainants, several acknowledged that the CAO had played an important role in strengthening their skills to engage with the IFC client, building their capacity to negotiate and developing their understanding of many of the highly technical issues facing their communities – often through participatory monitoring and joint-fact finding interventions. While there will be a more extensive discussion of the interventions of DR teams later, they noted that these skills were developed through capacity-building initiatives and the feedback provided by the DR team during mediation. Additionally, skills development outside the DR process through social development investments has been mentioned.

The data and feedback suggest that while not all DR processes result in the same outcomes every time, given that the nature of cases is variable, they do enable remedy for many project-affected people. In addition, based on feedback from complainants, many of the outcomes of these cases appear to be sustained over years. Most importantly, the data and feedback indicate that CAO DR processes effectively build trust and relationships between communities and clients and empower communities to engage more effectively with the clients.

### 6.2.2. DR Timeframes

The CAO Policy does not provide prescribed timelines for DR processes, and the process may only be closed if both parties decide to withdraw from the process or reach a settlement. Concentric Alliance has reviewed 53 cases handled between FY14 and FY22. The average length of DR cases settled, settled with partial transfer to Compliance, or transferred to Compliance is 2.72 years (Median: 1.75 years), with a standard deviation of 2.47. Of the cases

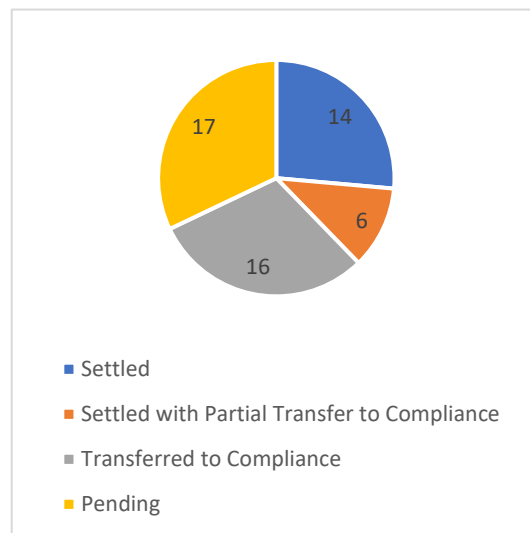
reviewed, 20 (38%) were closed<sup>6</sup> within two years, 11 (21%) were closed after four years, and 17 were still pending, with an average of nearly four years. Based on status, there is a substantial variation in the average length in years of DR. Cases that are settled take, on average, 4.13 years (Median: 5.34 years) to close, while cases that are transferred to Compliance take, on average, 1.19 years (Median: 1.01 years) to be transferred. After transfer to Compliance, a case must still go through relevant Compliance function processes. This is within the length recommended by the External Review for investigation.

Graph 6 Average DR Length, in Years, by DR Outcome, FY14-FY22, n=36



Source: CAO Public Data on DR

Graph 7 Number of Cases by DR Outcome, FY14-FY22, n=36



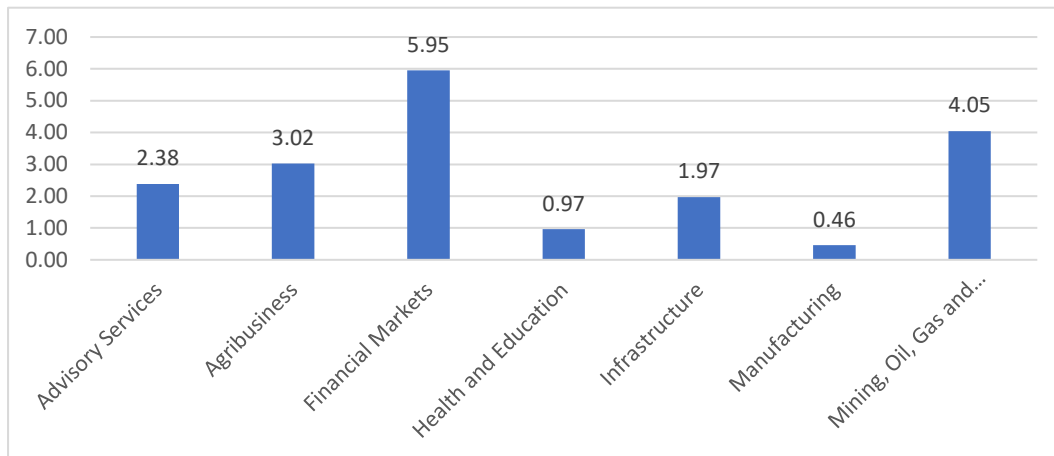
Source: CAO Public Data on DR

It bears noting that only 4 (88%) cases were transferred to Compliance that were in DR longer than 2 years. Arguably it would have been difficult to predict these outcomes earlier than had occurred. In two cases the company exited the process; in one case this was likely motivated by the financial distress of the company. In one case the community decided to withdraw after concerns were raised about the company’s willingness to engage in good faith. In the final case, there was a mutual decision after a lack of agreement and lack of progress in the case, which was marred by COVID-19 and a lack of government participation.

Depending on the sector involved, there is considerable variation in the average length of DR. The DR process in financial markets, Mining, Oil, Gas & Chemicals and Agribusiness are, on average longer than other sectors. DR processes in the Infrastructure, Mining, Oil, Gas and & Chemicals and Agribusiness sectors account for 70% (37) of cases during the period under review.

<sup>6</sup> When referring to the term “Closed” in relation to Dispute Resolution, Concentric Alliance is referring to cases that have either settled, transferred to compliance, or settled with partial transfer to compliance.

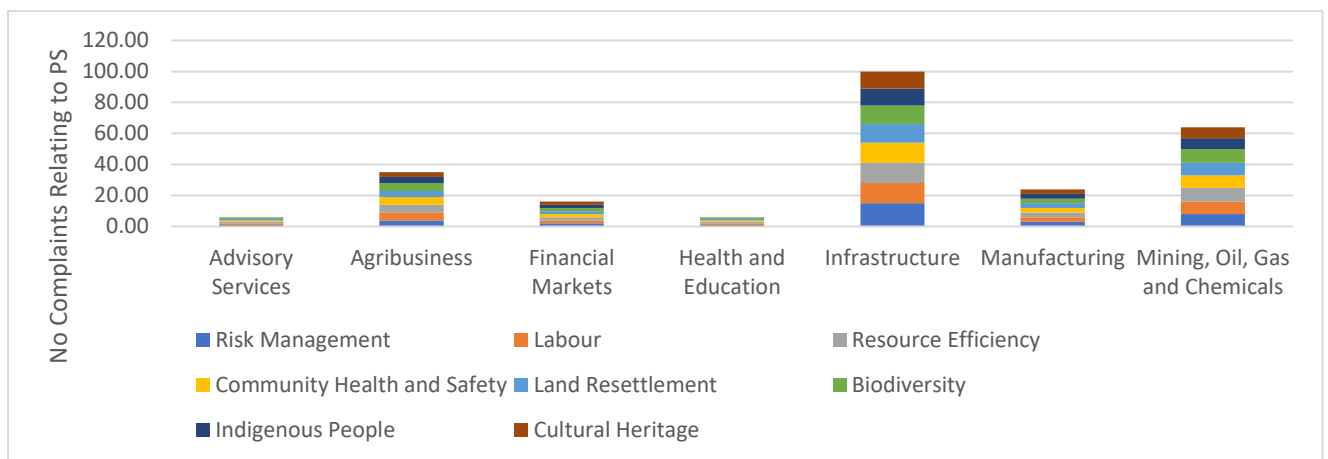
Graph 8 Average DR Length, in Years, by Sector, FY14-FY22, n=36



Source: CAO Public Data on DR

These sectors account for some of the largest-scale investments of the IFC, frequently having a substantial impact on the environment, requiring the resettlement of people, and impacting livelihoods and communities. A comparison of the sectors by the number of complaints related to the E&S Performance Standards illustrates the substantial concerns these projects elicit for project-affected people and, equally, the degree of technicality that these cases entail for the CAO, which can account for longer timeframes. While this is not an exact measure of technicality, it is useful in understanding the types of complaints that different projects generate.

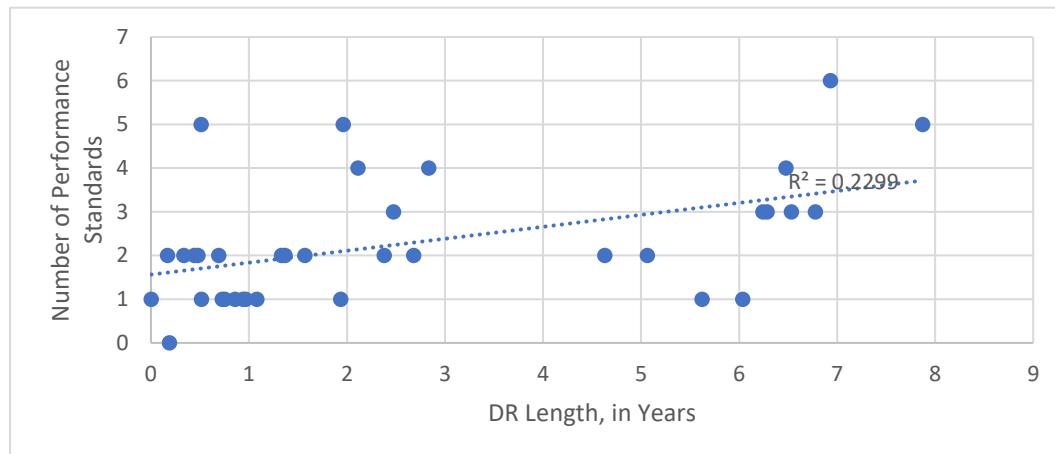
Graph 9 Sector by Number of Complaints related to E&S Performance Standards, FY14-FY22, n=36



Source: CAO Conclusion Reports

There is a trend towards longer DR processes when more issues form part of the DR process, entailing a larger number of issues within each case.

Graph 10 Performance Standards by DR Length, in Years, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

During each of the 27 interviews conducted by Concentric Alliance, concern was raised about the length of time of the DR process, with disquiet being raised by 14 participants from a cross-section of stakeholders about the CAO’s lack of timeframes in the DR process. Some participants perceived this as a risk that processes could continue for too long in search of a settlement that might not be possible. Additionally, concern was sometimes expressed that the mediator was not sufficiently proactive in steering the process forward, which could produce disillusionment. While this may be true, the data suggests that most cases transfer to Compliance in the first or second year. In interviews, it seems that once a process has been going on for a long time, there is a desire to settle. However, as one NGO representative noted:

*“It is very important for CAO to fix the deadline for the process and tell people when they start with a long-term discussion, we need a deadline, so that we will be able to guide the discussion. We need deadlines for the mediation instead of continuing discussions not going anywhere.” NGO Respondent #9*

Five interview participants, including companies and complainants, noted that highly complex cases could not be expedited – often requiring the development of new scientific knowledge, capacity-building, and even trust-building. NGO participants have expressed that the CAO’s intervention helped restore dialogue between the parties and that the case would have taken longer to conclude without it. Further, a participant noted that “with the timeline, the complainants would never have gotten the money. If someone is not engaging in good faith, the flexibility helps”. (CAO Respondent #6)

The absence of timeframes creates a risk that new opportunities arise within the process, potentially further delaying resolution. However, as one mediator noted, sometimes the issues in the complaint are not the real concerns raised in DR. The real issues of concern may only emerge as the DR process unfolds. This needs to be accounted for within the DR process. They believed that allowances need to be made for new issues to be included within the process, with the parties' agreement.

During several interviews with IFC representatives, they highlighted concerns about the timeframes of different DR processes. In their view, long cases create a potential risk that

clients pay off their loans and that IFC would lose its leverage over its clients, suggesting that cases must be closed expeditiously. It was, therefore, imperative that cases be closed expeditiously. Notably, civil society organisations believe that even when the client has paid off their loan, the IFC and its client should still be accountable for harm done. Two mediators also expressed concern about the loss of leverage.

In every interview conducted by Concentric Alliance, mention was made about the length of DR processes and the frustrations that these elicited. However, many of the DR processes executed by the CAO are complex, with multiple issues being raised in the complaints. The next section shows that the CAO's interventions play an important role in extending timelines. However, these also support the parties in reaching a settlement. The length of DR processes cannot, therefore, be viewed simplistically but needs to be understood through a number of interacting factors.

### 6.2.3. Dispute Resolution Process Interventions

This section reviews the CAO's dispute resolution process interventions, including the CAO's handling of technicality within the DR process and building the capacity of parties to negotiate. The parties noted these interventions as being instrumental in helping parties reach a settlement by ensuring that parties can negotiate and have a common basis of fact from which to reach a settlement.

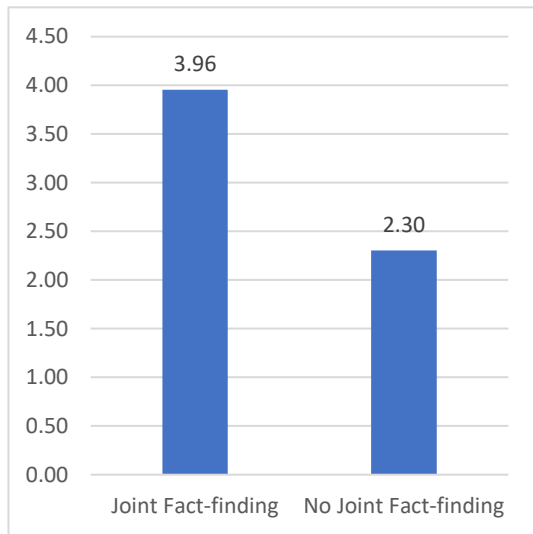
#### 6.2.3.1. Managing Technicality

It has been demonstrated that more technical cases take longer to close. This is because highly technical cases can result in a dispute over fact rather than a dispute of interests. They might also require research or the development of new knowledge to enable the parties to operate from a common basis of fact. Additionally, while companies may often have access to relevant knowledge, the absence of trust between the parties may result in that information not being believed. Therefore, during many DR processes, there has been a need to conduct independent research that is available to both parties.

Of the closed cases under review, joint fact-finding, on average, results in a longer DR process, taking on average 3.96 years (Median: 2.83 years) to close compared with 2.30 years (Median: 0.97 years) for those that do not require it. This is due to the time and resources needed to appoint an expert to conduct the necessary research, as both parties must agree to this person. Additionally, there is often a need to translate, disseminate and educate parties about the content of such research. However, it bears noting that joint fact-finding results in the settlement of more cases (Graph 12). This indicates that creating a common basis of fact helps parties reach more comprehensive settlements.

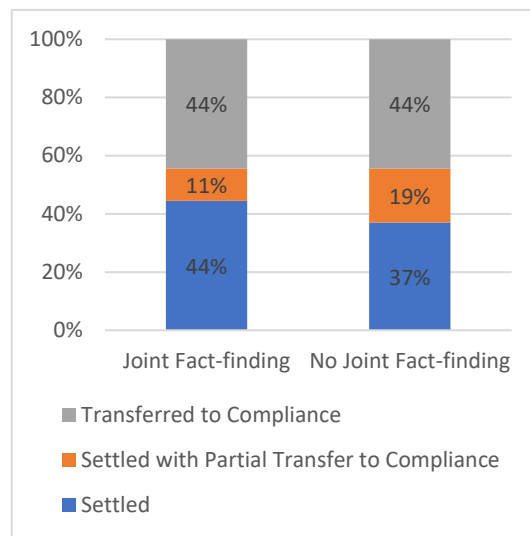


Graph 11 Average DR Length, in Years, by Joint Fact-finding, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

Graph 12 DR Outcome by Joint Fact-Finding, FY14-FY22, n=36, Joint Fact-finding: n=9, No Joint Fact-finding: n=27



Source: CAO Conclusion Reports and Public Data on DR

Our research indicates that joint fact-finding and participatory monitoring have taken place only in cases in the Agribusiness, Infrastructure and Mining, Oil, Gas and & Chemicals sectors. This again indicates the complex nature of these cases to resolve and can explain why these cases take longer to resolve.

During our engagement with CAO and IFC clients, it was noted that apart from being time-consuming, research is expensive to conduct. The CAO has indicated that it is often difficult to get funding for independent research and that IFC clients are often unwilling to provide resources for research that has already been conducted. It was noted in one interview that the IFC was instrumental in connecting the participants to an environmental expert. During two interviews with complainants and NGOs and two interviews with clients, it was indicated that support from the IFC in this regard would be welcomed.

Although the IFC did not respond directly to the clients and CSO’s call for assistance, in the draft IFC/MIGA approach to remedial action, recently published, it states: “Financing direct contribution to remedial actions gives rise to risks, the most significant of which include: the possibility of shifting how clients and other stakeholders understand their roles and responsibilities and act on them; increased litigation risk (under a range of possible legal theories) and increased costs and decreased competitiveness.”<sup>7</sup> The IFC is only willing to

<sup>7</sup> IFC/MIGA (2022). IFC/MIGA Approach to Remedial Action. World Bank Group. URL: <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2> Accessed: 02 March 2023

make contributions to facilitating remedy in exceptional circumstances. In response a group of international NGOs have stated that “in line with the recommendations of the external review and per international standards, IFC and MIGA are obligated to financially contribute to the remedy when their actions or inactions contribute to harm or when a client cannot provide financial contributions”.<sup>8</sup>

Cases that require high levels of technical knowledge and expertise exacerbate power imbalances between parties, which creates barriers to trust-building and can delay the process. Often there needs to be financial provision made for independent technical experts who could make findings of fact and provide communities with a better understanding of the issues in play. Therefore, the presence of an external expert would help to clarify facts that are subject to the dispute.

#### 6.2.3.2. Capacity Building Interventions

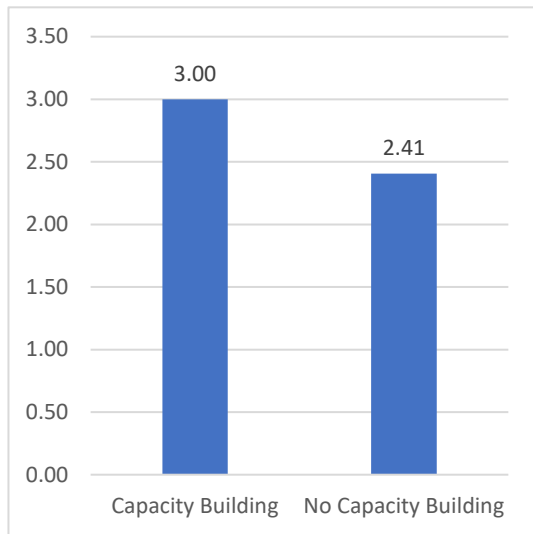
A unique aspect of the CAO’s policy is its provision of capacity-building to address power imbalances between the parties. The lack of capacity or resources to negotiate undermines settlement during DR, and the CAO attempts to address this via capacity-building. However, the other IAMS studied do not explicitly provide for capacity-building in their policies in the same way. Moreover, the timeframes established in their DR processes limit the ability to undertake such interventions.

Participants have noted the importance of the CAO’s interventions in building the confidence of communities to participate. Where capacity-building is a component of the case, on average, the case lasts three years (Median: 2.11 years), as opposed to 2.41 years (Median: 0.97 years), where capacity-building is not part of the case. In addition, as with joint fact-finding, capacity-building is associated with a greater proportion of cases being settled. This indicates that capacity-building empowers the parties and can support them in determining whether to keep pursuing the DR process. It also helps them reach more comprehensive settlements.

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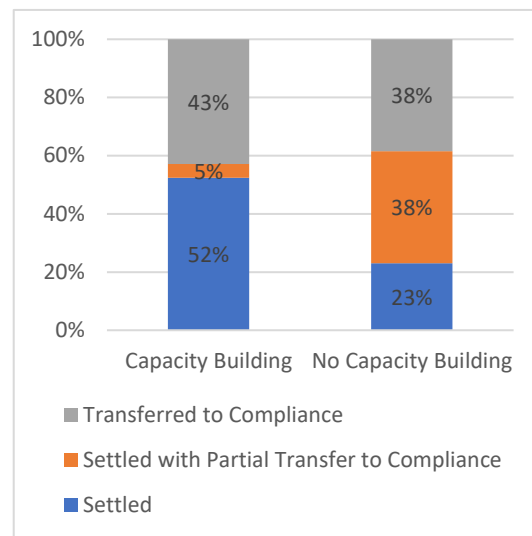
<sup>8</sup> Accountability Counsel (2023). Joint CSO Statement Calls on IFC and MIGA to Strengthen its New Approach to Remedial Action Policy. URL: <https://www.accountabilitycounsel.org/2023/02/joint-cso-statement-calls-on-ifc-and-miga-to-strengthen-its-new-approach-to-remedial-action-policy/> Accessed: 02 March 2023

Graph 13 Average DR Length, in Years, by Capacity Building, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

Graph 14 DR Outcome by Capacity Building, FY14-FY22, n=36, Capacity Building: n= 23, No Capacity Building: n=13



Source: CAO Conclusion Reports and Public Data on DR

During one interview with a complainant, they shared the importance of capacity building for them and other complainants:

*“I seldom used to participate in community meetings and wasn’t concerned with the law or social life. I was shy to talk in front of many people. I didn’t know how to go about ... Training is necessary ... I used to attend all the trainings until I was no longer a member of the (forum for engagement).” Complainant #2*

Additionally, another complainant noted the importance training played, not just in being able to participate in the DR process, but also in that training was provided to support skills development.

During two interviews with the IFC and one with a client, participants stated that the CAO provided a different level of support to clients than they did to communities. However, the client noted that this made sense, with communities needing capacity-building far more than the client did. Although the purpose of capacity-building is to enable the parties to engage on a level playing field, the client representative believed that the company had access to greater resources and was represented by educated and experienced people. Where capacity-building is absent, power imbalances could be exacerbated and undermine the purpose of the CAO.

The CAO has effectively provided capacity-building to support participants in the DR process. This creates a greater equality of the parties and likely enables the parties to reach a settlement, or failing this, to recognize that there is a need to exit the process.

#### 6.2.4. DR Monitoring

Following a DR process reaching a settlement, cases are monitored by the DR team responsible for the case. The purpose of monitoring is to ensure that the commitments reached during the DR process are implemented. This may include reparative actions like environmental rehabilitation, community development initiatives or the payment of compensation. Monitoring can extend over a number of years.

During our interviews, complainants from two separate cases expressed the sentiment, in their view, that the CAO had closed the case before the full implementation of the agreement or resolution of their issues. In one case, it was noted that during monitoring, the client was implementing the agreement as expected, but after the case was closed, the client began to delay implementation and communicated irregularly. The other case was closed after the implementation of social and livelihood projects, the provision of healthcare and the conclusion of a scientific study. However, in the complainants' view, the case should not have been closed because they still did not have a clear causal link for the illness that continued to affect many in their community. In the words of one participant:

“We still don't have answers to the questions we had at the beginning ... They are still there (sic), and we haven't received an answer in any way to the problem that we are suffering from.” Complainant #3

During several interviews with IFC representatives, they highlighted concerns about the length of the monitoring phase, one case continuing for several years after settlement. It was their view that a risk of long monitoring processes is that the client will pay off their loan, and the IFC would then lose its leverage over its clients. Therefore, monitoring after settlement should be expedited wherever possible.

Monitoring is critical to ensuring that parties meet their commitments and that the progress made through the DR process is sustained. Should commitments not be met, there is a risk that the relationships built will be undermined and that the DR processes may be perceived as not having fulfilled their objectives.

### 6.3. Context

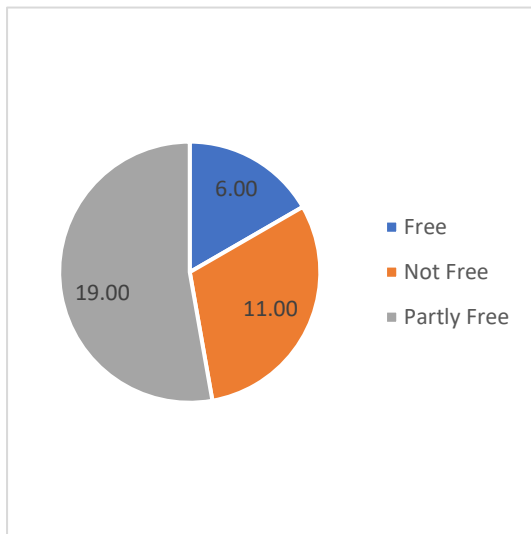
The context in which cases arise can have a substantial impact on both the outcomes of DR processes and their duration. This section will discuss the impact of case jurisdiction, concerns of threats and reprisals, the impact of location, complainant dispersion and finally, issues of force majeure. It is important to note that in most cases, CAO has limited control over these factors and that they can only be managed.

#### 6.3.1. Jurisdictions and Unstable Politics

The IFC operates in jurisdictions that often have weak rule of law or are politically unstable. Projects in these countries are presented with unique situations, and the project-affected communities often have limited recourse to justice outside of grievance mechanisms. While there are multiple measures that assess the rule of law and political freedoms, Concentric Alliance has chosen to use Freedom House's measure of Freedom in the World in the year that the complaint was filed. Most DR processes (83%) arise in countries rated not free or partly free. Jurisdictions rated not free are generally considered to have authoritarian forms of government, weak rule of law, strong security institutions, weak press freedom and freedom of association. Partly free states tend to have weak representative institutions, with strong executive authority and weak rule of law. During an interview, one complainant noted that they

filed a complaint with CAO because they had a limited expectation that the government would help them.

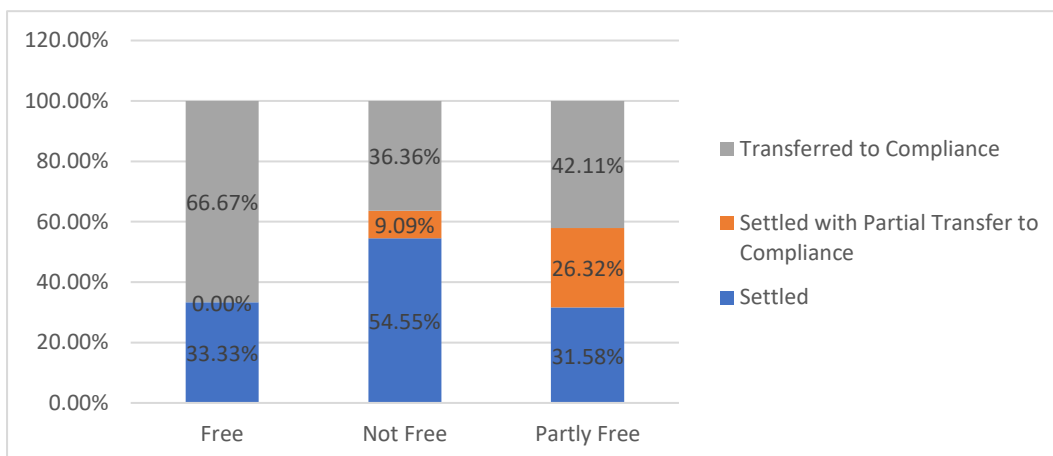
Graph 15 Cases by Jurisdiction, FY14-FY22, n=36



Source: Freedom House Freedom in the World

Proportionately, more cases are settled or settled with partial transfer to Compliance in jurisdictions rated not free or partly free. While proportionately, more cases are transferred to Compliance in jurisdictions rated free. This is likely because access to justice in many jurisdictions rated not free is limited, and therefore remedy would be more accessible through a DR process. Notably, all concerns of threats and reprisal occurred in states considered not free or partly free.

Graph 16 DR Outcome by Jurisdiction, FY14-FY22, n=36, Free: n=6, Not Free: n=11, Partly Free: n=19



Source: CAO Conclusion Reports, CAO Public Data on DR, Freedom House Freedom in the World

The majority of cases (81%) in countries rated not free or partly free related to Mining, Oil, Gas and & Chemicals, Infrastructure, or Agribusiness. This can increase the complexity of those issues.

It has been noted in several cases that the electoral cycle has impacted cases. In one case, where the government formed part of the agreement, the ruling administration lost power, and the new administration undermined the settlement that had been reached. In another case, when the environment became politically charged ahead of an election, local authorities questioned complainants about whether they were trying to start a revolution. Several members of the opposition were arrested during this period.

During interviews with several IFC representatives, it was noted that they feel under increasing pressure to meet investment quotas in environments that are unstable or where institutions are weak. This makes these projects vulnerable to breaches of the standards. Civil society organisations have questioned whether the IFC should be investing in such jurisdictions if it cannot ensure that the E&S standards are upheld and have further argued that the institution should be accountable for this. Given that the IFC is unlikely to stop investing in these jurisdictions, it seems likely that the CAO will continue to be important in enabling remedy for project-affected people.

### 6.3.2. Force Majeure

Force majeure factors are those that could not be accounted for when the complaint arose, creating conditions that increased the complexity of the DR process. These factors are varied and, in some cases, can extend timeframes and, in other cases, result in a transfer to Compliance. These factors have to be managed by the CAO.

While by no means exhaustive, 7 of the case reviews completed by Concentric Alliance noted the impact of COVID-19 on these cases. COVID-19 severely limited the ability of the CAO and mediators to travel, made data gathering more difficult and required many sessions to move online. This came with challenges like the lack of access to computers and the internet, the lack of participants' skills to use digital tools and the limitations on informal engagement. During interviews, it was noted that virtual negotiations were less effective than in-person sessions, affecting the intensity and pace of mediation. It was expressed by three participants (a DR specialist, an IFC participant, and an NGO participant, respectively) that the pandemic severely undermined the process in some cases, causing massive delays and frustrations. That said, one participant noted the CAO's extraordinary efforts to keep processes moving. Notably, during COVID-19, all case assessments exceeded 120 working days and took an average of 207.78 working days to complete.

Despite the vetting of clients done by the IFC, several DR processes have been impacted by financial difficulties experienced by clients. In one case, the company went into financial distress as the DR process commenced, and the client could not proceed without consulting with the people responsible for their bankruptcy administration. In another case, it was noted that the client went into financial difficulties at the case's conclusion, making it difficult to meet commitments – there is no suggestion that the case was the cause of this.

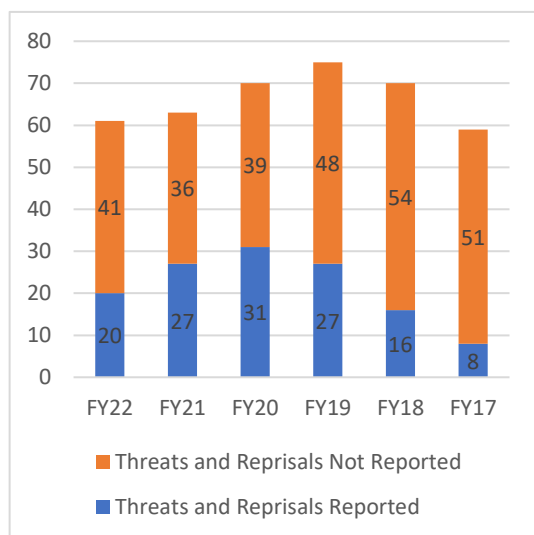
Force Majeure factors cannot be controlled and often cannot be accounted for by the CAO. However, they must be managed. This frequently makes settlement more difficult and can extend the length of the case.

### 6.3.3. Threats and Reprisal

IFC/MIGA are increasingly working with clients in jurisdictions where the rule of law is weak, or there is political instability. This often exposes complainants to threats and reprisals by the client or state actors. While at times threats and reprisals may only be a perception, in many cases, there is the reality of persecution, loss of livelihood or even life. The CAO has implemented several mechanisms through which complainants are protected, and during interviews, we have heard from complainants and their NGO advisors that these mechanisms have been effective.

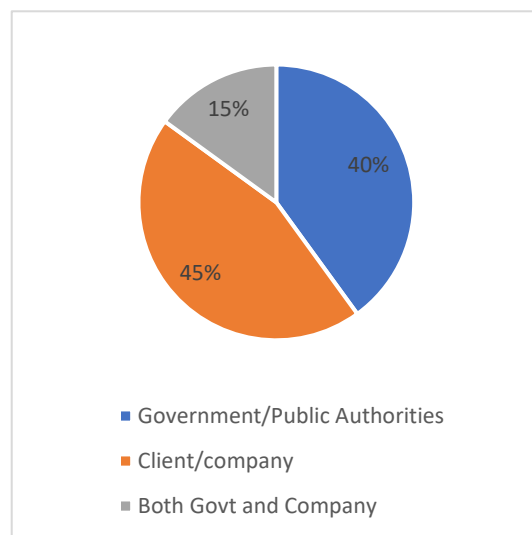
The CAO gathered reports of threats and reprisals across all active cases between FY17 and FY22, accounting for 32% of the CAOs active cases. Ten cases where threats and reprisals were reported are now closed. Threats emanate from government and companies that are the subject of complaints. Reprisals reported included the use of security and policing to threaten complainants, the use of threatening public communication, preventing communities from meeting, or gathering. One local NGO stated that government representatives and local traditional leaders had threatened to withdraw social services to intimidate the complainants.

Graph 17 No of Active Cases, by Threats and Reprisals, FY17 to FY22



Source: CAO Data on Threats and Reprisals

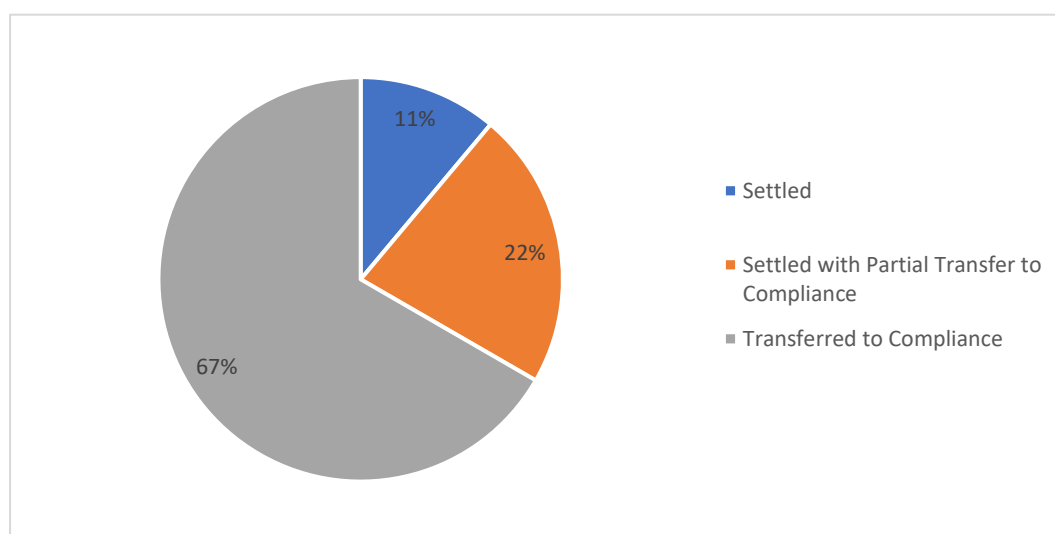
Graph 18 Origins of Threats and Reprisals, FY22



Source: CAO Data on Threats and Reprisals

Threats and reprisals significantly impact the DR process, have implications for the likelihood of success and require the CAO to implement measures to mitigate risk to the complainants and NGOs. Six of the nine closed cases where threats and reprisals were reported resulted in the transfer to Compliance. Cases where threats and reprisals were a factor, resulted in closure significantly faster than where they were not a factor; 1.24 compared to 3.21 years (Median: 0.97 years compared to 2.11 years). The impact of threats and reprisals makes it difficult for companies and complainants to work in good faith to achieve a settlement, resulting in faster transfer to Compliance. During one interview with a CAO representative, it was noted that consideration for the safety of a complainant influenced the transfer to Compliance.

Graph 19 DR Outcome, by Threats and Reprisals, FY14-FY22, n=36



Source: CAO Public Data on DR and CAO Data on Threats and Reprisals

Threats and reprisals require the CAO to implement strategies to mitigate risks to complainants. In certain instances, the CAO reports that, with the complainant's consent, it engaged with national and local governments to inform them about an ongoing CAO process. It has also contacted governments through the World Bank to address concerns regarding threats and reprisals. Additionally, the CAO has developed protocols to protect the identities of complainants by avoiding public meetings or meeting where complainants felt it was safe. It has utilised methodologies, such as shuttle diplomacy, to enable the DR process to proceed. CAO also assesses the safety of its digital communications and seeks to adopt technologies to safeguard the digital integrity of its processes. Two NGO participants have reported that the CAO plays a proactive role in supporting the complainants to manage threats and reprisals in a context where the government may oppress civil society activity.

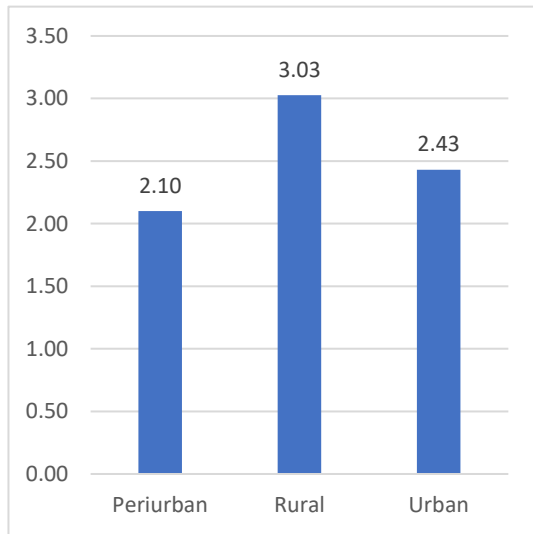
#### 6.3.4. Dispersion and Rural Context

Given the nature of many of the IFC's projects for which the CAO receives complaints, complainants are often located in rural contexts. They can be highly dispersed, living in multiple communities and spread across significant distances. This creates substantial challenges for the CAO's DR teams, requiring them to travel great distances, requiring complex logistical arrangements and working with communities with very different needs and issues.

The average length of a DR process in a rural context is substantially longer than cases in an urban context. On average, cases in rural contexts are 3.03 years (Median: 2.02 years) compared with 2.43 years (Median: 1.57 years) for urban cases. Rural cases account for 56% of the cases reviewed by Concentric Alliance. During interviews with complainants and a client from the same case, it was acknowledged that CAO worked to ameliorate the challenges presented by rural contexts, ensuring that parties could engage adequately through mobile telephones and planning the mediation around the needs of the pastoralist complainants to allow them to move between different grazing lands, often over great distances.

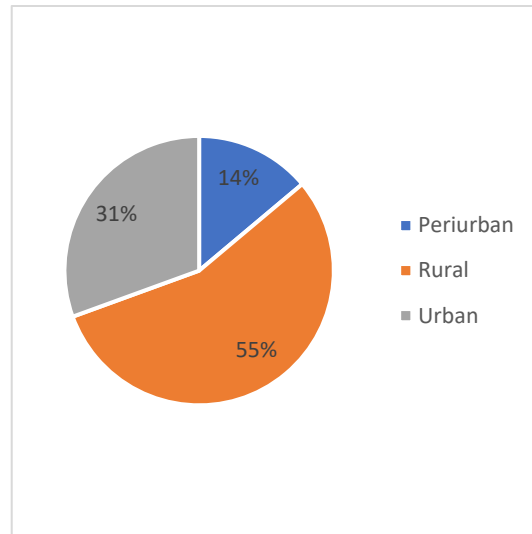


Graph 20 Average DR Length, in Years, by Urban/Rural, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

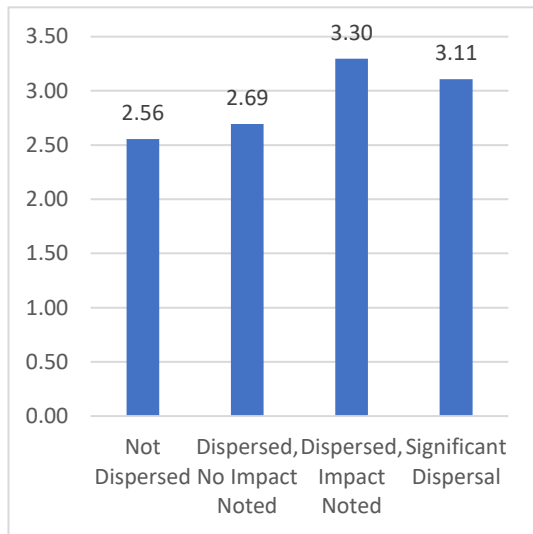
Graph 21 Urban/Rural Split Cases, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

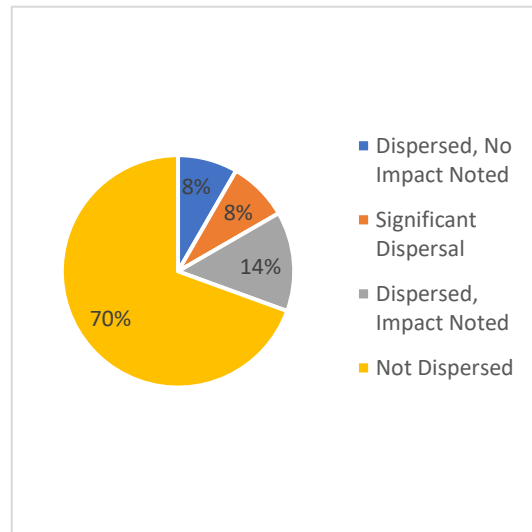
When communities are highly dispersed, there are often challenges for the CAO’s DR process. Concentric Alliance’s review of the conclusion reports is coded using four categories: Not dispersed; dispersed but no impact was noted; dispersed but impact was noted in the report; and significant dispersal. The average length of a DR process that was dispersed is substantially longer than in cases where there was no dispersal. For example, on average, cases that reported dispersal that had an impact took 3.30 years (Median: 2.47 years), while those where no dispersal was reported were on average 2.56 years (Median: 1.93 years). The majority of cases, though, are not dispersed.

Graph 22 Average DR Length, in Years, by Dispersion, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

Graph 23 Dispersion in Cases, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

During our engagement with the CAO and others, it became evident that highly dispersed cases presented challenges for managing cohesion among the complainant groups and often were made more complex by the number of issues within the case. For example, it was noted by one mediator that it had been their experience that divisions within the complainant group regarding the settlement had resulted in the case being transferred to Compliance. Notably, the company continued to engage with the section of the complainant group that had supported the settlement.

Dispersion and rural contexts have an impact on DR processes, making them more complex and requiring greater effort from the CAO DR Team and mediators to reach settlement, while there does not appear to be any impact from dispersion on whether there will be a settlement, the duration of DR is increased.

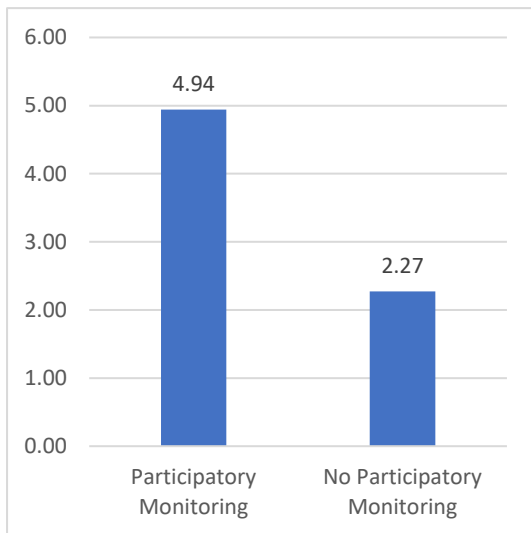
### 6.3.5. Proximity and Life of Project

Many IFC projects and the businesses implementing them have or expect to have a long existence. Some of the most extensive Infrastructure and extractive operations could be considered multi-generational activities. They are also often close to communities and can have wide-ranging impacts on their lives. During several interviews with the IFC and their clients, it was clear that part of the interest in DR lies in establishing functional relationships with those stakeholders. There is increasing interest globally in companies securing the social license to operate, the level of acceptance or approval by local communities and stakeholders

of a project<sup>9</sup>, particularly in the cases where project-affected people live and work close to operations. The absence of this can result in ongoing challenges with stakeholders that can be costly and time-consuming. During our engagement, it became evident that there is an incentive to pursue dispute resolution where communities and businesses are in close proximity.

Many of the complaints reviewed in this sample have, at least in part, mentioned impacts on communities close to the company. Many of these include access to water and pollution. The key interest in many of these cases often appears to be understanding the impact on people's health. For instance, 17% of cases closed have included some form of participatory monitoring. Often this involves explaining how the company conducts monitoring and how it is verified. On average, cases where there is participatory monitoring take far longer; however, in four of the six cases, they have also resulted in a settlement. In one of these cases, force majeure factors resulted in the transfer to Compliance.

Graph 24 Average DR Length, in Years, by Participatory Monitoring, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

While companies may be interested in reaching a settlement through DR, it is clear that there is also interest from communities. As one NGO respondent noted:

*“We understand now that we were really obliged to live with the company here because the company is working in our community. The best thing for us was to understand the company and have a conversation with them. It is better to collaborate.” NGO Respondent #4*

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<sup>9</sup> IFC. Securing a License to Operate. URL: [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/publications/biodiversityguide\\_addressing\\_risks\\_securing](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/biodiversityguide_addressing_risks_securing) Accessed: 13 March 2023

Additionally, during several interviews with the IFC, participants noted that they encouraged clients to pursue the DR process because it benefits both parties. As already noted, one of these is improved and more trusting relationships. Additionally, as already noted, the DR process often strengthens company policies. Case reports also show that clients have chosen to make different operational choices through the DR process.

#### 6.4. DR Process Stakeholders

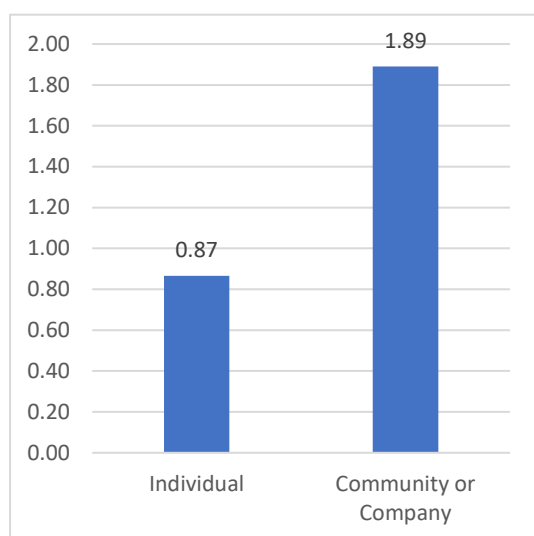
This section outlines findings that Concentric Alliance has made about the various stakeholders involved in the assessment and DR processes. This section aims to understand the impact that stakeholders can have on particular aspects of the process, the interplay between the different stakeholders and the perceptions that stakeholders have of CAO processes and each other. The stakeholders under review are complainants, NGOs and CSOs, clients and companies, IFC/MIGA, other IAMs, governments, CAO, and mediators. We conclude with a discussion of relational factors.

##### 6.4.1. Complainants

Issues regarding the complainants have been raised several times in interviews by other process stakeholders and can contribute to increasing complexity in DR processes. The size of complainant groups and how they are represented can play an important role in influencing the complexity and length of the DR process.

The size of the complainant group can have an important influence on the average length of the DR process. Individual cases, on average, take 0.87 years (Median: 0.91 years) to close, while those which include a group of individuals take on average 1.89 years (Median: 1.44 years). Excluding those cases that included NGOs, which will be discussed next, cases that have only an individual, on average, are significantly shorter than those where a number of people are involved. During our review of the cases, several cases, which included only one individual, or a family unit, often were quickly resolved or transferred to Compliance. On two occasions, negotiation between the lawyers of the complainant and the client resulted in a settlement without the CAO.

Graph 25 Average DR Length, in Years, by Complainant Type, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

In large complainant groups, stakeholder alignment may become an issue. Several DR processes have been undermined by the fragmentation of the group, with disagreements on the issues and the settlement. For example, in one case, the company provided mobile phones to some representatives of the complainant group to facilitate ease of communication between the company and the complainant representatives. This resulted in the fragmentation of the group because those who did not receive a mobile phone perceived this as the company's attempt to divide the complainants. One mediator participant noted that:

*"Contradictions within the complainant group can severely undermine the process, especially if they are within the representative group." CAO Respondent #5*

The CAO Policy does not explicitly allow for cases to be split between Compliance and DR, so in cases where one complainant group wishes to negotiate and another wishes to transfer to Compliance, it usually results in transfer. CAO has noted that there have been cases where with the agreement of the parties, there have been attempts to split the cases. Where complainants are divided, the group supporting dialogue will often continue to engage with the client. Two complainant interviews noted that the mediator was instrumental in helping the community to find alignment. It bears noting that three mediators have mentioned a concern that where cases proceed for too long with large complainant groups, there is a risk that representatives can lose their mandate, which can lead to fragmentation.

In several interviews, IFC participants alleged that, in some instances, the CAO processes are being used by complainants because there is an expectation that the process will result in benefits for the complainants. For example, two IFC participants expressed that a complaint on a project they worked on should never have been found eligible due to the limited risks the project presented and, in their view, environmental harm could not be caused. A review of the case illustrates that through participatory monitoring, these concerns were clarified and that there were other concerns that the community had, including the desire for preferential employment and poor communication by the client. Concentric Alliance cannot confirm if there is data to support this allegation. However, it should be noted that the eligibility criteria now contained in the CAO Policy aim to protect against spurious claims.

Complainants and clients are critical stakeholders in the CAO DR process. Unlike clients, that are often aligned and formalised within a company structure, the complainant group can vary in size and often have disputes within it that can create greater complexity. However, the CAO has largely been effective in creating greater alignment within these groups, which can support reaching a settlement.

#### 6.4.2. NGOs, CSOs, and Trade Unions

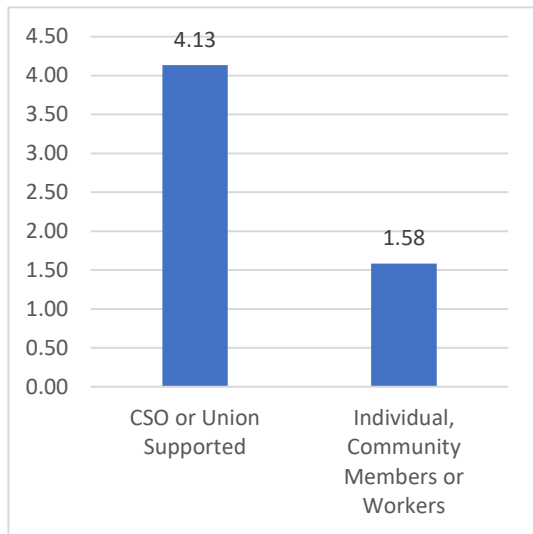
NGO, CSO, and Trade Union advisors play a vital role in assisting complainant groups in crafting their complaints and supporting them within the DR process. They provide important advice, can provide technical assistance, and often undertake capacity-building with the complainant group. These interventions are important for addressing the power imbalances between clients and complainants.

A mediator participant noted that,

*“Most communities really want a settlement, but they always feel the power imbalance and are unable to speak at the same level as the company. The status levels are so different, and the communities feel that. The role that advisors play becomes very critical in how the communities contribute positively or negatively to the process.” CAO Respondent #5*

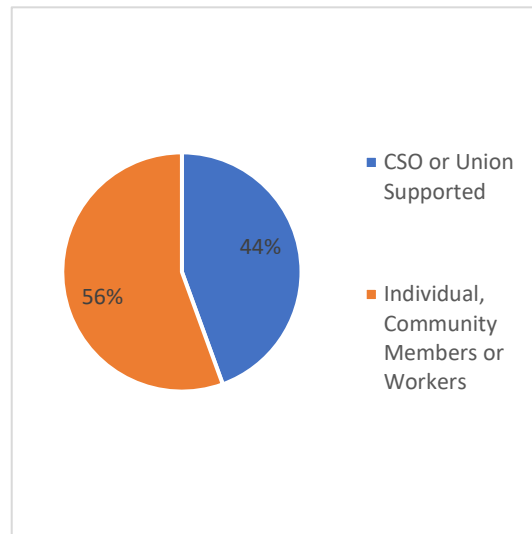
CSO- or union-supported cases account for 44% of DR processes. On average, these cases take longer than those which do not receive CSO or Union support, on average 4.13 years (Median: 5.13 years), compared with 1.58 years (Median: 0.95 years). It bears noting that CSO- or union-supported cases account for many of the cases in Agribusiness, Infrastructure and Mining, Oil, Gas and & Chemicals and for all cases involving financial intermediaries. These are many of the most complex cases.

Graph 26 Average DR Length, in Years, by NGO/CSO Support, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

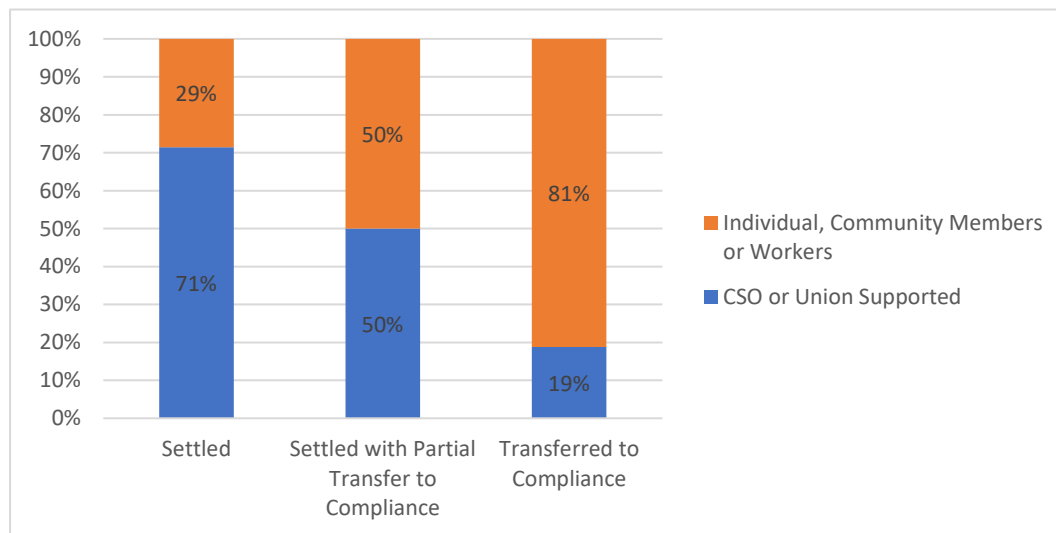
Graph 27 Cases with NGO/CSO Support, FY14-FY22, n=36



Source: CAO Conclusion Reports and Public Data on DR

CSO- or union-supported cases proportionally account for most settled cases, while those without CSO or Union support account for most cases being transferred to Compliance.

Graph 28 DR Outcome, by NGO/CSO Support, FY14-FY22, n=36, CSO or Union Supported: n=16, Individual, Community Members or Workers: n=20



Source: CAO Conclusion Reports and Public Data on DR

Despite this important role, a cross-section of CAO, IFC and client interviews expressed concern that, at times, NGOs and CSOs were pursuing the interests of their organisation in addition to the interests of the complainants. It was their view that these interests could sometimes be incongruent.

A client participant observed that:

*“Some of the NGOs would like a rights-based mediation, and they push for things that they feel the community has a right to under international law, as opposed to what the community actually wants. That's not really helpful in terms of negotiations.” Client Respondent #2*

One IFC representative noted that, at times, it felt like the NGO advisor was more interested in accessing client documents than reaching a settlement. However, as one mediator expressed, it was sometimes frustrating that the client would not share documents that should be in the public domain anyway. The same respondent also noted that the presence of NGOs/CSOs is most effective when they align with the community on their needs.

NGOs/CSOs play an important role in supporting complainants during the DR process, frequently participating in cases that reach a settlement. In addition, they provide resources, advice and support that empowers complainants. While there is sometimes concern that NGOs/CSOs are not fully aligned with the interests of complainants, it is largely the view of respondents that they play an important role in the DR processes that they are involved in.

#### 6.4.3. Client

The other critical party to a DR process is the client. Their role has been raised on several occasions by other stakeholders. Client participants, based on interviews, have experienced challenges during DR processes, namely, resourcing the DR process and concerns about reputation.

Participation in a DR process can have costs for the client because it can be time intensive and can have costs for the operations involved. Client representatives, as with complainants, are required to spend significant time on the DR process, which comes with opportunity costs. One client noted during the interview that they were required to spend many hours regularly focusing on DR at the expense of their other work in social performance. Notably, they did not foresee this improving in the near future. In some cases, clients allocated senior delegations from their operations, which can have implications for the operations with a number of leaders absorbed in a single area of focus. It was noted, however, during another interview that the failure to allocate a sufficiently senior team to the mediation can be seen as a snub by the complainants. Additionally, more junior delegations may need more decision-making power in order to agree to commitments during mediation.

One client noted that ongoing DR processes could have implications for operations, as engagement with communities and other affected parties may be influenced by the DR process. Involvement by a client's staff in a DR process could prevent progress on what might be considered day-to-day functions of the company. This, along with some DR processes requiring moratoriums on aspects of a project, can create delays for the clients and have cost implications.

During an engagement with one mediator, it was noted that resource availability for the DR process could be important in reaching a settlement. Under-resourced companies and representatives could make reaching a settlement more difficult. Conversely, when a budget does not limit the company, it helps to resolve a dispute since more money at their disposal provides more options regarding a settlement. This was confirmed by two DR specialist participants and one IFC participant. When clients can dedicate time and resources to resolve the issues raised by the complainants, they are likely to be perceived as engaging in good faith due to their financial commitment to the process. In one case, the client has a community



relations and investment department that heads the stakeholder engagement strategy for the company. They are empowered to address community concerns and can make commitments during the mediation. However, it was the perspective of one IFC representative that the dedication of this kind of resources could not be expected in every DR process, stating that:

"The client has an operation to run. Sometimes it's not just unwillingness (to participate), but you can't devote so much time to a process like that, that can run *on for years.*" IFC Respondent #7

Notably, each client we interviewed noted the importance of the CAO DR process in building better relationships with project-affected people. Even if it was ongoing, the process created opportunities for relationships to be formed and for parties to engage more effectively on other issues. For example, in one client's view, the DR process created greater awareness of the communities needs and strengthened their approach to stakeholder engagement.

During our engagements with several IFC representatives and clients, it was noted that any CAO process creates a reputational risk for the client. One IFC representative explained that the complaint becomes public long before a CAO process concludes<sup>10</sup>, which can have implications for accessing additional finance and influence the client's customers. One IFC representative said: "*Once the complaint is published*, the damage is done, even if the case *is without merit.*" IFC Respondent #12. This being said, the requirements for transparency within the IFC make this necessary and is a factor that IFC clients should consider as part of their own risk management and stakeholder communication.

The DR process can have significant implications for the clients, as it can for all stakeholders, often entailing significant opportunity costs for the client and raising reputational concerns. Despite this, there is a recognition by some clients that the process can strengthen their own processes and improve relationships with stakeholders.

#### 6.4.4. IFC/MIGA

IFC/MIGA do not have a formally defined role in the DR process. However, they may be requested by the parties to observe or participate or contribute in another manner. Where the IFC plays a role, either as an observer or in providing advice, many of the other stakeholders in a process view their role as helpful. Additionally, on several occasions, IFC representatives expressed support for DR rather than the compliance processes.

While there is no explicit policy preference for the DR process from IFC/MIGA, six participants (two DR specialists, one mediator, and three IFC participants) stated that the IFC prefers DR and will advise clients to opt for that process instead of for Compliance. One IFC participant noted that this advice stems from the view that DR produces benefits for both parties. Additionally, while compliance is focused on IFC compliance, the client faces scrutiny, which could expose them to further risk. However, it is also clear, based on several interviews with the IFC, that there is a deep aversion to the compliance process – which exposes staff and the IFC to substantial scrutiny and can have important negative implications for them.

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<sup>10</sup> Under the CAO Policy, the text of the complaint is now published at the end of the assessment, together with the assessment report.

Critically, creating a perception for clients that DR is the only option can bring the voluntariness of the DR process into question and can have implications for the openness with which clients engage. It was noted during an interview with one IAM that:

*“Management shouldn't push for DR just for the sake (sic), it should be about the sustainability of the project. This awareness isn't there yet.” IAM Respondent #2*

According to the CAO's policy, “Where appropriate and agreed by the Parties, IFC/MIGA may be invited to participate in a CAO dispute resolution process. IFC/MIGA will consider its participation on a case-by-case basis”<sup>11</sup>. Besides being an observer, the IFC has occasionally played a more supportive role in DR processes, providing information on projects, advising clients, and occasionally facilitating the selection of technical experts where required.

Client, NGO, and complainant interviews stated that IFC's presence as an observer is valuable in strengthening the CAO DR process. One NGO stated that the IFC's observation was important to help them understand the issues that projects face. One mediator further explained that the IFC can potentially enhance understanding of technical issues. In one case, the IFC were key contributors to a monitoring agreement, and their participation also helped to make scientific data available to the complainants. In one case the DR process led to institutional learning, resulting in the IFC reconsidering their resettlement guidelines to include issues relating to nomadic pastoralism. In this regard, an IFC participant stated the following:

*“That dialogue was extremely beneficial and helped us understand the issues better and helped us build trust. There was a point where the complainants didn't feel heard, so there was a great relief when we were there to listen.” IFC Respondent #7*

During an interview with an NGO, it was expressed that the IFC's presence as an observer could increase the client's accountability. IFC could use the information gained from the process to inform their supervisory processes. However, NGO participants have also expressed that the IFC's presence is not felt on the ground. An NGO participant stated:

*“They (the IFC) say they're doing a lot of work with (the company) but looking at the lack of tangible results creates the impression that the IFC is not properly supervising its client.” NGO Respondent #6*

While there is a perception that there is a benefit to IFC observation and some evidence to support this in several cases, several participants, including CAO mediators, have expressed a desire that the IFC should provide greater support for remedial action. For example, in the IFC/MIGA Approach to Remedial Action, the document states that IFC /MIGA would provide “support for enabling activities such as technical assistance, capacity building, fact-finding, dialogue facilitation, or community development which could be provided in the context of CAO

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<sup>11</sup> Pg 17. CAO (2021). IFC/MIGA Independent Accountability Mechanism (CAO) Policy. URL: <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2> Accessed: 02 March 2023

cases or otherwise.”<sup>12</sup> Critically, the document explicitly states that “financing direct contribution to remedial actions gives rise to risks.”<sup>13</sup> One IAM interviewee noted that other international financial institutions provide financial assistance through loan extensions to support remediation.

It has been noted by mediators, CAO specialists and NGOs that there is significant variation in the participation of the IFC. In some cases, there is a willingness to collaborate with the CAO, substantial information-sharing and support for the process. In other cases, there is substantial resistance to it. One IFC participant expressed the view that observation was sometimes frustrating as they do not have a voice in the process but are expected to contribute to it. Notably, the IFC has now created the SGR team to serve as a liaison between the IFC and CAO and support the IFC teams during DR. In addition, complainants are now offered the opportunity to work directly with IFC/MIGA to resolve their complaint, with the SGR's involvement. However, it was noted by one NGO representative that they have yet to experience the utility of the SGR, and there is a concern that the SGR will have a corrosive effect on the independence of the CAO.

During Concentric Alliance's interviews with the IFC, it was expressed that there was concern about the linkage between the DR and compliance processes and that the IFC would direct complainants towards the CAO to pursue DR if this were not the case. While the CAO policy does not state that the case is automatically transferred to Compliance should DR fail, it does provide complainants with the option to transfer to Compliance. Complainants must explicitly consent to the transfer, but in the case of threats and reprisals, the CAO may take this decision unilaterally to protect complainants. Given that it is a policy prescription, the CAO could not change the current framing, which links the DR and compliance processes, without board approval. It should be noted that during two interviews, a reference was made that the SGR is establishing a DR function.

#### 6.4.5. Independent Accountability Mechanisms

While rare, CAO and other accountability mechanisms may receive complaints from the same complainants on the same issues. In this regard, IAMs must determine how best to manage their processes. Sometimes, one party will lead the DR process, and others will observe. In other cases, they may decide to jointly work on the process, whilst in other cases, different mediators may facilitate different issues within the process. Evidence from information gathered during interviews indicates that where more than one IAM is involved, the participants have experienced some degree of frustration due to the variation in IAMs' approaches. This section discusses some of these. For a full comparative review of the IAMs, please refer to Appendix 3.

There is substantial variation in the policies of the IAMs, with different mechanisms, processes, and timeframes. This variation makes integrating multiple processes challenging for those

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<sup>12</sup> Pg 17. IFC/MIGA (2022). IFC/MIGA Approach to Remedial Action. World Bank Group. URL: <https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2>  
Accessed: 02 March 2023

<sup>13</sup> Pg 7. Ibid.

involved. One IAM representative noted that there is often poor knowledge of each other's policies and an unwillingness to find a common approach. In the experience of the other IAMs interviewed, the absence of timeframes in the CAO's process makes alignment on joint implementation difficult. Most other IAMs have tighter timeframes, and the executive leadership of the IAM is required to grant extensions where there is a likelihood of the parties reaching a settlement. The tighter timeframes and more constrained resources of the other IAMs also do not allow for capacity-building and other initiatives that the CAO uses.

During one interview, the individual noted a case where the two processes, the CAOs and another IAMs, worked concurrently. This created confusion for the parties and frustration for the facilitators because the overlapping processes often had different timelines and outcomes. Another interviewee noted that working in this manner creates a risk of the replication of processes and fatigues the parties. This could undermine the reaching of a settlement.

During another IAM interview, it was expressed that the IAMs need to consider how to work together better. There is already useful learning and information-sharing between the parties, but working together is challenging. In addition, they believed that the IAMs need to consider how best to utilise their comparative advantages. For example, some IAMs are more experienced in certain technical areas, whilst others have greater resources to respond quickly to cases because of their regional footprints.

#### 6.4.6. Government

The role of the IFC is to foster development through the growth of the private sector. However, the implementation of some of its projects may include the involvement of governments. Such involvement may be necessary during project implementation and/or when governments' participation may be valuable in a CAO process. For example, large Infrastructure or Mining, Oil, Gas and & Chemicals projects might entail the expropriation of land and the resettlement of people, and a government would be required to play an active regulatory role. However, it has been the experience of clients and the CAO that engagement with governments has been challenging, particularly in fragile states, where in some cases, the government is absent or unwilling to act in accordance with the performance standards.

While often it is the government's responsibility to undertake resettlements and other activities, in many jurisdictions, the government does not have the capacity or the willingness to undertake these in a manner consistent with the performance standards, particularly in contexts with weak rule of law. In these cases, the company is expected to make the best possible effort to undertake these activities in a manner consistent with the performance standards. Furthermore, they are expected to make the best effort to mitigate the impacts on project-affected people in cases where there is the production of environmental or social harm from a project. In these cases, there can be a blurring of the accountability of the state and the company, which can result in poorly implemented projects, or at least perceptions of such, that then become the subject of complaints to the CAO.

In one such case, featuring a significant infrastructure investment for expanding an airport, the government was responsible for managing resettlement. A complaint was raised against the IFC's client, which required government involvement in the DR process. While the case was eventually resolved, without having to resettle the community, the government was often challenging to engage with, and there were concerns raised about possible reprisals from the government due to the complaint.

In other cases, where the state is weak, communities may hold expectations for the client to deliver public goods. In these cases, complaint settlement can frequently entail financial outlays by the client for social expenditures and community development. For example, in one case, while a verified scientific study was inconclusive regarding the causes of a disease, the client nevertheless provided health services and financial support to those affected.

During one interview, an IFC representative raised concern that these expectations could create dependency on the client to continue delivering public goods to communities. They stated the challenge for their clients as follows:

*“We are pushing private sector companies to do things where the government isn't there. We don't push the public sector as much because we have much more leverage with the private sector, and that affects the IFC's relationship with the companies. Where does the company end, and the government begin? Yes, there are some good complaints, but there are some public health or goods issues that the private client cannot be expected to carry.”* IFC Respondent #12

However, this raises a contentious challenge in operating in contexts where the state is fragile or in conflict-affected areas and the role of clients in social investments. While it may not be the role of the client to provide public services, clients also operate in environments where the state is often weak or where the provision of public goods by the state is poor, and therefore, there is often a desperate need for social services that the company can provide.

#### 6.4.7. CAO and Mediators

The CAO aims to facilitate access to remedy for project-affected people. Interviews have seen many participants express profound respect for the work of the CAO, with each client and complainant expressing deep appreciation for the DR process and its outcomes. Additionally, NGOs noted that the CAO had been a trailblazer in the role that IAMs play in IFIs. Despite this, some concern has been noted about the CAO's workload and communication with stakeholders.

During several interviews, including NGOs and the IFC, concern was raised about the workload of the CAO Specialists, suggesting that they were overburdened with cases and that this was causing delays in some DR processes. A report on workforce analysis from December 2021 stated that CAO had an insufficient workforce to support its strategic plan and that there was a need to further resource the DR function with a further three positions. While relatively few of the IFC's commitments receive complaints, it bears noting that the IFC committed \$32.8 billion to private companies and financial institutions in FY22 and is expected to continue expanding its commitments in the future, likely increasing the need for an increased workforce in the CAO. In addition, as one IFC representative noted, there is increasing pressure on investment officers to expand investment quotas in fragile states. This creates the potential for a greater need for the CAO's services in the future, increasing pressure on its workforce.

While many interviewees commented on the strength of the CAO's mediators in the DR process, several stakeholders raised concerns about mediators in some DR processes. Concern was raised that, at times, mediators were passive within the mediation process, not doing enough to drive the process forward but simply summarising and repeating the discussion and not holding parties accountable for their commitments. During an interview

with one mediator, it was noted that it is not always clear how a CAO process should unfold and that there was a need to provide greater resources and training to mediators.

In subsequent discussions with the CAO, it was explained that mediator training has evolved, and considerable effort has been taken to develop appropriate training for mediators and to give them access to helpful resources. The CAO organises a biannual Mediator Summit where all mediators working with the CAO can explore issues, challenges, and best practices. The CAO regularly holds online webinars for mediators on different topics related to DR and has developed an induction course to ensure that mediators contracted to work on complaints understand the CAO and its role within the World Bank Group. Additionally, the CAO has developed a Mediator Toolkit to guide mediators working on CAO cases.

Several participants have raised the issue of neutrality within the DR process. The participants have noted that mediators have been excellent in striking the correct balance and tone with the parties. However, during one interview, an NGO said that a mediator was pro-government. This was demonstrated by the fact that the mediator commenced a senior role in a government ministry after the process. While it was not possible to confirm this, an IFC respondent said the same mediator had a good working relationship with the government, which was helpful in terms of obtaining valuable information that supported the CAO process.

Two NGO participants observed that, in their experience, there was a need to ensure that neutrality did not undermine the process. The mediator should empower the complainants to engage with the client, thus creating substantive equality. During an interview with a client, they indicated that initially, they were concerned that the mediator was showing bias; however, later, they realised the mediator enabled better engagement between the parties. It was further noted that the mediators provided valuable feedback to clients and complainants on how they were engaging, which contributed to strengthening the DR process.

On several occasions, concern was raised about the CAOs communication with the stakeholders, indicating that there were often long intervals between CAO communications on a case, creating the perception of delays and passivity by the CAO. While there may have been valid reasons for delays in the process, the absence of communication was frustrating for other parties. It was also noted that, at times, the CAO's response times were poor. In one interview, an NGO said there was concern during an assessment that the lack of communication was indicative of political interference in a case. While it is not possible to confirm this, it exemplifies how a lack of transparency can undermine trust-building.

## **7. Case Complexity**

It is important to understand that several factors contribute to case complexity, and the interplay of these factors can have a varying impact on the DR process. In this section, Concentric Alliance examines the interplay of these factors and the effect of complexity on the DR process.

### **7.1. Measuring Complexity**

Concentric Alliance has developed a numerical complexity score by attaching values to a maximum of 1 to several factors. These factors include:

- NGO/CSO Participation
- Group Size

- Dispersion
- Rural
- Jurisdiction
- Threats and reprisals
- Sector
- Number of issues, as reflected in relevant Performance Standards in Complaint

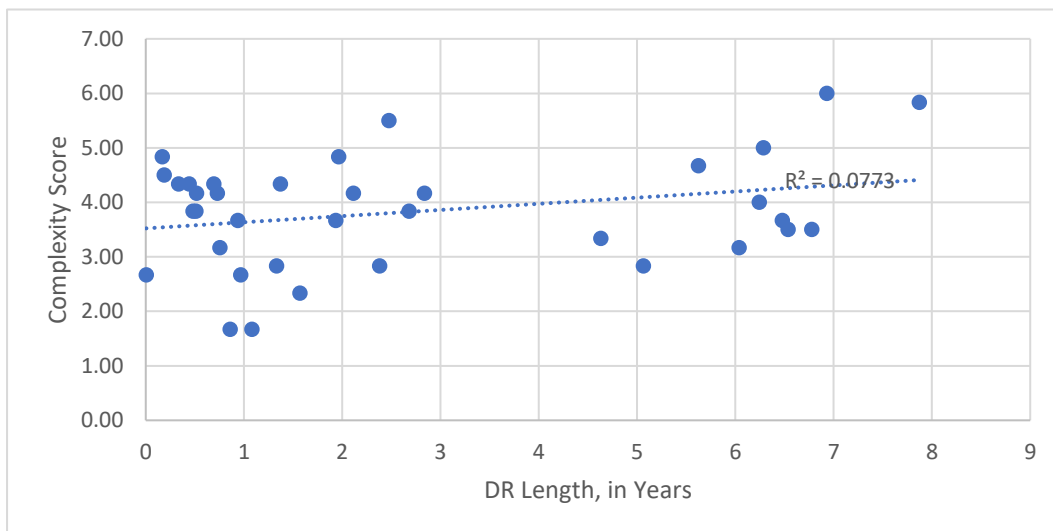
This created a maximum possible score of 7, of which the highest complexity score was 6. Individual complexity scores are available for review in Appendix D.

## 7.2. Impact on Timeframe

It has been evident during our evaluation that these factors individually impact the timeframe. The participation of NGO/CSOs, larger group sizes, higher degrees of dispersion, rural contexts, sector, and performance standards in a complaint have all resulted in longer duration in cases. Threats and reprisals and jurisdictions considered to be not free or partly free by Freedom House have resulted in shorter timeframes, but with the result that cases transfer to Compliance. All these factors present challenges for the CAO to manage.

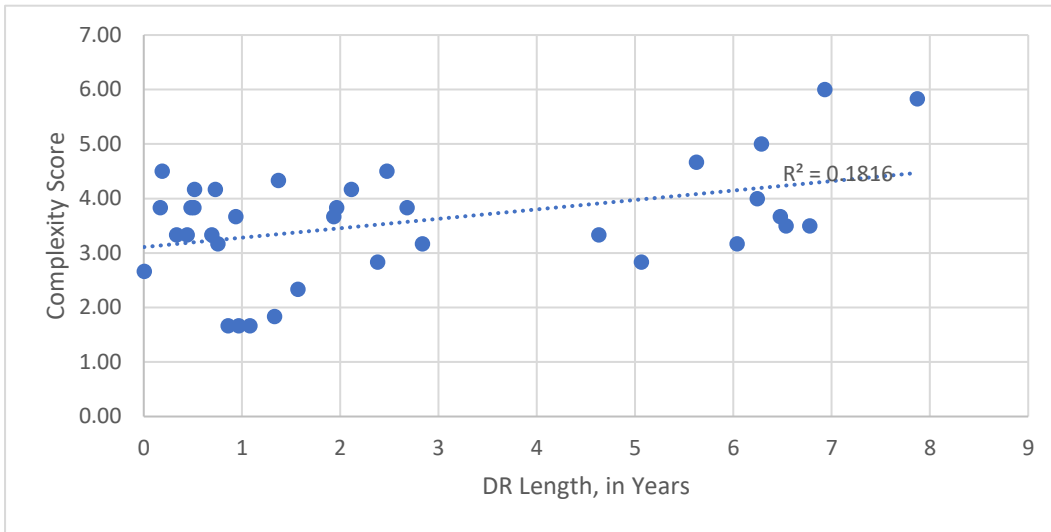
When comparing complexity against timeframe, it is possible to observe a trend towards longer duration. Notably, there is considerable clustering within the two-year timeframe and higher levels of complexity. This is partially accounted for by the number of cases that transfer to compliance early, where there are threats and reprisals.

Graph 29 Complexity, by DR Length, in Years, FY14-FY22, n=36



This trend increases, even when not accounting for threats and reprisals.

Graph 30 Complexity, by DR Length, in Years, excluding Threats and Reprisals, FY14-FY22, n=36

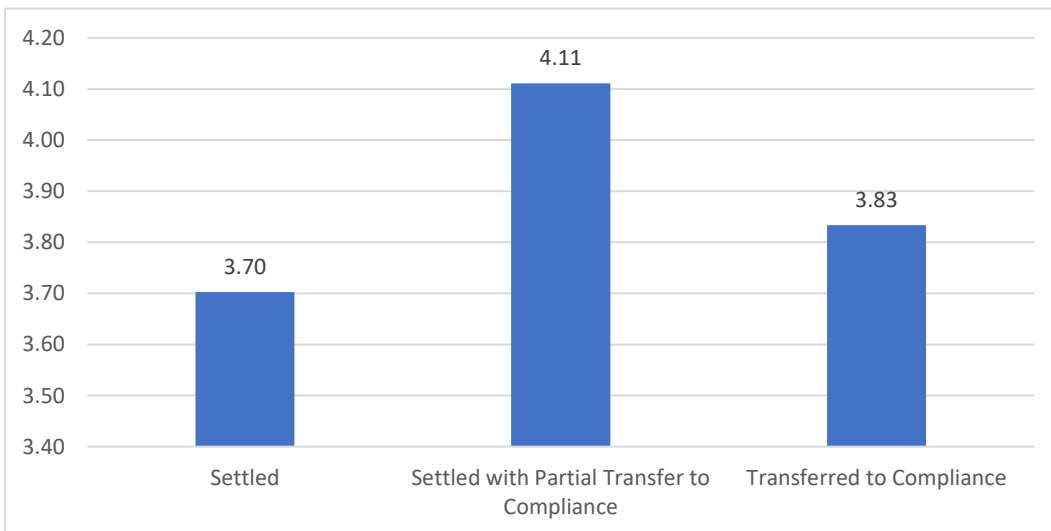


### 7.3. Impact on Outcome

The average length of time, based on outcome, suggests minimal impact of complexity on the eventual outcome of DR. Average complexity score based on DR outcome is similar: Average complexity of settled cases is 3.70, and the average complexity of cases transferred to Compliance is 3.83.

It bears noting that cases settled with partial transfer to Compliance have more complexity than others, 4.11. In these cases, there are often more issues relating to the performance standards arising than in other cases.

Graph 31 DR Outcome by Average Complexity, FY14-FY22, n=36



### 7.4. Impact on DR Process

Complexity presents substantial issues for the CAO, despite not appearing to impact the outcome of the DR process. If complexity increases timeframe, this has implications for the time and resources the CAO and parties must expend on the process. It also requires the



CAO to consider additional mitigation measures that can be implemented to manage the complexity continuously within highly complex processes.

## **8. Conclusions**

This evaluation has used quantitative and qualitative tools to evaluate CAO. It has sought to investigate the efficiency and effectiveness of CAO's assessment and DR processes and their outcomes. CAO is a highly respected institution. Other IAMs, members of the IFC and parties to the CAO's DR processes view the organisation as largely effective in facilitating access to remedy for project-affected people.

### **8.1. Case Complexity**

There is significant variance within CAO cases, which, while not necessarily being predictive of outcome, contribute to the time taken to conclude a case and very likely to the costs of the case. While some of these factors are predictable and can be planned for, others are unpredictable and require CAO to be responsive during the process.

Concentric Alliance has found that as the number of complainants increases, so too does the complexity and the likelihood of longer processes. The complexity arises from the fact that larger groups require significantly more time to find alignment on their issues and agreement on desired outcomes. Additionally, larger groups require the selection of representatives to lead the group and participate in the DR process. Where these representatives fail to deliver or are not transparent, there is the risk that complainant groups may decide to replace their representatives or lose cohesion. Finally, there exists the risk that where groups cannot align on outcomes and tactics, the groups may splinter, which could result in DR being unsuccessful.

Rural location increases the complexity of cases for a number of reasons. Firstly, they bring with them logistical challenges for the CAO team. In addition, these cases are more difficult to access, communication is often more difficult due to poor connectivity, and costs tend to increase.

Dispersion of the complainants can have an impact on the CAO DR process. There is a risk that highly dispersed complainants will be concerned with different issues within the complaint and may disagree over outcomes, tactics and who legitimately should represent them.

Jurisdictions with authoritarian forms of government, weak rule of law and that are unstable can create increasing complexity for the CAO DR process. This can create risks for the complainants through threats and reprisals. Additionally, these contexts can present significant challenges for the DR team and others.

While our findings suggest that CAO handles the risk of reprisals well and has created the necessary precautions where such risks arise, threats and reprisals do add to complexity arising from the fact that there is often an absence of trust between the parties and that the CAO is required to preserve the confidentiality of the parties. Confidentiality necessitates an absence of complete transparency and the use of methods like shuttle diplomacy, which require greater effort and more time. In addition, threats and reprisals appear to contribute to the likelihood of transfer to Compliance, in some cases, because the safety of complainants is at risk.

Force Majeure factors are out of the CAO's control but can substantially impact cases. While some of these are political, for instance, coups or civil unrest, others could be related to natural disasters, such as the COVID-19 Pandemic. Such factors can make face-to-face interaction difficult, create logistical barriers or heighten the risk of reprisals to complainants.

The sector in which clients operate can substantially impact the case complexity. Our findings indicate that certain sectors, notably cases in Agribusiness, Infrastructure and Mining, Oil, Gas and & Chemicals, appear to produce greater numbers of issues relating to performance standards. The scale of these projects is often significant, impacting many communities and livelihoods, thus creating a greater likelihood of the multiple problems arising. Furthermore, such projects often include environmental impacts, which are more complex for clients to mitigate. Finally, such cases often require a common basis of fact from which to work, requiring additional resourcing and expertise that must be funded and be viewed as independent.

Financial intermediaries appear to produce complexity, with the IFC not having a direct relationship with the company, which is alleged to have caused harm, but rather having a relationship with the financing institution.

## 8.2. Choosing Dispute Resolution

DR processes produce outcomes that benefit complainants and IFC clients, often strengthening relationships and resulting in remedial action and community benefits. While most cases result in the decision to pursue compliance, participants in the interviews argue that there is an initial preference for DR.

Where there is a pre-existing long-term relationship between clients and complainants with proximity or where a project will result in one being formed, then there is a high likelihood that DR will be the preferred option. DR, by its nature, supports relationship-building, and where the life of a project will be long, there is great benefit in building stronger relationships.

Where parties view that a case carries with it the chance for success or are highly motivated to resolve the issues at hand, there is a likelihood the parties will pursue DR. This perception will likely be shaped by whether commitments have previously been met by the counterparty or the potential for mutually beneficial outcomes.

Threats and reprisals undermine the ability of the CAO to facilitate DR processes. They also foster a lack of trust and undermine good-faith engagement. The decision to transfer to Compliance is often taken to protect complainants.

## 8.3. Dispute Resolution Closure without Settlement

A number of factors contribute to DR closure without settlement, including the lack of progress, complainant fragmentation, force majeure factors and the absence of good faith.

While there may be excellent reasons for cases to take several years to reach a settlement, there needs to be a perception that progress is being made for the case to reach a settlement. Where there is a perception that the process is stagnating and there is a lack of proactivity, parties can become disillusioned with the DR process and might choose to exit it. This perception can be shaped by a number of factors, including the lack of regular communication and engagement or the failure to meet commitments by the parties. While stagnation may result from long, unintentional delays, bad faith engagement results from wilful delay,

purposeful misrepresentation, or failure to act in the manner agreed upon during the mediation process. The data suggests that even where cases last many years, but there is activity, for instance, capacity-building, research, or joint fact-finding, the parties are likely to reach a settlement.

Where the complainant group fragments or where leadership is contested, there is the possibility that the DR process will close without settlement and possibly be transferred to Compliance. This may occur where one part of the complainant group wishes to settle while another may not want to.

Force majeure factors can substantially impact the process and its ability to progress and, in most cases, cannot be adequately accounted for by the CAO. Consequently, these may affect the client, complainants, or the process as a whole.

#### 8.4. Dispute Resolution Success

The factors contributing to the DR process's success include NGO and CSO engagement, CAO interventions and the mediators.

NGOs and CSOs, while contributing to extending timeframes for DR, are key factors in DR success. NGOs and CSOs contribute to creating equality between the parties by providing advice and support to complainants. Additionally, they provide important support in keeping the complainant groups aligned and coherent during the DR process.

In the cases where the CAO provides capacity building, there is a high likelihood that the parties will reach a settlement. Capacity-building is often provided to both parties. It creates equality between the parties and a clear understanding of the CAO process. The capacity-building comprises several aspects, including negotiation skills and technical knowledge.

In highly technical cases, there is a need for uncontested knowledge that is often unavailable to the parties. This makes reaching an agreement difficult. Joint fact-finding allows parties to have a shared basis of trusted fact. Linked to this is participatory monitoring, which gives complainants access to information that can be trusted. In the cases where the CAO supports joint fact-finding, there is a high likelihood that the parties will reach a settlement. It bears noting that there is often a challenge in accessing the resources for this activity due to the client's or IFC's unwillingness to finance this intervention.

Our findings suggest there is value for the DR process in the IFC/MIGA participating, even if only informally. They can provide information and provide support for the process. Conversely, concern has been raised about incidences where the IFC was unwilling to participate in DR processes, which frustrated complainants and clients. IFC representatives have noted some of the challenges from observing DR processes, including how time-consuming it can be. Based on the ongoing public discussion about the role of the IFC/MIGA in remedial actions, it is clear that this issue is contested, and the role of the IFC/MIGA needs greater clarification.

There is generally positive feedback about the quality of the mediators that the CAO uses. They are perceived to be highly skilled and capable. The CAO supports this by providing mediators with the necessary tools, skills enhancement, and peer learning opportunities to perform their roles. Mediators are critical in helping the parties reach a settlement, and, thus, are viewed as trusted, competent, and independent third parties that are critical to ensuring that DR is successful.

## 8.5. General

It has been noted that there is a need for more consistent and transparent communication within the DR process. This is critical for ensuring that all stakeholders hold similar information and for building trust between the parties. It has been expressed that there are often long gaps in communication from the CAO, which give the perception that the mediator and the DR team are passive in their role rather than driving the processes forward quickly.

During our engagements with other IAMs and the comparative assessment of processes, it was clear that there is a need for a more formalised approach to collaboration on cases. Shared cases create substantial confusion for the parties because of overlapping processes.

## 9. Recommendations

Based on Concentric Alliance's findings, we make the following recommendations to strengthen the CAO DR and assessment processes. The recommendations aim to improve the effectiveness and efficiency of the CAO's processes, strengthen the CAO in order to facilitate access to remedy for project-affected people and improve communication.

### 9.1. Recommendations for Assessment

The following recommendations are made for the assessment function. The purpose of these recommendations is to expedite the assessment process and support the DR function, should the parties select this.

#### 9.1.1. Mapping Environmental and Social Performance Standards

Concentric Alliance recommends that a CAO Compliance Officer support the DR team during the assessment process.

The function of this individual would be to make an initial assessment of the issues in the complaint and how they relate to the E&S Performance Standards and to provide advice and support on an ongoing basis during the assessment. The purpose of this is to provide direction for further enquiry if parties select a compliance process and, where a DR process is selected, to assist the DR team in determining what issues may require additional research or data to provide a common basis of fact within the process. Additionally, the compliance officer would assist in identifying other possible problems that may arise during the process relating to the E&S Performance Standards.

It would not be the role of this individual to make any determination on non-compliance but rather to provide supporting information that would help both the DR and compliance processes. Given the sensitivity that parties may have from the presence of a compliance officer, we recommend that this person works in the background of the assessment.

If individual case assistance is too resource intensive, the CAO should conduct regular cross-functional training, from compliance to DR team members. These workshops would allow the DR team to build a sufficient knowledge base of the E&S Performance Standards to understand how they may influence cases.

#### 9.1.2. Complexity Assessment

Concentric Alliance recommends conducting a complexity assessment as part of the CAO assessment process. This would aim to identify factors that may contribute to complexity within the DR process or pose a threat to the parties during the process. This would include, but not be limited to:

- Nature of Project
- Scope of the environmental and social issues
- Threats and Reprisals
- Contextual Risk
- Potential Force Majeure Factors - for instance, financial distress of the company
- Dispersion and number of complainants

The complexity assessment should contribute to case classification, resource allocation and the design of the DR process, should DR be selected.

### 9.1.3. Case Classification

Concentric Alliance recommends that the CAO adopt a system of case classifications based on risk and complexity to support the allocation of resources, and personnel and the determination of appropriate timeframes.

The purpose of this process would be to ensure that the CAO DR team can effectively meet its mandate whilst limiting unnecessary resource use and managing timelines.

Factors that should be considered in determining case classification should include:

- Number of Complainants
- Dispersion of Complainants
- DR process Needs, i.e., Capacity-Building, Independent Research
- Rural or Urban Contexts and Logistical Requirements
- Threats and reprisals
- Sector
- Nature of Issues

The CAO should consider whether it is possible to allocate budget to such categorisations.

Classifications should be used to support the establishment of timeframes discussed in the next section.

## 9.2. Recommendations for Dispute Resolution

The following recommendations are made for the DR function. The purpose of these recommendations is to support case management and resourcing to ensure that the DR function can meet its purpose.

### 9.2.1. Proactive Case Management

Concentric Alliance recommends the development of protocols that enable proactive case management. This should include the management of commitments and communication between the CAO and the parties.

This should include regularised reporting to the complainants, clients, NGO/CSO advisors and IFC on a minimum monthly basis, but this may be more frequent through the agreement of the parties.

The CAO should adopt agreed communication protocols and timeframes for response to communication from project stakeholders.

Where parties make commitments, and where confidentiality will not be breached, the CAO should regularly enquire about progress and share such progress with other stakeholders as a means of maintaining accountability.

#### 9.2.2. Establishing Timeframes within the DR Process

Concentric Alliance recommends the establishment of soft and hard timeframes for DR processes that support the management of cases and ensure progress towards settlement.

Concentric Alliance proposes that hard timeframes should be established for all activities for which the CAO DR team is accountable. This might include the delivery of capacity-building initiatives and providing reports to parties. The DR team must be accountable for such timeframes and the failure to meet them.

Concentric Alliance proposes the establishment of soft deadlines set at the commencement of the case and reviewed either semi-annually or annually. In consultation with the mediator, the CAO should be empowered to close cases or transfer them to Compliance where there is no possibility for success in DR.

The DR Team should undertake an annual review of cases, with a recommendation made by the head of DR to the Director-General on whether to close or proceed with a case. While this is currently not the practice, Concentric Alliance recommends that the DG approves decisions to close cases to ensure that there is adequate justification and backing for the closure of cases that are not making sufficient progress.

The decision will be based on the reasonable prospects of a successful mediated resolution informed by the progress made since the previous review and whether, based on a careful evaluation of the engagement between the parties in consultation with the mediator, the parties are engaging in good faith or not.

Factors that should be considered are:

- Completion of CAO Interventions (i.e., capacity-building, research)
- Meeting commitments made according to agreed deadlines or evidence of progress toward meeting commitments.
- The development of new commitments and the settlement of existing issues.
- Complying with deadlines established by the CAO.
- Force Majeure Factors
- Resources

Since every case has complexities and challenges that evolve and change as the process develops, it is impossible to prescribe a list of definitive criteria for closure. Making that decision is an art rather than a science. However, a broad overarching measure should be whether, if the mediation were to continue, there are reasonable prospects of a successful

outcome. Only the mediator is capable of making that determination, which would be informed by the reasons for the delay in bringing the mediation to a successful conclusion.

This recommendation aims to empower the DR team to make decisions on progressing cases and incentivise proactive commitment to, and engagement with, the mediation process in good faith. Reasonable delays should be accounted for, but ongoing failure to achieve commitments within the process should be grounds to close a case. In such a case, the complainant could request a transfer to Compliance. Additionally, such reviews should empower the CAO to manage mediation teams to ensure consistency of delivery and approach.

#### 9.2.3. Mediation Process Design

Concentric Alliance recommends that the CAO strengthen the mediation process design by identifying necessary interventions by the CAO and establishing timeframes for which those should be concluded. This should be done in collaboration with the parties and should consider risks and complexity.

The process should be reviewed annually to assess if amendments are necessary.

#### 9.2.4. Regularising Case Reviews

Concentric Alliance recommends developing a regularised review of cases within the DR Function. The purpose of such review is to establish the cause of blockages to settlement and possible actions to be taken to manage parties within the process.

The review should take cognisance of the timeframes established and the categorisation of cases. Reviews must include an assessment of costs to the CAO in budget and time. Additionally, consideration should be given to the impact that delays in resolution may have on the parties.

#### 9.2.5. Strengthening Monitoring Processes

Concentric Alliance recommends that CAO strengthen its monitoring processes by establishing appropriate timelines and management systems.

Monitoring should serve as a mechanism to assess the impact of interventions agreed upon during settlement and hold the parties to account for delivering on commitments.

Monitoring should be concluded expeditiously to avoid losing leverage due to the closure of cases as loans to IFC are repaid.

The CAO should allow for more extensive monitoring periods in highly complex cases. The CAO must ensure that settlements result in issues being resolved rather than the terms of an agreement simply being met. For instance, it may be necessary to ensure that the interventions in highly complex or technical cases have the desired impact or whether an alternative strategy should be attempted.

#### 9.2.6. Improved Communication

Concentric Alliance recommends that the CAO strengthen its communication systems with parties and stakeholders in the DR process.

This should include the development of appropriate timeframes for response, regularising engagements and ensuring information is shared with all participants timeously.

#### 9.2.7. Improved Documenting of Cases

Concentric Alliance recommends that CAO manage the documenting of cases by developing regular progress reports, compiling minutes, and documenting commitments throughout the DR process. Such documents should be provided punctually after each meeting.

This does not preclude the mediators from keeping their own documents and records.

### 9.3. Recommendations for CAO Capacity

The following recommendations are made for CAO capacity. The purpose of these recommendations is to support expanding the CAO's workforce and expanding and strengthening mediator support and monitoring.

#### 9.3.1. Expanding Capacity of the CAO DR Function

Concentric Alliance recommends that the CAO conduct an annual assessment of its workforce and forecast the needs of the DR team.

This should account for the tasks that Concentric Alliance has recommended.

The CAO should develop the capacity to monitor and evaluate settlements once reached. In addition, it should be considered whether or not additional, independent capacity for monitoring should be developed, to empower the DR team to focus on mediation and dispute resolution.

#### 9.3.2. Strengthening Mediator Support, Training and Monitoring

Concentric Alliance recommends that the CAO reviews mediator support, training, and monitoring. This should take the form of a needs and effectiveness assessment.

The CAO should develop appropriate monitoring of mediators to ensure they are being proactive and fully engaged in mediation processes and taking active steps to direct and manage the process and hold parties accountable. This should include ensuring that mediators maintain regular contact with parties and have the necessary skills and knowledge of the CAO and its purpose. Support should include ensuring that mediators have all the resources required to facilitate settlement.

The purpose of this is to ensure consistency in the delivery and approach of each mediation team and to ensure a standard to which mediators are held accountable.

It bears noting that while consistency is desirable, the nature of mediation is such that no process will ever be identical; there are too many variables that influence such processes. This aims to ensure that there is a general standard and set of expectations that mediators can operate within and are guided by when making decisions on the process. Such interventions should at no point undermine the independence of a mediator.

### 9.4. Recommendations for IFC



The following recommendations are made for the IFC. Concentric Alliance recommends that the CAO engages the IFC to consider how to strengthen the IFC's role in remedial action.

#### 9.4.1. Recommendations on CAO and IFC Alignment

Concentric Alliance recommends an engagement between CAO and SGR to discuss each of their processes and determine whether alignment can be improved to support efficient resource allocation and timely resolution of cases. This could include consideration of whether it would be desirable to establish a reference mechanism between project grievance mechanisms, SGR, and the CAO. This could support the escalation of complaints where issues are most serious. Any reference mechanism would need to be implemented in consultation with the complainant.

This should be done in accordance with the CAO Policy and preserve and strengthen the CAO's independence.

#### 9.4.2. IFC Participation in Cases

Concentric Alliance recommends that CAO engage the IFC/MIGA to, as a matter of course, be an observer of all CAO cases instead of only observing cases when requested to participate and agreeing to do so.

The default position should be IFC/MIGA participation as an observer, unless it is deemed unnecessary or if the parties would prefer that the IFC/MIGA do not observe.

This is to ensure that the IFC/MIGA is aware of commitments made during the DR process, to be mindful of the issues with their projects, to share information and, where applicable, to act as a mechanism for holding their client accountable. This would support institutional learning and facilitate access to remedy.

Our review has established that there is value in this, with the IFC/MIGA deriving learning from such participation and, at times, providing beneficial strengthening of the CAO DR process.

Linked to this, the IFC should assess how best such participation could enhance supervision and accountability mechanisms.

#### 9.4.3. Facilitating Remedial Action

Concentric Alliance recommends that the CAO engage the IFC in establishing mechanisms to support and facilitate remedial action. Notably, the IFC and the CAO should identify options for making resources available for scientific and technical studies, which are critical for establishing a basis for fact that contributes to the success of DR.

This would include facilitating access to expertise for CAO DR processes, financing such technical expertise and considering mechanisms to provide financial resources for remedial action.

### 9.5. Recommendations for CAO and other Independent Accountability Mechanisms

Concentric Alliance recommends that the CAO engage IAMs on how best to enable alignment when collaborating on DR processes.

The purpose is to ensure that resources are used effectively to avoid duplication and confusion by having multiple overlapping processes. Failure to do this will only contribute to the case's complexity and undermine finding a settlement.

Concentric Alliance's review of IAM policies evidences a challenge in finding alignment without the approval of the IAM's respective boards. If one of the IAMs' policies does not allow for flexibility in this regard, then it should be agreed, in consultation with the complainants and clients, who should be responsible for the case. There should be agreement on communication protocols, information-sharing and agreement on what is envisaged in observer status.

Where it is possible to find alignment, general principles should be established on roles and responsibilities, cost-sharing, resource allocation, timeframes, and process.

Concentric Alliance recommends that discussions with IAMs include establishing the comparative advantages and expertise of different IAMs and how these might be leveraged in finding alignment.

## Appendix A: Cases Reviewed

### Assessment Cases Reviewed

Case Name	Case Name
Albania: Enso Albania-01/Lengarica	Jordan: Daehan Wind Power Co-01
Albania: Enso Albania-02/Mat	Jordan: Masdar Baynouna-01/East Amman
Albania: Kurum Hydro-01/Bradashesh	Kenya: Bidco Bev. & Det.-01/Thika
Argentina: Pan American Energy (PAE)-01/Comodoro Rivadavia	Kenya: Bidco-04/Thika
Armenia: Lydian Intl3-01/Gndevaz and Jermuk	Kenya: Bridge international Academies-01/Kenya
Armenia: Lydian Intl3-02/Gndevaz and Jermuk	Kenya: Bridge international Academies-02/Kenya
Azerbaijan: TANAP-02/ Garachamirli	Kenya: Bridge international Academies-03/Kenya
Bangladesh: United Ashuganj Energy Ltd-01/Dhaka	Kenya: Delonex Energy and Africa Oil-01/Kerio Valley
Belarus: Strominvest II-01/Minsk	Kyrgyz Republic: Plato-01/Bishkek
Brazil: Valor-01/Sao Paulo	Liberia: Salala Rubber Corporarion (SRC)-01/Margibi & Bong Counties
Cambodia: Cambodia Airport-01/Phnom Pehn	Malaysia: Bilt Paper B.V.-01/Sipitang
Cambodia: Financial Intermediaries-01/	Malaysia: Bilt Paper-02/Sipitang
Cambodia: Financial Intermediaries-02/	Mexico: Harmon Hall-02/Puerto Vallarta
Cambodia: Financial Intermediaries-03/	Mexico: Harmon Hall-03/Mexico
Cambodia: TPBank and VPBank-01/Ratanakiri	Mexico: Harmon Hall-04/Mexico
Cambodia : VEIL II-01/Ratanakiri Province	Mexico: Harmon Hall-05/Mexico
Chile: Alto Maipo-01/Cajon del Maipo	Mexico: Harmon Hall-06/Mexico
Chile: Alto Maipo-02/Cajon del Maipo	Mexico: Harmon Hall-07/San Luis Potosi
Chile: Sociedad Hidromaule-01/San Clemente	Mexico: Harmon Hall-08/Mexico
Costa Rica - Reventazon HPP-01	Morocco: Zalagh-01/Tiddas
Costa Rica - Reventazon HPP-02	Myanmar: Myanma Awba Group Company Ltd.-01/Myanmar
Egypt: Alex Dev Ltd-02/Beni Suef	Nicaragua: Condor Gold PLC-01/Santa Cruz de la India
Egypt: Alex Dev Ltd-03/Beni Suef	Nicaragua: Ingenio Montelimar-01/Montelimar Environs
Egypt: Alex Dev-01/Wadi al-Qamar	Nigeria: Eleme Fertilizer II-01/Port Harcourt
Egypt: Egyptian Indian Polyester Company Sokhna-01/Hyderabad	Pakistan: Bank Alfalah-01/Saddar Karachi

Egypt: Egyptian Indian Polyester Company-Sokhna-02	Pakistan: Karot Hydro-02/Jhelum River
Georgia: AGL-01/Makhalakidzeebi	Pakistan: Karot Hydro-03/Jhelum River
Georgia: Trans-Anatolian Pipeline-01/Vale	Panama : PL IV-01/multi-locations
Ghana: Meridian PSL-01/Tema	Papua New Guinea: AES-01/Roku Village
Guatemala: CIFI-01/ Hidro Santa Cruz	Peru: Yanacocha 09/Cajamarca
Guatemala: Real LRIF-01/Coban	Peru: Yanacocha 10/Cajamarca
Guatemala: TCQ-01/Puerto Quetzal	Peru: Yanacocha-06/Cajamarca
Guinea: CBG-01/ Sangaredi	Peru: Yanacocha-07/Cajamarca
Guinea: NedBank Tier II-01/Kintinian	Peru: Yanacocha-11/Cajamarca
Haiti: Grupo M and CODEVI II-01/Zone Franche de Ouanaminthe	Philippines: Rizal Commercial Banking Corporation (RCBC)-01
Honduras: Dinant-02/Rio Aguan	South Africa: Lonmin-02/Marikana
Honduras: Dinant-03/Aguan Valley	Togo: Togo LCT-01/Lomé
Honduras: Ficohsa-02/Tela	Togo: Togo LCT-02/Lomé
Honduras: Financial Intermediary-01/Aguan Valley	Uganda: Bidco Bev. & Det-03/Kalangala Valley
India: Lafarge Surma Cement-01/Shella	Uganda: Bujagali Energy-08/Bujagali
India: Shapoorji Pallonji-01/Pune	Uganda: Bujagali-07/Bujagali
India: Tata Ultra Mega-02/Tragadi Village	Ukraine: Axzon-01/Halych and Kalush
Indonesia: Financial Intermediary-01	Ukraine: Galnaftogaz (GNG)-01/Kiev
Indonesia: Rajamandala HEPP-01/West Java	Ukraine: MHP-01/Vinnytsia Oblast
Indonesia: Wings-01/Long Beluah	Uzbekistan: Indorama Kokand-01
Jordan: Alcazar Energy-01/Jordan	Yemen: HSA Foods-01/Ras-Isa

## DR Cases Reviewed

Case Name	Case Name
Albania: Bankers Petroleum-01/Patos	Kenya: Bridge international Academies-02/Kenya
Albania: Enso Albania-01/Lengarica	Kenya: Bridge international Academies-03/Kenya
Albania: Kurum Hydro-01/Bradashesh	Kenya: Delonex Energy and Africa Oil-01/Kerio Valley
Armenia: Lydian Intl3-02/Gndevaz and Jermuk	Mexico: Harmon Hall-01
Bangladesh: United Ashuganj Energy Ltd-01/Dhaka	Mexico: Harmon Hall-07/San Luis Potosi
Belarus: Strominvest II-01/Minsk	Mongolia: Oyu Tolgoi-01/Khanbodg
Brazil: Valor-01/Sao Paulo	Mongolia: Oyu Tolgoi-02/Khanbodg
Cambodia: Cambodia Airport-01/Phnom Pehn	Morocco: Zalagh-01/Tiddas
Cambodia: Cambodia Airports-01/Preah Sihanoukville	Myanmar: Myanma Awba Group Company Ltd.-01/Myanmar
Cambodia: TPBank and VPBank-01/Ratanakiri	Nicaragua: Ingenio Montelimar-01/Montelimar Environs
Cambodia: VEIL II-01/Ratanakiri Province	Nicaragua: Nicaragua Sugar Estate Limited-01/León and Chinandega
Cameroon: AES Sonel-02/Douala	Papua New Guinea: PNG SEZ-01/Madang Province
Cameroon: Chad-Cameroon Pipeline-02/Cameroon	Peru: Yanacocha-04/Cajamarca
Chad: Chad-Cameroon Pipeline-03/Doba	Peru: Yanacocha-05/Cajamarca
Colombia: Alqueria-01/Cajicá	South Africa: Lonmin-02/Marikana
Egypt: Egyptian Indian Polyester Company Sokhna-01/Hyderabad	Togo: Togo LCT-02/Lomé
Egypt: Egyptian Indian Polyester Company-Sokhna-02	Uganda: Agri-Vie-01/Kiboga (Luwunga)
Georgia: AGL-01/Makhalakidzeebi	Uganda: Agri-Vie-02/Mubende (Namwasa)
Guinea: CBG-01/ Sangaredi	Uganda: Bidco Bev. & Det-03/Kalangala
Guinea: NedBank Tier II-01/Kintinian	Uganda: Bujagali Energy-04/Bujagali
Haiti: Grupo M and CODEVI II-01/Zone Franche de Ouanaminthe	Uganda: Bujagali Energy-05/Bujagali
Indonesia: Rajamandala HEPP-01/West Java	Uganda: Bujagali Energy-06/Bujagali
Indonesia: Wilmar Group-03/Jambi	Ukraine: Axzon-01/Halych and Kalush
Indonesia: Wings-01/Long Beluah	Ukraine: MHP-01/Vinnytsia Oblast
Jordan: Alcazar Energy-01/Jordan	Uzbekistan: Indorama Kokand-01
Jordan: Daehan Wind Power Co-01	Yemen: HSA Foods-01/Ras-Isa
Jordan: Masdar Baynouna-01/East Amman	

## Appendix B: Case Coding

Indicator	Description	Categorisation
<b>Dispute Resolution Process</b>		
NGO/CSO Complainants	Cases where local, national, or international NGOs/CSOs formed part of the complainant group	0 - No NGO/CSO 1 - local NGO/CSO 2 - national NGO/CSO 3 - international NGOs/CSOs 4 - More than one 5 - All
NGO/CSO Advisors	Cases where local, national, or international NGOs/CSOs provided advisory support to complainant	0 - No NGO/CSO 1 - local NGO/CSO 2 - national NGO/CSO 3 - international NGOs/CSOs 4 - More than one 5 - All
Political Commitment/Government Assistance	Cases where the government local, provincial, national formed part of the complainant group	0 - No Government Participation 1 - Local Government Participation 2 - Provincial, State, Prefecture Participation 3 - National, Federal Government Participation 4 - More than One 5 - All
Expert Involvement	Cases that require involvement of experts or not	0 - No 1 - Yes
Translators	Cases where translators were available or not / The standard of translations / the integrity of translators	0 - No 1 - Yes 2 - Unknown
Local Mediators	Cases where local mediators with cultural awareness were available or not	0 - No 1 - Yes 2 - Unknown

Independent Mediation Bodies	The presence of independent mediation bodies or not	0 - No 1 - Yes
Independence	Perceived independence of the mediator	
Outreach/Capacity Building	Cases in which the need for outreach and/or capacity building was extensive or not	0 - No 1 - Yes
Capacity to Negotiate	Cases in which the stakeholders had the capacity to participate in DR / Experience in negotiating of parties	0 - No 1 - Yes
DR Committees	Cases in which committees were established to represent groups, which either led to efficiency or perceived exclusion	0 - No 1 - Yes
Outcome	Outcome of the case.	0 - Pending 1 - Settled 2 - Settled with Partial Transfer to Compliance 3 - Transferred to Compliance
Independent Accountability Mechanism	The presence of other IAMs	0 - No 1 - Yes
<b>Environmental Indicators</b>		
Jurisdiction	Cases in which more than one jurisdiction was applicable	0 - One Jurisdiction 1 - 2 Jurisdictions 2 - 3 or More Jurisdictions
Force Majeure Factors	Conditions that exist outside of the control of the stakeholders and CAO	0 - No 1 - Yes Notes to be Provided
Interstate or Intrastate Conflict	Whether the case is located in a state of conflict, and whether such conflict is major or minor	0 - No 1 - Intrastate Conflict, Non-violent 2 - Intrastate Conflict, Violent 3 - Interstate Conflict, Non-violent 4 - Interstate Conflict, Violent

<b>Complainant Indicators</b>		
Stakeholder Alignment - Process	Whether the complainant group is unified or fragmented in process	0 - No 1 - Yes Notes to be Provided
Stakeholder Alignment - Outcomes	Whether the complainant group is unified or fragmented in perceived/desired outcome	0 - No 1 - Yes Notes to be Provided
Geographic Dispersion	The dispersion of the complainants	0 - No Dispersion 1 - Some Dispersion, did not seemingly impact process 2 - Some Dispersion, Impacted Process 3 - Significant Dispersion, did not impact process 4 - Significant Dispersion, Impacted Process Notes
Stakeholder Leadership	Cases where there is a turnover within stakeholder groups/change of leadership	0 - No 1 - Yes Notes to be Provided
Threats and reprisals	Whether there is a likelihood of Threats and reprisals	0 - None 1 - Unlikely 2 - Somewhat unlikely 3 - Somewhat Likely 4 - Likely 5 - Reprisal/Threats Occurred
Rural/Urban	Whether the complainant group is urban or rural	0 - Rural 1 - Peri urban 2 - Urban
<b>Client Indicators</b>		



Sector	The particular sector to which the complaint related to may increase complexity	0 - No Sector 1 - Advisory Services 2 - Agribusiness 3 - Financial Markets 4 - Health and Education 5 - Infrastructure 6 - Manufacturing 7 - Mining, Oil, Gas and Chemicals
IFC/MIGA Risk Category	IFC/MIGA categorisation of risk	0 - Not Stipulated 1 - Category A 2 - Category B 3 - Category C 4 - FI-1 5 - FI-2 6 - FI-3
<b>General Indicators</b>		
Governmental Relationship	Cases in which there was an existing relationship between the government and the complainant/client	Notes - need to consider if it's possible to categorise.
Joint Fact-Finding Process	Cases where were part of collaborative fact-finding effort or not.	0 - No 1 - Yes Notes to be Provided
Trust Levels	Cases in which there was an existing relationship of trust between the parties or not.	0 - No 1 - Yes Notes to be Provided
Good Faith Negotiations	Perceived commitment to negotiations and a fair outcome	0 - No 1 - Yes Notes to be Provided

## Appendix C: IAM Comparative Review

### Registration of a Complaint and Assessment

Once CAO receives a complaint, it proceeds with eligibility screening, which must take place within 15 business days upon acknowledgement of receipt. A 20-day extension may be provided for parties to provide missing information. An Assessment must be conducted within 90 business days after the complaint has been found eligible, which may be extended for another 30 days if the parties express an interest in dispute resolution.

Upon receipt of a complaint, MICI must inform the complainants within 5 business days of any missing information, in which case they will be granted 10 days to provide such information. Failing this, the process will be terminated. The bank's management is provided with 21 days of the date of the registration of the complaint to provide a written respond to the complaint, and they may request to suspend the eligibility determination for up to 45 days if they have a specific plan to make corrections to operations. It is only after the receipt of such written response that MICI can proceed to make an eligibility determination, which must take place within 21 days. This differs from CAO's process, since IFC is not given the opportunity to respond to the claim before CAO proceeds to the eligibility screening. MICI's Assessment of the complaint, after being found eligible, must be conducted within 40 days.

IRM is required to acknowledge receipt of the complaint within 7 business days, after which it must determine whether the complaint is eligible within 21 days. The registration of the complaint may be suspended for another 21 days for the complainants to provide additional information, failing which the process will be terminated. The bank management is also provided an opportunity to respond to the complaint, but only after the complaint has been registered, and within 21 days thereof. An internal review without a specific timeline must be conducted, and if it is decided that dispute resolution will be proceeded with, an Assessment must be conducted within 40 days of the review.

IPAM does not provide for any timeframes, except for allowing for the suspension of the registration of the complaint to allow for the bank's management or the client to make good faith efforts to address the issues raised within 45 days. There is also no timeframe provided for in the Assessment process.

While CAO does not require that complainants prove previous efforts to resolve the complaints, though parties are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible, other IAMs all require that complainants provide evidence of previous good faith efforts or proof that this was not possible. All the IAMs, however, can use a flexible approach to Assessments, conducting site visits where necessary and considering all the relevant information to determine whether dispute resolution is possible and whether the parties agree to proceeding with that function.

CAO	MICI	IRM	IPAM
CAO proceeds with eligibility screening upon receipt of the complaint.	5 days, with option to extend for 10 days for complainants to submit missing information.	7 days to acknowledge receipt.	No timeframe provided for registration, but Management or

20 days may be granted to complainants/IFC/MIGA to submit missing information.	Management may be given 45 days before eligibility determination to make corrections to operations.	21 days to determine whether complaint contains a bona fide allegation of harm.	the client may be given a maximum of 45 days to make good faith efforts to address the issues.
Assessment to occur within 90 days, but can be extended for 30 days if there is an expressed interest in DR with the potential that the other party will agree	Must prove previous efforts.	21 days for complainants to submit missing information.	Must prove previous efforts.
	Assessment to occur within 40 days.	21 days for Management's Response after registration	No timeframe given for Assessment
	Noted to be easier due to regional placement	Must prove previous efforts.	
		Assessment to occur within 40 days	

## Dispute Resolution

All the IAMs utilise a flexible, consensus-based approach that is tailored to the specific issues raised, using various techniques such as information gathering, joint fact-finding, facilitation, consultation, negotiation, and mediation.

CAO does not provide for a timeframe within which dispute resolution must be completed and is not empowered to terminate the process until the parties indicate withdrawal. However, it has been noted that CAO is able to terminate a process where good faith is not shown. Where dispute resolution fails, the case is automatically referred to compliance. The lack of a timeframe enables CAO to spend considerable time and resources on capacity-building.

The MICI policy requires that dispute resolution must be completed within 12 months from the date of issue of the Assessment Report. However, this term may be extended if the Director believes that the extension will help lead to settlement between the parties. Otherwise, the Director will consider the process concluded. IRM's policy similarly empowers the Director to declare that dispute resolution was unsuccessful if problem-solving efforts do not show meaningful progress or result in agreement within a period of 12 months from commencement of the process. The IRM mechanism, like CAO, specifically refers to capacity-building to empower the parties to participate in dispute resolution.

IPAM's policy does not provide for a timeline, however, the process may be terminated if the team is of the opinion that the process is no longer likely to lead to a positive outcome, and/or if the process has ceased to constitute an efficient use of resources.

CAO	MICI	IRM	IPAM
No timeframe within which DR must be completed.	1 year from the date of the Assessment report	1 year from commencement of DR	1 year
No power to terminate the process until the parties indicate withdrawal.	Term may be extended if the Director believes that the extension will help with resolution, otherwise process is concluded	Director empowered to declare DR if unsuccessful if no meaningful progress.	IPAM is empowered to terminate the process if it is of the opinion that the process is no longer likely to lead to a positive outcome
Specifically refers to capacity-building		Specifically refers to capacity-building	

### Notable Differences

The bank plays an important role in IPAM's dispute resolution process, which helps with the availability of creative solutions. In the MICI process, the bank is considered a party to the dispute resolution, and therefore must participate. IFC is not considered a part of the CAO dispute resolution process, however, they may act as observer when requested to do so.

### IAM Collaboration

When CAO has collaborated with other IAMs, there appears to have been a lack of analysis regarding what suits the context, as well as having a prior understanding of what kind of joint approach would be necessary to achieve the best results. Complainants often misunderstand the rules of the different mechanisms that are operating simultaneously, which increases complexity. This also creates a risk that processes are replicated.

## Appendix D: Complexity Scores for Individual Cases

Case Name	Complexity Score
Albania: Bankers Petroleum-01/Patos	2.83
Albania: Enso Albania-01/Lengarica	4.83
Albania: Kurum Hydro-01/Bradashesh	3.83
Armenia: Lydian Intl3-02/Gndevaz and Jermuk	4.50
Bangladesh: United Ashuganj Energy Ltd-01/Dhaka	4.33
Belarus: Strominvest II-01/Minsk	4.33
Cambodia: Cambodia Airport-01/Phnom Pehn	3.17
Cambodia: Cambodia Airports-01/Preah Sihanoukville	3.33
Cameroon: AES Sonel-02/Douala	4.17
Cameroon: Chad-Cameroon Pipeline-02/Cameroon	5.83
Chad: Chad-Cameroon Pipeline-03/Doba	6.00
Egypt: Egyptian Indian Polyester Company Sokhna-01/Hyderabad	2.67
Egypt: Egyptian Indian Polyester Company Sokhna-02	1.67
Georgia: AGL-01/Makhalakidzebi	4.17
Indonesia: Rajamandala HEPP-01/West Java	3.83
Indonesia: Wilmar Group-03/Jambi	4.33
Jordan: Alcazar Energy-01/Jordan	4.33
Jordan: Daehan Wind Power Co-01	1.67
Jordan: Masdar Baynouna-01/East Amman	2.83
Mexico: Harmon Hall-01	2.67
Mongolia: Oyu Tolgoi-01/Khanbodg	3.50
Mongolia: Oyu Tolgoi-02/Khanbodg	3.50
Myanmar: Myanma Awba Group Company Ltd.-01/Myanmar	4.83
Nicaragua: Nicaragua Sugar Estate Limited-01/León and Chinandega	3.67
Papua New Guinea: PNG SEZ-01/Madang Province	2.83
Peru: Yanacocha-04/Cajamarca	4.17
Peru: Yanacocha-05/Cajamarca	3.17
South Africa: Lonmin-02/Marikana	2.33
Uganda: Agri-Vie-01/Kiboga (Luwunga)	5.00
Uganda: Agri-Vie-02/Mubende (Namwasa)	4.67
Uganda: Bidco Bev. & Det-03/Kalangala	3.83
Uganda: Bujagali Energy-04/Bujagali	3.67
Uganda: Bujagali Energy-05/Bujagali	4.00
Uganda: Bujagali Energy-06/Bujagali	3.67
Ukraine: Axzon-01/Halych and Kalush	5.50
Ukraine: MHP-01/Vinnytsia Oblast	4.17