CAO COMPLIANCE ADVISOR OMBUDSMAN

The Independent Accountability Mechanism for IFC & MIGA

Responsible Exit

Insights from CAO Cases

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Advisory Note

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This Advisory Note is part of a series on remedy and responsible exit prepared by the Office of the Compliance Advisor Ombudsman (CAO). The report draws on a decade of experience to explore investment exits in CAO cases, including their impact on the effectiveness of IFC's accountability system and on access to remedy for project-affected people. CAO's objective in conducting this analysis is to inform the International Finance Corporation (IFC)'s evolving approach to responsible exit. The note identifies contributing factors and presents findings and recommendations to help IFC develop and operationalize an effective responsible exit approach.

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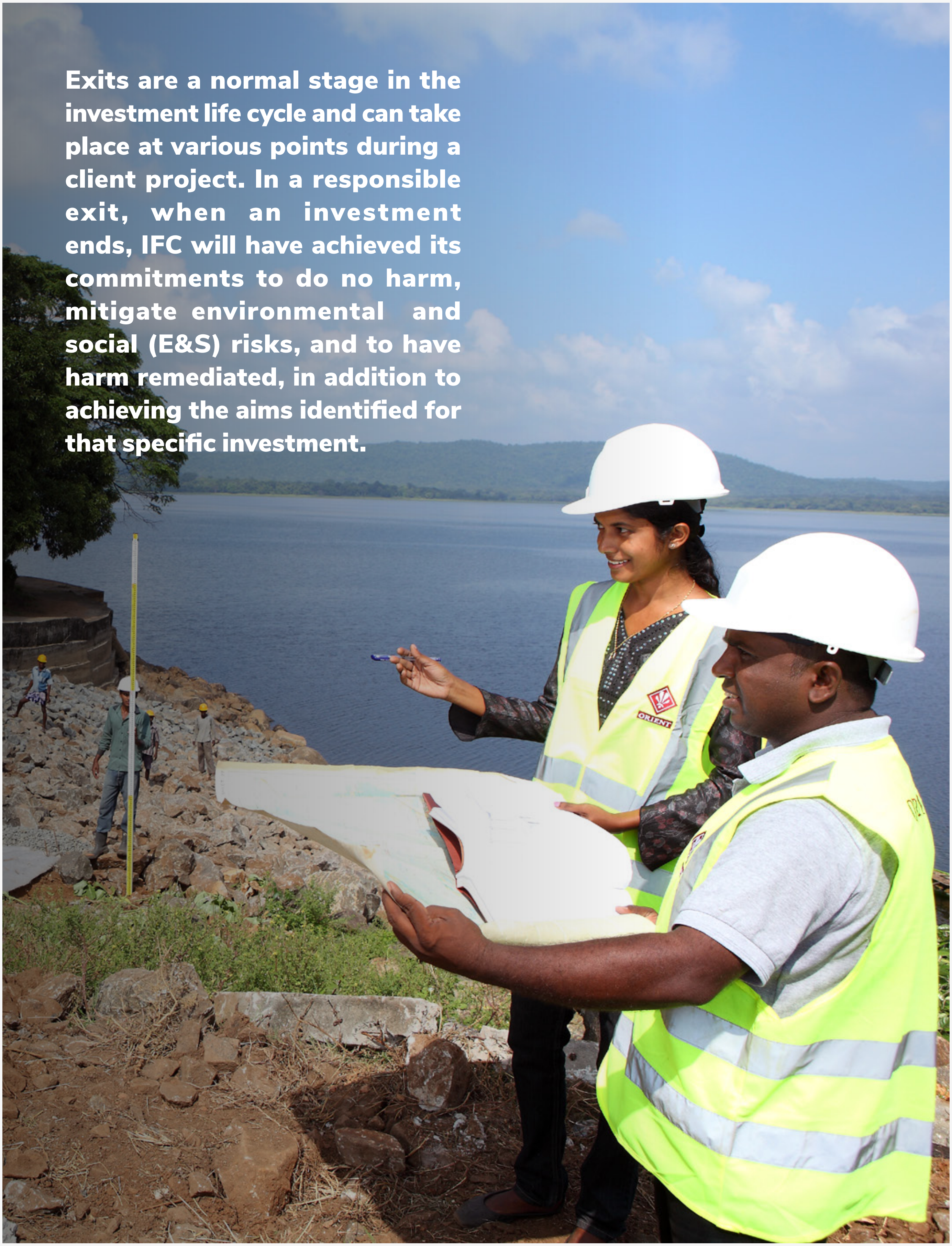

Exits are a normal stage in the investment life cycle and can take place at various points during a client project. In a responsible exit, when an investment ends, IFC will have achieved its commitments to do no harm, mitigate environmental and social (E&S) risks, and to have harm remediated, in addition to achieving the aims identified for that specific investment.

Summary

Development finance institutions (DFIs), including the International Finance Corporation (IFC), commit through their mandates and policies to support development activities in ways that achieve sustained positive impact, manage environmental and social (E&S) risks, avoid harm to people and the environment, and remediate harm when it does occur.

Exits are a normal stage in the investment life cycle and can take place at various points during a client project. In a responsible exit, when an investment ends, IFC will have achieved its commitments to do no harm, mitigate E&S risks, and to have harm remediated, in addition to achieving the aims identified for that specific investment.

Exiting investments responsibly is key to good E&S performance, and the topic has generated growing interest among DFIs, impact investors, investment banks, and other investors.

This report focuses on IFC's approach as the institution is finalizing a formalized, systematic approach to responsible exit.[1] CAO analyzed IFC's current approach to exiting investments through the lens of complaints and cases regarding IFC investments and managed by CAO from Fiscal Year 2013 to Fiscal Year 2022 (FY13—FY22).[2] Insights drawn from these cases inform the findings in this report and recommendations to IFC.

Overview of findings

CAO's analysis found shortcomings in the way exits from IFC investments typically take place, as well as weaknesses in E&S risk management of the investment and project prior to the exit. Taken together, these can restrict IFC's ability to adhere to its commitments in the Sustainability Policy and to assure that clients sustain good E&S performance, in particular mitigating risk and addressing any harm that has occurred. IFC's current approach presents challenges not only for E&S accountability but also for achieving remedy for project-affected people who have been harmed.

The findings section of this report documents specific challenges and barriers to responsible exit from IFC projects. They include the fact that exits during active CAO cases are common, limiting IFC's ability to ensure clients meet their E&S obligations, and that adverse E&S impacts occur across both lower and higher risk projects.

Multiple factors drive the high prevalence of exits during CAO cases (see Box 1). These include case-handling timelines compared with investment timelines, particularly given that CAO typically receives complaints many years after the investment has been initiated. Key factors that contribute to delayed complaints include communities' lack of information about how they can seek redress and the fact that risks and adverse impacts manifest at different times during a client project and IFC investment.

1. At this time, the Multilateral Investment Guarantee Agency (MIGA) has not committed to a responsible exit approach. While the findings and recommendations of this paper aim to inform IFC's proposed approach, they may also provide insights for MIGA because MIGA's Sustainability Framework-if not its products-is very similar to that of IFC.
2. When referring to CAO caseload of the last 10 years, this Advisory Note refers to the period between FY13 to FY22..

Moreover, the caseload analysis revealed that exits from debt investments during an active CAO case often took place earlier than planned for in loan agreements, with clients very often prepaying loans in these circumstances. These "early" exits have significant implications for IFC's management of risk, for CAO accountability processes, and ultimately for providing remedy to project-affected people.

The caseload analysis also revealed that a large proportion of cases that have experienced an exit were flagged for risks of threats and reprisals. Hence, project-affected people can face heightened vulnerability to threats and reprisals if this risk is not considered while deciding to exit and during the application of a responsible exit strategy. Shortcomings in current IFC processes also act as barriers to effective and responsible exit, including by not requiring clients to assess or address outstanding E&S issues before their contractual relationship with IFC ends.

Key data from exits in CAO cases, FY2013–FY2022

- Over the last 10 years, CAO has handled **76 cases** related to IFC investments or MIGA guarantees. Exits occurred in **31 (41%)** of the investments associated with these cases *while the CAO process was ongoing.*
- **15 out of 17 (88%)** exits in CAO cases related to debt investments were "early" exits, with IFC or the client ending the investment relationship prior to the loan reaching maturity.
- **9 out of 15 (60%)** of the early exits from debt investments took place because the client prepaid the loan.
- CAO receives complaints an **average of 5.5 years after project approval** by the IFC/MIGA Board, which, considering the typical duration of IFC investment products, presents challenges for addressing project-affected people's concerns.
- In investments where an exit took place during CAO's ongoing case management, **risk of threats and reprisals** had been **flagged in 76%** of these cases.

The findings from CAO's caseload analysis reveal important issues that require attention from both IFC and CAO. Potential solutions to some of the challenges highlighted in this Advisory Note could be trialed in IFC's pilot of its Responsible Exit Principles and in the final Principles and operationalization strategy. Other findings raise questions that require further analysis.

This report provides detailed recommendations for IFC and describes the steps CAO will also take in response to the findings (see the discussion that follows and the Conclusions and Recommendations section). CAO hopes these recommendations will support IFC in finalizing the institution's approach to responsible exit, more effective management of E&S risks and a cohesive approach to balancing its efforts to meet development objectives, deliver additionality, and achieve commercial goals. The adoption of a responsible exit approach is especially important as IFC-as part of the World Bank Group-embarks on a new phase marked by the Evolution Process, taking on greater risk and deploying additional instruments to help meet the need for global development financing.

CAO recommendations to inform IFC's approach to responsible exit

I. **Widen the scope** of projects for which IFC's responsible exit framework is applicable to all IFC investments **throughout their life cycle**.

   i. IFC's approach to responsible exit should apply to **all investments**, regardless of associated risk ratings and whether or not Harm has already materialized.

   ii. A responsible exit approach entails actions that must be taken **prior to approval of an investment** as well as throughout the investment life cycle.

II. **IFC should identify why early exits take place** so commonly during CAO cases and propose to the Board actions that will be taken to address this.

III. **IFC should ensure information-sharing, cooperation, and reporting** on exits from investments subject to a CAO case.

IV. **Review, with CAO, the outcomes of implementing new accountability policy provisions for "early resolution"** of CAO cases through referrals and deferrals.

V. Assess and strengthen the current approach to **stakeholder engagement**-both direct engagement and IFC assurance that the client meets engagement requirements.

VI. In making decisions about whether and how to exit, IFC should consider potential **threats and reprisals** risks for project-affected people.

VII. **Client commitment to, and existing organizational capacity for, E&S performance** should be a key consideration in the due diligence and supervision of the project.

VIII. **Legal agreements** should be used more effectively to ensure clients meet the Performance Standards.

IX. IFC should develop a standard approach to considering the institution's **different investment aims** and to addressing E&S risks in exit decisions and planning.

X. Address the core elements of responsible exit-**preparation, planning and addressing existing harm prior to exit**-that are currently missing from IFC's draft Principles and pilot.

Introduction

What is a responsible exit?

Development finance institutions (DFIs), including IFC, are committed through their mandates and policy frameworks to support development activities in ways that achieve sustained positive impact, manage E&S risks, avoid harm to people and the environment, and remediate harm when it does occur.

Exits are a normal stage in the investment project cycle and can take place at various points during the life cycle of a client project. In a responsible exit, when an investment ends, IFC will have achieved its commitments to do no harm, mitigate E&S risks, and to have harm remediated, in addition to meeting the aims identified for that specific investment.

Given that exiting investments responsibly is key to good E&S performance, the topic has been generating growing interest among DFIs, impact investors, investment banks, and other investors. Regardless of their timing or rationale, exits can significantly impact local communities and environments by limiting the investor's ability to influence and oversee the project's E&S performance. Exits end the contractual relationship between an investor and client company, limiting the investor's ability to enforce previously agreed and unmet E&S commitments.

In 2021, CAO conducted a landscape study, *Responsible Exit: Discussion and Practice in DFIs and Beyond*, which found considerable overlap across DFIs, other investor types, and relevant international frameworks regarding the core elements of a responsible exit approach. These core elements are shown in Table 1. In particular, the CAO study found broad agreement that a responsible exit involves more than simply making a decision as to whether to exit or not, and how that exit is executed. Investors agreed that planning for a responsible exit should take place throughout an investment project cycle. As an integral part of project design, responsible exit approaches should be applied not only to investments where E&S risks and harm have been identified or those designated as higher risk, but should be applied to all investments.

Table 1: Key elements of responsible exit identified by CAO's 2023 landscape study

RESPONSIBLE EXIT: CORE ELEMENTS			
Stages of a Responsible Exit			
Pre-investment planning	**Investment supervision**	**Deciding to exit**	**Exit execution and post-exit**
Understanding the project and client-related E&S risks	Supervision of client risk mitigation, such as through monitoring of E&S Action Plan (ESAP) implementation and client's grievance mechanism	Identify whether any risks are unmanaged, and if there is any unremediated harm (including threats and reprisals)	Develop a plan for exit to include: a) Management of existing/emerging risks, b) Remediation of any harm prior to exit
Understanding client capacity and commitment to E&S performance	Identification of new/emerging risks, incorporated into ESAP	Engage stakeholders in this determination	Engage with stakeholders to ensure communication regarding the exit
Planning for capacity building required to assist the client E&S performance	Provision of capacity building for the client to meet standards and sustain good E&S performance	Understand the investor's relationship to any harm	Consider and include actions that assist in the client sustaining good E&S performance
Selection and structuring of an appropriate investment product	Ongoing assessment of client commitment and capacity	Identify whether development and any other non-financial goals have been achieved	Communication to market and disclosures related to performance
Inclusion of legal assurances to ensure E&S commitments are met by client (risk mitigation and remediation of harm) by the client)	Use of legal assurances and of leverage to ensure E&S performance	Assess and use legal assurances and leverage to address any risks and harm	
		Identify potential adverse E&S impacts of exiting compared with those of continuing with investment	
		Engage stakeholders in making the decision as to whether to exit and in exit planning	
Corresponding stages of IFC investment project cycle			
Early review, appraisal, investment review and negotiations	**Disbursement of funds, project supervision, and development outcome tracking**		**Closing and evaluation**

IFC and responsible exit

IFC is developing an approach to responsible exit as part of its ongoing efforts to further and more systematically integrate how it analyzes and addresses E&S issues[3] "throughout its investment project cycle."[4] IFC's approach will generate interest among other development finance institutions pursuing initiatives to operationalize approaches to responsible exit from client projects.

IFC's draft Responsible Exit Principles and their pilot implementation apply only a limited range of the core elements of responsible exit—those found in the later stages of a project—instead of starting at the project appraisal stage of pre-investment planning. This has also been highlighted as central to a responsible exit approach in the findings of CAO's landscape study (presented in Table 1).[5]

IFC's Sustainability Framework: How responsible exit can assist

Omitting responsible exit considerations from pre-investment due diligence and from the drafting of related legal assurances makes achieving the aims of a responsible exit far more difficult. These aims are those that are stipulated in IFC and MIGA's Sustainability Frameworks.

The Sustainability Policy, Performance Standards, and Access to Information Policy, collectively referred to as the sustainability framework, enshrine IFC and MIGA's existing E&S commitments and requirements. Clients are expected to implement the projects that IFC finances in compliance with the E&S Performance Standards. These provide guidance on the company's risk management systems, labor issues, resource use, community health, safety and security, biodiversity, land resettlement, Indigenous Peoples, and cultural heritage. In implementing these standards, the client company is required to apply a risk mitigation hierarchy. This must anticipate and avoid adverse impacts on workers, communities, and the environment, or where avoidance is not possible, to minimize, and where residual impacts remain, compensate/offset for the risks and impacts, as appropriate.[6]

The CAO caseload shows that IFC's current approach to E&S risk management can leave E&S risks unmanaged and harm unaddressed at exit. A responsible exit approach—one that employs risk management at all stages of the investment life cycle—will assist IFC in achieving its Sustainability Policy commitments and intentions to:

- Carry out investment and advisory activities with the intent to "do no harm" to people and the environment, to enhance the sustainability of private sector operations and the markets they work in, and to achieve positive development outcomes (IFC Commitments, para. 9).

- Ensure that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that renewable natural resources are managed sustainably (IFC Commitments, para. 9).

3. See https://www.ifc.org/en/what-we-do/sector-expertise/sustainability.
4. See https://www.ifc.org/content/dam/ifc/doc/2023/ifc-draft-responsible-exit-principles-en.pdf.
5. The concept and appraisal stages are critical points during which responsible exit practices should be applied. The concept stage in IFC's investment project cycle is where a potential project is screened for E&S risks and given a risk designation. More detailed due diligence on the client and project takes place during the appraisal stage. IFC also determines the specific mitigation measures and investment conditions during this stage before seeking Board approval for the project.
6. Para 6 of IFC's Sustainability Policy.

- Recognize the responsibility of business to respect human rights, independently of the state duties to respect, protect, and fulfill human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to (IFC Commitments, para. 12).

- Seek to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards (Purpose of this Policy, para. 7).

- If the client fails to comply with its E&S commitments for a project, IFC will work with the client to bring it back into compliance; if these efforts fail, IFC will exercise its rights and remedies, as appropriate (IFC Roles and Responsibilities, para. 24).

- Only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period (IFC Roles and Responsibilities, para. 22).

Development of a responsible exit approach

IFC recognizes the limitations to its approach to ending investments in meeting its commitments under the Sustainability Framework and is among the institutions actively developing a formalized and systematic approach to responsible exit. Two developments in particular have contributed to driving this initiative.

In 2019, IFC launched new Operating Principles,[7] which it developed with leading impact investors, that require investors "to measure, monitor, verify, and disclose their impact—creating market standards by which all signatory organizations must comply." These Principles state that investors should address and manage negative impacts, and note that the timing, structure, and process of exits are a critical part of managing client E&S performance.

In addition, following a 2018 CAO compliance investigation of IFC's investment in CIFI/Hidro Santa Cruz in Guatemala, IFC committed to review its policies and procedures for exiting an investment, as well as to define an approach to "responsible exit."[8] CAO's report found IFC noncompliant in several areas in relation to a hydropower plant funded by its financial intermediary client that affected indigenous communities.

Between 2022 and 2023, IFC made public a set of [Responsible Exit Principles] to guide its investment project teams in making decisions about whether and how to exit, including any additional actions needed to strengthen alignment with the Principles. IFC proposed applying these principles in the case of investments where there is an active CAO case or the client project's E&S performance is unsatisfactory. As part of its new responsible exit strategy, IFC also launched a pilot program to implement these Principles.

CAO's findings and recommendations from this report are based on the insights obtained from its caseload, the findings of the 2023 landscape study, and responsible exit approaches being adopted by other investors. CAO's comments do not include a detailed analysis of IFC's pilot program lessons

7. https://www.impactprinciples.org/.
8. IFC made equity and debt investments in CIFI in 2008. CIFI made an investment in the Hidro Santa Cruz (HSC) for the construction of the Canbalam hydropower plant (the project) in Santa Cruz Barillas. CAO received a complaint about CIFI in July 2015 alleging that the project never properly consulted with indigenous communities and that community members' opposition to the project had been met with violence and repression from the company and government. CAO completed its compliance investigation in December 2018, which found IFC noncompliant in several areas. As a response to CAO's finding that IFC's policies and procedures did not provide an adequate level of protection in response to serious E&S incidents at the project level in Financial Intermediary (FI) investments, IFC committed to reviewing its investment operations, policies, and procedures as they relate to exits including defining IFC's approach to "responsible exit."

learned and implementation plans as these are not available to CAO. As IFC prepares to roll out the Principles across its operations starting in July 2024, CAO seeks, through this Advisory Note, to further inform and strengthen the draft approach. The final approach IFC adopts to responsible exit is expected to inform the approaches of other DFIs and financial actors.

Looking forward, the World Bank Group's Evolution Process foresees a significant role for substantial private sector investments, many of which will be channeled into high-risk contexts.[9] IFC will be at the center of this process as the Group seeks to increase investments that address global challenges. However, the Evolution Process does not address how the increased associated risks can be managed in order to protect people and the environment from unintended harm. Such risks include the growth in financing volumes that IFC has committed to, the more challenging markets for finding bankable deals, and the need in some markets to differentiate IFC's value added from that of other financiers.

IFC's development of a systematic approach to responsible exit presents an opportunity to get ahead of the potential project-related risks related to expanded investment by addressing gaps and weaknesses in the way in which the institution currently manages E&S risk.

CAO's conclusions

Based on a decade of CAO case history, this Advisory Note describes weaknesses in the way exits currently take place from IFC investments, as well as relevant shortcomings in IFC E&S risk management that contribute to this.

CAO views IFC's development of Responsible Exit Principles and a plan for operationalizing a responsible exit approach as a welcome step forward.

However, the Principles rely on many existing IFC practices for E&S mitigation, and CAO cautions that IFC must ensure that existing weaknesses in those procedures and practices do not undermine the achievement of responsible exit goals. In addition, CAO has expressed concerns that IFC's efforts to strengthen exit-related practices should not be diluted or undermined due to commercial or legal concerns.

As this report details, the CIFI/Hidro Santa Cruz case that prompted IFC's commitment to developing a responsible exit approach is not an exception. CAO's caseload from FY13 to FY22 reveals that many project-affected people have been left without remedy including following an exit from an investment. CAO calls this a "remedy gap," whereby project-affected people's concerns are not addressed, even when they have engaged in dispute resolution or when there has been a lengthy compliance process.[10] Instead, they may be left to suffer harm and bear the unintended costs of development projects, even in cases where CAO has found IFC non-compliance.

As exits represent a substantial proportion within CAO's caseload and may impact the mechanism's capacity to fulfill its mandate—evidenced in this report's findings—CAO is a key stakeholder that should have an active role in collaborating with IFC during the completion and operationalization of the responsible exit approach. CAO expects that IFC will take the findings of this report into close consideration in finalizing its approach to responsible exit and maximizing its effectiveness.

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9. See Ending Poverty on a Livable Planet: Report to Governors on World Bank Evolution (2023).
10. See CAO's 2023 Advisory Note "Insights on Remedy – The Remedy Gap".

Findings

This Advisory Note draws on insights from 10 years of CAO case experience (see Box 1) to understand how exits currently take place and affect investment E&S performance, and to offer insights and recommendations to IFC.

From FY13 to FY22, exits occurred in 4 out of 10 CAO cases—based on complaints brought by project-affected individuals, communities or nongovernmental organizations (NGOs)—while they were ongoing. Investment exits currently leave IFC with few tools to address clients' outstanding E&S commitments and any ongoing concerns or harm to people and the environment, frequently rendering such concerns or harm unresolved. The harms raised by complainants are often significant and can have far-reaching consequences for those individuals, their communities, and the environment.

Figure 1 summarizes the concerns raised by complainants regarding negative impacts in cases managed by CAO where IFC or the client exited the investment.[11] They reflect the serious nature of the actual/potential harm for which remedy is being sought and highlight the importance of timely remedy which remediates the harm incurred.

This section highlights the key findings of the analysis of CAO's caseload and is followed by recommendations that draw on, and address, these findings.

11. This figure only includes cases that went through CAO's compliance appraisal and investigation processes because these processes seek to "ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/ or issues of systemic importance to IFC/MIGA."

Figure 1: Types of harm to project-affected people and the environment found in CAO cases, FY13–FY22

Basic Human Needs

Loss of livelihood
Under- or uncompensated land appropriation impacts households' food security and income generation.

Chronic and acute impacts on health
Pulmonary fibrosis development in community members living near facility.

Unfair or unpaid compensation
Retrenchment scheme forcing workers to retire early without fair compensation.

Lack of access to water
Acceleration of desertification due to project location causing water shortages.

Vunerable Groups

Indigenous Peoples
Displacement of indigenous populations.

Women
Sexual assault in the workplace.

Children
Children born with severe health issues due to emissions from nearby plant.

Other vulnerable groups
Pollution and radiation associated with mine development in community with vulnerable groups.

Well-being

Pollution (air, land, water, noise)
Air pollution in community due to project dust emissions and emissions from increased road traffic.

Negative Impacts on nature
Downstream impacts on local water basins' quality.

Negative impacts on cultural heritage
Waterfalls considered sacred by indigenous communities in jeopardy due to two projects built on river.

Violence and/or abuse
Killings, forced evictions, forced disappearances, and repression toward communities by heavily armed security forces.

Changes to daily life
Loss of memory due to workplace exposure to toxic gases and heavy metals.

Environment

Biodiversity loss
Pollution and radiation associated with a mine development.

Negative impacts on ecosystem services
Health impacts associated with the absorption by livestock or bees of heavy metals in the dust, or of cyanide gas.

Physical Property

Land loss and displacement
Illegal eviction of local farmers from their land.

Private property damage or destruction
Cracks in buildings due to nearby facility vibrations.

Box 1: Key data: Exits in CAO cases

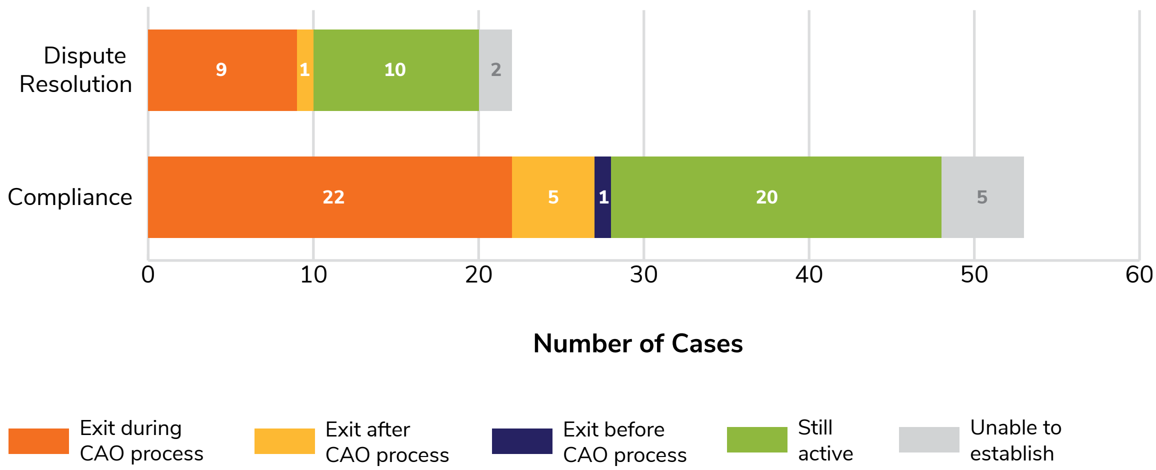
- Over the last 10 years (FY13–FY22), CAO has handled 76 cases pertaining to IFC investments or MIGA guarantees. Exits occurred in 31 (41%) of the investments associated with these cases while the CAO process was ongoing.
- 22 of 31 (71%) of these cases with exits were subject to CAO's compliance process, and 9 of 31 (29%) went through CAO's Dispute Resolution function.
- 15 out of 17 (88%) exits in CAO cases related to debt investments were early exits: that is,. IFC or the client dissolves the investment relationship before the loan reached maturity.
- 9 out of 15 (60%) of the early exits from debt investments took place because the client prepaid the loan.
- CAO received complaints an average of 5.5 years after project approval by the IFC/MIGA Board which, considering the typical duration of IFC investment products, presents challenges for addressing the concerns of project-affected people.
- In investments where an exit took place during CAO's ongoing case management, risk of threats and reprisals had been flagged in 76% of these cases.

Finding 1: Exits during active CAO cases are common.

Over the past 10 years, an exit took place in 41% of CAO cases while CAO was still actively engaged in addressing the complaint (see Figure 2). Specifically, from FY13–FY22, CAO managed 76 cases[12] in response to complaints brought by project-affected people in communities around the world. In 31 of these cases, the exit occurred before the CAO case was closed.[13] These exits encompassed a range of investment product types, including 17 debt or debt and equity investments, 13 equity investments, and one advisory project (see Figure 3).[14]

12. A complaint is only considered a "case" if it has been determined as eligible in accordance with CAO's Operational Guidelines prior to 2021 or the CAO Accountability Policy that came into effect on July 1, 2021.
13. CAO was unable to determine the exact time of exit for a further 4 projects as such, the actual number of exits during CAO cases may be up to 46 percent.
14. In three of the debt investments, IFC also held equity. In these cases, the exit happened in both debt and equity. As all three debt exits were prepayments or cancellations, these cases were counted within the "early exit" caseload and are henceforth included within the "debt" exits.

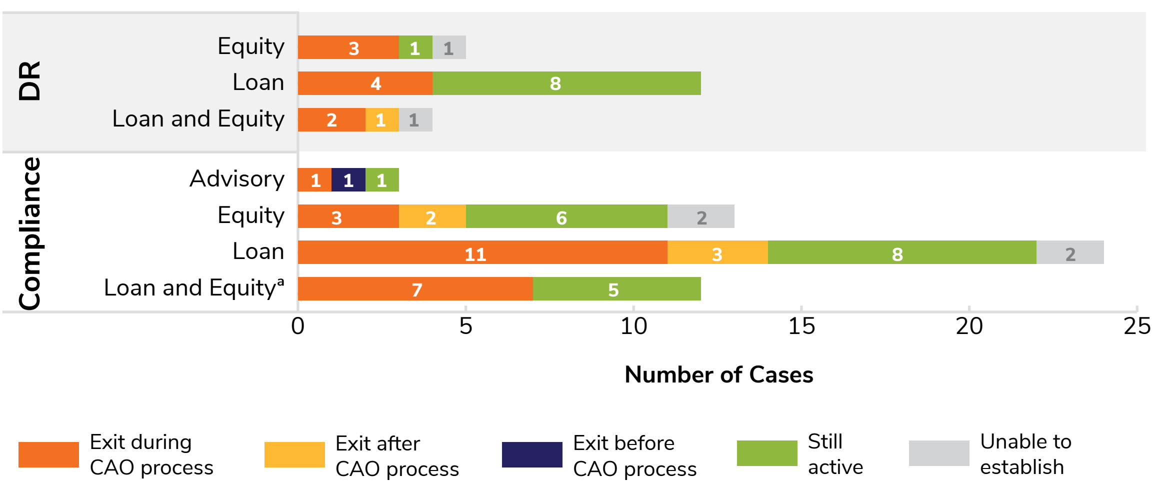
Figure 2: The timing of exits in CAO cases, FY13–FY22



There is a high prevalence of early exits from debt investments with an active CAO case

The overwhelming majority of exits (88%) from debt investments during active CAO cases were "early exits," meaning IFC or the client dissolved the investment relationship ahead of the scheduled loan maturity.[15]

Figure 3: Timing of exits in CAO cases, by investment product



a. It was not possible to establish the rationale for exit for the 13 equity investments with the information available to CAO, and consequently, whether the equity exits were unplanned/irregular.

15. Fgures 2 and 3 excude MIGA cases.

Some exits are predictable and occur as planned, while others require an active decision, as explained in Box 2. For debt investments, CAO considered loans that are cancelled or that are repaid in advance of the predetermined date of maturity (prepayment) "early" exits. In contrast, most equity investments do not have a predetermined "expiration date" or a point in time when the equity will be sold. As such, CAO only included debt investments when analyzing "early" exits for the purposes of this report, although equity sales that occurred during active CAO processes are included in other analyses of exits. The three cases in which IFC exited from both debt and equity are included in the analysis of exit from debt investment.

Almost nine in every ten exits from debt investments subject to a CAO complaint (88%) occurred ahead of loan maturity. Nine of these early exits were triggered by IFC clients prepaying the loan, while IFC cancelled, wrote off, or sold loans in a further six cases.

A project may have unaddressed E&S impacts regardless of whether an IFC investment exit occurs when a loan reaches maturity or by active decision. In either case, the way the exit is prepared for, decided upon, and executed can determine whether E&S risks will be managed, and if any harm to people and the environment will be addressed.

The frequent occurrence of exits during active CAO cases revealed in this report lends urgency to IFC's efforts to develop and implement a robust responsible exit approach that ensures client projects do not leave behind unaddressed E&S risks and harm to people and the environment.

Box 2: Types of exit

There are a number of circumstances that can lead to the end of a contractual relationship between an investor and investee, and different terms are used to describe different scenarios. Terminology also varies between institutions.

The following are the most commonly used terms relevant for this analysis, and their meaning as interpreted by CAO. The discussion notes where CAO's interpretation of the terminology differs from that of IFC, and why.

Planned or regular exits

- **A loan that reaches maturity** is considered a "planned exit," also known as a "regular exit". For a loan to reach maturity, the investor must have disbursed the financing and the client repaid the principal and interest in accordance with the schedule in the loan agreement.

- **The sale of IFC's equity stake** in a company after the investment's development aims have been met is another common example of what CAO considers a 'planned' exit: that is, the aim has been achieved.

Note: IFC's policy on equity sales mandates that IFC cannot sell its equity unless its role in the client project either has been completed or cannot be completed.

Unplanned exits

- **For debt investments, unplanned exits, also known as "early exits,"** are those that take place before the investor's loan reaches maturity.

- Early exits from debt investments happen in two primary ways: either the client **prepays the loan** prior to maturity, or **IFC cancels the loan** that has already been approved by the board and signed by the client signing the loan agreement.

    - IFC's Responsible Exit Principles consider client loan prepayment (where IFC does not need to approve the prepayment) to be a **"passive exit"** and does not include such divestments in the scope of its pilot implementation of the Principles.

    - IFC considers situations where it cancels a loan, or is required to approve or authorize loan acceleration, to be **"active exits,"** and these are included in the pilot.

- **For equity investments, unplanned exits, also known as "irregular exits,"** take place when the equity stake is sold but the investment's development objectives have not been realized. This can happen when loans perform poorly, either financially or due to other circumstances such as an operating environment that becomes unstable for the IFC client or otherwise unconducive for its operations. Exits from equity before investment aims are achieved may also take place for other reasons, such as ongoing balancing of the portfolio of investments.

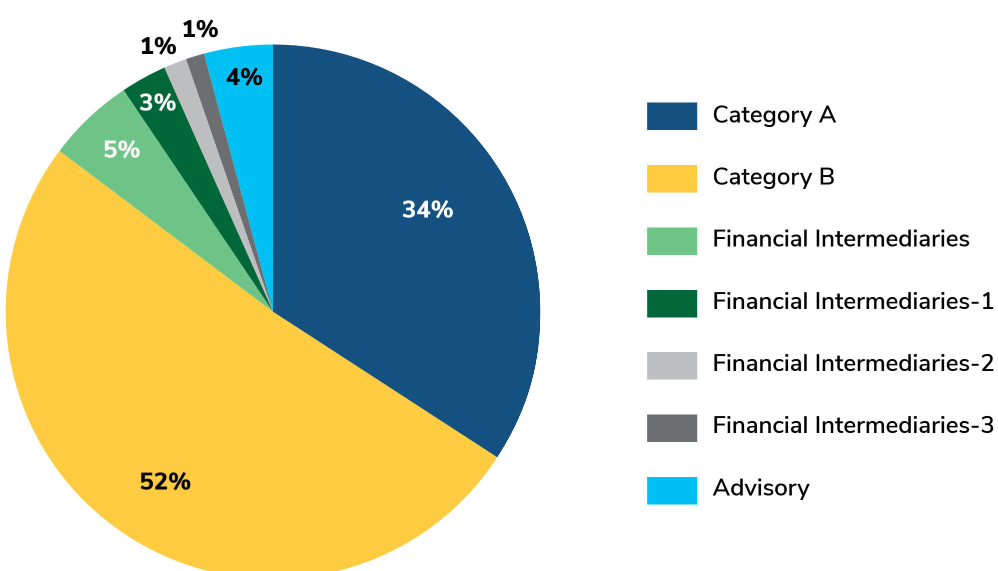
Some IFC products include conditions under which IFC may sell its equity to the company or the company may purchase equity back from IFC. The use of such "put" or "buy-back" clauses that result in IFC divesting from the investment, can indicate an "irregular" exit.

Finding 2: Adverse E&S impacts occur in projects designated both higher and lower risk.

Data from CAO cases over the past decade reveal that many complaints concern client projects that IFC did not view as high risk from an E&S perspective. Figure 4 shows that, since FY13, 50 percent of the complaints made by individuals, communities, and NGOs to CAO related to projects that IFC/MIGA assessed as being at lower risk of adverse E&S impacts, classified as Category B—limited potential adverse environmental or social risks and/or impacts. By contrast, only 28 percent of complaints received by CAO were about projects that IFC assessed as Category A, the highest E&S risk level—posing potential significant adverse environmental or social risks and/or impacts. In addition to categorizing projects based on the potential E&S risks, IFC assesses and categorizes risk related to a client. Similarly, complaints made to CAO over the past 10 years encompassed projects where IFC had determined the clients to be both lower risk and higher risk.

These trends suggest that responsible exit approaches should be applied to all IFC investments, since unmanaged risks and adverse impacts have arisen in investments across different project risk categories and with both lower and higher client risk ratings, despite IFC's risk categorization and related risk management practices. Limiting a responsible exit approach only to clients and projects that IFC currently identifies as higher risk—as it is set out in IFC's current approach—would omit a large proportion of investments that would benefit from the strengthened E&S risk management that a robust approach would offer.

Figure 4: E&S risk categories of projects about which CAO received a complaint



Finding 3: Exits can weaken IFC accountability and project-affected people's access to remedy.

When an exit takes place while a complaint related to the client project is still being managed by CAO, the exit can impact CAO's ability to facilitate resolution of the concerns raised.

Exits in such circumstances can undermine IFC's accountability and communities' access to remedy by limiting the channels project-affected people can use to raise their concerns. The impacts of an exit can also be felt by complainants and project-affected people across the different stages in a CAO process—during eligibility determination, dispute resolution, the compliance process, and while monitoring of IFC actions in response to CAO findings is ongoing.[16] These challenges are expanded upon in the discussion that follows.

Limiting project-affected people's access to recourse for E&S concerns

Exits present a challenge for complainants as they seek to find recourse for their E&S concerns. Analysis of CAO cases over the past decade shows that exits can close project-affected peoples' access to some channels for having their grievances addressed, including access to CAO, IFC's accountability mechanism.

In several cases prior to 2020, complaints were found ineligible because IFC's investment in the project of concern had already ended. The new E&S Accountability Policy for IFC and MIGA instituted under the CAO Policy (June 2021) allows complaints to be accepted by CAO up to 15 months post-exit, in exceptional circumstances.[17] Since adoption of this policy in July 2021, until July 2023, CAO had to determine four complaints ineligible because they have not been received within the stipulated 15 months following investment exit. Further, as described in later sections, even when CAO finds a complaint eligible post-exit, the absence of a contractual relationship between IFC and the client company places constraints on CAO processes. These constraints in turn diminish the likelihood of complainants having their E&S concerns effectively resolved.

Limiting CAO's compliance process

CAO's Compliance function plays an integral role in the E&S risk management and accountability system for IFC and MIGA. In response to concerns from project-affected people, compliance work seeks to verify that harm has occurred, and whether there were any IFC non-compliances with the

16. The findings presented in this section are based on focus group discussions with CAO specialists in the CAO Dispute Resolution and Compliance functions, reviewing their experience with the 31 cases affected by exit.
17. The IFC/MIGA Independent Accountability Mechanism (CAO) Policy (June 2021), para. 49 stipulates that if an exit has occurred the complaint will be deemed ineligible save for the following: "In exceptional circumstances, CAO may deem eligible a complaint submitted up to 15 months after an IFC/MIGA Exit, where: (a) there are compelling reasons why the complaint could not be made before the IFC/MIGA Exit; (b) all of CAO's other eligibility criteria are met; and (c) after consultation with Management, CAO considers that accepting the complaint would be consistent with CAO's mandate."

Sustainability Framework that contributed to the harm.[18] Based on the compliance investigation, CAO offers recommendations that remediate the harm identified on the ground (project-level recommendations), and recommendations that seek to prevent similar mistakes in the future (systemic recommendations).

Exits impose practical limits on the compliance process, and limit what CAO can practicably recommend as IFC and client actions to address adverse project impacts and facilitate remedy for project-affected people. Since leverage over clients is reduced after an investment ends, exits can also limit what IFC can do to address non-compliances and ensure that associated harm or adverse impacts are addressed and remediated. Consequently, exits occurring during a compliance process undermine E&S accountability of IFC in a number of ways, and place multiple constraints on access to remedy for project-affected people.

The Following specific challenges have been faced by the compliance team after exits:

- **Exits can influence CAO's decision on whether or not to investigate during compliance appraisals:** CAO considers different criteria in deciding whether a complaint warrants a full investigation during its compliance appraisal.[19] Among these, IFC's E&S accountability policy stipulates that where an exit has occurred, CAO is to consider whether an investigation would provide particular value in terms of accountability, learning, or remedial action, despite the exit.
- **Exits can make it difficult to gain access to information regarding the investment and conduct a thorough investigation:** The E&S accountability policy guarantees CAO access to project information relevant for carrying out its mandate.[20] However, if there is no longer an active investment, IFC may not be able to obtain information from the client, thus limiting CAO's ability to gather relevant information for conducting a thorough compliance appraisal or investigation.[21] As a result, the CAO compliance team's mandate to establish whether or not project-related harm has occurred, and IFC's relationship to such harm, may be undermined.
- **Exits can place constraints on monitoring implementation of remedial actions.** The constraints described above also impact CAO's ability to conduct compliance monitoring to ensure effective implementation of actions taken by IFC following completion of an investigation. The review of

18. This is the purpose of the Compliance function as defined in the 2021 IFC/MIGA Independent Accountability Mechanism (CAO) Policy. Under the previous Operational Guidelines applicable to CAO, the Compliance function, in instances of potential or actual significant adverse social and/or environmental outcomes, had a very similar purpose (without explicit reference to establishing IFC/MIGA's 'link to harm'): "[...] assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions." [...] "The compliance investigation criteria include IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements *whose violation might lead to adverse environmental and/or social outcomes*." Operational Guidelines (para 4.3, page 23), emphasis added. When CAO Compliance conducts investigations of IFC/MIGA, at issue is whether:
    - The actual environmental and/or social outcomes are consistent with, or contrary to, the desired effect of the policy provisions.
    - The failure to address environmental and/or social issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions." (para 4.4.2, page 24).
19. IFC/MIGA Independent Accountability Mechanism (CAO) Policy, para. 91.
20. See IFC/MIGA Independent Accountability Mechanism (CAO) Policy, para. 25, 26. "IFC/MIGA will cooperate to provide CAO with full and timely access to Project-related information held by them, including access to their staff, consultants, and files (including electronic and hard copy files), as the CAO DG reasonably considers relevant for carrying out CAO's role under this Policy…Financing or advisory agreements, and contracts of guarantee between IFC/MIGA and their Clients will include obligations for the Clients to permit CAO to (i) have access to the Clients' records relating to the Project, and in the case of financial intermediary (FI) Clients, such FI Clients' records relating to relevant Sub-Clients and relevant Sub-Projects, and (ii) visit and inspect the Project…"
21. The purpose of a CAO compliance investigation is to carry out reviews of IFC/MIGA's compliance with E&S Policies, assess related Harm, and recommend remedial actions where appropriate (para. 76). See also: "A compliance investigation determines whether IFC/MIGA has complied with its E&S Policies and whether there is Harm related to any IFC/MIGA non-compliance, following a systematic and objective process of obtaining and evaluating evidence" (para. 112). Access to client sites and client information may be necessary in the course of conducting an investigation. The Appraisal Approach (para. 90) notes that "In preparing its appraisal report, CAO will review the complaint/internal request, assessment report, Management and/or Client response, and any other documents that CAO may request and receive from the Complainant, Management, the Client, and other parties." The same is true of the Investigation itself. Further, the client may play a role in a compliance process by responding when a decision is made to transfer a complaint to CAO's Compliance function for appraisal as well as being involved in deferral, factual review and comment, and development of the MAP.

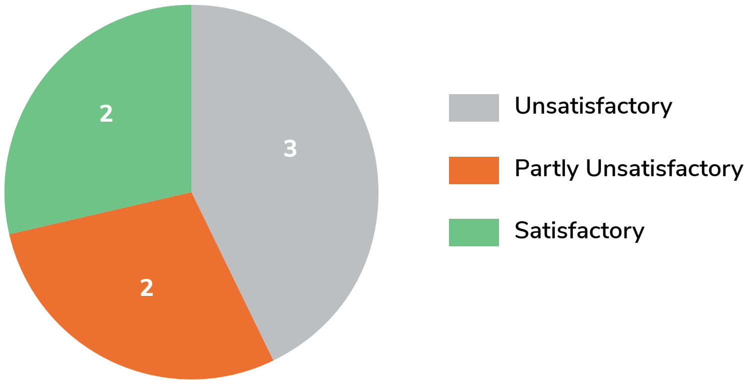
CAO cases found that, in some cases, actions agreed by IFC (and with the client where relevant) were no longer implemented following exit. In other cases, monitoring of implementation became more challenging, as access to information or project sites was dependent on the goodwill of the former client.

- **Exits can limit the scope of CAO recommendations for remedial action in investigation reports:** Once an exit has taken place, ending the contractual relationship with the client, IFC typically does not have any legal assurances to ensure that the client takes appropriate action in response to CAO investigation findings. Moreover, because the CAO Policy stipulates that CAO's recommendations will "take into account the implications of (...) an exit,"[22] CAO often makes recommendations to address harm considering what may be practicably implementable. What is practicably implementable without a current client is likely to fall short of actions necessary to address the adverse impacts and associated harm incurred by the complainants.

- **Exits can limit the scope of remedial actions agreed in Management Action Plans:** When IFC drafts a Management Action Plan (MAP) in response to CAO recommendations in cases where an exit has taken place, IFC proposed very limited or no actions at the project level to address the harm that had occurred In such cases, IFC has explained the absence of appropriate project-level actions in MAPs or management responses as due to the exit and the resulting lack of legal assurances to ensure that the client implements remedial actions. Five out of seven CAO cases where IFC has exited during the CAO process have a project-level management action satisfaction rating of either partly unsatisfactory or entirely unsatisfactory. The Management Action Tracking Records (MATRs) for these cases highlight a lack of remedy for the complainants even when a CAO compliance investigation has taken place and found adverse impacts and non-compliance by IFC.

- **Exits can limit implementation of Management Action Plans:** Over the past 10 years, CAO closed half the cases where an early exit took place while CAO was still monitoring IFC implementation of the actions it agreed to. CAO closed these cases, despite finding implementation of the agreed upon actions to be unsatisfactory and/or incomplete, on the basis that, post-exit, there was a high likelihood that no further implementation of MAP actions would occur.

Figure 5: MATR findings: Project-level actions, compliance cases[a]



a. This figure is based on the CAO's Management Tracking Record (MATR) which annually rates the adequacy of IFC's and MIGA's responsiveness to CAO compliance investigations.

22. IFC/MIGA Independent Accountability Mechanism (CAO) Policy, para. 120.

- **Exits can result in CAO closing cases throughout the CAO process: CAO has closed cases, post-exit, following assessment or compliance appraisal, during compliance monitoring, and while in dispute resolution (see Table 2).** Nearly 1 in 3 exits (7 out of 22) during a CAO compliance process ultimately led to case closure for reasons directly related to the exit.[23]

Table 2 provides data on the 22 of 31 exits that took place during an active CAO case while in compliance, between FY13 and FY22. Figure 6 provides an overview of how exits can limit the compliance process. Box 3 describes a case in which those limitations resulted in weaker actions by IFC and unremediated harm.

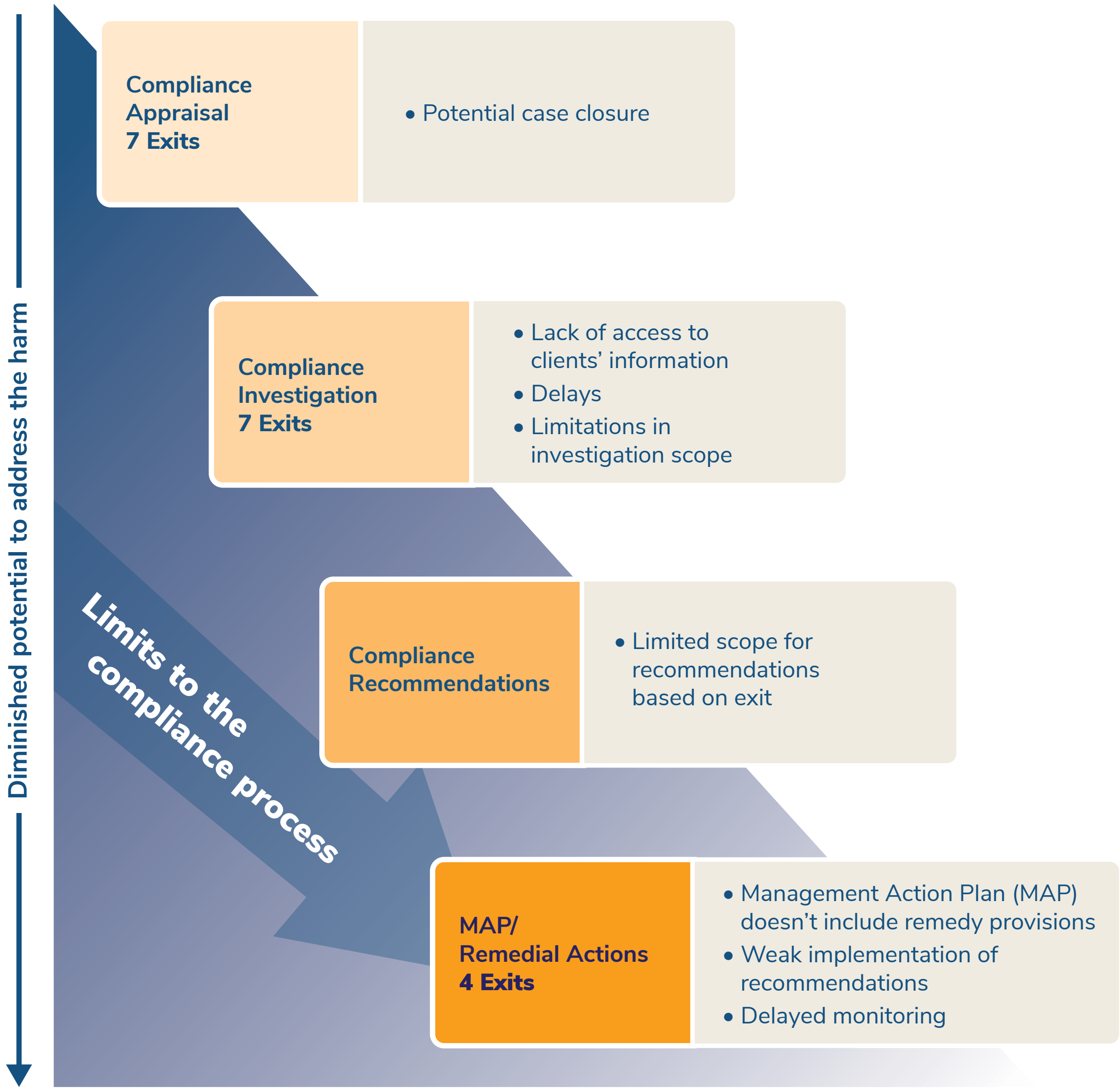
Table 2: CAO compliance cases closed due to exit (from a total of 22 cases)

WHICH PHASE IN THE CAO PROCESS DID THE EXIT OCCUR?	REASON FOR EXIT	NUMBER OF CAO CASES CLOSED DUE TO EXIT	WHICH PHASE IN THE CAO PROCESS DID THE CASE CLOSE?
Assessment	Loan cancellation	1	After compliance appraisal
In compliance appraisal, potential for investigation[a]	Loan prepayment	1	After compliance appraisal
In compliance appraisal, went to investigation	Equity sale	1	In compliance monitoring
In compliance investigation	Equity sale	1	In compliance monitoring
In compliance monitoring	Loan cancellation Loan prepayment Loan prepayment	3	In compliance monitoring

a. The "potential for an investigation" distinction was attributed to a case if the appraisal noted the potential of non-compliance, but CAO decided not to investigate on the strength of other factors such as IFC's exit from the investment.

23. Out of 22 compliance cases that experienced an exit between FY13 and FY22, 7 cases were subsequently closed by CAO for reasons related to exit.

Figure 6: Exits can limit the compliance process in several ways



Box 3: Case example where exit limited the compliance process and remediation of the harm

In the case of IFC's €80 million investment in the Alexandria Development Company (ADL) cement plant in the Arab Republic of Egypt,[24] exit occurred just before CAO's compliance investigation report was finalized and published in July 2021.

The complaint by a nongovernmental organization (NGO) on behalf of local communities raised issues regarding the plant's proximity to residential areas and the alleged effects of plant pollution on community health and safety. Other concerns included ADL's compliance with national legislation, labor issues, and lack of information disclosure and community consultation.

CAO's report recommendations were developed with the exit in mind, taking into account what was practicable given that IFC no longer had legal assurances regarding the client's actions.

Following around 22 months during which IFC implemented actions in response to CAO's investigation findings and recommendations, CAO closed the case in May 2023. In doing so, CAO concluded that, "IFC implemented project-level actions that did not fully resolve the relevant CAO noncompliance findings they were designed to address. However, IFC took these project-level actions in relation to an investment it had already exited, thus with limited leverage over its former clients."

Of the six project-level actions included in IFC's MAP, CAO rated one action taken unsatisfactory, four partly unsatisfactory, and only one satisfactory.[25]

Impacts on the dispute resolution process

Exits can also create challenges for CAO dispute resolution (DR) processes. These processes are voluntary for all participants and therefore are not dependent on an active relationship between IFC and the client. Five CAO cases in dispute resolution were affected by early exits between FY13 and FY22. These exits consisted of four client prepayments and one write-off. In all cases, the IFC client companies chose to continue with the voluntary DR process. Nevertheless, exits can create challenges for DR processes, as follows:

- **Changes in client engagement:** Even though participation in DR processes is voluntary, the relationship with IFC plays a role in some clients' commitment to seeing the process through. CAO staff found this to be particularly true for complex DR processes addressing multiple grievances. In a recent DR case, for example, CAO's team noticed a shift in attitude and commitment by the client after the exit, which slowed the process down.

- **Difficulty accessing information and related impacts on trust:** CAO specialists reported frequent difficulties obtaining basic information related to exit from IFC and/or its clients, even whether an exit is being considered or will take place imminently. There is currently no protocol regarding the release of such information to CAO dispute resolution teams and project-affected people. This is concerning given that successful DR and mediation processes rely on trust and good faith engagement by all parties involved. CAO specialists found that when the company, IFC, or CAO withheld knowledge about an imminent exit, trust between the complainant and company suffered as did trust in CAO and the DR process. This can result in unsuccessful DR outcomes.

24. See Egypt: Alex Dev-01/Wadi al-Qamar.
25. See Compliance Monitoring Omnibus Case Report: Q4, 2023.

- **Reduced role of the IFC investment team:** While this was not common historically, IFC has been increasingly engaging to support DR processes. CAO staff indicate that IFC's engagement has contributed in several cases to stronger DR processes, higher levels of trust among parties, and better-quality agreements. Exiting the project can make IFC staff involvement in a DR process more challenging, as project teams no longer have an incentive to participate and support the former client and former investment team members may be assigned to other projects or departments.

- **Threats to implementation of agreements to address concerns:** In cases where the DR process has resulted in agreement, exits can undermine their implementation, particularly if the client had engaged in the DR process with IFC's encouragement. The absence of IFC support and influence following exit, as well as the loss of IFC staff's knowledge of the complaint issues and agreements, can impact a company's decision to continue to implement actions it had previously agreed to.

Finding 4: Multiple factors drive the high prevalence of exits during CAO cases.

As illustrated in the previous section, there are multiple ways that exits during active CAO cases pose challenges for accountability, limit CAO's ability to facilitate resolution of community concerns, and affect IFC's ability to work with the client to remediate adverse impacts. Why are there so many exits during CAO mediation, appraisal, or investigation of complaints brought by project-affected people? With a view to reducing the number of such exits, CAO analyzed 10 years of data to identify the factors that contribute to their current high prevalence, described next.

Case handling timelines

In the 2020 External Review of IFC/MIGA's E&S accountability, CAO's lengthy case processing times and their implications were identified as a limiting factor.[26]

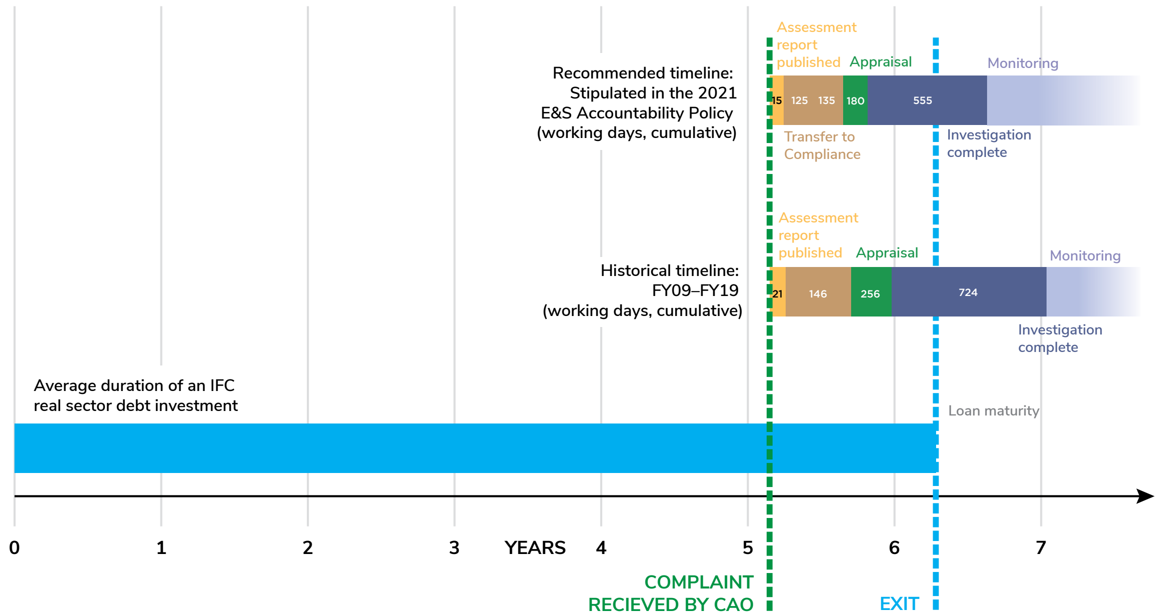
CAO has since made progress toward achieving the Policy timelines for compliance investigations established in the 2021 CAO Policy and toward reducing timeframes for dispute resolution. The Policy stipulates timelines for several phases in the CAO process, shown in Figure 7, and CAO's strategic priorities for FY23–FY25 include reducing the case backlog and ensuring that CAO Policy timelines are met, in order to facilitate access to remedy.[27] Efforts to speed up case management have resulted in the case backlog falling from 58% of total caseload in FY21 to 26% at the end of FY23.

However, even if CAO meets Policy-stipulated timelines, exits during active cases are still likely. The average maturity of IFC's debt products is approximately six to seven years, and of equity products is seven to nine years and the high prevalence of early exits from investments in the CAO caseload reduces these timeframes.

To further reduce exits during CAO cases it is therefore necessary both to reduce early exits and to understand why complaints reach CAO so many years after approval.

26. The "External Review of IFC/MIGA's E&S Accountability, including CAO's Role and Effectiveness" was initiated by the IFC and MIGA Boards in 2019 and conducted by a high-level panel of independent experts. The External Review report was released in August 2020.
27. For more details on the steps, see IFC/MIGA Independent Accountability Mechanism (CAO) Policy (June 2021), Section X – Compliance.

Figure 7: CAO processes and timelines under the 2021 CAO Policy



By the time CAO receives a complaint, IFC investments are typically already approaching maturity. On average, CAO receives complaints 5.5 years after project approval by the IFC/MIGA Board, with the earliest complaints over the past decade received nearly 3 years following approval, and the latest 8 years after approval.

There are multiple factors that contribute to this delay between IFC making an investment and CAO receiving a related complaint. Complainants cite difficulty in finding out about CAO and commonly try other forms of redress first. Some impacts occur only in later project phases or take time to materialize. Complainants may also have concerns that lodging a complaint may jeopardize personal and community safety. An analysis of these various factors is presented next.

Communities face barriers to submitting timely complaints

Communities face challenges in finding information about IFC/MIGA's involvement in the projects that affect them, and about CAO. The 2020 External Review of IFC & MIGA's E&S Accountability[28] noted that project-affected people face challenges in accessing information about who finances projects and what recourse they have to pursue redress for alleged negative impacts from an IFC-financed project. These challenges often include barriers caused by the language and medium in which the information is disclosed.[29]

CAO's experience in conducting outreach, and feedback from complainants during the assessment process, shows that project-affected people rarely know that IFC or MIGA financed or underwrote a project, or that they can access CAO with their concerns about these projects. It takes time for them to ascertain the possible channels for recourse. This suggests, in turn, that shortening the time it takes for communities to lodge complaints requires actions to raise project-affected people's awareness of CAO's existence.

Another reason CAO tends to receive complaints late in the project life cycle is the fact that most complainants (85%) first try other channels for raising their concerns, such as the project operator. They turn to CAO after failing to achieve resolution for their grievances[30] elsewhere, thus rendering an investment exit during the CAO process more likely.

Adverse E&S impacts/Harm can emerge over time

The timing of risks and impacts arising from IFC/MIGA-financed projects varies according to the type and maturity of the project. Some E&S impacts become apparent to affected communities only later in the project cycle, many years after the start of IFC's investment and possibly after it exits the project. This was the case for community members—including children and infants—who suffered from pulmonary fibrosis in the Alexandria Development Limited case in Egypt (see box 3).[31] Table 3 highlights the example of environmental and social risks that occur at different points in a mining project's life cycle—from the immediate effects of noise pollution to the cumulative impacts of air pollution. Even if IFC is invested early in the project cycle, some E&S impacts will often occur late in, or after the end of, IFC's investment.

28. External Review Report (2020).
29. External Review Report, para 357.
30. Responses to CAO surveys after the assessment process from 2017 to 2023 show that 85% of surveyed complainants tried other channels to address their grievances before going to CAO, most frequently seeking discussions with the company or their representatives.
31. See Egypt: Alex Dev-01/Wadi al-Qamar. https://www.cao-ombudsman.org/cases/egypt-alex-dev-01wadi-al-qamar.

Table 3: Typical mining life cycle—Stages, duration, and associated impacts

STAGE	TYPICAL ACTIVITIES	DURATION[a]	E&S IMPACTS EXAMPLES OF IMMEDIATE, LONGER-TERM AND CUMULATIVE
Exploration and feasibility	Reconnaissance, Discovery, Sampling, Studies, planning	**10–12 years**	Noise Removal of vegetation Right of way/ access restrictions
Development and construction	Clearing, stripping, blasting, building infrastructure	**1–5 years**	Vibrations Dust and airborne chemicals Removal of vegetation Stress-related health impacts Localized conflict Security concerns
Operations	Ore extraction, crushing, grinding, concentrating, waste material management, water management	**10–30 years**	Airborne chemicals Deforestation Impacts on water (e.g., lowered watershed & contaminants in water sources) Acute and chronic health impacts Destruction of cultural heritage Livelihoods impacted e.g. farming and fishing
Decommissioning and closure	Site clean-up including hazardous material, reclamation, Rehabilitation	**1–5 years**	Changes to biodiversity Pollution (e.g., contaminated ground water and soil) Chronic health impacts
Post-closure	Rehabilitation, Long-term storage of tailings and other materials, Ongoing environmental monitoring	**5–10 years**	Degradation of storage/ leakage of tailings Acid mine drainage (AMD) and high levels of potentially toxic elements (PTEs) Slope failure Changes to local ecosystems Chronic health impacts – community and workers Impacts on community cohesion
Total lifespan		**27–62 years**	

a. Duration estimates based on S&P Global data on 127 nickel, gold, copper, and zinc mines operating until 2022, and on World Gold Council data. See https://www.spglobal.com/marketintelligence/en/news-insights/research/discovery-to-production-averages-15-7-years-for-127-mines#:~:text=Nickel%20mines%20have%20the%20longest,the%20Philippines%20and%20New%20Caledonia and https://www.gold.org/gold-supply/gold-mining-lifecycle#:~:text=Gold%20Mining%20Operation%3A%2010%20%2D%2030,extracted%20and%20processed%20into%20gold.

The reality of delayed impacts deserves further consideration. CAO and IFC/MIGA should jointly explore how they can facilitate improved resolution of adverse impacts that materialize only later during a project and possibly after IFC's investment ends.

Table 4 shows the average length of time between IFC/MIGA project approval and communities filing CAO complaints by sector, ranging from 2.7 years for agribusiness projects to 5.3 years for mining, oil & gas, and chemicals projects in the real sector, and 7 years in the financial sector. The fact that complaints related to IFC investments through financial intermediaries take longer to reach CAO is likely related to access to information about IFC's involvement. Anecdotally, CAO has learned that it is harder for complainants to ascertain IFC's involvement in projects funded through financial intermediaries.

Table 4: Length of time from IFC/MIGA investment to lodging a CAO complaint, FY13–FY22

SECTOR	MEDIAN YEARS BETWEEN APPROVAL AND COMPLAINT[a]
Agribusiness	2.7
Financial markets	7.0
Infrastructure	3.8
Manufacturing	5.3
Mining, oil & gas, and chemicals	5.3

a. Median timeframe by sector was selected over average timeframe by sector because of the presence of several outliers that skewed the averages of some of the sector timeframes.

Clients often prepay loans during active cases

It is not only lengthy timelines that result in the prevalence of exits during active CAO processes. CAO's caseload analysis reveals that projects subject to complaints experience unplanned exits with great frequency. As noted, 88% of exits from debt investments during an active CAO case were early exits.[32] Over half of these early exits were triggered by IFC clients prepaying the loan (see Table 5). Yet, IFC considers client prepayments to be a passive exit and does not currently include such projects in their pilot of the draft Responsible Exit Principles. CAO suggests that a coherent trial Approach to Responsible Exit should also include passive exits and debt investments that have not yet been approved, in the next phase of the pilot.

A decision to exit ahead of schedule by IFC or its client once CAO receives a complaint can limit CAO's ability to execute its mandate to facilitate access to remedy. Project exits hinder the accountability system from working as it should. In such cases, project-affected people and the environment suffer the consequences of any unremediated impacts.

32. Based on the sample of 76 CAO projects during FY13–FY22.

Table 5: Drivers of early exit from debt investments, by CAO process

	EARLY EXIT CATEGORIZATION				
	TOTAL EARLY EXITS	PREPAYMENT	CANCELATION	WRITE-OFF	LOAN SALE
Compliance	10	5	4	0	1
Dispute Resolution	5	4	0	1	0
Total	15	9	4	1	1

Finding 5: Exits can exacerbate vulnerability to threats and reprisals.

IFC noted in 2021 that threats and reprisals against those who voice concerns or opposition to development projects have grown in visibility worldwide.[33] NGOs such as Global Witness document the harrowing level of threat to the lives and livelihoods of environmental and human rights defenders, noting that "a defender was killed every other day in 2022."[34] Many factors can play a role in aggravating the risk of threats and reprisals when IFC or MIGA exit a project.

A review of CAO cases from FY18 to FY22[35] that carried a risk of threats and reprisals found that the most common forms of reprisals were intimidation (through phone calls, messages, and surveillance), physical attacks, death threats, and job-related retaliation.[36] The source of the threats was most commonly the client, followed by government, third parties, and other community members or other communities in the project area.

Complainants expressed concerns about threats and reprisals in 76% of CAO cases that experienced an exit.[37] This is a much higher rate than the already high 47% of CAO's overall caseload where concerns about threats and reprisals were present from FY18 to FY23.[38] Threats and reprisals in the context of exits are not just of concern in projects subject to a CAO complaint, but also in situations where individuals or communities raise concerns about projects through other channels, for example via project grievance mechanisms or directly to IFC.

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33. IFC and Inter-American Investment Corporation (2021). "Good Practice Note for the Private Sector: Addressing the risks of retaliation against project stakeholders." https://www.ifc.org/en/insights-reports/2021/publications-gpn-reprisalrisks.
34. https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/#top-findings-2022.
35. CAO publicly released its Approach to Threats and Reprisals in April 2018, during the 2018 World Bank Group Spring Meetings, after a period of consultation and external inputs from April 2016 to December 2017. CAO began collecting and reporting the relevant data systematically at this time. For more information, see https://www.cao-ombudsman.org/about-us/approach-reprisals.
36. CAO data documenting complainants' reports of concerns and incidents of threats and reprisals.
37. The data presented here ranges from FY 2018 since at that point CAO started collecting data on threats and reprisals consistently. Out of the 31 cases that experienced an exit during an ongoing CAO process, CAO collected data for 17 of them. Cases accounted for represent those that have raised concerns related to threats and reprisals at some point during the complaint process. In addition, these concerns range from the fear of threats and reprisals to actual threats and reprisals incidents having taken place.
38. Data collected from FY18 to FY23.

Box 4: Case example: threats and reprisals surrounding IFC's Condor Gold investment

Background

Condor Gold is a gold exploration company with concessions in Nicaragua that include La India, the company's flagship project. IFC invested in Condor Gold in 2014 to support exploration at La India, classifying the project as Category B, denoting potential limited adverse environmental and social risks.

In July 2018, CAO received a complaint citing concerns about actual and potential E&S impacts, including lack of project consultation, reduced community access to water, risk of involuntary displacement and seismic activity, and potential impacts to biodiversity and the ecosystem. The complaint stated that police and client representatives had adopted intimidation tactics and threats of reprisals against project opponents, and had criminalized community actions against the project.

CAO's compliance appraisal raised questions about whether IFC's pre-investment due diligence properly assessed client commitment and capacity to meet IFC Performance Standards, as well as third party and contextual risk. However, CAO decided not to conduct a compliance investigation, noting that IFC did raise key issues with the client early in its project supervision. IFC exited the project in 2019 with challenges in ensuring the effective application of E&S standards contributing to the decision to divest.

Threats and reprisals

Two civil society organizations (CSOs) supporting the 11 complainants reported that local residents faced escalating criminalization, harassment, surveillance, and threats since 2011. From 2017, the mine area saw a heavy and militarized police presence that was visible during CAO's visit in November 2018 to conduct the complaint assessment. During IFC supervision of the project, organizations supporting the local communities were also targeted with threats and criminal charges. In December 2018, the government removed their legal right to exist, and police conducted a violent search and seizure of their offices and property.

In 2018, as the security situation in Nicaragua deteriorated, IFC was made aware that threats and reprisals for communities in the mining area were growing. IFC monitored these threats, increasing its oversight after the complaint was sent to CAO. IFC raised intimidation concerns with its client, flagged them with World Bank Group senior management, and hired a security consultant to review Condor Gold's security procedures. In addition, IFC advised the client on reviewing its security arrangements and engaging a third party to undertake a risk assessment of security arrangements and the wider social/human rights risks of the project.

Impact of exit while ongoing threats and reprisals

In June 2019, IFC exited the project in an equity sale. CAO closed the case following its compliance appraisal in October 2019 despite threat of reprisal continuing because CAO does not have a mandate to consider threats of reprisal alone. In its appraisal report, CAO questioned whether IFC's E&S categorization was commensurate to the project risk and adequately considered client capacity and commitment.

Following the exit in June 2019, the communities publicly denounced company and government aggressions they believed were a direct response to their complaint to CAO. They reported that the exit—without forewarning or disclosures—left them more exposed to violence and intimidation.

In 2018, IFC released a public statement on retaliation, noting that "IFC does not tolerate any action by an IFC client that amounts to retaliation—including threats, intimidation, harassment, or violence—against those who voice their opinion regarding the activities of IFC or our clients." The statement added that internal protocols and guidance for actions were being developed.[39] In 2021, IFC and IDB Invest, part of the Inter-American Development Bank (IDB) Group, jointly issued a Good Practice Guidance Note for the private sector providing advice for clients on how to manage these risks, including monitoring and response actions.[40]

However, these responses do not focus specifically on the implications of exit. While IFC and other DFIs develop protocols and guidance on how to address this issue, exits are taking place from projects where there have been allegations and/or the ongoing risk of threats and reprisal actions against project-affected people or their representatives. Box 4 presents the case of one particularly egregious example in Nicaragua.

Finding 6: Weaknesses in current IFC E&S risk management contributes to E&S risks at exit.

CAO's review of 10 years of case history identified several weaknesses in IFC's current approach to exit that mitigate against the fulfillment of the above obligations by IFC and its clients. These barriers to effective E&S risk and performance management, and their impact on IFC's mandate, are summarized in Box 5 and described in detai in the discussion that followsl.

39. The "IFC/MIGA Position Statement on Retaliation against Civil Society and Project Stakeholders" (October 2018).
40. See IFC and IDB Invest (March 2021). "Good Practice Note for the Private Sector: Addressing the Risks of Retaliation Against Project Stakeholders."

Box 5: Key weaknesses and consequences of IFC's current approach to exit

- Exits can compromise IFC's ability to deliver on its development mandate and goals as well as its E&S commitments. Development outcomes and client compliance with the Performance Standards typically do not occur early in a project. Therefore early exits in particular are likely to undermine IFC's ability to achieve development and other E&S aims.
- Early exits can also undermine IFC's value proposition by compromising the strengthening of client capacity for E&S risk management.
- IFC does not require an updated understanding of risks and harm to assure if they are being effectively addressed when making an exit decision.
- IFC inconsistently includes and uses legal assurances that E&S risks are effectively managed and harm remediated by the client prior to exit.
- Post-exit, IFC typically no longer has contractual leverage over the client. Hence all E&S risk mitigation and remediation of harm must be planned for and executed before exit.

IFC does not require updated E&S risk assessment prior to exit

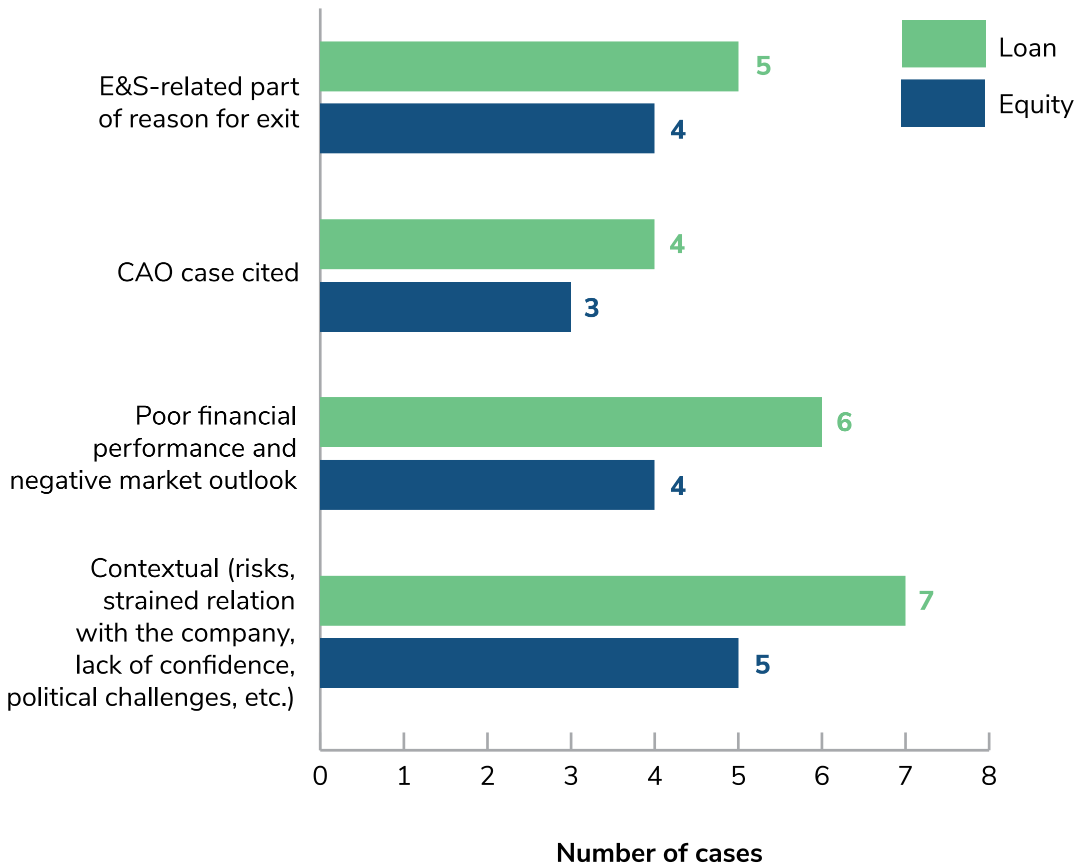
Current IFC procedures do not require the project team assigned to an investment to carry out an analysis of the E&S risks when an exit decision is being made. This is the case even when an investment is the subject of a complaint from project-affected people and CAO is addressing the complaint.

The way IFC makes exit decisions, and when and how they are executed, play an important role in ensuring that people and the environment are not left to bear any adverse impacts. Investment teams may consider different objectives when making decisions about exiting a client project, balancing financial and non-financial goals. If they fail to consider a client's ongoing E&S performance, or the E&S implications of the exit, it will be much more likely that any negative impacts on people and the environment are left unremediated after exit. In such situations, IFC has not met core commitments and intents enshrined in its Sustainability Policy—to "do no harm," ensure "that the costs of economic development do not fall disproportionately on those who are poor or vulnerable," and remediate harm where it does occur.

To explore the reasons behind exit decisions and to understand whether and how E&S objectives are considered, CAO reviewed exit documentation for 30 relevant CAO cases over the last 10 years.[41] Figure 8 shows the documented rationales for exit, which are typically focused on contextual risk (such as the political environment or a strained client relationship) or financial reasons (poor performance, negative market outlook). E&S concerns were explicitly mentioned in only about one third of these projects, despite the fact that a complaint had been filed with CAO in every case.

41. CAO reviewed the documentation for 30 exit cases (one advisory project was excluded). Relevant IFC documents were inaccessible to CAO for four cases at the time of writing this report, and for a further seven cases, the documentation did not state a reason for exit.

Figure 8: Issues mentioned in exit documentation



CAO's 2023 landscape study found broad agreement among development finance institutions and other investors on emerging good practice for responsible exit. This included consensus that a decision to exit should be based on appropriate knowledge not only of a project's ongoing impacts at that time, but also of the potential impacts of divestment.[42] Potential impacts for a DFI to consider would include the following:

- Whether the investor has achieved the development objectives that were anticipated (both for the communities and the project sponsor);
- Whether there is still scope to do that; and
- Whether divestment would contribute to further (or different) harm—including elevating the risk of threats and reprisals for project-affected communities and their defenders.

CAO's recommendations in the next section suggest how IFC could operationalize this emerging good practice in considering whether and how to exit investments.

42. See CAO (2023). "Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond." https://www.cao-ombudsman.org/sites/default/files/2023-02/03c_Rpt-WBG-3518-CAO%20ResponsibleExit_External%20R2%20v1%20FIN.pdf..

Engagement of project stakeholders is often lacking

Engaging project-affected stakeholders is a key element of responsible exit and acknowledged by DFIs as central to sound development practices. In particular, stakeholder input is seen as critical for identifying development challenges and relevant interventions, monitoring project implementation, and assessing outcomes and impact.[43]

Stakeholder engagement in various forms is also integral to compliance with IFC's Sustainability Policy and Performance Standards on Environmental and Social Sustainability.[44] In advising clients on the importance of stakeholder engagement in risk management, IFC counsels the following: "Looking through a risk avoidance lens, communicating early, often, and clearly with stakeholders helps manage expectations and avoid risks, potential conflict, and project delays."[45]

However, analysis of CAO cases between FY13–FY22 reveals that, in practice, effective implementation of stakeholder engagement in IFC-financed projects does not always match the centrality accorded in the Sustainability Framework. CAO flagged concerns with stakeholder engagement in two-thirds of compliance cases, including 13 that experienced an exit while the CAO case was ongoing (Table 6).

Table 6: Stakeholder engagement issues in CAO compliance caseload

Total compliance cases (FY2013–2021)	41
Cases flagged for stakeholder engagement issues	**27 (66%)**

Weaknesses in stakeholder engagement can contribute to unidentified and unmanaged E&S risks, and to harm for project-affected people. When effective stakeholder engagement is not undertaken prior to exit, IFC may find itself in a position where there is no longer a client to remediate harm that occurred during IFC's investment.

Inadequate use of legal leverage to address E&S compliance

IFC can use different forms of leverage to ensure that the client adheres to its responsibilities and commitments under the E&S Policy. Box 6 explains what is meant by leverage, in this space.

Amongst various forms of leverage, legal leverage is the strongest tool for IFC to ensure client's adherence to E&S commitments. This Advisory Note analyzed CAO's caseload to assess adequacy of the legal leverage used by IFC.[46]

CAO reviewed the loan agreements and related documentation for 13 of the 17 debt investments that experienced an exit while the CAO case was ongoing.[47] In all 13 cases, "the Common Terms Schedule" to the loan agreement contained E&S related broad/standard covenants and conditions. However, these covenants and conditions were not consistently translated into specific time bound operational level assurances in the main text of the loan agreements that would allow IFC to enforce the client's E&S obligations (see table 7). Even where such legal assurances were present, they were often not used by the investment teams to address E&S concerns that had arisen in the project.

43. CAO (2023). Responsible Exit Discussion and Practice in Development Finance Landscape Paper.
44. Supporting Companies to Develop and Manage Community-Based Grievance and Feedback Mechanisms Regarding Sexual Exploitation, Abuse and Harassment Toolkit.
45. IFC (2014). A Strategic Approach to Early Stakeholder Engagement: A Good Practice Handbook for Junior Companies in the Extractive Industries.
46. In a forthcoming Advisory Note, CAO will go deeper into analyzing the use of legal assurances and leverage in projects related to CAO cases.
47. The loan agreements for four of these cases were not available to CAO.

Box 6: What is leverage?

An investor's leverages refer to its ability to bring about a change in behaviors on the part of the actor (such as the investee company). The concept of leverage is relevant to an investor's decision regarding whether or not to exit. Where the investor's efforts over time to use leverage to mitigate risk and address harm prove unsuccessful, and the impacts remain severe, the investor needs to consider whether and how it can exit the relationship responsibly. An investor may also need to use leverage in executing exit, to mitigate additional and separate harms that would arise from exiting.

Forms of leverage

- Legal leverage, including assurances/covenants, conditions of disbursement, performance bonds as financial disincentives for poor performance amongst others, to ensure that clients comply with E&S commitments in a timely manner.
- An investor's position within a hierarchy or value chain of financers (for example, if the loan is syndicated, or the investor acts as a "signaler" of investment-worthiness.
- An investor's political position within and outside the company (for example, does the investor have a long-term relationship with the client or a seat on its Board?).
- A DFI's relationship with the relevant government or with other significant third parties.
- Investor expertise—such as in specific sectors or on E&S risk management—is often valuable to clients. Investor staff skills in areas such as relationship-building, negotiation, and consensus-building are very real sources of leverage already commonly used by investment officers while identifying investment opportunities and closing transactions. Similarly, investors' strategic resources, such as relationships with other business service providers and governments, add value for clients.

Assessing and planning leverage

Conducting a leverage assessment and drafting a leverage plan is central to planning for a responsible exit. Since forms of leverage differ among investments and instruments, initial project due diligence should assess and identify the best form to be used.

- It is important to note that availability and effectiveness of different forms of leverage vary according to the stage in the investment life cycle. Some forms of leverage are directly between the investor and the client, while others can be used indirectly through the investor's relationships or other stakeholders.
- Where providers of development financing exit a project, in certain cases this may in in fact constitute an act of leverage—for example, by virtue of the signaling power to the market.
- Post-exit leverage is also possible and should be included in planning.

For example, IFC's guidance for investment teams note that conditions of disbursement (CODs) should be used "to expedite Client attention to important high-risk factors."[48] However, CAO observed that the inclusion of E&S requirements as a COD varied in the loan agreements reviewed (see Table 7). In four loan agreements, IFC required client E&S compliance with the ESAP for all disbursements, while in four other agreements E&S stipulations were not included as CODs at all. In one loan agreement, compliance with the ESAP was a COD only for the first disbursement, despite the majority of the ESAP actions being due for completion after the first disbursement. In this case, IFC's legal assurances to enforce the implementation of the majority of the ESAP diminished significantly after the first disbursement.

In addition, CAO noted that compliance with E&S requirements by the client was either delayed or incomplete during the investment's lifetime in four of these nine investments with E&S related disbursement conditions.[49] CAO could not find documented efforts by IFC to exercise the COD in any of these cases. In four cases, IFC granted waivers for delayed E&S items without an appropriate analysis of how such delays would affect meeting the requirements and impact the communities and environment they were designed to protect. CAO's analysis highlighted that IFC can use its legal leverage in a more robust manner by consistently incorporating and efficiently using assurances and conditions to mitigate serious E&S harm.[50]

Table 7: E&S requirements in IFC-client loan agreements, FY13–FY22

E&S COMMITMENT	CASE COUNT
Covenants not translated into legal assurances	31% (4 of 13 cases)
Conditions of first disbursement	31% (4 out of 13 cases)
Conditions of second disbursement	8% (1 out of 13 cases)
Conditions of all disbursements	31% (4 out of 13 cases)

Another effective form of leverage is the disclosure of information about a project's E&S performance at the time of exit. When IFC/MIGA invest in a client, the market views this as a signal that IFC approves the quality of the client's E&S risk management, among other investment criteria. CAO's landscape paper on responsible exit noted that the current DFI practice not to disclose relevant E&S information at the time of exit is frequently criticized by NGOs. Instead, they have urged DFIs exiting investments to correct market perceptions about the E&S credentials of clients or projects where harms have not been remediated and the DFI has had to exit for negative reasons.[51] In the vast majority of IFC projects, E&S information disclosures do not get updated after Board approval of the investment.

48. IFC internal guidance document for investment staff on E&S procedures, issued September 2023.
49. Delayed E&S actions were found in IFC's project documentation for relevant investments. These include Annual Monitoring Reports (AMR), disbursement checklists, ESAP updates and memos.
50. If an appropriate analysis has been conducted with respect to this issue in any of these cases, it has not been made available to CAO in the project documentation.
51. CAO (2023). Responsible Exit Discussion and Practice in Development Finance Landscape Paper, pp. 30–31.

IFC does not exhaust available leverage to address outstanding E&S concerns at exit

In cases where investment agreements did address E&S requirements, IFC did not always apply the legal assurances, not enforcing the covenant and specific actions required of the client at that time. This leaves E&S issues, at time of exit, unresolved.[52]

In seven of the nine project legal agreements that stipulated E&S compliance as a condition of disbursement, client compliance with E&S requirements was either delayed or incomplete during the investment's lifetime, presenting an opportunity for IFC to exercise the assurances available.[53]

Similarly, in cases where IFC included contractual stipulations to address E&S requirements, it did not always effectively utilize this leverage. In six of the nine projects with E&S compliance a COD, client compliance with E&S requirements was either delayed or incomplete at one point during the investment's lifetime, and in three of these cases E&S-related waivers, such as rescheduling ESAP actions to a later date, were granted. Moreover, IFC granted these waivers without a documented analysis of how such delays would impact the communities and environment they were designed to protect.[54]

CAO's case analysis also revealed that, in 6 of the 13 debt exits CAO was able to review, early exit penalties such as collecting accrued interest, or a prepayment fee were waived. For a further 5 cases, CAO could not establish this finding based on the investment documentation made available.

In all these areas, the preceding analysis suggests that IFC could significantly strengthen its use of leverage to address outstanding E&S issues at exit.[55]

Client prepayments can leave E&S issues unaddressed

When a loan is written off or cancelled, or, typically, when an exit occurs from an equity investment, IFC is making the decision to exit. In such cases, responsible exit is about how the disinvestment is planned for during the appraisal stage, how legal assurances or leverage is used during the course of the investment to ensure client compliance with E&S requirements, capacity-building of the client occurs where it is required, how the exit decision is made, and how the exit is executed.

IFC's ability to enforce E&S requirements is much diminished when exits result from a client's prepayment of its outstanding debt. In these circumstances, IFC has to find ways to influence clients to exit responsibly. Incentives for clients to address outstanding E&S concerns at exit include traditional contractual leverage, such as collecting or forgiving prepayment fees. IFC can also employ softer influences such as the company's desire to maintain a good relationship with its stakeholders and with IFC, and to maintain a positive reputation, attract E&S conscious investors, and/or build a global brand.

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52. The Sustainability Policy assigns this role to IFC. It notes that "While managing environmental and social risks and impacts in a manner consistent with the Performance Standards is the responsibility of the client, IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards. As a result, the outcome of IFC's environmental and social due diligence of a proposed business activity is an important factor in its approval process, and will determine the scope of the environmental and social conditions of IFC financing." See para. 7.
53. Delayed E&S actions were found in IFC's project documentation for relevant investments; these include Annual Monitoring Reports (AMR), disbursement checklists, ESAP updates, and memos.
54. If an appropriate analysis has been conducted with respect to this issue in any of these cases, it has not been made available to CAO in the project documentation.
55. This is based on a sample of nine CAO cases over the past ten years. Having been subject to a CAO complaint, these cases–and the alleged or validated harm–were known to IFC.

Inadequate support to help clients develop capacity

CAO compliance investigations often raise questions about the depth of IFC's pre-investment E&S due diligence of the project, and whether it adequately considered client commitment and capacity to meet IFC Performance Standards (see Table 8). Provision of capacity support to clients appears to be a weakness in IFC's role. Advisory projects are an important way in which IFC can assist the client in developing required capacity to implement the performance standards. The research found that there were few Advisory projects associated with an IFC debt or equity investment in CAO's caseload. For only 5 of the 31 investments did clients also receive an IFC Advisory project, either prior to, or concurrent with the investment (see Table 9). IFC has not systematically prioritized and provided capacity support, nor have clients consistently been requested to take specific actions to strengthen their capacity. As a result, it is unsurprising that CAO's case analysis found that early exits of investments took place without IFC fulfilling its role of ensuring that the client company complied with the Performance Standards.

In general, other CAO cases, IFC's reviews and actions after identifying issues of concern regarding client capacity or commitment have not been consistent and sustained enough for the client to effectively implement the Performance Standards. A recent evaluation by the World Bank Group's Independent Evaluation Group (IEG), covering middle-income countries, came to similar conclusions, stating that IFC's expected non-financial additionality (of which E&S standard setting was the most common) was not realized in more than one-third of investments.[56] The IEG study noted weaknesses in IFC's work quality, staff capabilities, and internal procedures. Among external factors critical to project success, IEG found that the most important is client capacity and commitment.

Table 8: Issues of client commitment and capacity identified in CAO compliance appraisals/investigations

INVESTMENT TYPE	NUMBER OF CASES WHERE ISSUES WITH CLIENT COMMITMENT AND CAPACITY WERE IDENTIFIED	FY BOARD APPROVAL	FY COMPLIANCE INVESTIGATION OR APPRAISAL* (FOR CASES WITHOUT INVESTIGATIONS)
Equity	**7 (50%)**	2009	2017
		2010	2022
		2008	2019
		2014	2021*
		2015	2020*
		1999	2021
		2007	2023
Debt	**6 (43%)**	2016	2018*
		2014	2021
		2013	2020
		2009	2015
		2009	2021*
		2013	2015*
Equity & debt	**1 (7%)**	2011	2015

56. IEG (2023). "International Finance Corporation Additionality in Middle Income Countries, An Independent Evaluation" Independent Evaluation Group https://ieg.worldbankgroup.org/evaluations/international-finance-corporation-additionality-middle-income-countries.

INVESTMENT TYPE	NUMBER OF CASES WHERE ISSUES WITH CLIENT COMMITMENT AND CAPACITY WERE IDENTIFIED	FY BOARD APPROVAL	FY COMPLIANCE INVESTIGATION OR APPRAISAL* (FOR CASES WITHOUT INVESTIGATIONS)
Total: 14 of 22 (64%)			

Table 9: Clients with both IFC debt or equity investment and an advisory project (CAO exit cases FY13-FY22)

CLIENT/ CASES	FY INVESTMENT PRODUCT APPROVED	FY ADVISORY PRODUCT APPROVED	REASON FOR IFC ADVISORY PRODUCT	FY CAO COMPLAINT
1	2011	2008	Economic improvements	2017
2	2008	2012	E&S capacity building	2016
3	2013	2013	E&S capacity building	2014
4	1993	2014	E&S capacity building	2017
5	2007	2007	E&S capacity building	2015

Conclusions and recommendations

The findings from CAO's past 10 years of cases relevant to responsible exit reveal some important issues that require attention from both IFC and CAO. Potential solutions to some of the challenges highlighted in this Advisory Note could be trialed in IFC's pilot of its Responsible Exit Principles and in the final Principles and operationalization strategy. Other findings raise questions that require further analysis.

In addition to recommendations for IFC, this section also notes the steps that CAO is taking in response to the findings.

At present, as this report documents, exits can compromise IFC's ability to deliver on the E&S commitments in its mandate. Development outcomes and client compliance with the Performance Standards typically do not occur early in a project. Therefore early exits are likely to undermine IFC's ability to achieve development and other E&S aims. Early exits can also undermine IFC's value proposition by compromising efforts to strengthen client capacity for E&S risk management.

The overall goal of IFC's approach to responsible exit should be to enhance the existing approach and tools for E&S performance with a view to ensuring that investments meet IFC's Sustainability Framework commitments and development aims. Because, after exit, IFC can typically no longer use legal assurances and other forms of contractually derived leverage with the client, all E&S risk mitigation and remediation of Harm must be planned for and executed before exit takes place. In addition, CAO suggests that addressing responsible exit could assist IFC in thinking through and addressing the tension between competing E&S and financial goals that is often manifested in different ways within the institution.

Effective management of E&S risks and a cohesive approach to balancing IFC's multiple aims are especially important as the institution embarks on a new phase, taking on greater risk and deploying additional instruments to help meet the need for global development financing.

In the discusson that follows, CAO presents recommendations to IFC in relation to each key finding derived from our case analysis. Where relevant, it also states the actions that CAO is committed to pursuing.

Recommendations on responsible exit

RECOMMENDATION I: Broaden the scope of projects for which IFC's responsible exit framework is applicable to all IFC investments, throughout their life cycle.

1. **IFC's approach to responsible exit should apply to all investments, regardless of associated risk ratings and whether or not Harm has already materialized.** The objectives and practices of a responsible exit approach are relevant to all investments, and should span the investment life cycle as an integral and ordinary part of investment teams' approach to managing E&S performance.

2. **A responsible exit approach entails actions that must be taken prior to approval of an investment as well as throughout the investment life cycle.** This means IFC's approach to responsible exit should be applied to projects that are undergoing due diligence and have not yet been approved. IFC's pilot approach is limited to active projects. In CAO's view, this limits the effective operationalization of the Principles as well as the key elements of responsible exit identified in the CAO Landscape Study, by excluding practices that should take place prior to project approval and prior to the agreement of legal covenants, terms, and conditions with the client.

RECOMMENDATION II: Identify why early exits take place so commonly during CAO cases and propose to the Board actions that will be taken to address this.

RECOMMENDATION III: Ensure information-sharing, cooperation, and reporting on exits from investments subject to a CAO case.

1. IFC should proactively share information with CAO staff about exits, whether early or regular, IFC- or client-driven, respecting appropriate confidentiality provisions.

2. IFC and CAO should develop guidelines for managing exits for investments with an ongoing CAO case.

3. The guidelines should include an agreed protocol for dealing with the risk of threats and reprisals in a specific case.

4. IFC should report to its Board periodically on the E&S performance of investments where there is a complaint to CAO and an exit has taken place.

5. IFC should identify reasons for early exits while CAO cases are ongoing and discuss with CAO potential actions to address these.

RECOMMENDATION IV: Review, with CAO, the outcomes of implementing new accountability policy provisions for "early resolution" of CAO cases through referrals and deferrals.

RECOMMENDATION V: Assess and strengthen the current approach to stakeholder engagement—both direct engagement and IFC assurance that the client meets engagement requirements.

1. IFC should enhance its outreach to project-affected people and its work with clients to ensure that project-affected people have timely, accessible and up-to-date information regarding the investment and project.

2. IFC should work with the client to ensure that project-affected people have knowledge of all grievance redress options available to them, including CAO.

RECOMMENDATION VI: In making decisions about whether and how to exit, IFC should consider potential threats and reprisals risks for project-affected people.

1. IFC should clearly communicate and uphold its commitment to zero–tolerance commitment for threats and reprisals in the context of exits.

2. In planning for exit, IFC should engage CAO complainants and actions should be taken with their knowledge and input.

3. IFC's approach to responsible exit should detail how the zero-tolerance commitment will be operationalized and how cooperation with CAO will take place in relevant cases.

RECOMMENDATION VII: Client commitment to, and existing organizational capacity for, E&S performance should be a key consideration in the due diligence and supervision of the project.

1. Conduct assessments of client commitment and capacity to manage relevant E&S risks and meet related Performance Standards. Update these periodically in order to identify and respond to changes and challenges and ensure continued progress of the investment toward E&S goals.

2. E&S Action Plans should be costed and client resources to implement them should be secured.

3. Capacity support required by the client commensurate with the project's E&S risks should be planned, documented, and provided by IFC. The results of such support should be documented to inform exit decision-making, which requires an understanding of the client's progress.

RECOMMENDATION VIII: Legal agreements should be used more effectively to ensure clients meet the Performance Standards.

IFC should identify relevant terms and conditions, and assurances that can be included in legal agreements, to hold clients to E&S requirements throughout the life of the project, including at exit. Consider the following:

1. Conditions for first disbursement should include compliance with baseline E&S requirements and subsequent disbursements should be conditional to achieving key milestones toward meeting the Performance Standards. Requirements should be clearly stipulated in the legal terms of the loan agreement.

2. Client prepayment of a loan should be conditional on meeting keystone E&S requirements stipulated in the legal agreement and on client remediation of any adverse impacts.

3. Disbursements should not be completed until key milestones in the ESAP have been achieved. In situations where a disbursement is deemed absolutely necessary for the project to proceed with outstanding ESAP milestones, further disbursements should not be made until those milestones have been reached.

4. In situations of a poorly performing project, IFC should conduct an updated leverage assessment to identify remaining leverage options to help bring the client into compliance. Such an assessment should inform decision-making on whether and how to exit.

RECOMMENDATION IX: IFC should develop a standard approach to considering the institution's different investment aims and to addressing E&S risks in exit decisions and planning.

1. IFC should conduct a pre-exit assessment of the status of ESAP implementation and Performance Standards compliance, as well as an assessment of how exiting will affect E&S risks, adverse impacts, and threats and reprisals. Project-affected people should be engaged during this assessment.

2. IFC should strengthen exit decision-making by considering E&S performance, and document the exit decision in detail, including current E&S performance and any ongoing or future projected impacts as well as the E&S risks and impacts directly related to exit. This documentation should note how the pre-exit E&S assessment findings have been considered, alongside financial goals.

3. Where significant E&S risks are present or adverse impacts have not been remediated, IFC should prepare exit plans in consultation with project-affected communities. Exit plans should include remedial actions to address Harm and actions to manage the significant E&S risks and threats and reprisals, if relevant.

RECOMMENDATION X: Address the core elements of responsible exit—preparation and planning, and addressing existing harm prior to exit—that are currently missing from IFC's draft Principles and pilot.

1. The pilot should include projects at appraisal stage in order to trial practices that strengthen due diligence and effectively identify client capacity and commitment. Once adequate due diligence is conducted, IFC should put measures in place for building client capacity, and use commensurate legal assurances and influence/ leverage with the client.

2. The pilot should provide clarity and details on how the Responsible Exit Principles align with the proposed remedial actions framework to ensure that harm is remediated prior to exit.

Appendix 1. Methodology

The Advisory Note on Responsible Exit is an exploratory analysis to describe CAO's current data on its complaints where exits have taken place.

This study uses a mixed methods approach, considering both quantitative and qualitative data analysis, collected from various primary and secondary sources. Analyses provided in the document do not necessarily confirm any type of causal relation between the exits and the challenges described in the paper.

The aim of this Advisory Note is to prompt questions and describe IFC's institutional approaches to responsible exit by examining three elements: (1) IFC's current responsible exit practices when an exit takes place during an ongoing CAO case; (2) impacts of exits on CAO's practice and capacity to carry out its complaint process, and; (3) how IFC's current approach to responsible exit (Principles and pilot) is able to cover for any gaps and/or weaknesses in current exit practices and institutional frameworks (IFC/MIGA Sustainability Policies).

Data collection and analysis

The main portion of data were collected from a series of databases and documentation owned and produced by CAO. In addition, data was triangulated with IFC confidential information (but disclosed to CAO) and publicly available documentation on projects and investments. To complement the qualitative analysis, unstructured interviews and group discussions with CAO specialists were conducted to obtain key data points regarding certain CAO cases. Furthermore, CAO organized exchanges with IFC/MIGA officials and external stakeholders (civil society organizations, CSOs) to present its preliminary findings and gain better insights on this topic from different perspectives.

Peer review process

In addition to the methodology to collect and analyze data, CAO conducted a peer review process—which included IFC/MIGA staff, representatives of CSOs, and representatives from development agencies—to assess the validity and quality of the content included in the report.

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