

July 29, 2024  
Mr. Mehrdad Nazari  
Director, Independent Accountability Mechanism  
U.S. International Development Finance Corporation  
1100 New York Ave NW, Washington, DC 20527

CC: DFC Board of Directors

**Re: CSO Comments on the DFC IAM Draft Terms of Reference**

Dear Mr. Nazari,

As civil society organizations who support communities to protect their human rights and environment from internationally financed projects, we appreciate the opportunity to comment on the DFC Independent Accountability Mechanism's (IAM) draft Terms of Reference (TOR). Several of us have been engaged in advocacy concerning the DFC (and its predecessor the Overseas Private Investment Corporation or OPIC) for years and have been calling for the full operationalization of the IAM required by the BUILD Act. We are therefore happy to see that this consultation is finally happening.

We also appreciate that the IAM's draft TOR are based on the International Finance Corporation's Compliance Advisor Ombudsman (CAO) policy. The CAO policy is reflective of several best practice recommendations for IAMs.<sup>1</sup> However, the CAO policy has some areas where it falls behind standard practice for ensuring an effective IAM process, and there are other areas of the TOR that need strengthening. In that light, we provide the comments below and the attached redlined edited version of the TOR to ensure that the DFC's IAM facilitates a fair and effective process for addressing community grievances and delivering remedy to communities harmed by DFC's investments.

**Independence**

It is crucial for the IAM to be fully independent from DFC's management, whose actions the IAM is scrutinizing. We are concerned about potential conflicts of interest in Board decisions on the IAM because the DFC CEO is a member of the DFC Board. This is in contrast to the structure of the IFC, where IFC management is not able to participate in decision making on the CAO. In order for the IAM to be truly independent, the DFC CEO must be required to recuse themselves from any decision-making processes concerning the IAM. This includes the hiring and removal of the IAM director, approving the IAM's budget, and approving investigation

---

<sup>1</sup> Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms (2024), <https://www.accountabilitycounsel.org/wp-content/uploads/good-policy-paper-2024.pdf>.

reports and management action plans. The TOR should clearly state that references to the Board in the TOR refer to all of the Board members except for the DFC CEO.<sup>2</sup>

### **Accessibility**

Communities affected by DFC investments must have access to the IAM. Although there are some positive provisions on accessibility in the TOR, the TOR also limits accessibility in very significant ways. First, the TOR restricts complaints on projects prior to Board approval. This is out of step with most IAMs and limits the ability to prevent harm to communities before it happens. Second, the TOR only allows complaints after a DFC exit under “exceptional circumstances.” This ignores the fact that harm to communities can continue after exit and is again contrary to the policy and practice of most other IAMs. Moreover, DFC management would have to agree for the IAM to accept the complaint, which undermines the IAM’s independence. We know that despite DFC policy requiring client disclosure of the IAM to project affected communities, this often doesn’t happen in practice in a satisfactory manner. The restrictive accessibility provisions in the draft TOR will exacerbate these issues, further limiting the ability of communities to access remedy when DFC projects cause harm. The TOR should remove the restriction on complaints filed before Board approval and allow all complaints to be filed up to 2 years after DFC exit or when the communities learned of the harm, whichever is later.

### **Resources**

An IAM must be able to quickly dispense its resources to facilitate its work, including the hiring of consultants and mediators, covering transportation to meetings for community members, hiring translators, producing outreach materials, and implementing a communication strategy, such as maintaining an independent website and social media. Although we appreciate the IAM’s ability to set its own budget, we are concerned that the TOR does not have strong enough provisions to ensure that the IAM has full control over its budgetary decisions. For instance, the IAM must be able to quickly use its resources to respond to the fast-paced nature of IAM work, including the budget flexibility to conduct investigations and mediations in a way that is safe for complainants facing potential threats and reprisals. This may require exceptions to typical DFC procurement processes. In order to guard the predictability and stakeholder confidence in the mechanism, we call for the TOR to strengthen the provisions on how the IAM can use its resources.

### **Remedy**

The aim of any IAM process is for harm to communities to be fully remedied and livelihoods restored. Thus, remedy must be a key component of the IAM’s mandate. The “Purpose” and

---

<sup>2</sup> This firewall is particularly important given recent reporting of alleged retaliation against whistleblowers at the DFC. See Project on Government Oversight, “Grudges” and Whistleblower Reprisal at a Development Agency (June 11, 2024), available at <https://www.pogo.org/investigations/grudges-and-whistleblower-reprisal-at-a-development-agency>.

“Mandate” sections of the TOR should include language to clarify that facilitating remedy is a core objective of the IAM, in addition to promoting accountability and learning. In fact, adding such language would bring the TOR closer in line with the CAO policy, which states that “in executing its mandate, the CAO facilitates access to remedy for Project-affected people manner that is consistent with the international principles related to business and human rights included within the Sustainability Framework.”<sup>3</sup>

Additionally, the DFC needs an established remedy framework to ensure that harms identified through the IAM’s processes are fully remedied. Such a framework should include details on how the DFC and its clients will ensure that resources are available for remedy. As demonstrated by the experience of communities in Liberia harmed by OPIC’s investments in Buchanan Renewables, if an IAM process does not result in real remedy, communities will continue to [suffer](#). Along with a remedy framework, DFC needs a responsible exit framework that would detail how DFC would ensure that harm is addressed before DFC exit. We call on the DFC to ensure that these frameworks are developed as soon as possible and are developed through a robust public consultation process.

Again, we thank you for the opportunity to comment on the draft TOR and look forward to continued engagement with your office to ensure that communities receive justice and remedy.

Sincerely,

Accountability Counsel – Global  
African Law Foundation (AFRILAW) – Nigeria  
Bank Information Center – United States  
Buliisa Initiative for Rural Development (BIRUDO) – Uganda  
Center for International Environmental Law – United States  
Friends of the Earth U.S. – United States  
Friends with Environment in Development – United States  
Fundación CAUCE: Cultura Ambiental - Causa Ecologista – Argentina  
Fundeps – Argentina  
Global Labor Justice – United States  
Inclusive Development International – United States  
Instituto Maíra – Brazil  
Jamaa Resource Initiatives – Kenya  
Lumière Synergie pour le Développement – Senegal  
MenaFem Movement for Economic Development and Ecological Justice – Morocco

---

<sup>3</sup> IFC/MIGA Independent Accountability Mechanism (CAO) Policy, para. 5 (2021)

Narasha Community Development Group – Kenya  
Peace Point Development Foundation (PPDF) – Nigeria  
Publish What You Fund – United Kingdom  
Recourse – Netherlands  
Sustentarse – Chile  
Transparentem – United States  
Witness Radio – Uganda

**Attached: Redlined edits of the Draft TOR**

# Draft Terms of Reference for the Independent Accountability Mechanism of the U.S. International Development Finance Corporation

---

May 30, 2024



**CONTENTS**

GLOSSARY .....ii

SECTION I- BACKGROUND .....1

SECTION II- PURPOSE .....1

SECTION III- MANDATE AND FUNCTIONS .....3

SECTION IV- CORE PRINCIPLES.....3

SECTION V- GOVERNANCE.....4

SECTION VI- ACCESS TO INFORMATION AND DISCLOSURE .....6

SECTION VII- SUBMITTING A REQUEST AND SCREENING FOR ELIGIBILITY .....7

SECTION VIII- ASSESSMENT .....12

SECTION IX- PROBLEM SOLVING .....14

SECTION X- COMPLIANCE REVIEW .....17

SECTION XI- ADVISORY .....25

SECTION XII- THREATS AND REPRISALS .....26

SECTION XIII- OUTREACH AND COMMUNICATION .....27

SECTION XIV - COOPERATION WITH OTHER IAMs .....29

SECTION XV- REVIEW OF POLICY .....29

SECTION XVI- MISCELLANEOUS.....29

## GLOSSARY

Capitalized terms used in this Policy have the following meanings:

**Active Project:** A Project approved by the Board, including delegated approval, ~~for which the DFC Exit has not yet occurred.~~ Projects include DFC support provided through insurance, reinsurance, equity, technical assistance, direct loans or loan guarantees, including support through financial intermediaries. Projects also include projects under consideration for DFC support.

**Formatted:** Normal (Web), Left, Indent: Left: 0.18", Hanging: 0", Right: 0.1", Space Before: 10.95 pt, Line spacing: single

**Commented [CSO1]:** Language reflects 2014 OA Procedures

**Commented [CSO2]:** Language based on para. 20 of GCF IRM's procedures

**Affected Stakeholders:** Members of project-affected communities or workers, including subcontracted workers or workers without permanent employment contracts, at DFC-supported Projects who believe they are or could be harmed by the environmental or social (including human and labor rights) effects of a Project or Sub-Project. This term does not include commercial competitors to the Project or Sub-Project.

**Applicable Standards:** As defined on a project-by-project basis, including the IFC Performance Standards, applicable EHS Guidelines, and Labor Rights.

**Board:** DFC Board of Directors. Although a member of the DFC Board of Directors, the DFC CEO must recuse themselves from decision making processes on the IAM. All references to the Board in this document refer to all of the Board members except the DFC CEO.

**Build Act of 2018** – Better Utilization of Investments Leading to Development Act of 2018. The BUILD Act, Div. F of P.L. 115-254, 22 U.S.C. §9612 *et seq.*<sup>1</sup> is the governing legislation for DFC.

**Business Days:** Any day that is not a Saturday, Sunday, U.S. Federal holiday, or other day on which the DFC headquarters remain closed.

**CEO:** Chief Executive Officer of DFC.

**Client:** The direct recipient or prospective recipient of DFC support, including FIs.

**Complainant(s):** Either the Affected Stakeholder(s) or the Client identified in a request to the IAM. Requester may be represented by a Representative. The terms Requester(s) and Complainant(s) are used interchangeably in this TOR.

**Commented [CSO3]:** We recommend either using the term complainant or requester for simplicity's sake. It is confusing to use both terms.

**DFC Exit:** With respect to any Project, the earlier of (i) the termination of negotiations or contracts with the Client for such Project; or (ii) when the Project ceases to exist, or the Project has fully repaid or written off or insurance coverage has lapsed.

**Environmental and Social (E&S) Requirements:** The Applicable Standards and the applicable provisions of this ESPP.

**Environmental and Social Policy and Procedures (ESPP):** DFC's commitments for environmental and social screening, review, risk mitigation, and monitoring that will help ensure the environmental and social sustainability of DFC-supported projects (2024).

**FI:** Financial Intermediaries, which are vehicles or entities that provide debt to, make equity investments in, or provide financial services to eligible Sub-projects.

**FOIA:** Freedom of Information Act.<sup>2</sup>

**Harm:** Any material adverse environmental and social effect on people or the environment

resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future.

---

<sup>1</sup> <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter103&edition=prelim>

<sup>2</sup> <https://www.dfc.gov/foia>



**IAM:** DFC’s independent accountability mechanism, known also as the Office of Accountability.

**IAM Network:** The Independent Accountability Mechanisms Network<sup>3</sup> (IAMnet) is a partnership of dedicated practitioners at international and bilateral financial institutions who build institutional capacity on accountability and compliance for improved corporate governance and development impact. [The DFC IAM is a member of IAMnet.](#)

**IFC:** International Finance Corporation.

**Implementation Document:** DFC’s Board approved implementation document establishing DFC’s IAM (2020)<sup>4</sup> or any amendments or successor documents.

**Internationally Recognized Worker Rights:** The term, as specified in the Trade Act of 1974 (as amended), includes: (1) the right [to freedom](#) of association; (2) the right to organize and collective bargaining; (3) prohibition on forced labor and the worst forms of child labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.

**Labor Rights:** Rights of Workers, which includes Internationally Recognized Worker Rights, and protection from discrimination with respect to employment and occupation on the basis of personal characteristics that are unrelated to inherent job requirements such as: race; color; social, indigenous, ethnic, or national origin; migrant status; health status (including HIV status or genetic background); marital, family, or social status; sex or gender (including gender identity or expression and sexual orientation); political opinion; affiliation or non-affiliation to a workers’ organization; disability (including physical or mental disability); religion or belief; age; or other disadvantaged or vulnerable status. Special measures of protection or assistance taken in order to remedy past discrimination will not be deemed discrimination for purposes of this definition.

**Management:** The management of DFC.

**MAP:** DFC Management Action Plan developed in response to IAM findings.

**Operational Guidelines:** The U.S. Overseas Private Investment Corporation (OPIC) Office of Accountability’s Operational Guidelines Handbook for Problem-Solving and Compliance Review Services, dated 2014.

**OOA:** DFC’s Office of Accountability to be renamed IAM.

**OPIC:** The U.S. Overseas Private Investment Corporation, DFC’s predecessor.

**Other DFC Policies:** [Policies relevant for a compliance investigation including \(non-exhaustive\): DFC’s statutory provisions such as the BUILD Act, subsections \(g\), \(l\), \(m\), and \(n\) of section 237 of the Foreign Assistance Act of 1961, as amended, and relevant report language; ·DFC’s procedures manual that explains how DFC implements the ESPP; Impact Quotient; Development](#)

Strategies; Risk Policies; Transparency Policy; Board Stakeholder Engagement Policy; Climate Change Policy; International Energy Engagement Guidance pursuant to “Executive Order on Tackling the Climate Crisis at Home and Abroad” (E.O. 14008) that implements the direction on “ending international financing of carbon-intensive fossil fuel-based energy”; U.S. International Climate Finance Plan; DFC Climate Action Plan Under Executive Order 14008; Clean Energy Transition Partnership (also known as the Glasgow Statement)

**Parties:** The Affected Stakeholder(s) and the Client(s) and/or Sub-Client(s).

**Performance Standards:** IFC Performance Standards on Environmental and Social Sustainability.

**Public Registry of Cases:** A case management system maintained by the IAM providing searchable, user-friendly, publicly accessible, web-based register of cases made accessible through the IAM’s webpages.

<sup>3</sup> <https://accountability.worldbank.org/en/iamnet>

<sup>4</sup> [https://www.dfc.gov/sites/default/files/media/documents/BDR\(20\)45\\_IndependentAccountabilityMechanism.pdf](https://www.dfc.gov/sites/default/files/media/documents/BDR(20)45_IndependentAccountabilityMechanism.pdf)

Formatted: Indent: Left: 0"

**Representative:** Any individual(s) or organization(s) who Requesters elect, as demonstrated with written proof provided to the IAM (such as a letter signed by the Requester), to represent them for a case handled under this TOR. [Legally elected and representative trade unions may act as a Representative for any case submitted by or on behalf of workers affiliated with or otherwise represented by the union.](#)

**Requester:** Either the Affected Stakeholder(s) or the Client identified in a request to the IAM. Requester may be represented by a Representative. The terms Requester(s) and Complainant(s) are used interchangeably in this TOR.

**Sub-Client:** A business directly supported by an FI Client that is within the use of proceeds requirements in DFC's finance or investment documents, or contract of guarantee.

**Sub-Project:** A business operation of a Sub-Client within the use of proceeds requirements in DFC's finance or investment documents, or contract of guarantee, [which includes those projects receiving support through DFC-supported financial intermediaries.](#)

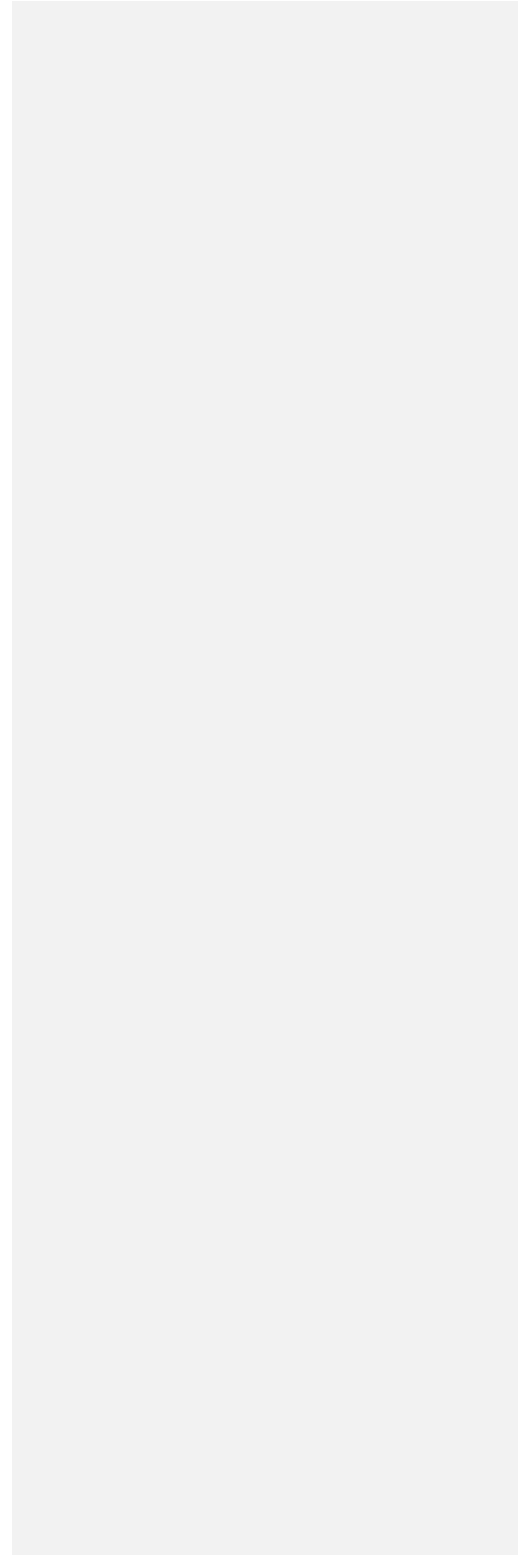
**Terms of Reference (TOR):** IAM's Terms of Reference, approved by DFC Board of Directors, that establishes the IAM's mandate and operational procedures.

**Threats and Reprisals:** In connection with IAM pursuing its purposes, any detrimental act suggested, threatened, or taken, directly or indirectly, against a person to silence or punish him or her, prevent interaction with IAM or prevent the submission or continued processing of a complaint. Forms of Threats and Reprisals include attempts at intimidation, harassment, discriminatory treatment, withholding of entitlement, risks to livelihood or reputation, and threats of [employment termination or retaliatory subcontracting](#), physical violence, criminalization, or incarceration.

**Transparency Policy:** DFC's Transparency Policy outlines the principles that guide proactive public disclosure of programmatic and project-related information, as well as the scope and type of information and data that are routinely disclosed<sup>5</sup>.

---

<sup>5</sup> <https://www.dfc.gov/our-impact/transparency>



## SECTION I - BACKGROUND

1. In 2020, the U.S. International Development Finance Corporation (DFC or Corporation) established an Independent Accountability Mechanism (IAM)<sup>6</sup> to implement the requirements of 22 U.S.C. § 9614. In accordance with that law and Article VI of the Bylaws adopted by the DFC Board of Directors (Board), the functions of the IAM will be to:
  - (1) annually evaluate and report to the Board and Congress regarding compliance with environmental, social, labor, human rights, and transparency standards, consistent with Corporation statutory mandates;
  - (2) provide a forum for resolving concerns regarding the impacts of specific DFC-supported projects with respect to such standards; and
  - (3) provide advice regarding DFC projects, policies, and practices.

In establishing an IAM, DFC has reflected upon the best practices among numerous international financial institutions (IFIs) and bilateral investment and export assistance organizations to provide an effective mechanism for addressing concerns regarding the social and environmental impacts of proposed projects.

## SECTION II - PURPOSE

2. Purposes and Objectives. The DFC has identified several broad goals it hopes to achieve through its IAM. An IAM will improve DFC's effectiveness in fulfilling its mission by ensuring compliance with DFC requirements and enhancing information flow between locally impacted communities and their representatives, project sponsors and decision-makers. The DFC also expects to benefit from the independent advice that an IAM will be able to provide.
3. Access to the IAM. In light of the experiences at other IFIs and its own structure within the U.S. Government, the DFC has identified four primary categories of users of the mechanism: (1) impacted communities and people in the host country; (2) their representatives; (3) project sponsors; and (4) Board and DFC Management. Access to the mechanism is different for each of the IAM's core functions (compliance review, problem-solving, and advisory).
4. In general, locally impacted communities and their representatives are the primary categories of potential users for both the compliance review and problem-solving functions. Locally impacted communities are often the group with the least effective means for being heard at IFIs, and the projects impact their lives the most. Project sponsors may also benefit from a neutral problem-solving mechanism available to them on a voluntary basis.
5. Outreach to Eligible Stakeholders. The IAM will ensure that project-affected stakeholders have information about how to access its services and complaint process. The DFC will assist the IAM in carrying out its outreach efforts, including requiring clients and sub-clients (for financial intermediary projects) to disclose the existence of the IAM to project-affected communities in a

culturally appropriate, gender sensitive, and accessible manner, including in a local language (in written and non-written forms), ensuring that a broad swath of impacted communities are made aware. The existence of the IAM and how to contact it will be included in appropriate project documents.

6. Threats and Reprisals. The IAM will not tolerate retaliation against complainants or any other individuals involved in an IAM process or outreach activity and will reject any form of threat, intimidation, harassment, violence or discrimination based on the fact that they have exercised their right to raise concerns.
7. Scope of the Mechanism. The Compliance Review function is aimed at ensuring that the DFC has complied with applicable statutes, rules, policies, and procedures, particularly those meant to protect the interests of affected communities including, for example, environmental, human rights, labor, transparency, and other development-related policies or rules, including internationally recognized individual, worker, and community rights and protections. The Advisory function is intended to be less complaint-driven and more derived from the IAM's experiences and lessons learned. In this respect, the most effective triggers will be those from the Board or senior DFC Management. Other stakeholders could raise suggestions for policy reviews or advisory processes through a simple letter to the Board and/or DFC CEO.
8. Exclusions. Some types of claims may need to be specifically excluded, including for example: claims that do not involve the DFC responsibilities; claims raising issues already decided in previous claims; claims relating to procurement decisions or the selection of consultants; claims meant primarily to harass a business competitor or to otherwise gain competitive advantage; claims based solely on allegations that the existing policy framework is inadequate; and, claims under the jurisdiction of the DFC Inspector General (including claims of fraud, corruption, etc.).
9. Employment Status, Selection, and Lines of Reporting. The DFC is subject to the relevant rules and regulations governing hiring in the U.S. government. Within those rules, the DFC must balance several factors, including the need to: ensure the IAM's independence; attract high-level applicants; provide sufficient status at the agency; and, fit within the DFC's budget and employment practices. The IAM shall have full ability to employ consultants and bring in expertise as needed to respond to specific requests, subject to approval by the Board in consultation with DFC Management. As set out in Article VI of the Bylaws of the DFC, the head of the office responsible for fulfilling the functions of the IAM shall be appointed by the Board, report directly to the Board, and be removable only by a majority vote of the Board.
10. Authorities and Remedies. The IAM is empowered to receive and investigate claims from stakeholders regarding all of DFC's operations, including activities co-financed with development finance institutions, to draw independent conclusions and undertake conflict resolution and mediation, as appropriate, and, to make recommendations regarding the DFC's compliance or future steps to resolve the conflict. The IAM has the necessary authorities to perform its work, including the ability to review all documents relating to the project, to interview staff that worked on the project, and to conduct site visits, including after an Exit when the site visit relates to a current and eligible claim at the IAM.
11. Reporting and Transparency. Maximizing transparency and information disclosure of the

**Commented [CSO4]:** Added because of the paragraph below on exclusions... if the existing bank policy framework tolerates non-compliance with fundamental labor rights or other internationally recognized rights/protections (either explicitly or in practice), then there should be space to raise the material impacts of that failure in the mechanism.

**Commented [CSO5]:** What if the consultant has a conflict of interest or a history of bad behavior?

**Commented [CSO6]:** An IAM should have the ability to freely hire needed consultants without Board approval and consultation with management.

compliance review process is critical for the IAM's credibility and public confidence in the process. The DFC thus expects that, wherever possible, findings of the IAM will be made public during the process, making sure to protect the confidentiality of complainants if so requested, subject to the DFC statutory responsibilities, including provisions of both the Trade Secrets Act, the Freedom of Information Act (FOIA), and the Privacy Act.

## SECTION III - MANDATE AND FUNCTIONS

12. The IAM's mandate is to:
- a. Facilitate the resolution of Requests or Complaints from people who may be affected by Projects or Sub-Projects in a manner that is fair, objective, and constructive;
  - b. Enhance the environmental and social outcomes of Projects or Sub-Projects; and
  - c. Foster public accountability and learning to enhance the environmental and social performance of DFC, and reduce the risk of harm to people and the environment.

e. In facilitating its mandate, the IAM facilitates access to remedy for project-affected people in a manner consistent with international principles related to business and human rights, including the UN Guiding Principles on Business and Human Rights.

Formatted: Normal, No bullets or numbering

Commented [CSO7]: Based off IFC CAO Policy Para. 5

Formatted: Font: 12 pt

13. IAM operates through three complementary functions, which all contribute to delivering on this mandate:

- a. **Problem-solving function:** IAM helps resolve issues raised about the environmental and/or social impacts of Projects and/or Sub-Projects through a neutral, collaborative, problem-solving approach and contributes to improved outcomes on the ground.
- b. **Compliance function:** IAM carries out reviews of DFC's compliance with the ESPP, and other DFC policies, assesses related Harm, and recommends remedial actions to address non-compliance and Harm where appropriate.
- c. **Advisory function:** IAM provides advice to DFC and the Board with the purpose of improving DFC's systemic performance on environmental and social sustainability and reducing the risk of harm.

Commented [CSO8]: The scope of compliance review is inappropriately narrow. There are several other policies that DFC uses to guide its work, and compliance review should examine compliance with those policies as well.

IAM's authority does not extend to review of any entity other than DFC, such as Clients and public authorities. Nor does compliance review authority extend to allocating responsibility for harm among DFC, the Client, or others. IAM has no authority with respect to judicial processes. IAM is not a judicial or legal enforcement mechanism, nor is IAM a substitute for courts or regulatory processes, ~~and IAM's analyses, conclusions, and reports are not intended or designed to be used in judicial or regulatory proceedings or for purposes of attributing legal fault or liability.~~

Commented [CSO9]: This is legal mumbo jumbo and not enforceable in court.

If, based on the available information, the IAM Director determines that serious irreparable harm may result from the continued execution of a DFC-supported project, the IAM Director may recommend to the Board that DFC take interim measures pending completion of the IAM process. Such interim measures could include suspending financial disbursements or taking other steps to bring DFC into compliance with its social and environmental commitments, or to address the imminent harm. The IAM Director will endeavor to consult potentially affected people on these measures, depending on time and related constraints.

Commented [CSO10]: Language based on para. F(19) of the IDB MICI Policy and para. 13 of the UNDP SECU policy.

## SECTION IV - CORE PRINCIPLES



14. The IAM carries out its work guided by the following core principles:

- a. **Independence and impartiality:** As independence and impartiality are prerequisites to encourage stakeholders' trust and confidence in the IAM: not being identified with or beholden to any sector or interest and operating independently of Management, reporting directly to the Board; conducting work without undue influence and ensuring the fair and objective conduct of staff; and making provisions to avoid conflicts of interest.
- b. **Transparency:** Making every effort to keep Parties informed about processes and the progress of a complaint, and ensuring transparency and disclosure of IAM reports, including findings and outcomes, while protecting the confidentiality of complainants if so requested and disclosing the existence of the IAM to affected communities in an inclusive and accessible manner.

- c. **Accessibility:** Being known, accessible, and available to all stakeholders; mitigating barriers of access and promoting safe access through confidentiality and reprisal risk provisions; providing a process [hat is inclusive and](#) responsive to gender [and sexual minorities](#) and disabilities; and communicating effectively with stakeholders to enhance their understanding of the IAM.
- d. **Responsiveness:** Being flexible, timely, and solutions-driven while considering disparities in power and resources between Parties.
- e. **Fairness and equitability:** Carrying out IAM processes so that all relevant stakeholders are able to participate and be heard; have reasonable access to information, advice, and expertise; and are treated respectfully on fair, equitable, and informed terms [with an emphasis on allowing the concerns of local communities to be heard so as to fulfill DFC's development mandate](#).
- f. **Predictability:** Offering clear and consistent processes and procedures with relevant timeframes and providing clarity with respect to the types of available outcomes and means of monitoring implementation to facilitate stakeholders' understanding and expectations of such processes and procedures.
- g. **Consistency with good practice:** Following international good practice standards consistent with this TOR, including the responsibility of business to respect human rights.
- h. **Continuous learning:** Consistently enhance IAM's effectiveness based on feedback from stakeholders, foster systemic improvements in the environmental and social performance of DFC, and reduce the risk of harm to people and the environment.

## SECTION V - GOVERNANCE

### Director, Independent Accountability Mechanism

15. The IAM will be led by a Director, as follows:

#### *Roles and responsibilities*

16. The DFC is subject to the relevant rules and regulations governing hiring in the U.S. government. As set out in Article VI of the Bylaws of the DFC, the head of the office responsible for fulfilling the functions of the IAM shall be appointed by the Board, report directly to the Board, and be removable only by a majority vote of the Board. The Director is responsible for the implementation of the TOR, managing IAM's operations, and making decisions pursuant to this TOR. The IAM shall have full ability to employ consultants and bring in expertise as needed to respond to specific requests, subject to approval by the Board in consultation with DFC management for administrative matters.

#### *Pre-employment conditions*

17. To preserve IAM's independence, credibility, and integrity, candidates for the IAM Director position will be external to the DFC, with the exception of any IAM staff who may apply for the IAM Director position. Current or former DFC Management and staff (other than IAM

staff) may not be candidates for the IAM Director position or serve as IAM Director until ~~five~~two

**Commented [CS011]:** The recommendation for 5 years is based off of para. 84 of the AfDB IRM's policy

years have elapsed since the end of their service with the DFC.

***Experience and credentials***

- 18. The IAM Director will be a person of integrity and credibility, strong interpersonal skills, empathy, sound judgment, and a proven record of respected international leadership. The Director will possess highly developed diplomatic, negotiating, and communication skills. S/he will have significant experience in institutional oversight, recourse and accountability functions, including grievance mechanisms, applying the multidisciplinary principles and practices of environmental and social impact assessment, safeguard policies and best practices of international financial institutions, compliance review and assurance, and mediation. The Director will also have experience in developing countries and/or emerging markets.

***Selection process***

- 19. The selection process will be determined by the Board and administratively supported by Management, in line with relevant rules and regulations governing hiring in the U.S. government. The selection committee will not include DFC management and will include at least two members of civil society and one member representing a global trade union.

Commented [CSO12]: See para. 15 of the CAO policy

***Term and renewal***

- 20. The IAM Director will be appointed for a ~~three~~two-year term initially, renewable for additional ~~three~~two-year terms at the discretion of the Board. The IAM Director will be barred from seeking employment for other positions at DFC permanently ~~for a period of five (5)~~ years.

Commented [CSO13]: Longer terms allow for more institutional memory

Commented [CSO14]: See CAO policy para. 18

***Immunities and compensation***

- 21. The IAM Director is an administratively determined, senior-level employee, and compensated accordingly. The performance review of the IAM Director is managed under the oversight of the Board.

***Conflict of Interest***

- 22. If the IAM Director has a conflict of interest about a particular case, he/she will propose to the Board and Management (for administrative purposes) how to manage such conflicts or withdraw from involvement in that case.

***Removal***

- 23. The IAM Director is removable for cause only by a majority vote of the Board.

***Budget***

- 24. The IAM will be adequately resourced to carry out its activities. The IAM Director will prepare an annual itemized budget identifying a sufficient level of resources to ensure that IAM can carry out all of the roles, responsibilities, and activities set out in this TOR in an effective way, including its strategy, communications, and human resources activities. The IAM Director will be responsible for determining the allocation of resources within IAM, including appropriate staffing and

Formatted: Normal (Web), Indent: Left: -0.07", Hanging: 0.25", Right: 0.1", Space Before: 2.3 pt, No bullets or numbering, Tab stops: Not at 0.5"

recruitment of consultants and experts. Due to the often fast-moving nature of the IAM's work, the IAM Director will have the ability to expediently use the allocated funds in a timely manner, including spending allocated funding directly on case expenditures without Board oversight.

#### Access to Legal Counsel

If requested by the IAM director, the General Counsel of the DFC or a counsel designated by the General Counsel will provide legal advice to the IAM on the DFC's rights and obligations and DFC operational policies and procedures relevant to a request. The IAM director may also seek external legal advice on a request-related matter or with regard to any other matters concerning the IAM. Where legal issues are materially relevant to the findings or recommendations of the IAM in a report to the Board, those issues (including any legal advice) will be included in the IAM's report to the Board. With respect to interpretation of its procedures, the IAM will apply the procedures as it understands them, subject to the Board's review.

**Commented [CSO15]:** Language adapted from para. 100 of the GCF IRM policy. Similar language can also be found in para. 97 of the AfDB IRM policy.

### Staffing

~~25~~<sup>24</sup>. The IAM Director manages any IAM staff, to whom applicable DFC Human Resources policies and procedures apply. The credibility of IAM staff and consultants is critical to IAM's work. If the IAM Director, staff or consultant has a conflict of interest about a particular case, that person will withdraw from involvement in that case. In exceptional circumstances, contractual arrangements for IAM consultants may impose time-bound restrictions on their future involvement with DFC.

### Accountability and Reporting

~~26~~<sup>25</sup>. IAM is accountable to and reports directly to the Board and the U.S. Congress.

~~27~~<sup>26</sup>. IAM provides regular updates regarding activities to the Board and the U.S. Congress. IAM case reports, advisory work, and annual reports are all made publicly available. Although IAM reports to the Board, IAM communicates with the CEO and Management as relevant or requested.

## SECTION VI - ACCESS TO INFORMATION AND DISCLOSURE

### Access to Information

~~28~~<sup>27</sup>. DFC will cooperate to provide IAM 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 IAM Director reasonably considers relevant for carrying out IAM's role under this TOR.

Commented [CS016]: Good provisions

~~29~~<sup>28</sup>. Financing or advisory agreements, and contracts of guarantee between DFC and their Clients will include obligations for the Clients to permit IAM to (i) have access to the Clients' records relating to the Project, and in the case of FI Clients, such FI Clients' records relating to relevant Sub-Clients and relevant Sub-Projects, and (ii) visit and inspect the Project, for the purpose of carrying out the IAM's role under this TOR, upon reasonable prior notice to the Clients, and subject to any applicable laws and regulations.

Commented [CS017]: Strongly support this language!

### Disclosure

~~30~~<sup>29</sup>. In carrying out its work, IAM will apply a presumption in favor of disclosure of environmental and social information, and at the same time, maintain the confidentiality of sensitive commercial information, to the extent permitted by applicable law and regulation.

~~31~~<sup>30</sup>. The IAM may disclose information gathered during its activities, subject to applicable laws, and other applicable requirements. If necessary and unavailable through other sources, an IAM report may, ~~subject to the escalation procedure in paragraph 32 below,~~ summarize relevant non-public environmental or social information ~~following consultation with Management.~~

~~32~~<sup>31</sup>. Any issue of access or disclosure should be discussed between the IAM Director and DFC General Council with a view to resolution. If the issue is not resolved, including whether any information is confidential and whether and how it can be disclosed or protected, it will be referred to the ~~DFC Inspector General Board, DFC General Counsel (in his/her institutional capacity),~~ and the IAM Director for resolution (within 15 days).

## SECTION VII - SUBMITTING A REQUEST AND SCREENING FOR ELIGIBILITY

### Submitting a Request or Complaint

#### *Who may submit a request or complaint*

3332 Affected Stakeholders, comprising one or more members of project-affected communities and workers at DFC-supported Projects who believe they are or could be harmed by the environmental or social (including human and labor rights) effects of a Project or Sub-Project. Affected Stakeholders can select and be represented by a Representative. This term does not include commercial competitors to the Project or Sub-Project.

#### *How to submit a request or complaint*

3433 Requests or complaints should be submitted in writing, preferably via electronic mail to [accountability@dfc.gov](mailto:accountability@dfc.gov), and may be presented in any language. Requests or complaints may also be sent or delivered to the IAM office in Washington, D.C. The IAM ~~does not~~ accepts anonymous Requests or Complaints. ~~However, a~~ A Requester or Complainant may request confidentiality to the IAM in writing, recognizing that requesters may face reprisals and other dangers posed, and there may be few recourse options available through local judicial systems and distrust of institutional authorities. Generally, the IAM will maintain this confidentiality unless the IAM determines that disclosure is unavoidable during the course of an investigation, or as otherwise required by applicable law or regulation. The IAM cannot guarantee confidentiality due to, for example, the non-secure nature of electronic mail systems.

**Commented [CS018]:** The 2024 U.S. National Action Plan on Responsible Business Conduct includes a commitment from DFC to "ensure existing DFC complaints mechanism procedures enable anonymous complaints." <https://www.state.gov/wp-content/uploads/2024/03/2024-United-States-Government-National-Action-Plan-on-Responsible-Business-Conduct.pdf> The IAM procedures should reflect this commitment as well. Communities do not trust the U.S. government to keep their identities safe.

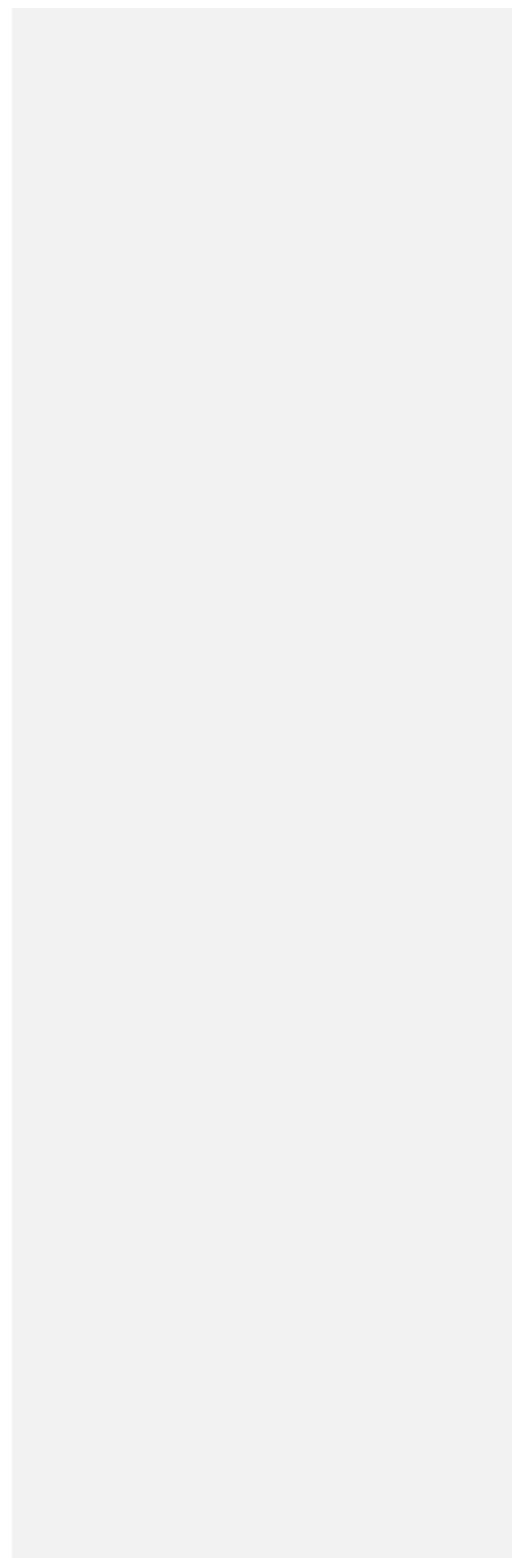
#### *What to include in a request or complaint*

3534 Requests or complaints may relate to environmental and social harm regarding any aspect of the planning, implementation, or impact of a Project or Sub-Project. While Requesters or Complainants are encouraged to provide as much of the information requested as possible to facilitate IAM understanding, lack of information will not prevent IAM from reviewing a request or complaint. This is in recognition that Affected Stakeholders are likely to be constrained by asymmetric information and subject to fundamental power imbalances that limit their capacity to collect relevant data.

3635 Although there are no formal requirements for submitting a request or complaint to the IAM<sup>s</sup>, Requesters or Complainants are encouraged to provide the following information:

- a. The Requester's or Complainant's name(s), address, and other contact information.
- b. If the party submitting a request or lodging a complaint is doing so on behalf of a Project-affected person(s), such party should identify on whose behalf the complaint is made, but specific names or identifying information are not required in order to protect the safety of impacted communities. Such party should also present evidence that it has been requested to present the complaint on behalf of the Project-affected person(s).
- c. If the Requester or Complainant wishes that IAM keep their identity, or any information communicated as part of the complaint confidential.

- d. The identity and nature of DFC's Project or Sub-Project.
- e. A statement of how the Requester or Complainant believes they have been, or may be, harmed by the Project or Sub-Project.





3736. In addition, the Requester or Complainant may wish to provide information on the following:

- a. Whether anything has been done by the Requester or Complainant to attempt to resolve the issue of concern, including any contact with DFC staff, the Client, Sub-Client, or the host government, and what aspects have been resolved and which remain unresolved.
- b. How the Requester or Complainant thinks noncompliance with DFC's Environmental and Social Policies and Procedures, may have occurred, without the need to specify particular policies, guidelines, or procedures.
- c. A clear statement of results that the Requester or Complainant views as the most desirable outcome of the process.
- d. Any other relevant facts, supporting documents, or other relevant materials.

3837. On request, IAM will provide guidance on how to submit a request or lodge a complaint without providing advice regarding the substance of the complaint. The IAM website includes a model complaint letter and/or similar other guidance. Potential complainants may also contact IAM for clarification before lodging a complaint.

#### **Screening a Request or Complaint for Eligibility**

##### *Eligibility criteria and considerations*

3938. The first step that the IAM takes after receiving a request or complaint is to acknowledge its receipt within five (5) business days. Requests submitted by DFC's Board or CEO are deemed eligible upon receipt by IAM, subject to limitations linked to IAM's overall mandate and approach. After acknowledgment of the request or submission or complaint received from Affected Stakeholders or Clients, including through their duly appointed representatives, IAM will screen the request or complaint against the eligibility criteria listed in paragraph 40. If the complaint is not clear, the IAM will seek additional information or clarification from the Requester or Complainant. The IAM's eligibility decision does not constitute a judgment on the merits of the complaint.

4039. The IAM will deem the request or complaint eligible if:

- a. The complaint relates to an **Active Project** (see exceptions noted in paragraph 52);
- b. The issues raised in the request or complaint pertain to IAM's mandate to address environmental and social impacts of Projects; and
- c. The Requester or Complainant is or may be affected by the harm raised in the complaint.

4140. Requesters or Complainants and Clients/Sub-Clients are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible. Within the scope of their respective mandates, IAM and DFC are committed to facilitating the early resolution of complaints.

4241. After determining a request or complaint to be eligible, IAM will enquire (a) whether good faith efforts have been made by the Requesters or Complainants with DFC and/or the Client or Sub- Client to address the issues raised in the request or complaint or (b) if such efforts were not undertaken, why.

In the event the IAM understands that the Requester or Complainant has not made any good faith efforts with DFC or the Client or Sub-Client, IAM will establish whether the Complainant wishes to refer the complaint to DFC or the Client or Sub-Client. In the event the Requester or Complainant does, the IAM will refer such request or complaint to DFC and/or the Client or Sub-Client, and the IAM will continue to track the case. Complainants who have decided to pursue their complaint with DFC and/or the Client or Sub-Client may notify IAM at any time of their desire to resume the processing of the complaint by IAM in accordance with this TOR. In the event no such good faith efforts were made, and the Complainant still wishes to pursue a request or complaint with IAM, IAM will record the Requester's or Complainant's response that no such good faith efforts were made to address the issues raised in the request or complaint.

If the IAM decides to reject the complaint on the basis of its eligibility criteria, the IAM will close the file on the request or complaint and inform the Requester or Complainant in writing of this decision within 20 Business Days.

4342. Requesters and Complainants are permitted to refile a previously ineligible complaint where they present new information.

***Additional eligibility criteria for specific complaint types***

4443. In addition to the eligibility criteria in paragraphs 40-43 above, the criteria below will apply to the following types of requests or complaints:

- a. ~~For requests or complaints pertaining to FI Sub-Projects, whether: (1) the complaint pertains to a Sub-Project within the scope of the financial product being offered to an FI or guaranteed under the applicable financing agreement or contract of guarantee (e.g., if DFC is providing equity or financial support of a general purpose or is providing a non-commercial risk guarantee in relation to an investment in the FI, or the Sub-Project is within any ringfence that DFC contractually established with the FI or its guarantee holder); (2) there is a material link between the FI Client and its active Sub-Client that is the subject of the complaint (considering factors including the nature of the financing or guarantee, the share, type, and tenor of the FI investment/debt exposure to the Sub-Project); and (3) there are indications of a plausible link to harm or risk of harm to the Complainant related to the Sub-Project.~~
- b. For complaints pertaining to primary suppliers or high-risk supply chains (as such term or any successor terms are understood under the ESPP, including the IFC Performance Standards), whether: (1) the complaint pertains to the supplier's activities and impacts directly related to its role in supplying the Client/Sub-Client, and (2) the activities and impacts in question are linked to the Client's environmental and social responsibilities.
- c. Complaints relating to subcontractors of the primary supplier will only be eligible to the extent they meet the two conditions set forth in b) above, and, in addition, the

**Commented [CSO19]:** It seems like it could only be used by sub-projects to get out of addressing concerns through the IAM

Client/Sub-Client had a responsibility to ensure that its primary suppliers managed the subcontractor's environmental and social risks raised in the complaint.

### **Exclusions**

45.44. The IAM will deem the following complaints ineligible:

- a. Requests or Complaints that are clearly fraudulent, frivolous, malicious, or generated to gain competitive advantage;
- b. Allegations of fraud and/or corruption. The IAM will refer these allegations to DFC's Office of Inspector General; If a complaint contains both allegations of fraud/corruption and allegations of environmental and social harm, the IAM and the Office of Inspector General can collaborate on the processing of a complaint. The IAM can address allegations of environmental and social harm in matters that are already before the Inspector General.
- c. Requests or Complaints relating exclusively to DFC procurement decisions. IAM will refer these requests or complaints to Management;
- d. Requests or Complaints alleging, in a general way, DFC's existing policy framework, including ESPP, is inadequate. The IAM will refer these requests or complaints to Management. If a Request or Complaint alleges DFC's existing policy framework is insufficient to ensure compliance with internationally recognized rights and protections for Affected Stakeholders, and the requesters or complainants have been or may be harmed by this insufficiency, then the Request or Complaint will be eligible for review by the IAM
- e. ~~Request or Complaints related to Projects which are pending Board or Board-delegated approval (see paragraph 50-51 below). IAM will refer these requests or complaints to Management and inform the Board;~~
- f. Requests or Complaints related to Projects submitted to the IAM on after whichever is the later of the following dates: (a) within two (2) years from the date the complainant became aware of the adverse impacts or (b) within two (2) years from the closure of the DFC funded project where DFC Exit has occurred, except as provided in paragraph 52 below;
- g. ~~Requests or Complaints that focus exclusively on global impacts of a global public good. IAM will refer these Request or Complaints to Management;~~
- h. Requests or Complaints from an individual related to working conditions and terms of employment, where there is no reason to believe that the issues relate to Labor Rights. IAM will refer these complaints to Management; and
- i. Requests or Complaints that are the same in all material respects as a complaint that has previously been submitted to IAM, unless IAM determines there has been a material change in circumstances.

46.45. When the IAM refers a request or complaint to Management or another mechanism, IAM will seek the prior consent of the Complainant, after discussing the rationale for and implications of such referral, to ensure that no confidential information is shared.

### **Timeline for eligibility decisions**

**Commented [CSO20]:** Language based on para. 23 of the GCF IRM procedures.

**Commented [CSO21]:** Working conditions can be indicative of systemic challenges with the project.

4746 Eligibility screening and determination will take no more than 15 Business Days from the IAM's acknowledgment of receipt of the complaint. However, where IAM needs to receive clarification from the Requester or Complainant, or from DFC to make an eligibility determination, IAM may extend this period for an additional period of up to 20 Business Days, after which IAM will make an eligibility decision on the basis of the best available information. IAM will update its Public Registry of Cases and/or case management dashports accordingly, and notify the Requester or Complainant, Management, and the Board of any extension.

**Registry of Requests or Complaints**

47. The IAM will publish a Public Registry of Cases on its website. The registry, which will be updated regularly will contain the information on pending, completed, and closed cases and relevant documentation relating to complaints processing, including described below, which will be updated from time to time:

- Complaints with links to complaint letters (redacted if Complainant(s) request confidentiality)
- decisions on Complaints eligibility
- assessment reports
- Problem-Solving reports and agreements
- Terms of reference for Compliance Review investigations
- Compliance Review reports and management action plans
- Monitoring reports and final monitoring reports.

All material shall be provided in full and posted online as they become available and remain there indefinitely.”

48.

Eligible requests or complaints:

- a. A brief summary of the issues raised in the request or complaint;
- b. Date of receipt;
- c. The name, sector, and location (country or countries) of the Project and/or Sub-Project that is the subject of the request or complaint;
- d. Information about DFC’s exposure to a Project or Sub-Project that is derived from public information disclosed by DFC;
- e. With regard to complex cases, succinct reasoning for the eligibility decision; and
  - f. Information on the status of IAM’s case management related to the request or complaint. This information will include deferrals or referrals.

Ineligible requests or complaints:

- a. The subject matter of the request or complaint (e.g., labor, resettlement, etc.);
- b. Date of receipt;
- c. The location (country or countries) and sector of the Project or Sub-Project operates. The identify of the Client or Sub-Client will not be included; and
- d. The basis for the ineligibility determination (including succinct reasoning in complex cases).

49. IAM will not post the request or complaint itself at the eligibility stage, though, as

- Formatted: Font: 12 pt
- Formatted: Normal, Justified, No bullets or numbering
- Formatted: Indent: Left: 0.65", Space Before: 0 pt
- Formatted: Font: 12 pt
- Formatted: Normal, No bullets or numbering
- Formatted: Space Before: 0 pt
- Formatted: Font: 10 pt
- Formatted: List Paragraph, Indent: Hanging: 0.24", Space Before: 4.1 pt, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.76" + Indent at: 1", Tab stops: 1", Left
- Formatted: Font: 12 pt
- Formatted: Normal, No bullets or numbering
- Formatted: Font: 10 pt
- Formatted: List Paragraph, Indent: Left: 0.76", Hanging: 0.25", Right: 0.11", Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.76" + Indent at: 1", Tab stops: 1", Left
- Formatted: Font: 12 pt
- Formatted: Normal, No bullets or numbering
- Formatted: Font: 10 pt
- Formatted: List Paragraph, Indent: Left: 0.76", Hanging: 0.25", Right: 0.11", Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.76" + Indent at: 1", Tab stops: 1", Left
- Formatted: Font: 12 pt
- Formatted: Normal, No bullets or numbering
- Formatted: Indent: Left: 1.01", No bullets or numbering
- Formatted: Indent: Left: 1", No bullets or numbering
- Formatted: Indent: Left: 1", No bullets or numbering
- Formatted: Indent: Left: 1", No bullets or numbering
- Formatted: Indent: Left: 1", No bullets or numbering
- Formatted: Indent: Left: 0.5", No bullets or numbering

noted above, a brief summary of eligible complaints will be posted.

***Requests or complaints received before Board approval of Project***

50. If a request or complaint is received on a Project under active consideration by DFC but not yet approved by the Board or Board-delegated authority, the IAM will inform the about the subject Project, and refer the request or complaint to Management, and deem the request or complaint ineligible.

51. IAM will disclose information about an ineligible pre-Board or pre-Board-delegated request or complaint following the provisions in paragraph 48 above.

***Request or complaints received after DFC Exit***

52. In exceptional circumstances, IAM may deem eligible a request or complaint submitted up to 24 months after DFC Exit, where: (a) there are compelling reasons why the complaint could not be made before the DFC Exit; (b) all of IAM's other eligibility criteria are met; and (c)

Formatted: Font: 10 pt

Formatted: List Paragraph, Right: 0.18", Space Before: 0 pt, Line spacing: Multiple 1.01 li, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Tab stops: 0.5", Left

Formatted: Indent: Left: 0"

Formatted: Font: 10 pt

Formatted: List Paragraph, Right: 0.18", Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Tab stops: 0.5", Left

Formatted: Font: 12 pt

Formatted: Normal, No bullets or numbering

Formatted: Font: 10 pt

Formatted: List Paragraph, Right: 0.18", Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Tab stops: 0.5", Left

Formatted: Indent: Left: 0"

Formatted: Heading 4, Space Before: 0.05 pt

Formatted: Font: 12 pt

Formatted: Normal, No bullets or numbering

~~after consultation with Management, IAM considers that accepting the complaint would be consistent with IAM's mandate. Requests received from DFC Board and Management are deemed eligible regardless of the date of the DFC Exit if the request is consistent with IAM's overall mandate.~~

## SECTION VIII - ASSESSMENT

Formatted: Justified, Indent: Left: 0.5", Right: 0.18", Space Before: 3.9 pt

### Purpose of assessment

~~53.48.~~ Once the IAM determines a request or complaint to be eligible, it will conduct an assessment to:

- a. Develop a thorough understanding of the issues and concerns raised in the request or complaint;
- b. Engage with the DFC Project team,
- c. Engage with the Requester or Complainant and the Client and, to the extent possible, Sub-Client;
- d. Identify the local communities and any additional stakeholders relevant to the complaint;
- e. Explain IAM's different functions, their scope, and possible outcomes to the Parties and other stakeholders, including a detailed briefing on the different processes and timelines between compliance investigations and problem solving;
- f. Determine whether the ~~requesters~~Parties seek to initiate the IAM's problem solving or compliance review function and sharing this information with the client after requesters have shared their preference; and
- g. Consider the status of other grievance resolution efforts.

~~54.49.~~ The IAM's assessment of the complaint does not entail any judgment on the merits of the complaint.

### Assessment process

#### *Assessment approach*

~~55.50.~~ In carrying out its assessment, IAM will give Requesters or Complainants, Clients, Sub-Clients, and DFC an opportunity to ask questions and consult with IAM staff to facilitate informed decision-making and understanding of IAM's mandate, services, and procedures. IAM will consider any Project-specific or relevant information provided by, or through, engaging with Complainants, Clients, Sub-Clients, DFC, and other relevant stakeholders.

~~56.51.~~ The IAM will approach assessments in a flexible manner. The IAM will typically conduct the following activities during its assessment of the complaint:

- a. Review DFC Project- or Sub-Project-related files.
- b. Meet with the Requester or Complainant, Client, Sub-Client, DFC staff and, where relevant, government officials of the country where the Project or Sub-Project is



located, representatives of local and international civil society organizations, and other stakeholders.

- c. Visit Project and, ~~to the extent possible,~~ Sub-Project sites.
- d. Where necessary, hold public meetings in the Project or Sub-Project area. The IAM will consider private meetings where community members would not feel comfortable meeting as a group. Make sure to protect confidentiality where requested. The IAM will enable off-site meetings with community members when there are reprisal threats or a meeting near the project site would not be safe for community members; facilitate these meetings by paying for transportation, lodging, and meeting space for all participants.
- e. Where deemed necessary by any Party, consider the relevance of concluded, pending or ongoing judicial or non-judicial proceedings.

~~57~~52 When planning a visit, the IAM will notify DFC, the Client, Sub-Client, Complainant, and other relevant stakeholders of its plans.

~~58~~53 If the Parties consent, they may engage directly with one another during the assessment process to resolve the issues raised in the complaint. Such engagement may take place without the direct involvement of the IAM. The IAM's assessment report will summarize the outcomes of such engagement. Where appropriate, and within the scope of their respective mandates and with the Parties' consent, DFC may support the constructive resolution of issues related to the complaint. Where the complaint issues are resolved, and subject to the Complainant's consent, IAM will issue an assessment and conclusion report to close the case.

#### *Timeframe*

~~59~~54 IAM will complete the assessment within 90 Business Days of the date it determines a complaint to be eligible. The IAM Director may extend the assessment timeframe by a period not exceeding 30 Business Days if after the 90 Business Day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in problem solving, and there is potential that the other Party will agree. IAM will notify the Parties and DFC Management, and the Board of the decision to extend the assessment, and update the IAM Public Registry of Cases. This timeframe can be extended at the request of the complainant.

#### *Staffing*

~~60~~55 IAM staff will carry out the assessment of a complaint, supported by external consultants if deemed necessary by the IAM Director.

#### *DFC role*

~~61~~56 In connection with any complaint, DFC staff may engage with the Client/Sub-Client, other stakeholders, and the IAM during the assessment process. DFC may continue to support its Clients in their responsiveness to the issues raised in the complaint. To the extent possible, DFC will inform the IAM of such engagements with its Clients.

#### **Outcomes of assessment**

*Parties' decision*

6257. During the assessment process, the Requester or Complainant, ~~and the Client and/or Sub-Client~~ decide whether they would like to initiate IAM's problem solving or compliance review function, ~~or both. If both functions are selected.~~ If both Parties agree to undertake problem solving, the IAM will facilitate this process, including by covering reasonable and directly related costs of ensuring the meaningful

**Commented [CSO22]:** Noting that the OPIC OA Procedures allowed complainants to choose both functions. See Sec. 5

participation of the Requester in problem solving, compliance review or monitoring. If there is no agreement, the request or complaint will proceed to the IAM's compliance review function.

#### *Assessment reports*

63.58. At the conclusion of the assessment process, the IAM will produce an assessment report that includes:

- a. A broad summary of the information gathered and the Parties' perspectives of the issues raised in the request of complaint during the assessment, including views from other stakeholders as deemed relevant;
- b. The decision of the Parties to pursue a problem-solving process or if the request or complaint will proceed to the compliance review function; and
- c. A copy of the request or complaint and any Client and/or Sub-Client response that may be provided, redacted to protect the confidentiality of the Requester or Complainant where appropriate.

64.59. The IAM will provide a draft assessment report to the Parties and DFC for factual review and comment for 15 Business Days prior to finalizing the report. IAM will share the final assessment report with the Parties, Management, and the Board, and will publish it on the IAM's website.

## **SECTION IX - PROBLEM SOLVING**

### **Purpose**

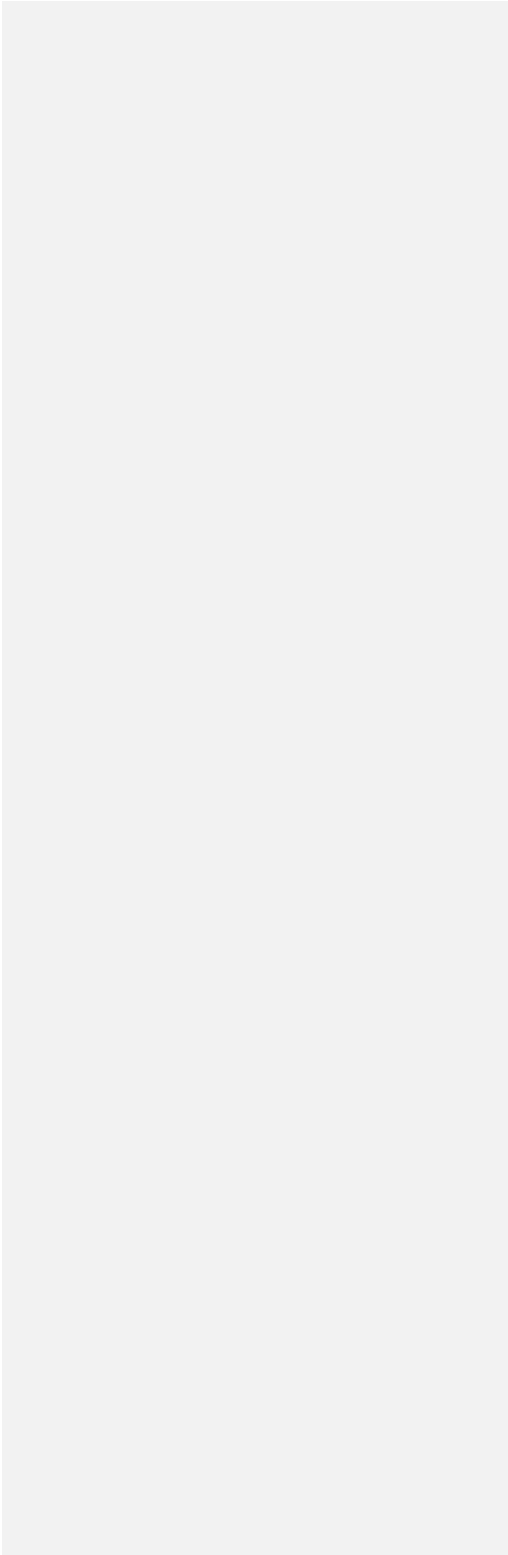
65.60. The purpose of the IAM's problem-solving function is to help resolve issues raised about the environmental and/or social impacts of Projects or Sub-Projects through a neutral, collaborative, problem-solving approach and to contribute to improved outcomes on the ground.

### **Principles and Approach to Problem Solving**

66.61. Engaging in a problem-solving process is a voluntary decision and requires agreement between the Requester or Complainant and the Client and/or Sub-Client, at a minimum. However, the decision to move forward through a problem-solving process must first be made by the Requester or Complainant, before the offer for problem-solving is made to the Client and/or Sub-Client. As a nonjudicial, non-adversarial, neutral forum, the IAM's problem-solving approach provides a process through which Parties may find mutually satisfactory solutions to the issues raised in the complaint and any other significant issues identified during the assessment. The IAM conducts the process in a manner acceptable to the Parties and treats all participants in a problem-solving process fairly and equitably.

67.62. The IAM seeks to work directly with the Project-affected people, recognizing that local communities, minorities, and vulnerable groups often have much to gain or lose from a Project or Sub-Project. IAM recognizes that these groups of people typically live with the impacts and benefits of the Project or Sub-Project and have an ongoing relationship with the

Project or Sub- Project.



## Approaches to Problem Solving

~~68~~63. The IAM, in consultation with the Parties, may use different approaches and cover directly associated costs of attempting to find a resolution of the issues, including:

Commented [CSO23]: This is a great provision

- a. **Mediation:** Mediation involves the intervention by a neutral third party in a dispute or negotiation to assist the Parties in voluntarily reaching their own mutually satisfying resolution.
- b. **Facilitation and information sharing:** In many cases, the complaint will raise questions regarding the current or anticipated impacts of a Project or Sub-Project. The IAM problem solving team, including consultants or experts appointed by the IAM, may help the Parties obtain information or clarifications that may result in resolution.
- c. **Joint fact-finding:** Joint fact-finding is an approach that encourages the Parties to agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that the Parties will use the information generated from the joint fact-finding process.
- d. **Dialogue and negotiation:** Where communication among Parties has been limited or disrupted, the IAM problem-solving team, including any IAM-appointed consultants or experts, may encourage the Parties to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The IAM problem-solving team, including any IAM-appointed consultants or experts, may offer training and/or expertise to assist the Parties in this process.

## Reaching and Documenting Agreements

~~69~~64. Any agreement reached should be specific in terms of objective, nature, and requirements and, at the discretion of the Parties, documented in written form. The terms of the agreement will be published in the public registry unless all of the signing parties agree on confidentiality, in which case IAM will record the result and publish a summary.

Commented [CSO24]: Language based on para. 34 of the IDB MICI policy

~~70~~65. In pursuit of a resolution, IAM will not knowingly support agreements that would coerce one or more Parties, be contrary to DFC policies, or violate applicable domestic laws or international law.

Commented [CSO25]: Great provision

## Monitoring Implementation of Agreements

~~71~~66. Where the Parties have reached an agreement through the IAM problem-solving process, IAM will monitor the implementation of the agreement. The IAM will inform the Parties and DFC Management when the case has formally moved to the monitoring phase. IAM will share interim updates with Management and will publish such updates on the IAM's website every six months during the monitoring phase.

## Outcomes and Conclusion of the Problem-Solving

### *Full resolution*

72.67. If the Parties reach an agreement and inform the IAM that the agreed terms have been implemented to the Parties' mutual satisfaction, the IAM will conclude the problem-solving process ~~and close the case.~~

### *Partial agreement or absence of agreement*

73.68. The IAM will conclude the problem-solving process if:

- a. One or more Parties wishes to exit at any point in the process;
- b. The Parties fail to reach an agreement;
- c. The Parties fail to implement the material terms of an agreement; or
- d. The Parties reach a partial agreement but are unable to reach an agreement on other material issues related to the case.

e.c. The Complainants wish to transfer the case to IAM's compliance review function.

74.69. Upon conclusion of the problem-solving process with partial or no agreement, IAM will enquire whether the Requester or Complainant wishes to withdraw (close) or transfer the case to IAM's compliance review function. IAM will transfer the complaint to the compliance function where one (or more) Complainant provides explicit consent, or otherwise will close the case. In situations where IAM is aware of concerns regarding Threats and Reprisals, to protect the Complainant, IAM may transfer the complaint to the compliance function without the need for a Complainant's explicit consent.

75.70. IAM will provide a draft conclusion report to the Parties and DFC for factual review and comment for 15 Business Days prior to finalizing the report. IAM will release a conclusion report that summarizes core process steps and outcomes and the rationale for concluding the problem-solving process. The conclusion report will be circulated to the Parties, the Board, and Management, and, promptly thereafter, publicly disclosed on IAM's website.

## Role of Mediators

76.71. In managing the problem-solving process, the IAM will determine the knowledge and skills required in each case and engage a third-party mediator who:

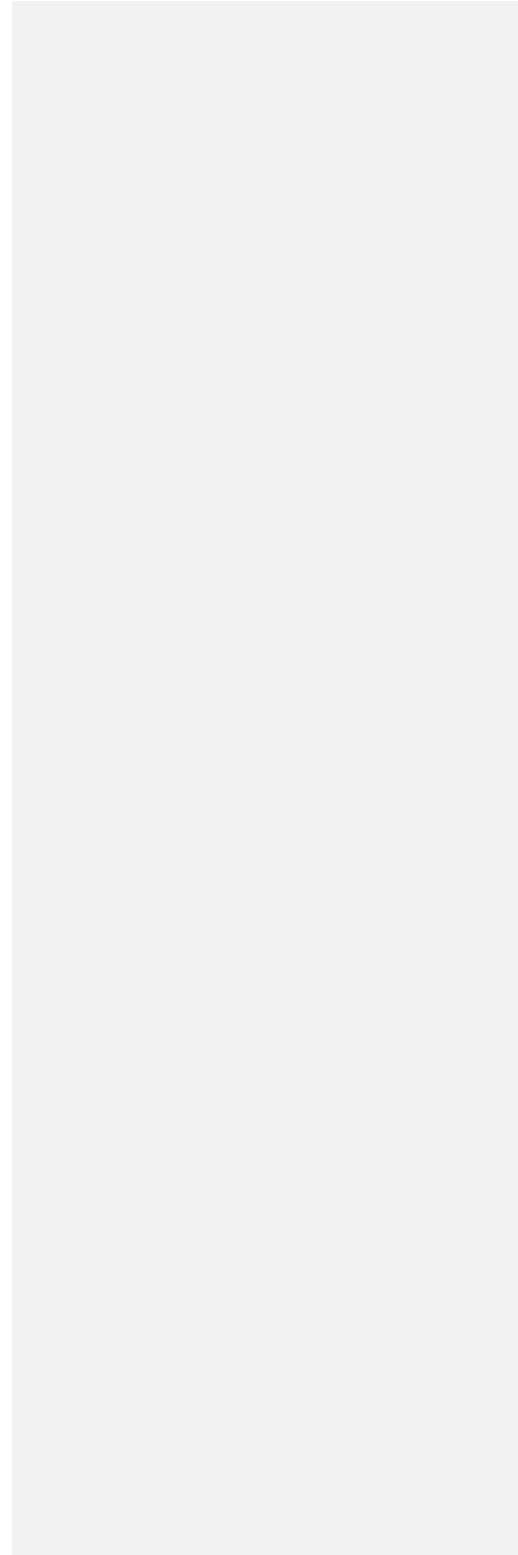
- a. Possesses the appropriate expertise;
- b. Has the ability to understand the cultural context; and
- c. Is considered acceptable as independent and impartial by the Parties.

77.72. IAM will include specific confidentiality requirements in mediator contracts in

Formatted: Font: 12 pt

Formatted: Indent: Left: 0.25", Hanging: 0.25", Right: 0",  
Space Before: 0 pt, No bullets or numbering, Tab stops:  
Not at 1"

addition to the general confidentiality provisions provided by DFC contracts.



## DFC Engagement in the Problem-Solving Process

~~78.73.~~ Where appropriate and agreed by the Parties, DFC may be invited to participate in a IAM problem-solving process. DFC will consider its participation on a case-by-case basis.

## SECTION X - COMPLIANCE REVIEW

### Purpose

~~79.74.~~ The purpose of the IAM compliance function is to carry out reviews of DFC's compliance with the ESPP and other DFC policies; assess related Harm; and recommend remedial actions where appropriate.

~~80.75.~~ IAM's compliance function does not evaluate the adequacy or suitability of the ESPP, and does not make findings in relation to compliance of a Project, Sub-Project, Client, or Sub-Client with the IFC Performance Standards or other Applicable Standards. However, in making findings regarding Harm and whether any Harm is related to DFC non-compliance with its ESPP and other DFC policies, IAM will assess, as relevant, DFC's review and supervision of its ESPP Requirements at the Project- or Sub-Project-level, and consider Project- or Sub-Project-level ESPP-related performance.

~~81.76.~~ The IAM compliance function follows a three-step approach: (1) compliance appraisal, which determines whether further investigation is warranted. If warranted, the appraisal is followed by (2) compliance investigation and (3) compliance monitoring, as described below.

### Compliance Appraisal Process

~~82.77.~~ The purpose of the appraisal process is to determine whether a request or complaint or internal request merits a compliance investigation based on the criteria set out below.

#### *Initiating a compliance appraisal*

##### Compliance appraisal in response to a request or complaint

~~83.78.~~ IAM will commence a compliance appraisal in response to a case transferred to the compliance function following an IAM assessment process or an IAM problem-solving process.

##### Compliance appraisal in response to an internal request

~~84.79.~~ IAM may initiate a compliance appraisal of one or more Projects or Sub-Projects in response to an internal request from the IAM Director, the CEO, or the Board, ~~or Management.~~

Commented [CSO26]: This is a good provision

~~85.80.~~ Such internal request may be made in circumstances where: (i) an appraisal is deemed necessary to review environmental and social compliance issues of systemic importance to DFC; (ii) concerns exist regarding particularly severe Harm; or (iii) Project-affected people may be subject to, or fear, reprisals, preventing them from submitting a request or complaint to IAM.



8681. Requests initiated by the IAM Director, CEO, or the Board will include a written rationale for the compliance appraisal request, and the IAM will notify the Board.

~~87~~82 For compliance appraisals of more than one Project or Sub-Project, the IAM will consult with Management before commencing the appraisal.

***Management and/or Client response***

~~88~~83 IAM will notify Management in writing of the transfer of a case to IAM's compliance function for appraisal. Management will have 15 Business Days from the date of transfer to respond to the issues raised in the complaint. Upon request from Management, this timeframe would be extended for up to 10 Business Days in exceptional circumstances. In such a case, the 45- Business Day period in paragraph 98 would be extended by the same number of days.

~~89~~84 In its response, DFC will outline the steps DFC and/or its Client or Sub-Client have already taken, or intend to take, to facilitate compliance with relevant policies, procedures, and ESPP Requirements, to address the allegations of Harm raised by the Requester or Complainants, or raised in an internal request, and indicate whether a deferral of any compliance investigation is requested.

~~90~~85 The Client may respond in writing to the issues raised in the request or complaint within the same timeframe above. IAM will take into account the DFC and Client responses during the appraisal.

***Scope of compliance appraisal***

~~91~~86 A compliance appraisal in response to a complaint will consider issues raised in the request or complaint, or identified during the IAM assessment phase, but not those resolved during a IAM problem-solving process.

~~92~~87 A compliance appraisal in response to an internal request will consider issues raised in the request.

***Appraisal approach***

~~93~~88 In preparing its appraisal report, IAM will review the complaint/internal request, assessment report, Management and/or Client response, and any other documents that IAM may request and receive from the Requester or Complainant, Management, the Client, and other parties.

~~94~~89 IAM will apply the following appraisal criteria in determining whether a compliance investigation is necessary:

- a. Whether there are preliminary indications of Harm or potential Harm;
- b. Whether there are preliminary indications that DFC may not have complied with its E&S Requirements; and
- c. Whether the alleged Harm is plausibly linked to the potential non-compliance.

~~95~~90 During a compliance appraisal, IAM will also consider the following:

- a. For any Project or Sub-Project where an DFC Exit has occurred at the time IAM completes its compliance appraisal, whether an investigation would provide particular

value in terms of accountability, learning, or remedial action despite a DFC Exit.  
“Value in terms of accountability and learning” will be construed broadly, with a particular focus on whether the DFC can apply lessons learned to current and future Projects within the same or similar sector or geographical market.

- b. The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the request or complaint.
- c. Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Requester or Complainant or in the internal request and followed the ESPP [and other DFC Policies](#) or whether Management acknowledged that it did not comply with the ESPP [and other DFC Policies](#).
- d. Whether Management has provided a statement of specific remedial actions, and whether, in IAM's judgment after considering the Requester's or Complainant's views, these proposed remedial actions substantively address the matters raised by the Requester or Complainant.

~~96~~91. In relation to a Project or Sub-Project that has already been the subject of a compliance investigation, IAM may: (a) close the request or complaint; (b) merge it with the earlier compliance process, if still open, and the request or complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the request or complaint raises new issues or new evidence is available.

~~97~~92. The appraisal process does not lead to a definitive assessment of DFC's compliance with its ESPP or related Harm. IAM may make these assessments only in the context of an investigation.

~~98~~93. IAM will complete the compliance appraisal process within 45 Business Days of the transfer of the case to IAM's compliance function and may extend the appraisal process by up to an additional 20 Business Days in exceptional circumstances, in which case IAM will notify the Complainant and Management, and update its Public Registry of Cases, and the Board of the extension.

***Appraisal decision***

~~99~~94. At the conclusion of the appraisal process, IAM will prepare an appraisal report stating its reasoning and decision on whether to investigate, merge, defer, or close the case. When the appraisal outcome is a decision to investigate, IAM's appraisal report will also include terms of reference (see paragraph 116 below), indicating the scope of the compliance investigation.

~~100~~95. Every appraisal decision, whether to investigate, close, or defer, will be made at the discretion of the IAM Director, applying the criteria set out in this section (see paragraphs 94-95 above).

***Deferral of a decision to investigate***

~~101~~96. In specific cases that meet the criteria for a compliance investigation (see paragraphs 94-95 above) as well as the criteria below, the IAM Director may decide to defer the decision to investigate to allow DFC, the Client, and the Complainant to resolve issues directly:

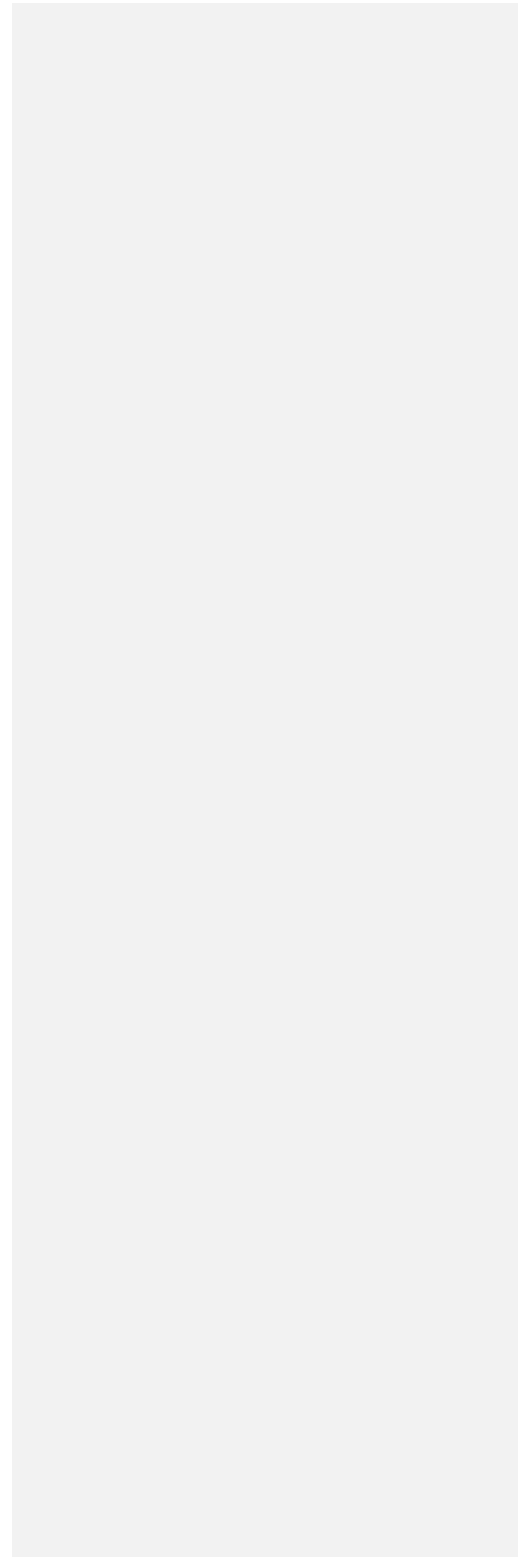
Criteria for decision to defer

- a. The severity of alleged Harm and potential compliance issues raised by the Requester

**Commented [CSO27]:** Introducing a deferral procedure can unnecessarily delay a complaint process and lead to more harm to communities. If deferral is to be added, communities must consent to its use and must have the power to terminate it at any time.

or Complainant, including whether the issues of alleged Harm are clearly defined, limited in scope, and appear to be amenable to early resolution;

- b. Whether the Management response includes specific commitments that are



commensurate with the issues raised in the request or complaint or during the assessment, and consistent with DFC policy requirements;

- c. The views of the Requester or Complainant as to the impact (positive and negative) of a decision to defer; and
- d. Other information deemed relevant by IAM.

~~102~~97. In order to consult with the Requester or Complainant on deferral, IAM may share the Management and Client responses (or any portions thereof) with the Requester or Complainant, on the condition that appropriate measures are in place to safeguard the confidentiality of such responses prior to public disclosure.

#### Framework for deferral

~~103~~98. Deferral can only occur if the complainant consents to the deferral. In cases in which IAM decides to defer the decision to investigate, IAM should establish and make public as part of its appraisal report:

- a. IAM's analysis of the criteria for deferral as set out above;
- b. The conditions of the deferral as agreed by Management;
- c. A framework for monitoring during the deferral period, including a schedule for DFC reporting on the progress made on commitments by Management to address the issues raised by the Requester or Complainants; and
- d. A timeline for the deferral period, typically no longer than six (6) months, including for IAM to issue a report on DFC implementation of commitments in the Management response and whether these have addressed the issues raised in the request or complaint, or during the assessment phase.

#### Conclusion of deferral period

~~104~~99. The complainants can request the end of the deferral period at any time. Additionally, d During the deferral period, if IAM assesses that the conditions have materially changed, or making progress is unlikely or unfeasible, IAM may end the deferral and commence a compliance investigation.

~~105~~100. Upon the conclusion of the deferral period, IAM Director may decide to:

- a. Close the case if the issues raised in the request or complaint have been substantially addressed and there is no material value for accountability, institutional learning, or remedial action from conducting an investigation;
- b. Extend the deferral period if considerations above remain (see paragraph 101 above), and there is, in IAM's analysis, a high likelihood of the issues being resolved within a defined extension period; or
- c. Proceed to a compliance investigation if issues have not been substantially addressed or if there is otherwise material value for accountability, institutional learning, or

further remedial action.

~~406~~101. In any case, IAM will issue, and circulate for information, a report summarizing the actions taken and outcomes of the deferral to the Board, Management, and the Requester or Complainant. IAM will also publish this report on its website.

#### ***Circulation and disclosure of the appraisal report***

~~407~~102. Once IAM concludes an appraisal, it will circulate, for information, the appraisal report to the Board, Management, and the Client. In cases where IAM is responding to a request or complaint, IAM will also circulate the report to the Requester or Complainant.

~~408~~103. Promptly following the circulation of the appraisal report, IAM will publish the appraisal report. IAM will also publish the Management response, a response from the Client (if any).

### **Compliance Investigation Process**

#### ***Definitions and approach to compliance investigations***

~~409~~104. A compliance investigation determines whether DFC has complied with its ESPP [and other DFC policies](#) and whether there is Harm related to any DFC non-compliance, following a systematic and objective process of obtaining and evaluating evidence. In determining whether DFC has complied with its ESPP [and other DFC policies](#), IAM will include, where appropriate, an assessment of whether DFC has deviated in a material way from relevant directives and procedures.

~~410~~105. Where IAM finds non-compliance and related Harm, IAM makes recommendations for DFC to consider when developing a Management Action Plan (MAP). Recommendations may relate to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.

~~411~~106. A compliance investigation does not make non-compliance findings in relation to a Project or Sub-Project. However, in making findings regarding Harm and whether any Harm is related to DFC non-compliance with its ESPP [and other DFC policies](#), IAM will assess DFC's review and supervision of its ESPP Requirements at the Project or Sub-Project level, and consider Project- or Sub-Project- level environmental and social performance. Where relevant in accordance with applicable DFC ESPP Requirements that refer to national law, IAM will also consider how DFC reviewed and supervised the Project's compliance with applicable national law.

~~412~~107. IAM will base the compliance investigation on a review of documents, interviews, observation of activities and conditions, and other appropriate means.

~~413~~108. IAM will assess whether there is evidence that DFC applied relevant ESPP Requirements considering the sources of information available at the time the decisions were made. IAM will not make findings and conclusions with the benefit of hindsight.

~~414~~109. IAM follows a non-adversarial model. In undertaking analyses and making conclusions, IAM will systematically and objectively consider such facts, circumstances, information, and evidence as may be available to it from documents, interviews, statements,



reports, correspondence, and other sources as IAM determines relevant. Sufficient, relevant evidence is required to afford a reasonable basis for IAM's compliance findings and conclusions.

***Terms of reference for compliance investigations***

H5.110. IAM will publicly disclose terms of reference for the compliance investigation. The terms of reference will specify:

- a. The objectives and scope of the investigation;
- b. Any limitations on the scope of the investigation that may be appropriate, considering, among others, issues closed at the appraisal stage, the presence of concurrent judicial proceedings, or a DFC Exit;
- c. The approach and method of investigation, and specific consultant qualifications; and
- d. A schedule for the investigation tasks, timeframe, and reporting requirements. This schedule will include deadlines for the submission of information by DFC to inform the compliance investigation process.

H6.111. In preparing the terms of reference for any compliance investigation involving more than one Project, IAM will consult with DFC.

***Compliance investigation report***

H7.112. IAM will prepare the compliance investigation report, which will at a minimum include:

- a. The investigation findings with respect to compliance, non-compliance, and any related Harm.
- b. Context, evidence, and reasoning to support IAM's findings and conclusions regarding the underlying causes of any non-compliance identified.
- c. Recommendations for DFC to consider in the development of a MAP relating to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances. In case of a Project where the DFC Exit has occurred, recommendations will take into account the implications of such a DFC Exit.

H8.113. IAM will circulate a draft investigation report within one year of the disclosure of the appraisal report.

***Factual review and comment***

H9.114. IAM will circulate the draft report to Management for factual review and comment. Management may share the draft report with the Client or Sub-Client on the condition that appropriate measures are in place to safeguard the confidentiality of the draft report prior to disclosure.

~~120.115.~~ Management will have 20 Business Days from the receipt of the draft report to provide written comments. DFC may take into account feedback from the Client or Sub-Client when preparing written comments.

~~121.116.~~ IAM will provide the Requester or Complainant with the opportunity to undertake factual review and comment on the draft investigation report concurrently with DFC, on the condition that appropriate measures are in place to safeguard the confidentiality of the draft report prior to public disclosure.

~~122.117.~~ ~~At a minimum, the Requester or Complainant will be provided a draft table of findings for factual review and comment and as a basis for information to inform subsequent consultation on any MAP.~~

~~123.118.~~ Upon completion of the factual review and comment phase, no new information or arguments will be introduced in relation to the IAM compliance process.

#### ***Finalizing an investigation report***

~~124.119.~~ After considering the comments from DFC and the Requester or Complainant on the consultation draft, IAM will finalize the compliance investigation report in 20 Business Days.

~~125.120.~~ The final investigation report will be submitted to Management and, promptly thereafter, circulated to the Board for information. A final table of findings and the final investigation report shall may be shared with the Requester or Complainant, and Client or Sub-Client for the purpose of consultation while preparing the MAP, on the condition that appropriate measures are in place to safeguard confidentiality of the findings prior to public disclosure.

~~126.121.~~ A notice will be posted on IAM's website informing the public that the IAM has completed its compliance investigation and the investigation report will be posted on the IAM's website.

#### ***Management response, action plan, and clearance for disclosure***

~~127.122.~~ Within 50 Business Days of receiving IAM's compliance investigation report and findings, Management will be required to submit a report (Management Report) to the Board for consideration, stating the actions proposed in response to IAM's findings.

~~128.123.~~ For the purpose of addressing IAM findings of non-compliance and related Harm, if any, the Management Report will include, for Board approval, a MAP comprising time-bound remedial actions proposed by Management.

~~129.124.~~ The Management Report should also include a reasoned response to IAM's findings or recommendations regarding non-compliance or related Harm that DFC is unable to address in the MAP.

~~130.125.~~ While the MAP is the responsibility of Management, Management may incorporate input from relevant Parties.

**Commented [CSO28]:** The complainants should be provided with the entire draft investigation report

**Commented [CSO29]:** The investigation report should be made publicly available as soon as it is finalized. The IAM should not have to wait for the MAP to be completed. We have seen cases at the CAO where management has delayed developing the MAP, which has then delayed the publishing of the investigation report. Having the investigation report public in a timely fashion is helpful for accountability and also helps stakeholders push management to develop a MAP that concretely addresses the investigation's findings. The AfDB IRM posts compliance investigations before the MAP is approved by the Board

~~131.126.~~ During the preparation of the MAP, Management will be required to consult the Requester or Complainant, and the Client. Actions that involve the Client or Sub-Client will be agreed with the Client prior to inclusion in the MAP.

~~132.127.~~ IAM will submit comments on the proposed MAP to the Board. The Requester or Complainant may submit to IAM a statement on the proposed MAP and the adequacy of consultations for circulation to the Board.

~~133.128.~~ To support institutional learning, Management may provide measures in the MAP to avoid recurrence of non-compliance and improve institutional performance in other Projects.

~~134.129.~~ The Board will not have any editorial input regarding the content of a compliance investigation report but may take the opportunity to discuss the investigation findings with IAM and Management.

~~135.130.~~ Once the Board approves the MAP, ~~the IAM's investigation report,~~ the Management Report, and the MAP will be published on IAM's website, along the previously posted investigation report.

## Compliance Monitoring

### *Approach to monitoring*

~~136.131.~~ After the Board has approved a MAP, IAM will monitor ~~its~~ implementation until all areas of non-compliance are addressed.

~~137.132.~~ The scope of IAM's compliance monitoring will be the corrective actions approved as part of the MAP. Monitoring will verify the effective implementation of the actions set out in the MAP.

~~138.~~ IAM compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.

### *Reporting during monitoring*

~~139.133.~~ Management will be responsible for supervising implementation of the MAP and will submit progress reports to the Board on the implementation of the MAP at such intervals as proposed by Management or otherwise approved by the Board. Every progress report will summarize the implementation status of the MAP in the period covered by the report, including actions completed, actions in ongoing implementation, and upcoming actions based on timelines included in the MAP. It also may include information on engagements undertaken during the reported period. IAM will publish Management's progress reports on its website and incorporate these reports into the IAM's annual public monitoring report.

~~140.134.~~ As requested by Management, IAM, or the Board, IAM and Management will provide a briefing in the format requested by the CEO or the Board on progress made in the implementation of remedial measures in MAPs, including Project- or Sub-Project-level actions and DFC systemic responses to IAM compliance findings.

Formatted: Font: 12 pt

Formatted: Normal, No bullets or numbering

Commented [CSO30]: This incentivizes management to not address certain compliance findings in the MAP

44.135. The Board may consider options on how to strengthen the implementation of measures in the MAP, if necessary, taking into account Management progress reports and IAM monitoring reports.

**Closure of compliance investigations**

42.136. IAM will close the compliance monitoring process when all areas of non-compliance have been satisfactorily addressed:

a. ~~IAM determines that substantive commitments as set out in the MAP have been effectively fulfilled; or~~

b. ~~following engagement with Management and/or the Board, not all substantive commitments in the MAP have been effectively fulfilled, and IAM determines that there is no reasonable expectation of further action to address its Project or Sub-Project level non-compliance findings.~~

137. ~~In either case,~~ IAM will prepare a final monitoring and closure report and circulate it for information to the Board and Management, the Requester or Complainant, and the Client before making it public.

**Self-Initiated Compliance Investigations**

Under specific circumstances, the OA director may initiate compliance reviews. These circumstances could relate to:

(i) Complaints raised to the IAMs of co-financiers in a DFC co-financed operation for which no complaint has been submitted to OA;

(ii) Operations in the public domain where there is a reputational risk for the DFC;

(iii) Cases where the OA receives information from a credible source that a DFC Financed Operation has adversely impacted or may impact persons, a community or the environment; or

(iv) Cases where the OA is informed of a risk of retaliation if a requestor came forward.

(v) If a compliance review could provide an important learning opportunity.

Compliance Reviews initiated by the OA shall not prevent project-affected communities from filing a subsequent request.

143.

**SECTION XI - ADVISORY**

**Formatted:** Font: 10 pt

**Formatted:** List Paragraph, Indent: Hanging: 0.25", Right: 0.18", Space Before: 0 pt, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.77" + Indent at: 1.01", Tab stops: 1", Left

**Formatted:** Font: 12 pt

**Formatted:** Normal, No bullets or numbering

**Commented [CSO31]:** Language adapted from paras. 75-76 of the AfDB IRM policy

**Formatted:** Font: 12 pt

**Formatted:** Normal, No bullets or numbering

## **Purpose**

144.138 IAM's advisory function provides advice to Management and the Board with the purpose of improving DFC's systemic performance on environmental and social sustainability and reducing the risk of harm to people and the environment. IAM's advisory work provides insights and recommendations on broader environmental and social issues relevant to DFC's work by drawing on IAM's experience with cases in progress or closed, and good international practice.

## **Approach**

145.139 IAM's advisory function is guided by the following principles:

- a. IAM preserves its independence and impartiality by not giving advice on specific Projects or Sub-Projects.
- b. IAM provides advice on broader DFC environmental and social policies, processes and approaches, guidance documents, strategic issues, trends, and systemic concerns.
- c. IAM advice draws from experience gained through its problem solving and compliance review work.
- d. IAM seeks to carry out its advisory work in a collaborative manner with DFC and other actors as appropriate.

## Advisory Process

### *Requests for advice*

146.140. The Board or Management can request IAM advice. Other stakeholders could raise suggestions for policy reviews or advisory processes through a simple letter to the Board and/or Corporation CEO. IAM will review any request for advice to ensure it only undertakes advisory work consistent with its mandate and principles.

**Commented [CSO32]:** Reflecting language from the implementation document  
[https://www.dfc.gov/sites/default/files/media/documents/BD R%2820%2945\\_IndependentAccountabilityMechanism.pdf](https://www.dfc.gov/sites/default/files/media/documents/BD%20R%2820%2945_IndependentAccountabilityMechanism.pdf)

### *Developing advisory work*

147.141. To enhance the impact of its advisory work, IAM will seek to identify ways of working collaboratively with Management and other actors as appropriate when developing advisory work, while maintaining its independence. At a minimum, IAM informs Management when it initiates advisory work and when it responds to a request for advice and consults Management on the scope of advice and proposed process.

148.142. IAM delivers advisory work through various formats, including written reports, interactive tools, and in-person learning. IAM will not provide Project-specific advice.

### *Information disclosure*

149.143. While IAM seeks to maximize disclosure of its advisory work, it may provide non-public advice to maximize uptake of advice on issues that are part of internal DFC deliberative processes.

### *Monitoring and follow-up*

150.144. IAM will systematically assess the impact of its advisory work as part of its monitoring and evaluation activities, and include advisory work in its reporting to the Board as part of its Management Action Tracking Record.

145. IAM may carry out periodic external reviews of its advisory work.

**Formatted:** Not Expanded by / Condensed by

151. When DFC management submits a newly proposed Project to the Board or the relevant approver (if the Board has delegated the approval authority), it will first establish if the proposed Client has ever been a party to a case reviewed by DFC IAM, its predecessor (OPIC Office of Accountability), or other institutions' IAMs and determine, in conjunction with the IAM, if this information, and the outcome of the complaint, must be included in the submission for consideration by the Board or the relevant approver.

**Formatted:** Normal, No bullets or numbering

**Commented [CSO33]:** Language based on 2.2(g)(i) of EBRD IPAM policy

**Formatted:** Font: 12 pt

## SECTION XII - THREATS AND REPRISALS

152.146. DFC and IAM take Threats and Reprisals against Requesters or Complainants or any other persons involved in a IAM process or activity seriously. IAM recognizes that the concerns any such persons may have for their safety and wellbeing, and that of their families, can prevent them from submitting a complaint or otherwise engaging fully with IAM.

153.147. The following principles guide IAM in its approach to Threats and Reprisals:

- a. Disputes should be resolved through non-violent and peaceful means that promote the

dignity of people and respect the rights of all;

- b. IAM should safeguard individual identities where requested, including by keeping information confidential that could, directly or indirectly, reveal identities [and allow for complainants to remain anonymous](#);



- c. IAM should obtain the informed consent of the concerned person before taking action in relation to Threats and Reprisals, and any such action should be developed in a participatory manner; and
- d. IAM should ~~ensure~~~~act with the intent~~ that people are not harmed due to cooperating in the IAM process or activities.

~~154.148.~~ To address concerns and risks arising from Threats and Reprisals related to its processes or activities, IAM will: (i) regularly assess the risk context of any complaint throughout a IAM process or activity; (ii) if requested by any person who raises concerns regarding Threats and Reprisals, work closely with the concerned person to identify preventive measures adapted to the specific circumstances, particularly where security concerns exist, and plan possible responses with the concerned person; and (iii) if security threats or incidents occur or IAM becomes aware of such a threat in the context of a IAM process or activity, IAM will make every effort to support the safety and wellbeing of any concerned person by following an appropriate course of action discussed and agreed upon with the concerned person.

~~155.149.~~ While IAM will seek to fulfill its mandate under this TOR in a manner that maximizes its ability to respond appropriately to Threats and Reprisals, IAM is not an enforcement body or entity. It does not have the direct ability to physically protect or otherwise safeguard Requesters or Complainants or any other concerned persons from the possible consequences of engaging in an IAM process or activity or cooperating with the IAM.

~~156.150.~~ IAM and Management will coordinate, as appropriate and within the scope of their respective roles and mandates as described in their respective then-current position statement or policy, on measures to assess, prevent, and respond to concerns of Threats and Reprisals stemming from IAM processes and activities.

### SECTION XIII - OUTREACH AND COMMUNICATION

~~157.151.~~ IAM’s accessibility and the effective implementation of its mandate under this TOR depend on the ability of IAM to engage effectively with its stakeholders. The IAM takes a proactive approach to promote awareness and understanding of this TOR and the purpose, mandate, functions, and activities of IAM as the independent recourse and accountability mechanism of DFC. IAM’s outreach activities and communications are guided by confidentiality considerations relevant to Requesters or Complainants and other stakeholders, including measures designed to address the risk of Threats and Reprisals.

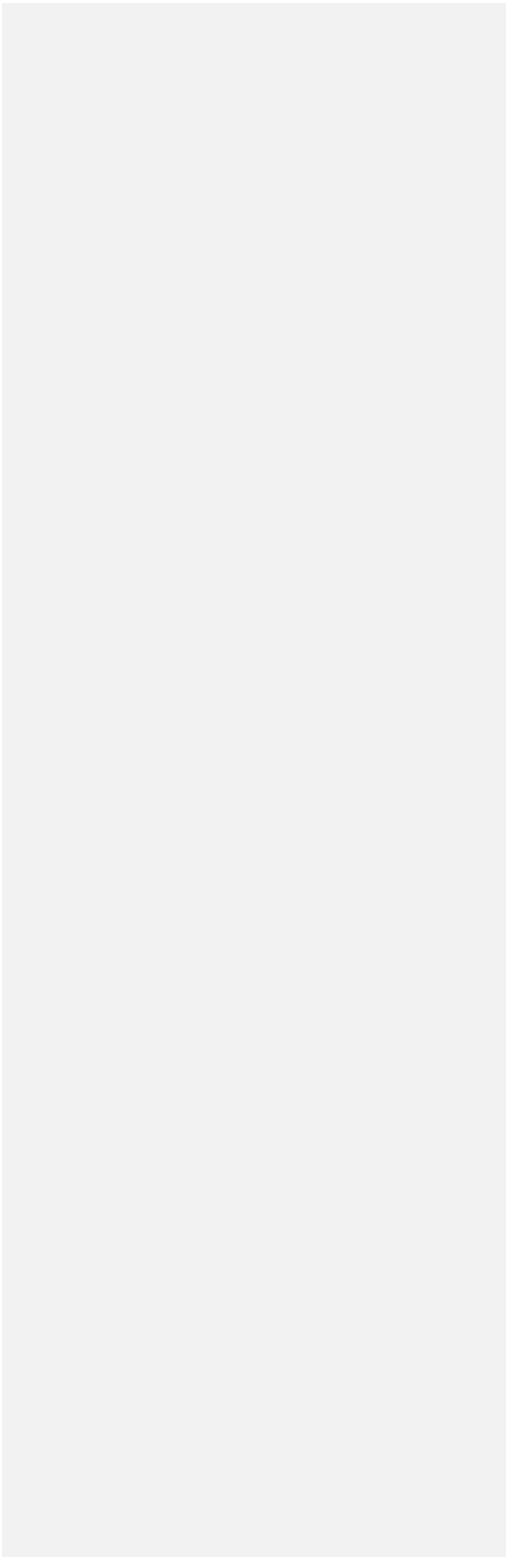
#### Outreach and Training

~~158.152.~~ The IAM will ensure that project-affected stakeholders have information about how to access its services and complaint process. DFC Management will assist the IAM in carrying out its outreach efforts, including requiring clients and sub-clients (for financial intermediary projects) to disclose the existence of the IAM to project-affected communities and workers in a culturally appropriate, gender sensitive, and accessible manner. The existence of the IAM and how to contact it will be included in appropriate DFC project documents.

Commented [CSO34]: This is a really positive requirement

~~159.153.~~ IAM conducts outreach to external stakeholders to enhance its accessibility, including

cooperation with the independent accountability mechanisms of other organizations, as



relevant. IAM disseminates information about its mandate and work, including through DFC's offices or regional hubs. IAM also engages with Project-affected people and their representatives upon request. Through these efforts, IAM aims to respond to local constraints that may impede people's ability to access IAM services or participate in a IAM process.

**Commented [CSO35]:** When working with impacted communities, they almost never know that DFC is involved, let alone that there is a compliance mechanism. Greater outreach is required starting from the points when DFC is considering supporting the project so that it is more likely that impacted communities will know about the IAM.

160.154. IAM will provide awareness raising or training to DFC staff and external stakeholders on the implementation of this TOR. IAM will tailor the awareness raising or training to specific needs, based on direct requests or feedback, or in relation to cases.

### Public Reports and Information Materials

161.155. While IAM's working language is English, the IAM ~~will seek to~~ make reports and communication materials available in relevant local languages to promote accessibility. IAM issues public information materials in different languages (English, French, Spanish, and Portuguese), and additional languages where deemed necessary ~~and upon request~~. IAM makes available these materials in electronic, hard copy, and/or by other culturally appropriate means, as needed.

**Commented [CSO36]:** Is this aligned with where DFC support goes? Have you considered Arabic or languages spoken in Asia. Also noting that OPIC OA published information about its services in Arabic, French, Hindi, Portuguese, Russian, Spanish, Turkish, Urdu, Russian, Ukrainian, Indonesian, Swahili, and Burmese.

162.156. Requesters and Complainants may submit a request or complaint to IAM in any language, and IAM's correspondence and engagement with the Requesters or Complainants, including its representatives, may be in both the language of the request or complaint and English, if requested.

163.157. IAM publishes all IAM reports in English, including case reports, advisory reports, and annual reports. All publicly disclosed reports on casework — including assessment reports, problem solving reports, and compliance reports — will be ~~translated, at least as a summary,~~ into the Requester's or Complainant's local language. When deemed necessary, IAM will translate its reports, ~~at least in summary,~~ into additional local languages and present them in a culturally appropriate manner.

**Commented [CSO37]:** Complainants need to have the full case documents in their own language.

164.158. IAM may post a public statement on its website or social media channels at different stages of the case handling process to clarify its mandate and process. The complainant may request that IAM not make public statements to protect their safety. IAM may issue joint statements agreed by the Parties, and joint statements by IAM and Management, as appropriate.

165.159. IAM will submit an annual report to the Board and Congress concerning its activities. IAM publishes the annual report and other materials on its webpages.

166.160. IAM will maintain a Public Registry of Cases and disclose status updates from time to time.

### DFC Information Disclosures about IAM

167.161. To help make IAM known to DFC staff, Clients, and Project-affected people, DFC will:

- e. Provide accessible information about IAM on DFC's websites and in annual reports;
- f. Include in the relevant DFC Project disclosure reference to any applicable grievance mechanisms, including IAM;

- g. Require clients and sub-clients (for financial intermediary projects) to disclose the existence of the IAM to project-affected communities and workers in a culturally appropriate, gender sensitive and accessible manner;

- h. Include information pertaining to IAM as relevant in the appropriate DFC Project documentation; and
- i. Include information about IAM in the induction and training of DFC staff.

## SECTION XIV - COOPERATION WITH OTHER INDEPENDENT ACCOUNTABILITY MECHANISMS

~~168~~162 If IAM is aware that other organizations with independent accountability mechanisms have financed or guaranteed a Project that is the subject of a complaint to IAM, IAM will notify those mechanisms of the existence of the complaint, subject to the Requester's or Complainant's consent to this notice and applicable provisions to protect confidentiality.

~~169~~163 If IAM engages with a request or complaint that overlaps with the jurisdiction of other organizations' independent accountability mechanisms and where the request or complaints involve the same or substantially similar issues, IAM will use best efforts to collaborate with such other mechanisms to ensure that the complaint is handled fairly and efficiently, avoiding duplication of efforts, consistent with this TOR. At all times, the cooperation will be conducted in accordance with the mechanisms' respective mandates, policies, and procedures, including requirements of confidentiality and disclosure of information.

~~170~~164 IAM may also cooperate, including sharing reasonable costs, with other independent accountability mechanisms on other relevant activities, including outreach, communication, advisory, and training.

## SECTION XV - REVIEW OF POLICY

~~171~~165 The IAM will initiate a review of this TOR for Board approval no later than five (5) years after it becomes effective, and periodically every five (5) years after. These reviews will include public consultations.

## SECTION XVI - MISCELLANEOUS

~~172~~166 This TOR will become effective on [the day of its approval by the Board].

~~173~~167 This TOR will apply to any request or complaint submitted to and has been deemed eligible by IAM on or after the date on which this TOR became effective, and supersedes and replaces in its entirety the OPIC Office of Accountability's Operational Guidelines Handbook for Problem-Solving and Compliance Review Services, dated 2014.