

What To Do When Project Impacts Are In Dispute?

Participatory Monitoring and Joint Fact-finding

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Compliance Advisor Ombudsman (CAO) is the independent recourse and accountability mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), World Bank Group

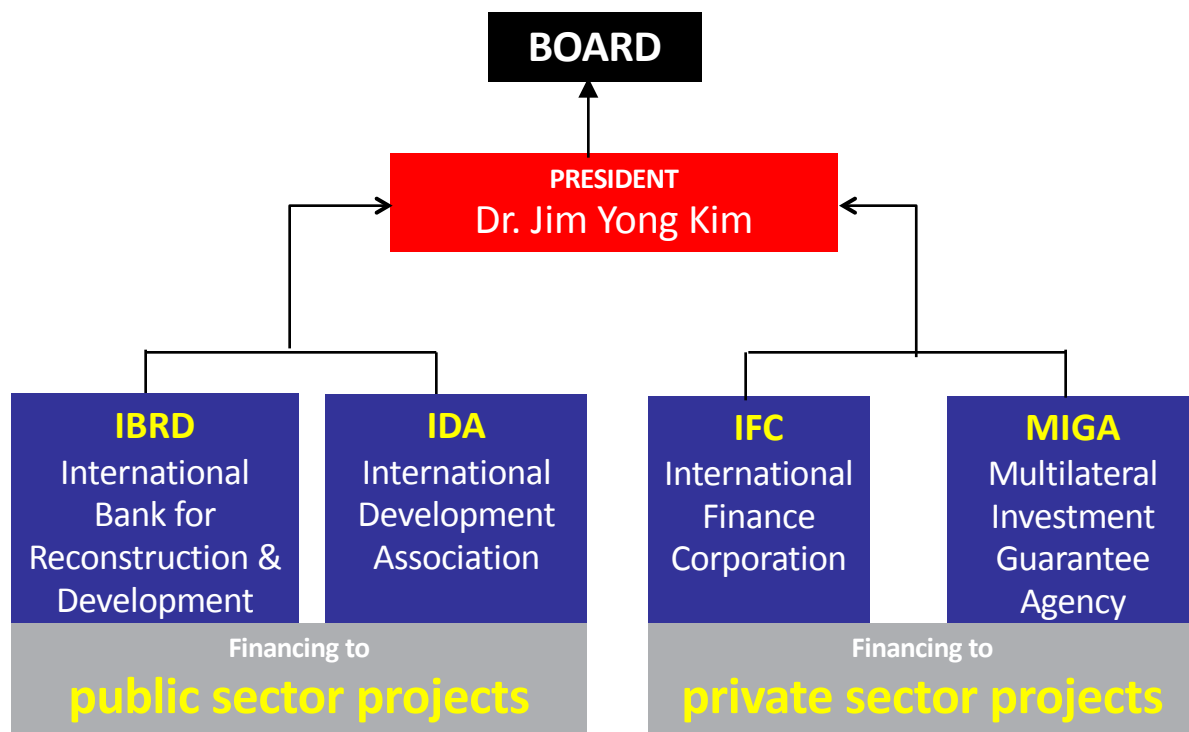


CAO Overview

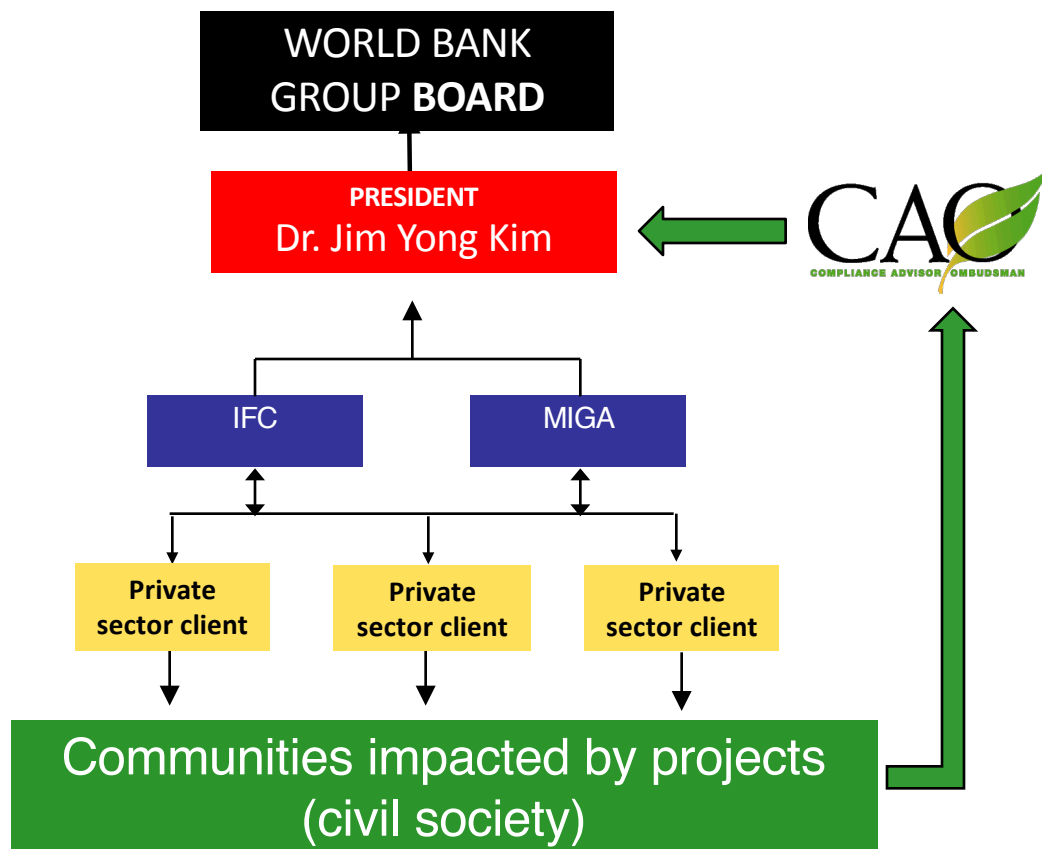
- The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for projects supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)--the private sector arms of the World Bank Group.
- CAO responds to complaints from project-affected communities with the goal of enhancing social and environmental outcomes on the ground.
- CAO reports directly to the President of the World Bank Group.



World Bank Group

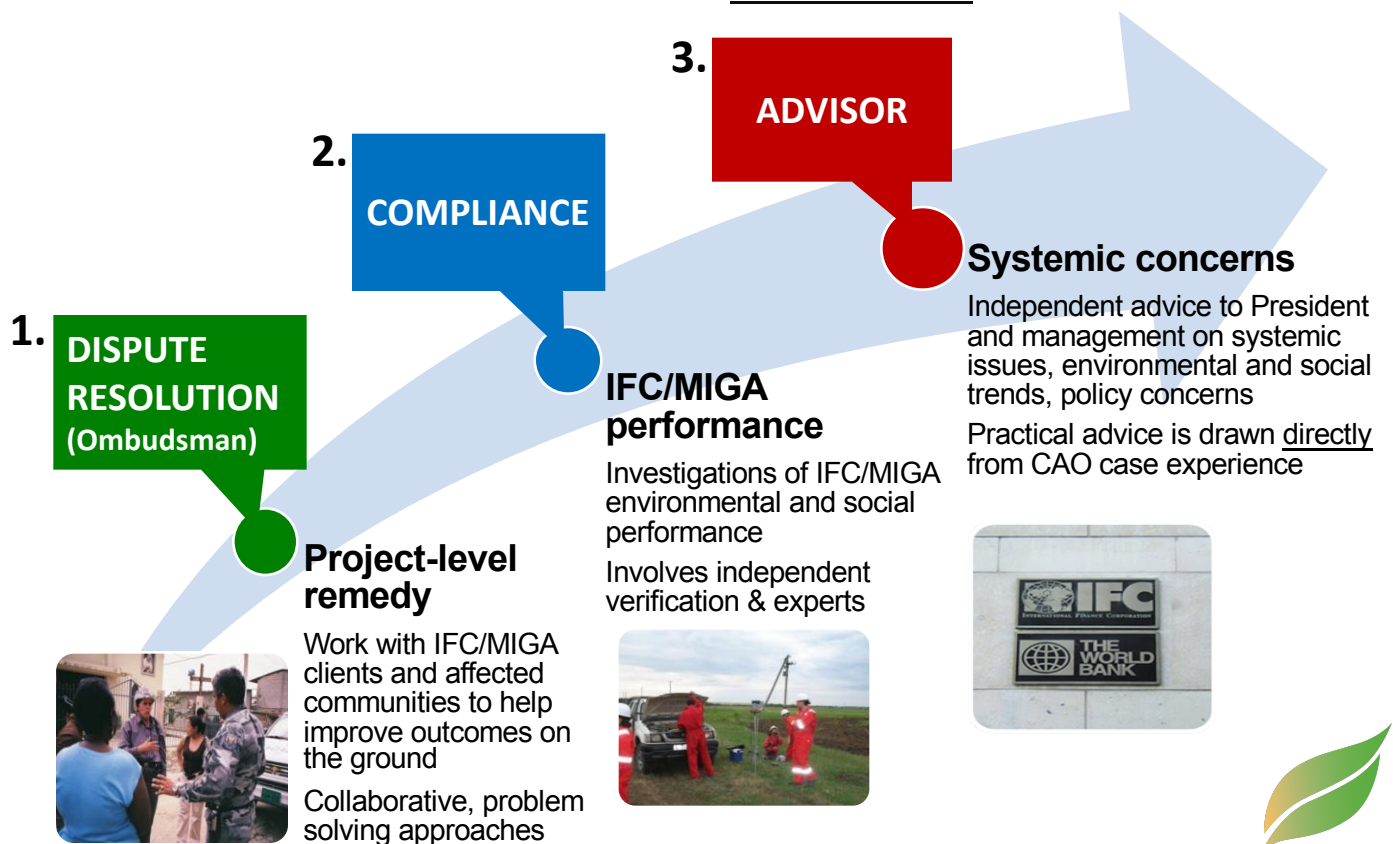


Accountability at IFC and MIGA

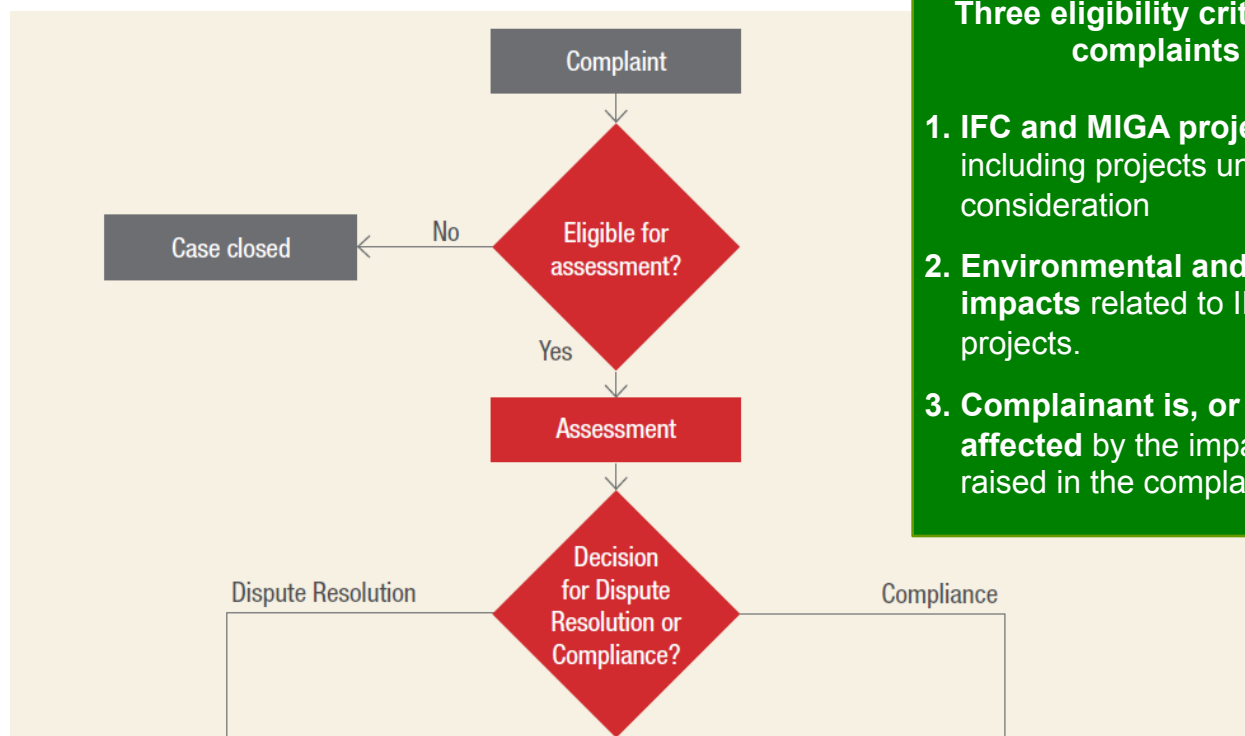


How does CAO work?

3 core functions focused on outcomes



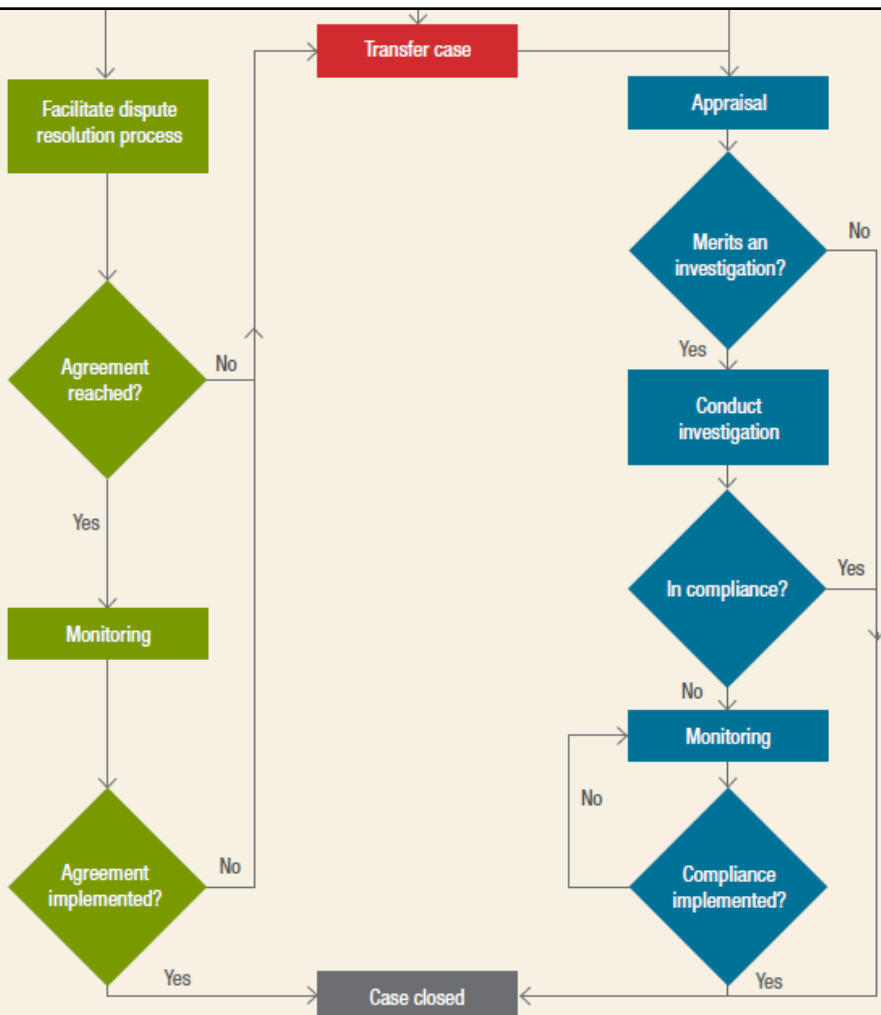
CAO Process for Handling Complaints



Three eligibility criteria for complaints

1. **IFC and MIGA projects**, including projects under consideration
2. **Environmental and social impacts** related to IFC/MIGA projects.
3. **Complainant is, or may be, affected** by the impacts raised in the complaint.





Dispute Resolution

Compliance



Definitions – Participatory Water Monitoring

PARTICIPATORY MONITORING is a collaborative process of collecting and analyzing data, and communicating the results, in an attempt to identify and solve problems together. It includes a variety of people in all stages of the monitoring process, and incorporates methods and indicators meaningful to the stakeholders concerned. Traditionally, companies and agencies initiate and undertake monitoring. Participatory monitoring requires changing the dynamic so that a wider range of stakeholders assume responsibility for these tasks and learn and benefit from the results. Participatory monitoring is not only scientific, but also social, political, and cultural. It requires openness, a willingness to listen to different points of view, a recognition of the knowledge and role of different participants, and the ability to give credit where credit is due.

WATER MONITORING involves gathering rigorous, scientific data and information about water quality and quantity. The data are analyzed to determine whether water quality supports resource uses and whether the available quantity of water is sufficient to meet the needs of these various uses. Data are also used to educate participants and to evaluate human impacts on water, as well as the effect of measures implemented to improve water quality.

PARTICIPATORY WATER MONITORING uses a participatory approach to monitor water. In the process, it not only generates credible data and information but also builds trust and helps resolve or avoid conflict surrounding perceived or actual impacts.

from CAO's 2008 Advisory Note, "Participatory Water Monitoring: A Guide for Preventing and Managing Conflict"



Participatory Water Monitoring - Simulation

1. What are the potential ***mutual*** benefits (to Kazon, to local community members, to the NGO) of a participatory monitoring program?
2. What might some of the barriers be, and ways to overcome them?

Assuming all parties have agreed...

3. Draft a purpose statement for your participatory water monitoring program.
4. How will various stakeholders participate?
5. How will program data be used and communicated to the public?



Participatory Water Monitoring – Guiding Principles

Seven broad principles guide the development of effective participatory monitoring programs:

1. **Participation.** Active participation gives those most directly affected equal voice in the design process, program implementation, and data analysis.
2. **Transparency.** Participants have access to information that is understandable and allows them to make informed decisions.
3. **Fair Process.** A fair process leads to a credible program based on learning and mutual understanding, which becomes the basis for corrective action.
4. **Negotiation.** Parties negotiate to reach agreement at each stage of the process: from determining what will be monitored or evaluated to deciding how and when data will be collected, interpreting what the data actually mean, agreeing to how findings will be shared, and outlining what actions will be taken.



Guiding Principles (cont.)

5. **Knowledge.** The process generates knowledge and understanding, and not simply data and information.
6. **Accountability.** Participants know that their efforts will produce results that improve project performance and that justice will be served.
7. **Flexibility.** Participants are open to results that may counter preconceived notions and are prepared to address such results with action.

from CAO's 2008 Advisory Note, "Participatory Water Monitoring: A Guide for Preventing and Managing Conflict"



Yanacocha: Participatory Water Monitoring

- In 2000, mercury spill from a truck contracted by Yanacocha gold mine in Peru: 150kg of mercury over 40 km road.
- Three complaints submitted to CAO regarding health impacts of spill and mining impacts on watershed
- To help parties address this complex dispute, CAO established an inclusive dialogue table – the *Mesa De Dialogo*.

Participants

Dialogue participants included

- *Affected Communities*
- *Company*
- *NGOs*
- *Local businesses*
- *Universities*
- *Catholic Church*
- *Local and regional government.*



Yanacocha: Participatory Water Monitoring (cont.)

Issues

- Yanacocha's regional impact on water quality/quantity was a primary concern to Mesa participants
- Health of mercury spill victims also a concern

Process

- Dialogue table commissioned independent water study to provide technical data around water impacts that could be trusted by all parties
- Technical capacity building accompanied water study to help local stakeholders understand study results and their implications
- Independent participatory water monitoring program set up to provide quality assurance for water monitoring programs

Outcomes

- Increased trust in mine monitoring program
- Provided forum for communication of monitoring results to a broad audience



Maple Energy: Participatory Water Monitoring

Issues

- Oil exploration & production in Peru; oil spills impacting local communities led to complaint to CAO
- Communities believed their health had suffered from exposure to hydrocarbons, including from participation in spill clean-up.
- The company did not believe that their operations had exposed the communities to a level of hydrocarbons that would result in adverse health impacts

Participants

- Communities chose 7 representatives representing two communities in dialogue process
- Communities were supported by NGOs, and local indigenous federations
- Three company representatives



Maple Energy: Participatory Water Monitoring (cont.)

Process

- Dialogue designed to address community access to safe drinking water, development of environmental and health studies, and options for community monitoring.
- Company and communities agreed to address health concerns through jointly designed environmental and health studies
- Parties worked together to test community water supplies and ensure access to safe drinking water
- Parties agreed to develop and implement a new community monitoring program



Definitions – Joint Fact-Finding (JFF)

Joint Fact-Finding is a process for conducting scientific studies or reconciling existing studies in ways that better ensure the credibility and accuracy of the studies in the eyes of all stakeholders. JFF is recommended when parties can reasonably anticipate that their science will be challenged by stakeholders who may be opposed to or skeptical of the use of the science in controversial decision-making processes. JFF is an antidote to “advocacy science” – the selective use of science to support or oppose a controversial position or action.

– from “*Humble Inquiry. The Practice of Joint Fact Finding as a Strategy For Bringing Science, Policy and the Public Together*” by Peter S. Adler, PhD; Todd Bryan, PhD; Matthew Mulica, MS; Julie Shapiro, MS



Joint Fact-Finding (JFF) Exercise

The dialogue participants (company, affected communities, local government, and NGOs) have turned to you as an independent expert for advice.

1. What ground rules or principles do you think would be important to guide the JFF process and behavior of the participants?
2. How might the independent scientists be selected?
3. How will relevant data be gathered, analyzed, and interpreted?
4. How will study results be communicated and used?



Oyu Tolgoi Joint Fact-Finding (JFF)

Oyu Tolgoi is a copper and gold mine in the Southern Gobi region, Mongolia. Complaint filed with CAO in February 2013 by nomadic herders.

Issues:

- Ensuring mutual understanding of the mine's impacts to the Undai River
- How design of river diversion project prevents and/or mitigates impacts
- What additional impacts have not yet been identified by company and what can be done to address or mitigate them?



Oyu Tolgoi (cont.)

Outcomes

- “Independent Expert Panel” (IEP) Terms of Reference jointly drafted
- IEP experts jointly selected (geologist/hydrologist and natural resource management earth scientist)
- Draft, Preliminary IEP Report Shared with parties for comment before conclusion of Phase I



NSEL: Joint Fact Finding Related to Health

In 2008, complaint from local residents and former sugarcane workers of Nicaragua Sugar Estates Limited (NSEL) regarding epidemic of Chronic Kidney Disease (CKD).

Issues

- Complainants claimed disease caused by exposure to company agrichemicals. Company strongly denied this claim. Parties deadlocked in a cycle of recrimination and denial.

Participants

- NSEL (the company) and ASOCHIVIDA, an association of over 2000 former sugarcane workers and their families

Process

- **Framework agreement** (2008) between parties to investigate cause of CKD
- **Parties jointly selected Boston University** to carry out **independent study** into disease cause
- **Initial Scoping Study** to gather available information on CKD in the region, identify data gaps, and recommend research activities.
- **Six research activities** then implemented regarding different aspects of the disease



NSEL: Joint Fact Finding Related to CKD (cont.)

Outcomes

- **Unprecedented scientific study** with full collaboration between company and community
- **Increased understanding** about the disease and treatment options
- **Informed broader public and private sector** of potential impacts of disease on workforce
- **BU is continuing investigation into CKD:**
 - Ongoing efforts to address health issues
 - Efforts to raise awareness of disease regionally and globally in collaboration with US Centers for Disease Control and Prevention (CDC)



Joint Fact-Finding (JFF) Procedures - Typical Characteristics

1. They involve multiple stakeholders who may have very different viewpoints.
2. They are collaborative and require people to work together.
3. They are structured - JFF processes and meetings are not left to chance but are well designed and highly focused dialogues.
4. They are inquiry based and require a robust exploration to understand the problem from all angles.
5. They are interest-based study processes and not forums for arguing political positions.
6. They are integrative and multidisciplinary. They bring different types of knowledge, information and data to the table.

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