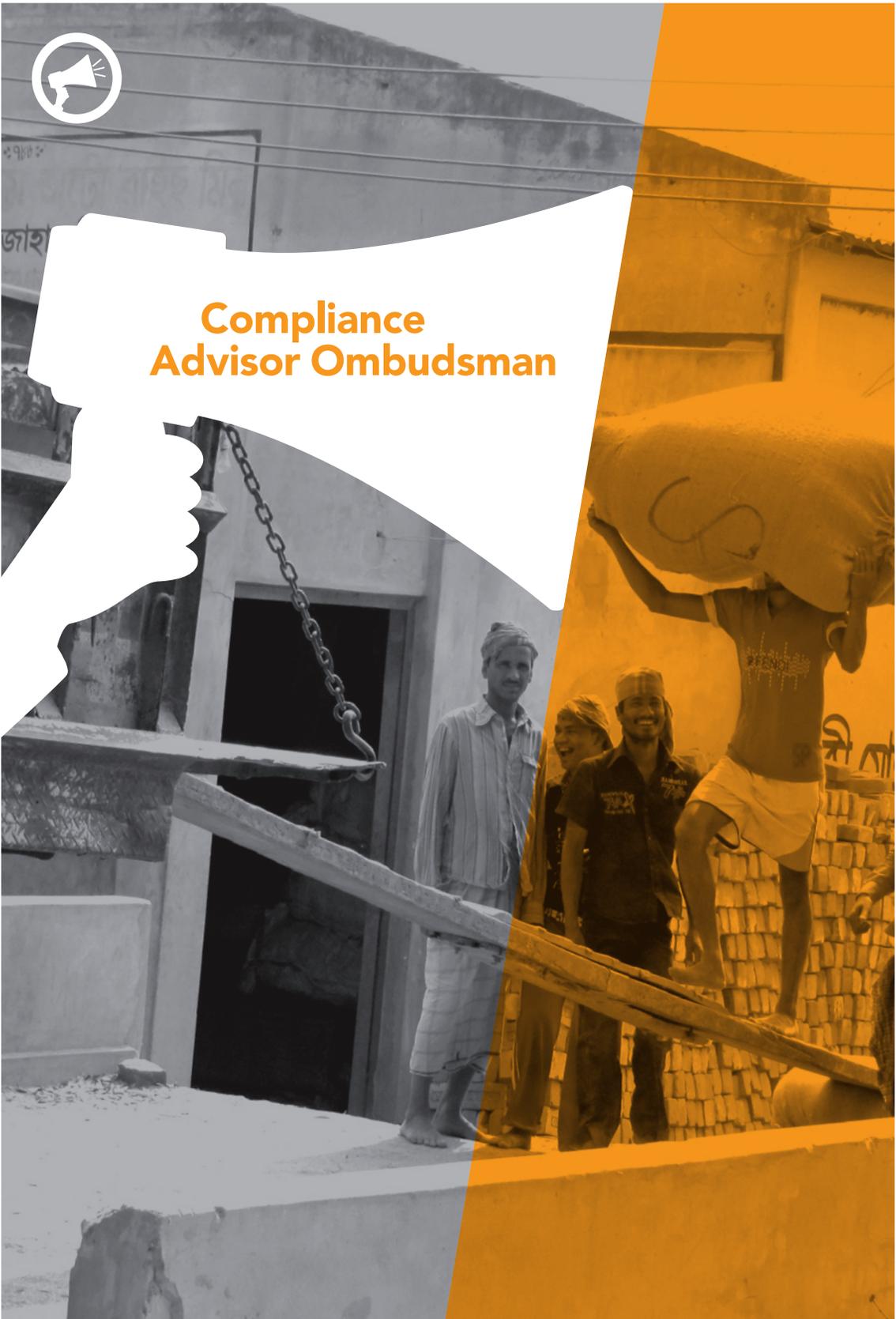




Compliance Advisor Ombudsman

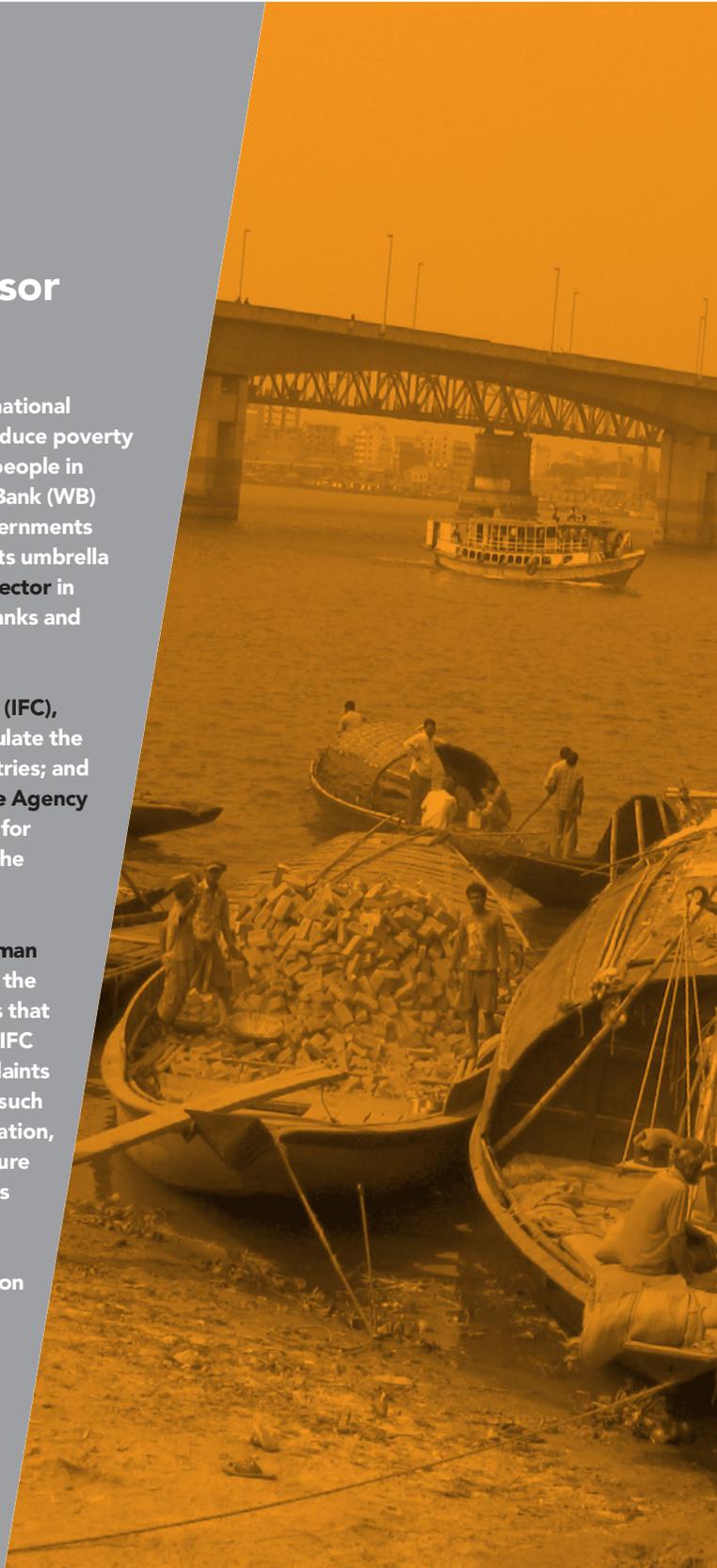


About the Compliance Advisor Ombudsman

The World Bank Group is an international development bank that aims to reduce poverty and improve living standards for people in developing countries. The World Bank (WB) Group is made up of member governments and has two organisations under its umbrella that directly support the **private sector** in developing countries, including banks and corporations:

- **International Finance Corporation (IFC)**, which provides assistance to stimulate the private sector in developing countries; and
- **Multilateral Investment Guarantee Agency (MIGA)**, which provides insurance for private corporations investing in the developing world.

The **Compliance Advisor Ombudsman (CAO)** was established to address the social and environmental concerns that affected communities have about IFC or MIGA-financed projects. Complaints often relate to projects in sectors such as agribusiness, mining, transportation, hydropower and other infrastructure sub-sectors. Examples of the types of issues raised in complaints to the CAO include those regarding Indigenous Peoples, land acquisition and involuntary resettlement, environmental management, and labour and working conditions.



Key IFC and MIGA rules

The IFC and MIGA have a set of rules that provide their client companies with guidance regarding how to identify, evaluate, avoid, mitigate and manage risk of harm from activities supported by the IFC and MIGA. While you do not need to argue that an IFC or MIGA rule has been violated in order to complain to the CAO, awareness of the following rules may help you to draft your CAO complaint.

The rules most commonly addressed in CAO complaints are the IFC Performance Standards on Environmental and Social Sustainability ("Performance Standards"). In addition to the Performance Standards, which address standards that corporations must meet to receive IFC support, the IFC's Policies on Environmental and Social Sustainability and Access to Information govern the IFC's own behaviour. Visit www.ifc.org/sustainability to view the policies in more detail.

Performance Standards:

PS 1 Assessment and Management of Environmental and Social Risks and Impacts: Establishes the importance of identifying the environmental and social impacts of a project; engagement with local communities; and the management of environmental and social performance throughout the project.

PS 2 Labor and Working Conditions: Recognises the importance of protecting workers' rights, as well as promoting non-discrimination and equal opportunities in safe and healthy working conditions.

PS 3 Resource Efficiency and Pollution Prevention: Aims to avoid adverse impacts on health and the environment by minimising pollution from projects, promoting sustainable use of resources and reducing project-related greenhouse gases.

PS 4 Community Health, Safety and Security: Addresses the responsibility to avoid risks to community health, safety and security as a result of project activities. Ensures the safeguarding of personnel and property in accordance with human rights principles.

PS 5 Land Acquisition and Involuntary Resettlement: Stresses that involuntary resettlement should be avoided, and if it is unavoidable, it should be minimised and appropriate measures should be taken to mitigate adverse effects on affected individuals or communities. This refers to physical and economic displacement in which affected communities do not have the opportunity to refuse land acquisition.

PS 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources: Clients should avoid impacts on biodiversity and ecosystem services, and when impacts are unavoidable, they should implement measures to minimise impacts and restore biodiversity and ecosystem services. This includes direct and indirect impacts that are related to projects.

PS 7 Indigenous Peoples: Ensures that the development process respects the human rights, dignity, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples. It also requires free, prior, informed consent of indigenous communities.

PS 8 Cultural Heritage: Recognises the importance of cultural heritage for current and future generations and requires that the client should identify and protect cultural heritage.



How to file a complaint

The following step-by-step guide explains the process that affected groups and their representatives can follow to submit a complaint to the CAO. There are various tools available for assistance. The CAO, as well as SOMO and Accountability Counsel, can provide advice and additional information on submitting a complaint. A sample complaint can be found online at: <http://www.cao-ombudsman.org/>.

Overall strategic considerations

- Consider the benefits of a complaint, as well as limitations of the mechanism and set appropriate expectations.
- Consider whether another strategy might be more effective or efficient. Using the CAO may be most effective when combined with other strategies, including: engaging the media; seeking campaign support from other organisations; government advocacy; or other tactics.
- Understand the time and resources required to complete the CAO process, which could take several years.
- Consider whether beginning a CAO complaint process could place the affected group at risk of retribution or violence. Develop a strategy in advance for how to address this risk.

Background to the CAO



The CAO was created in 1999 to receive complaints from communities that were harmed, or may be harmed, by IFC and MIGA activities. Its mission is to address community concerns about IFC or MIGA-funded projects, enhance environmental and social outcomes on the ground, and provide transparency and greater public accountability of IFC and MIGA.

The CAO has three functions:

- To assist communities and companies to resolve their disputes (Dispute Resolution),
- To determine whether the IFC and MIGA complied with their rules when conducting due diligence (Compliance Investigation), and
- Providing advice to the World Bank Group (Advisor).

The CAO's Dispute Resolution function provides a forum for communities and companies to address grievances, but only if the company agrees to participate in the process voluntarily. Even when companies agree to participate, if they do not enter the process in good faith, it is unlikely that they will make meaningful progress towards addressing a dispute. If one or more of the parties choose the Compliance function, or if the parties are unwilling or unable to reach agreement through dispute resolution, CAO's Compliance function will be initiated.

The head of the CAO is called the CAO Vice President. The CAO Vice President reports to the President of the World Bank Group. The CAO staff is composed of individuals appointed by the CAO Vice President. To encourage the CAO's independence, staff members are prohibited from being employed by either the IFC or MIGA for two years after they have ended their term at the CAO and the CAO Vice President is restricted from ever being employed by the IFC or MIGA in the future.

Technical preparation for the complaint

- If possible, clearly define for yourself the specific IFC and MIGA rules that have been violated and determine whether those violations have caused, or will cause, harm.
- Determine which corporate entities you believe to be responsible or involved.
- Make sure to keep a record of the steps that have been taken to communicate the problem with the company and/or with IFC or MIGA management and responses, if any.
- Gather evidence to detail the harm or expected harm; this could include photographs, videos, written notes or other materials.

Write the complaint

Your complaint to the CAO should include:

- The date, name and signatures of the affected person or group; whether they wish their identities to remain confidential and if so why; and the name of any representatives assisting the affected person or group, with a signed letter providing proof of authority to provide the representation.
- A brief description of the IFC or MIGA project and any rules that may have been violated.
- An explanation of the social or environmental harm, or expected harm, as a result of the IFC or MIGA project.
- A description and record of any steps already taken to try to resolve the problem with the company, IFC or MIGA.
- A description of the change you would like to see as a result of the CAO process.
- Evidence of harm or potential harm.

The CAO Process

Upon receiving a complaint, the CAO has 15 days to decide on eligibility. If the complaint is not eligible, the case is closed. If the complaint is eligible, the CAO conducts a 120-day assessment to understand the issues raised in the complaint; engage with the parties; explain the different roles of CAO and determine which role the parties seek to initiate.

Dispute Resolution: If the CAO sees an opportunity to reach a solution through Dispute Resolution, the CAO may offer formal mediation through a professional mediator, hire experts to assist with fact-finding or use other techniques to address the conflict. If Dispute Resolution is not possible, or if at any point either party no longer wishes to be a part of the process, the complaint is transferred to the CAO's Compliance function.

Compliance Investigation: In the Compliance phase, an initial 45-day appraisal determines whether the case merits a full investigation or not. If not, the case is closed. If the appraisal results in a recommendation for a Compliance Investigation, CAO staff members prepare a report with a Terms of Reference on the scope of the issues, process and timeline of the Investigation.

The CAO typically hires a panel of independent experts to conduct the Compliance Investigation, which examines whether IFC or MIGA followed its own rules and whether project outcomes are consistent with the goals of those rules. The Investigation may include a review of documents, interviews and site visits. The CAO then reports to the World Bank Group President, allowing management to respond both to a draft and the final report. The final report and response are disclosed on the CAO website after clearance by the President.

In cases where the CAO's investigation shows that the IFC or MIGA is not in compliance with their rules, the CAO will keep the case open to monitor IFC's actions until compliance has been achieved.

File the complaint

- You may submit the complaint to the CAO in any language.
- Submit the complaint via email, fax or mail to:

Office of the Compliance Advisor
Ombudsman (CAO)
2121 Pennsylvania Avenue, NW
Washington, DC 20433
United States of America

Tel: + 1 202 458 1973

Fax: + 1 202 522 7400

Email: cao-compliance@ifc.org

Community considerations prior to entering into a CAO Dispute Resolution process

- Determine the scope of the community experiencing harm and assess whether those people fully understand and support a complaint process. If they do not, consider whether it would be useful to conduct trainings for the affected group.
- If possible, any community divisions should be resolved early on so that they do not undermine the process. Dispute resolution is most effective when the affected community speaks with one voice.
- Decide who will speak on behalf of the affected community during the complaint process; how decisions will be made; what the desired outcomes are; whether the dialogue could produce those outcomes and how; and

The who, what, when, where, and why of filing a complaint

Who: Any individual or group that believes they are, or may be harmed by an IFC or MIGA project can submit a complaint. Representatives speaking on behalf of an affected group may also submit a complaint, as long as they provide the names of those they represent and proof that the representation was authorised.

What: The complaint must relate to a social or environmental impact of an IFC- or MIGA-funded project; it must show that the individuals submitting the complaint have been or likely will be affected by social or environmental impacts on the ground.

When: Complaints may be filed before the start of the project, while the project is being constructed, is ongoing, or after the project has been completed. However, it may be more difficult to address a problem once the IFC or MIGA have ended their relationship with the project.

Where: The complaint is submitted to the CAO, which is based at the IFC's headquarters in Washington, DC.

Why: Submitting a complaint to the CAO may help you to resolve the problem you are facing with a company receiving financial support from IFC or MIGA; it may bring the problem to the attention of WB Group leadership, who may be able to remedy harm; or it may create a record of the IFC or MIGA's violations of their rules through a Compliance Investigation, which may help to address problems in advocacy campaigns and to prevent such violations from happening in the future.

Follow up on your complaint

- If agreements are reached through the CAO's Dispute Resolution process, ensure that the CAO monitors and reports on implementation of those agreements.
- If transferred to Compliance and the CAO concludes that the IFC or MIGA violated its rules, ensure that the CAO and World Bank Group leadership follow through with any commitments made to address violations.
- It may be particularly helpful to speak to members of the World Bank Group Board of Directors, who may ultimately receive and be empowered to respond to a Compliance Investigation report.

- which issues will take priority.
- The balance of power between communities and companies is often imbalanced in favour of the company. If needed, communities should reach out for assistance.
- Note that the CAO has a record of attempting to limit participation of community representatives in the Dispute Resolution process, both in initial communications and during meetings with companies. Be prepared to address this challenge.



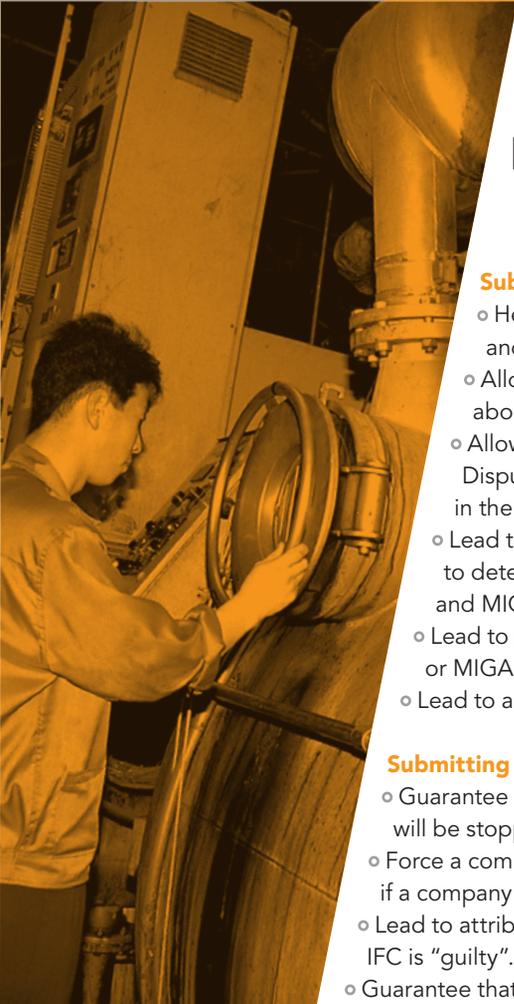
Benefits and limitations of the mechanism

Submitting a complaint to the CAO could:

- Help raise awareness about what is happening, both locally and internationally.
- Allow you to directly voice your concerns to the IFC and MIGA about a project.
- Allow for direct dialogue with the project company through a Dispute Resolution process if the company agrees to participate in the process.
- Lead to a formal investigation through a Compliance Investigation to determine whether or not there have been violations of IFC and MIGA rules.
- Lead to public monitoring and reporting on any violations of IFC or MIGA rules.
- Lead to action by the WB Group leadership to correct the violation.

Submitting a complaint to the CAO cannot:

- Guarantee that harm being caused by an IFC or MIGA supported project will be stopped or prevented.
- Force a company to participate in a voluntary Dispute Resolution process; if a company refuses to cooperate, the Dispute Resolution process ends.
- Lead to attribution of blame or lead to findings that a company or the IFC is "guilty".
- Guarantee that the CAO will conduct an investigation.



About this brochure

This brochure provides a brief overview of the work of the Compliance Advisor Ombudsman and its procedure to file a complaint. Civil society organisations, workers, communities and groups of individuals who are harmed by an IFC or MIGA project can use the CAO process to address their grievance. This brochure briefly explains how.

About the Human Rights & Grievance Mechanisms Project

This brochure is part of a series of brochures on grievance mechanisms that is produced within SOMO's Human Rights & Grievance Mechanisms Project. This project aims to improve the accessibility and effectiveness of non-judicial grievance mechanisms for stakeholders who experience adverse impacts on their human rights as a result of business activities. For more information, go to www.grievancemechanisms.org.

About SOMO

SOMO is an independent, not-for-profit research and network organisation that promotes sustainable and fair global economic development and the elimination of the structural causes of poverty, environmental problems, exploitation and inequality.

SOMO

Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations
Sarphatistraat 30
1018 GL Amsterdam
The Netherlands

T +31 20 639 12 91
info@somo.nl
www.somo.nl

About Accountability Counsel

Accountability Counsel is a non-profit legal organisation that supports communities to defend their environmental and human rights when they have been harmed by internationally financed development projects. Accountability Counsel helps communities to voice their complaints about projects that affect them – and to demand remedies where rights are violated – through the use of non-judicial accountability offices.

Accountability Counsel
230 California Street, Suite 304
San Francisco, CA 94111
United States of America

T +1 415 296 6761
info@accountabilitycounsel.org
www.accountabilitycounsel.org



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