

Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations



COMPLIANCE ADVISOR OMBUDSMAN

introduction

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive, and to enhance the social and environmental outcomes of those projects.

CAO's mandate and role reflect the reality that many development projects carry social and environmental risks.

In this context, an impacted person's ability to speak up about impacts of development projects freely and without fear, particularly if the person belongs to a community that is already vulnerable as a result of its status in society, is essential. People who come to CAO are often vulnerable and may fear that submitting a complaint to CAO puts them at risk of reprisal for doing so. This Approach seeks to address these concerns and risks.

This approach should be read together with CAO's Operational Guidelines, as well as World Bank Group policies and staff rules.

applicability, scope and limitations

This Approach is applicable to all CAO functions. It sets out how CAO staff and consultants—within CAO’s mandate—are expected to handle situations that may arise in the course of CAO’s work involving threats and incidents of reprisals targeted at individuals engaged, or seeking to engage, in a CAO process.

The types of threats of reprisals which this approach aims to address can range from fears for a person’s job or standing at work, future job prospects being

adversely impacted, or loss of reputation in the community or workplace, to threats of physical violence to individuals or their family members, and even criminalization or incarceration as a result of speaking out against the impacts of a project. People’s concerns for their and their families’ safety and wellbeing can prevent affected people from filing complaints to seek redress for anticipated or experienced social and/or environmental impacts associated with IFC/MIGA projects.

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Limitations of CAO’s role

CAO takes the safety of complainants and others that engage in a CAO process seriously, and seeks to exercise its mandate in a manner that maximizes its ability to respond appropriately to threats and incidents of reprisals in the context of CAO’s processes. CAO is available to discuss such concerns with people prior to lodging a complaint. At the same time, CAO endeavors to be clear about the limitations of its ability to respond to such instances: CAO is not an enforcement mechanism, and does not have any direct ability to physically protect complainants or safeguard people from the possible consequences of engaging in a CAO

process or cooperating with CAO. Where countries have adequate processes available that prevent and protect against reprisals aimed at persons working in the public interest, using those processes may be the concerned person’s best option. As set out below, CAO may have the ability to reach out to other actors. In any given situation, however, other actors may or may not be able to respond to potential threats or incidents of reprisals. Given these limitations to CAO’s ability to respond to threats or incidents of reprisals, this approach is focused on assessment and prevention as the best means to counter threats.

principles

CAO acts in keeping with the following principles:

1. Peaceful resolution of disputes

CAO believes in the resolution of disputes through non-violent and peaceful means that promote the dignity of people and respect the rights of all. Violence or threats have no place in a CAO process.

2. Confidentiality

CAO's Operational Guidelines set out its commitment to safeguard individual identities and confidential information shared by the parties*. CAO will respect a party's request for confidentiality, and protect their right to confidentiality for as long as they choose in a process and after it has been closed. This confidentiality protection can start as early as inquiries are made to the office before lodging a complaint, and carries through the eligibility, assessment, dispute resolution and/or compliance process, and any related advisory work.

*Note: In a CAO process, the term "parties" typically refers to the complainant(s) and project operator.

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3. Participation and informed consent

CAO’s approach to responding to threats or incidents of reprisals will be discussed and agreed with the concerned person(s) (complainants and others engaged or seeking to engage in a CAO process) from the start and throughout the process. CAO engages with the concerned person(s) throughout its involvement to discuss and reassess the risk of threats or incidents of reprisals, and to help devise an appropriate response. CAO will always seek the informed consent of the concerned person(s) before taking any action in relation to threats or incidents of

reprisals on their behalf. In this context, CAO will explain the limitations of its mandate and capability in this field, and strives to be realistic and transparent in its description of what CAO can and cannot do in such circumstances, as set out in this document.

4. Intent to prevent harm

Core to CAO’s work is the intent that people should not be harmed as a result of cooperating in a CAO process. CAO will discuss concerns with the concerned person(s) and may conclude a CAO process as a preventative measure.

approach

CAO will proactively assess, discuss, and address risks of threats and reprisals throughout its involvement in any complaint. Recognizing that every case context is unique, CAO takes a flexible approach which can be adapted to different situations, but is always guided by core principles: peaceful resolution of disputes; confidentiality; complainant participation and informed consent; and intent to prevent harm.

Risk Assessment

From the outset and throughout CAO's process, CAO will regularly assess the risk context of the complaint and incidents of reprisals, both through interactions with the parties, and by consulting independent sources and IFC/MIGA management.

CAO pays particular attention to risk factors such as, but not limited to: the environment for public participation; the risks people in the country or region take when they protest against a development project or promote social and environmental causes; whether complainants have previously faced threats or incidents of reprisals; the presence of formal or informal security forces; and whether there are specific groups or individuals that may be at higher risk based on their status in society. CAO also assesses the safety of its digital communications, and seeks to adopt best available technologies to safeguard the digital integrity of its processes.

Preventive measures

Where asked to do so, CAO will work closely with the concerned person(s) to identify preventive measures adapted to the specific circumstance, especially where security concerns are present. Where risks of reprisal are present, CAO seeks to plan possible responses with the concerned person(s) prior to any potential incident in case they may be unreachable in such an event (see also “Response to security incidents”, p. 9).

Preventive measures can take a multitude of forms:

Safeguarding confidentiality

CAO will safeguard individual identities and confidential information throughout a party’s engagement with CAO. Examples of methods that CAO employs to protect confidentiality are set out below:

- *Complaint disclosure:* CAO only shares complaints, or information contained in the complaint, with other parties with the prior consent of the complainant(s).
- *Photography:* CAO will not take photographs of individuals involved in a complaint without their express consent. In addition, CAO will not use identifiable images of individuals with confidentiality protection, or indications of their locations, without their express consent. Photographs of individuals involved in a CAO process will only be used for publication purposes when appropriate permissions have been sought and the individuals are aware how the images will be used.
- *Recording of meetings:* CAO never makes audio or video recordings of meetings without consent of the participants, and may advise against the use of recording/filming devices during meetings to protect confidentiality.
- *Confidentiality agreements:* CAO requires the consultants, interpreters, and drivers it uses to sign confidentiality agreements.
- *Secure communication:* Wherever feasible, CAO will use encrypted mediums for communication and seek to adopt other technology best practices to help safeguard confidentiality online and in communications.

- *Logistics*: Logistical arrangements will be agreed with the concerned person(s) with view to minimizing risks, such as by avoiding public meetings, or meeting people at off-site locations or where they feel it is safe.

Generating a supportive environment and addressing power imbalances

Particularly for cases in dispute resolution, which engage the project operator and complainant(s) in a voluntary collaborative process, CAO may work with the parties to implement measures that help create a safer environment for engagement and address power imbalances. Such measures include the engagement of professional mediators, and provision of training and ongoing capacity building for the parties engaged in dialogue. Parties may contribute to a safer environment for engagement through actions aimed at building trust, such as cessation of activities that are of concern to the other party. Joint public statements in support of a collaborative process can also send a positive signal to process outsiders. Sometimes, it may be appropriate to approach other actors, such

as government agencies or World Bank Group management, as relevant, with the consent of the concerned person(s).

Response to security incidents

CAO acknowledges that incidents of reprisals and their consequences for concerned person(s) may be of an ongoing nature and may require ongoing efforts. Should security threats or incidents occur in the context of a CAO engagement, or should CAO become aware of such threats, CAO will discuss with the concerned person(s) what the appropriate course of action in relation to the CAO engagement might be. In this context, not having any direct ability to physically protect complainants or safeguard people from possible consequences, CAO endeavors to be clear about the limitations of its ability to respond to such instances of threats and reprisals.

reporting

CAO will report information on threats and reprisals in its operations in aggregate annually. CAO may also reflect any significant security concerns or incidents in CAO case reports, as appropriate, where it is safe for the concerned person(s) to do so, and with their consent.

review of approach

CAO will periodically review the effectiveness of this approach and make improvements as needed.





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