



# GETTING STARTED WITH DISPUTE RESOLUTION



## PREFACE

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the private sector arms of the World Bank Group, the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). CAO reports directly to the President of the World Bank Group. CAO's mandate is to address complaints from people affected by IFC/MIGA projects in a manner that is fair, objective, and equitable, and to enhance the environmental and social outcomes of those projects. A detailed description of CAO's mandate, functions, and procedures can be found in CAO's Operational Guidelines.

The main objectives of CAO's Dispute Resolution function are to help resolve issues raised about the environmental and/or social impacts of projects supported by IFC/MIGA and to improve outcomes on the ground.

CAO's Dispute Resolution function provides a nonjudicial, non adversarial, impartial, and independent forum through which communities and companies (the "parties") can seek mutually satisfactory solutions to disputes. CAO and the relevant stakeholders may use a number of different approaches in attempting to resolve these disputes, such as confidential meetings, public meetings, joint fact-finding, or shuttle diplomacy. Each approach is chosen in consultation with the parties with the objective of creating a process that promotes self-determination and encourages voluntary decision making. Typically, CAO's role is to convene meetings to facilitate communication, negotiation, and joint problem-solving among the parties. Figure 1 depicts a typical dispute resolution process convened by CAO (see p. 2).

CAO's Reflections from Practice series has two primary goals: to provide guidance for CAO Dispute Resolution staff, mediators, and consultants; and to inform the parties participating in CAO dispute resolution processes about foundational principles.

Each publication in the series is organized along similar lines:

- 1. Introduction**
- 2. Principles**
- 3. Common Challenges**
- 4. Strategies and Tools**

The diversity of cases, issues, and stakeholders engaged with by the CAO makes it difficult and inappropriate to develop guidelines that will apply in every case. This series is intended as a useful resource. The relevance and application of any specific part will depend on the professional judgment of individual staff and mediators, as well as the knowledge of the stakeholders involved. In most cases, the general guidance provided by these publications will need to be tailored to the context and specifics of each particular case.



**1**

**Assessment**  
CAO meets the parties, and other stakeholders where relevant, to get a better understanding of the issues and explain CAO's Dispute Resolution and Compliance functions.



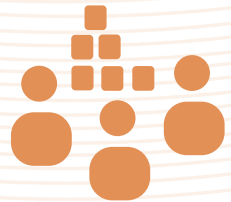
**2**

**Parties Choose Dispute Resolution**  
If parties choose dispute resolution, an independent mediator is contracted. Ongoing capacity building and training may be conducted to help prepare the parties for dispute resolution and build skills required for participation.



**3**

**Ground Rules Established**  
Mediator helps parties to agree on a set of ground rules that will govern the process, covering such issues as handling the media, disclosure of information, and confidentiality.



**4**

**Parties Design a Framework for Engagement**  
The mediator works with the parties to design a structure for the process, including how meetings will be conducted and what issues the parties are willing to mediate.



**5**

**Facilitated Dialogue**  
The mediator works with the parties to identify their needs and interests, explore options to address them, and negotiate possible settlement of issues raised. Tools used may include:

- independent fact finding
- participatory monitoring
- expert advice
- joint field trips.



**6**

**Settlement Agreement**  
If the parties reach a settlement, the mediator works with them to conclude a settlement agreement that captures implementation of specific actions and commitments.



**7**

**Monitoring**  
CAO monitors implementation of the agreement(s) to ensure that actions and commitments are met.



**8**

**Case Closed**  
CAO closes the case once assured that agreed items have been fully implemented to the satisfaction of the parties.

Note: If at any stage in the process, one or more parties wishes to exit the process or fails to reach agreement, the case is transferred to CAO Compliance.



## INTRODUCTION

Once CAO deems a complaint about an IFC or MIGA project eligible for further action,<sup>1</sup> CAO conducts an assessment to gain an understanding of the parties and their concerns and perspectives. During this time, CAO also informs the parties about the process options available through CAO. Parties can choose to pursue either a collaborative solution through CAO's Dispute Resolution function or submit the case for review by CAO's Compliance function. This assessment phase concludes with the parties' decision about which CAO process to initiate.

Where parties agree to seek resolution through a voluntary dispute resolution process, there are typically many questions that need to be addressed before the process begins:

- *What* is the purpose of the process?
- *What* are the issues for discussion and how should they be framed?
- *Who* should participate?
- *What* are the roles and responsibilities of the participants, the mediator, and any advisors or observers?
- *How* can the process be structured so that it is conducive to all parties participating fully on as equal a footing as possible?
- *Are* there any ground rules that parties would like agreement on before commencing the process?

During this early phase of preparing the process and convening the parties, CAO can set the stage and tone for the dispute resolution process and build trust. This Reflections from Practice provides an overview of the principles that guide the early "getting started" phase of CAO's dispute resolution work, the challenges that may arise when setting up a dispute resolution process, and the strategies and tools that conveners can use in this phase.

<sup>1</sup> Complaints are accepted by CAO if they pertain to a project that IFC/MIGA is supporting; the issues raised are environmental and/or social in nature; and the complainant is, or may be, at risk of being, affected by the issues in question. These eligibility criteria were developed through public consultation. For the full text of the eligibility criteria, consult CAO's Operational Guidelines at <http://www.cao-ombudsman.org/howwework/2012OperationalGuidelinesUpdate.htm>.





## PRINCIPLES

An important part of building trust and common understanding is agreeing upon and following a set of principles. The early convening phase represents the entry point of a dispute resolution process. Thus, the principles that guide this phase mirror the principles that guide CAO dispute resolution as a whole:<sup>2</sup>

*Ownership and self-determination by the parties:* The parties need to agree on the purpose, principles, scope, and structure of the dispute resolution process.

*Independence:* CAO teams operate as independent neutrals, which means they must at all times act in an impartial manner, avoid conduct that gives the appearance of partiality, and be committed to serve all parties equally in the dispute resolution process.

*Representation:*<sup>3</sup> The parties need to be adequately represented in the process, with each party identifying for itself credible and legitimate representatives. With respect to the parties bringing the complaint (the complainants), CAO seeks to work directly with the project-affected individual(s) or community.

*Cultural appropriateness:* The dispute resolution process should take into account local practices, culture, and traditions. It should also be accessible to all relevant parties. When parties from different cultural, educational, religious, professional, or other backgrounds come together, the structure of engagement needs to accommodate all parties' needs.

*Predictability and flexibility:* The dispute resolution process should provide sufficient structure to create predictability and an efficient and focused process, while remaining flexible and adaptable to the parties' changing needs and priorities.

*Empowerment of the parties:* All party representatives should feel able and prepared to participate in the process on as equal a footing as possible. Achieving this goal often entails some capacity building or preparation with parties before beginning the process.

*Inclusivity:* Even where the concerns were not raised by marginalized groups or minorities, ways should be found to include such groups and accommodate their concerns and input in the process, either directly or through representative structures or other process elements (such as women-only groups) that meet to discuss relevant questions and feed into the process. Such groups may be differentially affected by the issues raised in the complaint and have different concerns, and may propose different solutions. Including them can enrich the process and lead to more sustainable results.

<sup>2</sup> The principles underpinning CAO's work in dispute resolution, and as a mechanism as a whole, are in close alignment with the effectiveness criteria for non-judicial grievance mechanisms described in the United Nations publications, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. See [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>3</sup> See Reflections from Practice 2: Representation, CAO (2018).



## COMMON CHALLENGES

Conveners like CAO typically face a series of common challenges when beginning a dispute resolution process.

*Power imbalances:* Parties in dispute can have significant capacity and power imbalances. For example, they may have different access to resources and information or different relationships to relevant government agents. While structuring the dispute resolution process, it is important to work toward reducing these imbalances, while also acknowledging that some differences will remain and will need to be addressed continuously during the process.

*Working through early complexities:* It can often be challenging to know where to start setting up a dispute resolution process. Agreeing on the scope of the discussion can help the convener and the parties determine who needs to sit at the table. At the same time, determining who sits at the table can help define the scope of issues for discussion.

*Representation:* Defining who sits at the table is one of the most common challenges that conveners face in the early stages of the dispute resolution process. Representation issues can include whether all the relevant actors have been included in the process, the extent of the decision-making authority of parties' representatives and steps to ensure their consistent participation, and questions regarding the roles of lawyers and advisors to the parties. Reaching the right balance is important to ensure the "buy-in" of participants, the effectiveness of the negotiation process, and the legitimacy and credibility of any outcomes. This challenge is further explored in a separate Reflections from Practice publication.<sup>4</sup>

*Lack of trust:* At the outset of a process, trust between the parties is often limited. Despite this, parties sometimes want to address substantive issues before interests have been explored and trust has been built. For example, they may wish to negotiate preconditions to dispute resolution as part of the discussion about ground rules.

*Finding experienced mediators:* Working with a capable mediator is critical to the success of a dispute resolution process. However, in CAO's experience, it can be a challenge to identify mediators who have prior experience mediating situations that are similar in scope, style, and subject matter to the dispute at hand, and who also possess the right language skills or ability to understand the cultural context and be accepted as independent and impartial by the parties.

*Understanding the role of the mediator:* In many circumstances, the parties have never experienced dispute resolution and often look to the mediation team for decisions and judgments, expecting mediators to act like a judge or arbitrator.

*Timing and pacing:* Parties in a dispute are typically eager to start telling their stories and address their substantive issues. They may have limited interest or patience for upfront preparations, capacity-building, and discussion of procedural matters, even if those aspects greatly increase the likelihood of a successful process.

<sup>4</sup> Reflections from Practice 2: Representation, CAO (2018).



## STRATEGIES AND TOOLS

Conveners can employ a variety of strategies and tools to help work through the challenges at this early stage in a dispute resolution process.

### *Assembling the Right Team*

Engaging a trusted and competent dispute resolution professional (usually a mediator), or team of professionals, is essential for a successful process. Although the selection of the mediator or mediation team can sometimes be straightforward, more often it is a sensitive decision that can have a significant impact on how parties view the process and their level of trust in the independence and competence of CAO and its mediators.

*What to look for:* There are a few key elements to consider when selecting a mediator or mediation team. Ideally, mediators speak the working language(s) of the parties, are available to engage for the duration of the process, and have experience mediating in situations that are similar in scope, style, and subject matter. Mediators should be independent and impartial, and not have any actual or perceived conflict of interest. Mediators who can make themselves available easily and quickly, given both their schedules and their location relative to the parties, are also advantageous to the process, which calls at times for quick responses and interventions. In some contexts, mediator options may be limited by language, availability, experience, capacity, and real or perceived conflicts of interest. To protect the independence of the process, all CAO team members, including mediators, must not have any financial or other interest in the outcome of the process, and moreover, disclose any circumstances which may give rise to a conflict of interest.

*Who chooses the mediator and how:* In CAO cases, mediators are usually appointed by CAO, using its judgment based on experience working with different mediators in diverse cases. Still, the parties should be given the opportunity to review the mediator's profile, ask relevant questions, and raise concerns or objections that can be discussed substantively with CAO. In some cases, it may be sensible for CAO to involve the parties in the selection of the mediator to help increase trust and buy-in from the outset. Where appropriate, this participation can be extensive: for example, parties could shortlist, interview, and select a mediator jointly. Whatever the selection process looks like, if a party has serious concerns about a mediator that cannot be addressed, it is advisable to look for alternatives rather than choose that mediator and be faced with issues of mistrust throughout the process. A mediator may even recuse herself/himself on her/his own initiative, if not supported by one or more of the parties.

*When and how to work with mediation teams:* In many cases, employing a single mediator may be appropriate. However, where issues are highly complex and/or the dispute resolution process involves multiple stakeholders, working with a team may be preferable (a co-mediation model). Many mediators value having one or more colleagues to strategize with, and the burden of a complex process is often more easily borne by a team.<sup>5</sup>

Assembling a mediation team enables CAO to reflect important characteristics of the parties in the composition of the team, such as culture, race, or gender differences. The underlying principle is that parties need to trust and be comfortable with the mediation team. For example:

- *In conflicts where violence against women has been an issue, or women's issues are a priority,* it would be sensitive and appropriate to consider working with a female mediator.
- *In conflicts where a minority group or marginalized group has been affected,* including a mediator with a similar background can help build trust.
- *When parties have cultural or educational differences*—such as in disputes between a corporation and a rural community—working with mediators that have experience in both contexts and can bridge these differences is immensely helpful.

In some cases, however, the opposite is true, and parties will only accept and trust a mediator who has little or no connection to the local groups or dynamics, such as a foreign national. It is important to note that, in such situations, CAO aims to balance this desire with a principle of inclusivity, so that systems of division or exclusion (by gender, race, or class, for example) do not dictate the composition of a mediation team.

In CAO's experience, where a mediation team is used, clarity around roles and responsibilities is important. This may mean that a lead mediator is designated, or that mediators and CAO agree on the different roles of each member, and how tasks and responsibilities will be divided.

*What to consider in the choice of interpreters:* Where relevant, interpreters are also an important part of the team. Interpreters working with parties in a dispute resolution process should be selected with the same careful consideration as mediators. They need to combine technical competence with high professional ethics and prudence. In highly sensitive environments, CAO may disclose interpreters' identities and profiles to the parties ahead of time so that they can raise any concerns.

## Developing the Process Together

To arrive at a process that all parties can agree to and feel comfortable with, the CAO team needs to work with them to understand their needs and preferences, and design a structure that works for all.

*An iterative process:* For CAO, the starting point for developing a dispute resolution process is a thorough assessment report, which documents the complaint and the interests and perspectives of the parties. From this baseline, the mediator will work with the parties to understand their expectations of the process, their needs, and their preferences; address possible concerns; and explain the role of the mediator. Since many components of the process—such as the exact scope, who participates, and how to meet—are dynamically linked, arriving at a structure and method that works for all sides happens through an iterative process, with the parties' active participation. The mediator may choose to hold these discussions separately through shuttle diplomacy, or get started by bringing the parties together to help reach consensus on challenging elements of the process. Ultimately, it is the parties that decide what the process looks like.

<sup>5</sup> CAO needs to make a judgment about the responsible use of resources.



*Balancing time spent on advance preparations with getting started quickly:* When one or both parties are impatient to get started and express frustration about time spent on upfront preparations, capacity-building, or discussion of procedural matters, it may be helpful to openly discuss the trade-off between getting started quickly and laying the ground work. Such a discussion may address questions like: Do the representatives have a consensus in the group about their strategy and priorities? What are their constituents expecting, and how will they report back? Do they understand the other side's priorities and expectations? Such a conversation may help reveal to a party its state of preparedness and how much (or little) need there is for further preparation before starting the dialogue. If the need for further preparation becomes apparent to the parties after dialogue has started, the mediator can always make time in the process to work with the parties on these elements. The time required for upfront preparations can range from several months for highly complex and sensitive cases to just a few hours or phone calls in other cases.

*Cultural appropriateness:* When parties come from different cultural backgrounds, the mediator works with them to develop a process that respects and builds upon the cultures and expectations of both parties. Where the parties have significant power imbalances, the design of the process can be used to create a more level playing field, such as by building equal access to relevant information into the process. Aspects such as the working language(s) of the process, the venue, and how the day starts and ends all need to be designed and adapted in a way that is comfortable for all participants. To start this discussion, the mediator can ask the parties what approaches they currently use to resolve disputes, and the design of the process can be inspired by existing or traditional practices.

## Building Trust

Trust greatly enhances the likelihood of success of a dispute resolution process. Both parties need to achieve a level of trust in the mediation team and the integrity of the process first. Later, they may come to trust one another. While trust may be scarce at the outset, it can be strengthened throughout the process in various ways.

*Building trust through the shared experience of dispute resolution:* During this early phase, trust can be built as the parties begin to experience dispute resolution principles in action and gain an insight into the process, and their power and roles in it. For example, parties may experience a mediator designing the process in a highly participative and inclusive way that enables them to reach consensual decisions. Such experience also shows that, in practice, the role of the mediator is to help the parties arrive at their own decisions, in contrast to that of a judge or arbitrator, which can sometimes be their expectation. Overcoming early obstacles during this phase, and reaching agreement on issues such as mutually acceptable ground rules, can further strengthen trust by demonstrating the potential for success and the good faith and commitment of the parties. Sometimes, early good faith concessions may help build trust between the parties (see box 1).



### HOW EARLY ACTS OF GOOD FAITH CAN HELP BUILD TRUST

In a dispute resolution process in Indonesia, CAO brought together a major international palm oil producer, Wilmar, and local communities to address a dispute concerning the company's clearance of customary lands and environmental and social impacts of the plantation. At the start of the process, the company agreed to a moratorium on further land clearance. This was a condition for dialogue requested by the complainants. The company's agreement helped establish trust with the community and demonstrated its commitment to enter the dialogue in good faith.<sup>a</sup> Similarly, in Cambodia, where CAO has

worked with indigenous communities and the company that operates the local rubber plantations, HAGL, the company's early commitment to halt further land clearance helped establish trust and lay the groundwork for dialogue.<sup>b</sup>

<sup>a</sup> Further information on this case can be found at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=76](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76).

<sup>b</sup> Further information on this case can be found at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=212](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=212).

*Structuring early engagements in a way that builds trust:* Early interactions convened by the mediator are also opportunities to start building relationships, break down barriers, and begin to create trust between the parties. This may involve making time for joint meals or coffee breaks; using “peace-making” circles to identify common values;<sup>6</sup> organizing small group discussions; or pairing people from opposite sides to introduce one another to the larger group. Structuring these early engagements in an appropriate way will be highly specific to the context, but these types of simple, creative approaches can go a long way in building trust and help lay the groundwork for dialogue.

## Setting Ground Rules

Dispute resolution processes are typically governed by a set of “ground rules” that the parties develop jointly and agree on. Ground rules help create predictability and structure for the process at a time when trust between the parties may still be low. While not all dispute resolution processes require ground rules before they start, it can be helpful for the parties to agree to a set of principles that guide them throughout the process, and that the mediator can hold them to.

*What to include in ground rules:* Ground rules usually set out the objectives and scope of the process; principles that the parties commit to, such as good faith engagement or mutual respect; how the parties are represented; and the respective roles of the parties, mediator, and any advisors or observers. In addition, ground rules often detail the responsibilities of the parties with respect to their constituents; provide guidance on issues such as confidentiality of the meetings and interactions with the media; and address logistical aspects such as when and where to meet, who will cover which costs, and how decisions will be made and agreements recorded. The level of detail included in ground rules may vary significantly from one dispute resolution process to another—including whether they are documented in writing and what they are called. For these reasons, the nature of ground rules will be highly specific to the context of the dispute.

*How to arrive at an agreed set of ground rules:* As a general principle, ground rules should be derived from the parties’ needs and priorities to the greatest extent possible. A mediator may have examples that can be shared with the parties, or may guide the parties to determine their own ground rules through a series of questions, or both (see box 2).

Examples of ground rules that the parties agreed to disclose related to cases in Albania, Cambodia, Nicaragua, and Ukraine are available on CAO’s website.<sup>7</sup>

*Whether to develop ground rules through bilateral or joint meetings:* Ground rules can be developed through joint or bilateral meetings. In cases where goodwill exists among the parties, joint development of ground rules can also be a good opportunity to reach early agreement about important issues. However, where trust is low, or where certain issues are contentious, the mediator may best serve the parties by consulting separately with each side and bringing them together when some common ground has been identified.

<sup>6</sup> Peace-making circles are one approach in the larger field of dispute resolution using restorative justice methods. For further information, see <https://www.iirp.edu/>; <http://www.cehd.umn.edu/ssw/rjp/>; <http://www.livingjusticepress.org/>; [http://www.project-nia.org/docs/Peacemaking\\_Circles\\_overview.pdf](http://www.project-nia.org/docs/Peacemaking_Circles_overview.pdf).

<sup>7</sup> The respective CAO cases are Albania: Kurum Hydro-01; Cambodia: VEIL II-01; Nicaragua: Nicaragua Sugar Estates Limited-01; and Ukraine: Axzon-01. In the Nicaragua case, the parties called their ground rules a “Framework Agreement.”

- What is the purpose of the dispute resolution process?
- Which are the issues to be addressed, and in what order should they be prioritized?
- What principles should guide the process?
- Who will represent each of the parties, and what decision-making power will the representatives have?
- Will the parties have any advisors, and under what conditions will they participate in the process?
- Will there be any observers, and under what conditions?
- How can new representatives, parties, advisors, or observers join the process?
- Who will convene and facilitate the dispute resolution process?
- How long is the process expected to last, and how often are meetings to take place? Under what circumstances can the process be interrupted?
- How will communication and exchange of information be coordinated? What language will be used? Will progress be communicated to the public and, if so, how? What commitments will parties and observers make regarding the use of media (TV, radio, internet, press, social media)?
- How will decisions be made? How much time will representatives be given to confer with their constituencies to make decisions and reach agreements? How will agreements be documented?
- Who will monitor the implementation of agreements reached, and how? What steps will be followed if one of the parties fails to implement an agreement?
- How will the process be funded? What contributions will each party make, if any?
- If needed, how will training needs be met to promote equal participation, for example to interpret technical information or build capacity in negotiation techniques?

*Finding the right balance between detailed and flexible rules:* Ground rules should be detailed enough to provide clarity about how the process will work. In some situations, prescriptive ground rules are helpful, while in others, flexibility is important. Front-loading the process with overly rigid ground rules can risk making them a point of conflict before the necessary trust has been built—trust that will be required for the parties to reach later agreement on more difficult and important issues. For example, it may not make sense to include details about potential future elements, such as joint fact-finding exercises that may not end up being necessary. As a consensus instrument, ground rules are not set in stone and can be amended by mutual consent of the parties. Therefore, it is advisable for the parties to also agree on a process for changing ground rules should it be necessary later.

*Formalizing ground rules:* Where possible, ground rules should be formally adopted by the parties, typically by signing a joint document. In some cases, more informal methods, such as summarizing ground rules on a flip-chart, can serve a similar purpose. When trust is low or the parties have reservations about producing a joint document, CAO has explored other options, such as having each party write its own letter in support of a framework to guide the process. Although the format may vary, formalizing ground rules helps bring clarity to the parties about what they are undertaking and serves to ratify the principles of dispute resolution articulated in the ground rules. This creates a good reference point for parties as the process unfolds. The better documented the ground rules are, the less room there is for the parties to dispute the rules that were agreed.

*Whether to share the ground rules with others or keep them confidential:* The parties should determine whether the ground rules will be confidential or can be circulated more widely and/or be disclosed to the public. A public document can add some

weight to the agreement by inviting public accountability, but parties may not deem disclosure necessary or prudent. If the issue of confidentiality does not come up directly, the mediator should raise it for discussion because it is important to reach agreement on this issue, particularly for mediations subject to public scrutiny.

*Determining the right time to establish ground rules:* When to establish ground rules varies from case to case. In general, earlier is better, a presumption borne out by CAO cases. Some mediation teams raise ground rules questions from the time they are first exploring the willingness of parties to enter dispute resolution. Some parties seek clarity around elements of the ground rules before they agree to dispute resolution, while others may be open to proceed with an “in-principle” agreement to dispute resolution, and define specific components later. Parties may need training or other forms of capacity building before they feel prepared to discuss ground rules. The earlier these conversations happen the better, but it is important to be sensitive to the parties’ needs and levels of preparation.

### *Leveling the Playing Field through Capacity Building and Other Interventions*

One of the most challenging aspects of company-community dispute resolution is how to address disparities in capacity or “know-how” among the parties. Assessing and defining any disparities and capacity-building needs is an important part of this early convening phase so the mediator can work with the parties to level the playing field.

Capacity building takes different forms, ranging from the mediator spending time with the parties separately to help them think through their options and strategies early on, to more formalized workshops or trainings in dispute resolution approaches and skills. While not all cases require capacity building, in CAO’s experience, the question merits exploration upfront to determine what, if any, interventions are needed. Typically, there will be value in providing capacity building and other support in complex, multi-stakeholder processes with significant disparities between parties. In some cases, these interventions may best take place before the parties come together, but at other times they can be built into the dispute resolution process. Table 1 lists different types of capacity gaps and provides ideas for addressing them. As with many issues, there is no one answer and the right solution will largely depend on the context, the parties, and the mediator’s approach and insight. Box 3 presents examples of cases where CAO has provided different types of capacity building.

*Typical capacity constraints:* Some of the common constraints CAO has experienced with complainants include their comfort with making demands from institutions that are perceived as more powerful, financially and otherwise; limitations in their presentation skills; level of knowledge about legal rights and processes; and knowledge and experience interpreting technical information. Where mediators identify such capacity constraints, they need to think creatively about addressing them. Capacity building can take many forms: spending time with both parties to help them prepare for the process; providing more formalized dispute resolution training; or providing support ahead of each engagement so that parties are informed, feel prepared, and are empowered to participate.

*Helping parties assess their relative power and leverage throughout the dispute resolution process:* Imbalances between parties in a dispute resolution process often stem from power differentials. A powerful company can be experienced as an intimidating adversary for a rural community, for example. Such a community may find out, however, that the company has a strong interest in good relations with their neighbors, who are not only a source of local labor but contribute to a stable and predictable operating environment. Helping the parties become aware of their own and the other party’s sources of power or influence, through reality testing



around alternatives to a mediated solution, can be an important tool for leveling the playing field. CAO's role can sometimes be to help the weaker party assess—upfront or throughout the process—whether dispute resolution will serve or is serving its interests.

*Bringing equity by opening access to information:* Another important way to address power imbalances is to set up a process that helps provide the parties with equal access to relevant information. This can range from simple information sharing between the parties to joint fact-finding exercises, in which the parties jointly establish what information is needed to inform the dialogue process and how to obtain it. This approach may involve joint selection of experts and joint oversight of their work. Where information is shared between the parties, it should be governed by mutually agreed rules regarding confidentiality and dissemination. More information about joint fact-finding as a tool in dispute resolution processes will be provided in a forthcoming Reflections from Practice publication.<sup>8</sup>

TABLE 1

TABLE 1. HOW TO ADDRESS CAPACITY GAPS AMONG PARTIES IN A DISPUTE RESOLUTION PROCESS

DIFFERENTIAL	STRATEGIES FOR MEDIATION TEAMS
Varying levels of familiarity and comfort with different process formats	<ul style="list-style-type: none"> <li>• Consider including several meeting breaks (coffee breaks or group consultation) or shortening the length of meetings.</li> <li>• Explore options for different meeting formats (interactive, circle, role-playing) and locations (meeting rooms, community centers, open-air).</li> <li>• Encourage, where relevant, joint field trips, “walking the land,” or other interactions outside of a regular meeting.</li> <li>• Build in time for rest and breaks during aspects of the process that require long hours in meeting rooms or physically taxing time in the field.</li> </ul>
Limitations to presentation or communication skills	<ul style="list-style-type: none"> <li>• Where relevant, provide specific training on presentation skills, Power Point, or other practical skills.</li> <li>• Create opportunities where parties can make presentations or interventions, with the goal of helping them feel comfortable in that role.</li> <li>• Provide feedback and be available to help prepare a party before a joint meeting.</li> </ul>
Varying levels of understanding and experience with legal rights and processes	<ul style="list-style-type: none"> <li>• From the start, make the parties aware that they can consult with a lawyer or adviser.</li> <li>• Maintain openness to having lawyers and/or advisers participate in the process, provided their roles are clear, and their participation has been discussed and agreed among the parties.</li> <li>• Encourage the parties to consult with a lawyer or adviser if specific legal questions are raised.</li> <li>• Help the parties consider their best alternative to a mediated approach (including using the legal system).</li> </ul>
Different amounts of technical know-how	<ul style="list-style-type: none"> <li>• Work with an appropriate resource person(s) who can explain highly technical information to the layperson.</li> <li>• Set aside time for parties to consult and reflect on technical information or methodologies presented.</li> <li>• Explore with parties when joint fact-finding would be appropriate.<sup>a</sup></li> </ul>

<sup>a</sup> A forthcoming CAO publication, Reflections from Practice: Joint Fact-Finding, will explore the fact-finding stage.

<sup>8</sup> Reflections from Practice: Joint Fact-Finding, CAO (forthcoming).



## TRAINING WORKSHOPS CAN HELP THE PARTIES PREPARE FOR JOINT MEETINGS AND BUILD SKILLS

**Cameroon:** CAO has been facilitating three parallel mediation processes in Cameroon to address a complaint related to the Chad-Cameroon Oil Pipeline. Capacity building efforts have been tailored to the specific needs of the complainants. For example, CAO provided training in 11 villages to help set up a system of communication with the village leaders representing each community in the dialogue process.<sup>a</sup>

**Indonesia:** CAO held a joint training workshop to strengthen communication between the company and the local community to address a complaint related to the Rajamandala hydropower project. The training allowed the parties to agree on a framework for continued communication and collaboration, which was a key element of the parties' settlement agreement.<sup>b</sup>

**Mongolia:** CAO has provided training on negotiation, conflict resolution, communication skills, and joint fact-finding to all the parties involved in dialogue related to the Oyu Tolgoi copper mine. The joint fact-finding

activities, which involved independent experts, were instrumental in helping the parties work through disagreements around project impacts.<sup>c</sup>

**The Philippines:** To help address a 60-year land conflict related to a hydropower project, CAO designed a joint capacity-building program focused on increasing the parties' dialogue skills. The training developed the parties' skills in active listening, collaborative communication, and negotiation, which enabled them to engage more effectively. As a result, the parties agreed on a set of principles that would guide their dialogue process—which resulted in a signed agreement a year later.<sup>d</sup>

<sup>a</sup> Further information on this case can be found on CAO's website at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=168](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=168).

<sup>b</sup> Further information on this case can be found at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=247](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=247).

<sup>c</sup> Further information on this case can be found on CAO's website at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=191](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=191).

<sup>d</sup> Further information on this case can be found on CAO's website at [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=85](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=85).

**Despite skills training, power imbalances may persist:** No amount of capacity building or intervention will be able to completely erase power imbalances in all circumstances. These imbalances are typically structural and have developed over time, often marginalizing certain groups or putting them at a disadvantage. These types of imbalances are not easy to address, much less during a dispute resolution intervention outside regular societal interactions. Recognizing this fact is important for every mediator, but it does not mean that dispute resolution cannot be attempted or, more importantly, that dispute resolution and its outcomes cannot help make relationships and outcomes more equitable. It also does not mean that where there is a power imbalance, outcomes will be inadequate or inappropriate.

### Looking Ahead

While parties are often eager to get started quickly, putting in the time and effort required to assemble a strong mediation team, develop the process jointly with the parties, agree on ground rules, and address capacity constraints up front can certainly yield significant benefits for the dispute resolution process over the long term. The elements that are put in place in the early convening phase will form the foundation of the dispute resolution process and serve as its support structure as it unfolds.

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