

MEDIATOR TOOLKIT





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PREFACE

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), members of the World Bank Group.

CAO reports directly to the IFC and MIGA Boards of Executive Directors. CAO's mandate is to facilitate the resolution of complaints from people who may be affected by IFC and MIGA projects in a manner that is fair, objective, and constructive; enhance the environmental and social outcomes of projects; and foster public accountability and learning to enhance the environmental and social performance of IFC/MIGA and reduce the risk of harm to people and the environment. CAO works through three functions - Dispute Resolution, Compliance, and Advisory - to deliver on its mandate. A detailed description of these functions and procedures can be found in the [CAO Policy](#).

The Mediator Toolkit was developed for the CAO. CAO would like to acknowledge and thank all those who offered their wisdom, expertise, insights, and other meaningful contributions to this document: Nokukhanya Ntuli, Victoria Vasalo, Gina Barbieri, Scott Adams, and Anne-Claire Olivera. Editorial inputs were provided by Emily Horgan, Natasha Adams and Celia Garrity.

FIGURE 1

A TYPICAL CAO DISPUTE RESOLUTION PROCESS



Note: If at any stage in the process, one or more parties wishes to terminate the dispute resolution process, they can inform the CAO mediation team. CAO will transfer the case to CAO Compliance only if the complainant(s) expressly requests the transfer.

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.



INTRODUCTION

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 Parties may use several 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. 3).

This Toolkit forms part of the resources developed by the CAO to provide guidance on the dispute resolution processes, including CAO's *Reflections from Practice Series*¹. The Toolkit includes the following sections:

- **Framework for Mediator Performance**

- Understanding the Role of the Mediator
- Guiding Principles Governing Dispute Resolution
- Understanding Continuous Professional Development
- Terminating a Dispute Resolution Process Terminating
- a Mediator's Contract

- **Overview and Templates for CAO Assessment**

- **Overview and Templates for Dispute Resolution**

- Ground Rules and Framework Agreement
- Mediation Settlement
- CAO Progress Reports
- CAO Dispute Resolution Conclusion Reports

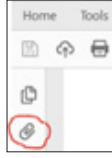
The Toolbox, including the Guiding Principles, apply to all consultants appointed by CAO as mediators to assist in handling of complaints (Mediator). All Mediators are encouraged to familiarize themselves with the contents of this Toolbox. They compliment the terms and conditions contained in CAO Mediator contracts and do not in any way limit the responsibilities the Mediator may have, under any other

¹ See CAO's Reflections from Practice Series, www-cao-dr-practice.org

code of ethics, national or international legislation, or professional association to which the Mediator subscribes.

The application and relevance of any specific part of the templates included in this Toolkit will depend on the professional judgment of the mediator, as well as the knowledge of the Parties involved. The general guidance provided in this Toolkit may need to be tailored to the local and cultural context of each case.

How to Access the Templates



Included templates are indicated in respective sections of this document using **purple type in bold**. Adobe Acrobat Reader is required to access the attached templates. To download a free version of Acrobat Reader, click [here](#). To download the attached templates, open Acrobat Reader *Attachments* panel (see the image shown left), right-click on a relevant file name and select *Save Attachment*.



1. FRAMEWORK FOR MEDIATOR PERFORMANCE



1.1. Understanding the Role of Mediator

The authority and responsibility of decision-making in a dispute resolution process rests with the Parties. The role of the Mediator is to assist the Parties to make their own decisions, through facilitating and managing the dispute resolution process. The Mediator assists the Parties to:

1. understand what is involved in the CAO dispute resolution process;
2. voluntarily participate in the dispute resolution process;
3. understand the dispute resolution process and the respective roles of all the stakeholders involved;
4. build capacity of the Parties to engage effectively in the dispute resolution process;
5. establish rules/principles which will guide the dispute resolution process;
6. identify, clarify, and define the issues to be mediated, and the Parties needs and interests;
7. communicate and negotiate fairly and in good faith with each other;
8. help the Parties reach an informed decision about how to resolve the dispute; and
9. monitor or build mechanisms to monitor the full implementation of any agreement reached during mediation.

1.2. Guiding Principles Governing Dispute Resolution

Dispute resolution is based on problem-solving techniques, which include mediation, dialogue, negotiation, and facilitation. Key principles which guide the dispute resolution process relate to the process² and the Mediator's conduct. Principles guiding the Mediator's conduct include:

1. Principles governing the Mediator's conduct in a CAO dispute resolution process. These principles include:

Impartiality: The Mediator should treat all Parties to the dispute resolution process fairly and impartially. Impartiality means freedom from favoritism, bias or prejudice.

² See CAO's Reflections from Practice Series, www-cao-dr-practice.org

Conflicts of interest: In line with the World Bank Group's Staff Manual³, the Mediator should avoid engaging in any matter, during or after the dispute resolution process, which could be regarded by the Parties and/or CAO, as a real or potential conflict of interest. A conflict of interest can arise from the Mediator's involvement with the subject matter of the dispute or from a prior relationship between a Mediator and any of the Parties to the dispute resolution process. Conflict of interest may be of a personal or professional nature and raises questions about the Mediator's impartiality and/or independence. It is good practice for a Mediator to disclose to the Parties and CAO any such conflict of interest, as soon as the Mediator becomes aware of it, whether the conflict occurred prior to, or during the dispute resolution process. After disclosure, if all the Parties and CAO acknowledge the disclosure and agree for the Mediator to continue with the dispute resolution process, the Mediator may proceed. Any agreement to continue the dispute resolution process, despite the conflict of interest, should be recorded by the Mediators and the Parties in a manner which can be shared with CAO. To avoid conflict of interest after a dispute resolution process is completed, the Mediator should refrain from any conduct involving a Party to the dispute resolution process that may reasonably cast doubt on the integrity of the process.

Confidentiality: a Mediator should treat all information disclosed by the parties during a dispute resolution process as confidential, except to the extent that disclosure of information has been specifically authorized by the Parties.

Self-determination: a Mediator should conduct the mediation in a manner which enables the Parties to voluntarily make free, informed and uncoerced decisions, at any stage of the process, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

Freedom from threats and reprisals: CAO dispute resolution processes should be conducted in a manner which respects and promotes the rights and dignity of each Party. Parties to the dispute resolution process should not be subject to any threats or reprisals as a result of their participation in a CAO process. To address these concerns, CAO has adopted the "*Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations*" (the Approach), and has developed Implementation Guidance Materials for CAO staff and consultants.⁴ Mediators are encouraged to familiarize themselves with CAO's Approach and to ensure that where issues of threats and reprisals arise, they are properly handled in line with the CAO approach.

Legal Advice & Counseling: Except in exceptional circumstances, the Mediator should avoid providing legal advice or counseling during the dispute resolution process. The Parties may seek legal and technical advice from other professionals at any stage in the dispute resolution process.

Mediator's Behavior: In line with the World Bank Group's Principles of Staff Employment "General Obligations of Staff Members," the Mediator should attempt to conduct her/himself in a manner that does not tarnish their image nor that of CAO. Therefore, the Mediator should:

- act within and uphold the law;
- act honestly, professionally, and with integrity;
- not abuse her/his position or connection with CAO;
- conduct her/himself in a manner that promotes diligence, timeliness, and mutual respect among the Parties;

³ Principle 3 on "General Obligations of Staff Members" and Staff Rules 3.01, 3.02 and 3.03 on "Disclosure and Resolution of Conflicts of Interest"

⁴ The Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations is available on CAO's website at: <http://www.cao-ombudsman.org/documents/CAO-Reprisals-web.pdf>

- be respectful of all Parties involved in the dispute resolution
- process; be sensitive to cultural context; and
- not act outside her/his level of competence.

Being appointed as a Mediator for a specific CAO case does not confer any permanent rights to the Mediator to continue working for CAO.

1.3. Understanding Continuous Professional Development

The Mediator is encouraged to continue her/his professional education while actively serving as a CAO Mediator. A CAO Mediator is personally responsible for her/his ongoing professional growth, including participation in CAO webinars⁵ and other educational initiatives. A Mediator is strongly encouraged to participate in at least two CAO webinars per year.

1.4. Terminating a Dispute Resolution Process

A CAO Mediator may only decide to terminate a dispute resolution process in consultation with CAO. CAO retains the ultimate decision-making authority in this regard.

1.5. Terminating a Mediator's Contract

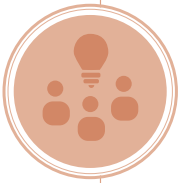
CAO may terminate the appointment of the Mediator, prior to expiration of her/his contract, on the grounds that the Mediator's services are no longer required⁶. CAO reserves the right to change the consultant offering mediation services if circumstances dictate. The Mediator will be consulted and properly briefed prior to any decision being taken that alter her/his contractual relationship with CAO.

⁵ CAO conducts quarterly webinars for Mediators who are working, or have worked on CAO cases

⁶ According to Staff Rule 7.01 - <https://ispan.worldbank.org/sites/ppf3/PPFDocuments/090224b0823441ef.pdf>



2. OVERVIEW AND TEMPLATES FOR CAO ASSESSMENT



When a complaint is accepted for further assessment, CAO has 90 working days to conduct an assessment of the conflict. The aim of the CAO assessment is to clarify the issues and concerns raised by the complainants, gather information on the views of different stakeholders, and determine whether the complainants and the IFC/MIGA project sponsor would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be referred to CAO's compliance function for appraisal of IFC's/MIGA's performance (see annex a for CAO's complaint-handling process). CAO does not make any judgment regarding the merits of the complaint at this stage. CAO partners with international, regional and local independent Mediators.

At the end of the assessment phase, CAO produces an **Assessment Report** which captures the perspectives of the different stakeholders who shared information with CAO during the assessment. The Assessment Report is then published on the CAO website once all the Parties have factually reviewed it to ensure that their perspectives were captured correctly.



3. OVERVIEW AND TEMPLATES FOR DISPUTE RESOLUTION



3.1 Ground Rules and Framework Agreement

If during CAO's assessment of the complaint, the Parties choose to resolve the issues through dispute resolution, the case is formally referred to CAO's Dispute Resolution function. In preparing for this phase, CAO will jointly design a process with the Parties, and discuss the creation of ground rules and framework agreement for the process that can guide the Parties toward a productive, constructive, and respectful dispute resolution process. Parties give their own ideas on among others; how they prefer to engage with each other, who will represent each Party, what issues will be discussed and how the Parties will hold each other accountable during the process.

Examples of questions to help guide Parties in establishing ground rules and framework agreement for the process:⁷

- What is the purpose of the dispute resolution process?
- Which are the issues to be addressed, and what is the best order in which to address them? How are issues prioritized?
- What principles should guide the process?
- Who are the Parties that will sit at the table with decision-making power? Who will represent each of the Parties, and what decision-making power will they have?
- Will there be any observers, and under what conditions? How can new Parties and observers join the table?
- Who will convene and facilitate the dispute resolution process?
- How long is the process expected to last, and how often will meetings take place? Under which 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 different communication media (TV, radio, internet, press, social media, video, photography etc.)?
- 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?
- How should the Mediator deal with split opinion/disagreement among representatives of the same constituency. Who will have the final say?

⁷ See CAO Reflections from Practice, *Getting Started with Dispute Resolution*, 2019, p. 10 http://www.cao-dr-practice.org/reports/CAO_1_GettingStarted.pdf

- Who will monitor the implementation of agreements reached and how? What steps will be followed should one of the Parties fail to implement any agreements?
- How will the dispute resolution process be funded? What contributions will each Party make?
- If needed, how will training requirements on technical information or negotiation techniques be met in order to promote equal participation?

Example of Ground Rules and Framework Agreement

Example of Ground Rules and Framework Agreement is intended to provide an example of suggested wording for an agreement, with an explanation on the right-hand column on relevance of the clause. Please discard any irrelevant clauses.

EXAMPLE OF CLAUSES	ANNOTATION
1. General	
<p>Following the assessment conducted by CAO on [Date], the Parties voluntarily decided to engage in a dispute resolution process facilitated by CAO, to help resolve their dispute and find a mutually beneficial outcome.</p>	<p><i>Typically, the ground rules and framework agreement will form the beginning of the dispute resolution phase. Before the Parties begin direct engagement on issues to be resolved, it is useful for them to agree on how the process will be conducted.</i></p>
2. Parties to the Dispute Resolution Process	
<p>The Parties to this dispute are:</p> <p>Party A Party B</p> <p>Due to:</p> <p>the complex nature of the dispute; or</p> <p>the pivotal role played by [stakeholder/s] in [what did the stakeholder do]; or</p> <p>the important role required from [stakeholder/s] in implementing any settlement agreement reached;</p> <p>The following Parties have been requested to form part of the dispute resolution process as secondary Parties:</p> <p>Stakeholder A Stakeholder B</p>	<p><i>List all the Parties involved in the dispute resolution process.</i></p> <p><i>In a dispute resolution process, there may be stakeholders who are not party to the dispute but are necessary for the resolution of the dispute. The Parties may agree to add any other stakeholder to the dispute resolution process. This may be the case, for instance, where the other stakeholder is the government and they are required for the implementation of some or all of the issues agreed to by the Parties. An additional stakeholder can only be added once they have also given consent to be part of the process. The reason for adding these stakeholders should ideally be captured in the ground rules and framework agreement.</i></p>

3. Representation

The Parties agree that, for the purposes of the dispute resolution process, each Party will be represented by the following:

Party A —

Party B —

Stakeholder A —

Stakeholder B —

The representatives are tasked with representing the interests of their constituency during the dispute resolution process, as well as reporting back and seeking a mandate for decision making from their constituency. The Parties agree that, should the need arise to change a representative during the dispute resolution process, the following process will be followed [...]

Should a difference in opinion which significantly impacts the direction of the case, arise among representatives of the same constituency, CAO will resolve the impasse by [...]

As part of setting the ground rules and framework agreement, the Parties will agree on who will represent each Party at the negotiating table. This ensures a more effective and efficient process, especially where the complainant group is large. The mediator should understand the process used by each party to select the representatives. This ensures legitimacy.

The Parties should agree on how the change in representation will be communicated to the Mediator and the other Party.⁸ Representatives may be selected from within the complainant group.

Mediator should discuss what will happen if some of the representatives in one constituency want a different outcome from others. Who will have the final say? Example: what will be done if half of the representatives want the case to go to compliance and the other half want to go through a dispute resolution process?

4. Advisors

The Mediator does not act as an advisor to either Party during the dispute resolution process. Each Party is entitled to obtain independent advice from people who can assist them in formulating and expressing their interests and making informed decisions during the dispute resolution process.

The Parties agree that the following Advisors will be present in a dispute resolution process;

[Advisor A] – advising which party

[Advisor B] – Advising which party

OR

The Parties agree that advisors [will not] be present in the dispute resolution process, [unless consent of their attendance is received from all Parties to the process]. Advisors may advise the Parties outside of the dispute resolution process.

The Parties further agree that the responsibility of making decisions about the outcomes of the dispute resolution process rests solely with the Parties, and not the Advisors. Advisors may be invited by CAO, at the request of the Parties, to attend the dispute resolution process, for the purposes of conducting studies or sharing expert information, which will assist the Parties to make informed decisions on how to resolve the dispute.

Parties to a dispute resolution process often have advisors, whether it be an NGO or lawyers. In some instances, where all Parties agree, the advisors are present in the dispute resolution process.

If advisors are permitted to attend the dispute resolution process, the principle of confidentiality is also extended to them. At times, when advisors are present in a dispute resolution process, Parties defer decision-making to their advisors. Parties should always be encouraged to consult with advisors, but to make their own decisions.

If the parties cannot agree on which advisors can sit at the table, the Mediator will use their best efforts to negotiate this with the parties until an agreement is reached.

The Mediator should be aware that where a Party has more than one advisor (e.g. two NGOs advising communities), tensions may sometime arise between the advisors, which may require the Mediator's assistance to resolve.

Experts may be invited by CAO, at the request of the Parties, to attend the dispute resolution process, for the purposes of conducting studies or sharing expert information, which will assist the Parties to make informed decisions on how to resolve the dispute. Experts will not make decisions on behalf of the Parties but will limit their engagement in the dispute resolution process, to providing expert advice.

The use of experts in a mediation process is common. Experts are used where there is dispute of facts, or where technical information is required by the Parties to evaluate options for settlement of an issue.

⁸ See CAO Reflections from Practice, Representation, 2019, pg. 9 http://www.cao-dr-practice.org/reports/CAO_2_Representation.pdf

5. Observers

The Parties agree that observer status will be afforded to:

[Parties...]

Observers will be permitted to attend the dispute resolution process for the purposes of **[e.g. learning from the process, providing support to one of the Parties or any other reason agreed on]**.

During a dispute resolution process there may be stakeholders who wish to be observers for learning purposes, or to ensure transparency in the process.

Observers can only be permitted with the consent from all Parties to the process.

They do not participate in the process but are bound by the rules of confidentiality.

6. Language

The Parties agree that the language to be used during the dispute resolution process is [...]. Where necessary, an interpreter will be provided by the CAO to ensure that the Parties communicate in a language they are most comfortable with.

In all CAO dispute resolution processes, Parties are encouraged to use the language they are most comfortable with. CAO provides interpreters to enable active participation of the Parties. Parties need to agree on which languages they will communicate in during the process.

7. Guiding Principles for the Dispute Resolution Process⁹

Voluntary: Dispute resolution is a voluntary process. Parties enter the process voluntarily and may withdraw or suspend their participation at any time during the process.

Confidentiality: To create an atmosphere of trust and facilitate an open discussion, the Parties undertake to abide by the principle of confidentiality. No Party, including Observers, Stakeholders and Advisors may disclose any information shared during the dispute resolution process, which is not already in the public domain. Unless authorized by the Parties, CAO will not disclose any information provided by the Parties during the dispute resolution process. Discussions held during the process, whether written or oral, are not admissible in any court proceedings. Observers, Stakeholders and Advisors are also bound by the principle of confidentiality.

These principles should be explained to the Parties before the ground rules and framework agreement are agreed on.

Confidentiality is very important to the process of dispute resolution. However not all parties want the process to be confidential. The Mediator should establish whether confidentiality is important to the Parties and the extent to which the Parties want to observe confidentiality. If confidentiality is important, it should be maintained for all information shared by the Parties during joint sessions and bilateral sessions. The principles of confidentiality extend to all the parties present in the dispute resolution process including Observers, Stakeholders, Advisors, the Mediator and all the CAO team working on the case.

Sometimes Parties believe that using the media (including social media), will advance their position in a dispute resolution process. Often, engaging the media and divulging confidential information, has the opposite effect on a Party's position and dispute resolution process in general. It is advisable that when agreeing on ground rules and framework agreement, the Parties agree on how they will involve and/or engage with the media if the need arises.

If parties chose not to observe confidentiality in the process, the Mediator should explain the consequences of disclosing information shared in the process to ensure that Parties make an informed decision on confidentiality.

⁹ See CAO Reflections from Practice, *Getting Started with Dispute Resolution*, 2019, p.4 http://www.cao-dr-practice.org/reports/CAO_1_GettingStarted.pdf

<p>No Party to the dispute resolution process, including Observers, Stakeholders and Advisors, may divulge any information about the process to the media (including social media), without prior consent of all the other Parties to the process. Any statement given to the media about the dispute resolution process should be jointly written and cleared by the Parties prior to engaging with the media. (See Template Joint Statement)</p> <p>Independence and Neutrality: CAO will retain its independence and remain impartial throughout the course of the dispute resolution process.</p> <p>Threats and Reprisals¹⁰: No Party to the dispute resolution process, including Observers, Stakeholders and Advisors, may harass, threaten, or cause actual harm to a Party to the dispute resolution process, for the purposes of exerting pressure, to do or refrain from doing anything related to the CAO process.</p> <p>Where issues of harassment, threats, and reprisals are brought to the attention of the CAO, the Parties agree to [how will they handle this issue].</p>	<p><i>The Mediator should provide the Parties with options for engaging the media.</i></p> <p><i>Options include:</i></p> <ul style="list-style-type: none"> ▪ <i>Providing the media with a statement jointly created by Parties to the dispute resolution process;</i> ▪ <i>Holding a joint press conference to brief the media on the dispute resolution process and potential outcomes;</i> ▪ <i>Requesting CAO to provide a communiqué related to the dispute resolution process;</i> ▪ <i>Publishing case studies of the dispute resolution process once concluded.</i> <p><i>Sometimes one of the Parties complains of threats, harassment, and incidents of reprisals resulting from their involvement in the CAO process. The types of threats of reprisals can include threats to a person’s job or standing at work, future job prospects being adversely impacted, loss of reputation in community or workplace, threats of physical violence to people themselves or their family members, and even criminalization or incarceration as a result of speaking out against the impacts of a project. When setting the ground rules and framework agreement, Mediators are encouraged to familiarize themselves with the “CAO Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations” and help parties to discuss how they will deal with past, ongoing, and/or future complaints of threats and reprisals.</i></p> <p><i>The mediator can refer to The Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations is available on CAO’s website at: http://www.cao-ombudsman.org/documents/CAO-Reprisals-web.pdf</i></p>
<p>Other principles: The Parties further agree to be bound by the following principles during the dispute resolution process. Examples of common principles include:</p> <p>[Spirit of the process, e.g. solution-oriented approach]</p> <p>[Respectful engagement]</p> <p>[Engagement in good faith]</p> <p>[Time keeping]</p> <p>[How decisions will be made on issues that require both Parties to decide]</p> <p>[any activity which the parties should refrain from during the dispute resolution process]</p>	<p><i>The Parties can list general principles they want to include that will govern the dispute resolution process and include in the Ground Rules and Framework Agreement anything else that may be important for the smooth running of the process.</i></p>

¹⁰ http://www.cao-ombudsman.org/newsroom/documents/documents/CAOApproachtoThreatsandIncidentsofReprisals_October2017.pdf

8. Key Issues to be resolved

The Parties agree that the following are the key issues to be resolved during the CAO process:

1. A
2. B
3. C

Should other issues not listed above arise during the dispute resolution process, the Parties agree that [... **What happens if other issues crop up during the process?**]

During the assessment phase, the complainants will often list several issues that they want resolved. Once the dispute resolution process begins, it is important to confirm with all Parties which issues need to be addressed during the process. Sometimes the issues are identical to those identified during assessment. However, at other times the number of issues to be resolved is smaller or larger than what was originally identified during assessment.

Parties should also discuss how they will deal with new issues that arise once the process is underway.

9. Meetings

Parties agree to attend meetings and to constructively engage with each other. Meetings during the dispute resolution process will be held at [a venue, date, and time agreed to by all the Parties] and can be held jointly or separately, depending on the appropriateness thereof.

Whereas the CAO mediation process is not time bound, the parties agree to dedicate [time] to resolve the issues identified in clause 9 above. Should the time run out before the issues have been resolved, the Parties will review the progress of the mediation and decide if additional time should be allocated.

The Parties should discuss and agree on the frequency of meetings. They should also agree on the most suitable times and places to hold meetings. CAO provides the funds to host meetings for the dispute resolution sessions. This allows the Parties to meet at a neutral and convenient venue. Where possible, the Mediator should help parties set a time-frame for the process. While CAO does not have set timelines for concluding the dispute resolution process, it is useful to ask the Parties how much time they would like to dedicate to the process. The parties may not want to set a time for the process. However, the mediator should ask the question.

10. Agreements

[Any agreement reached during the dispute resolution process ought to be written down, translated where relevant, and signed by all Parties to the dispute resolution process.]

Although having a written agreement is preferable, it is not mandatory. It may be easier for the Parties to track implementation of the agreement if it is in writing. Where a language other than English was used for the process, the document will have to be translated into that language.

If reaching a ground rules and Framework agreement is taking a long time and creating frustration for the process, the Mediator should consider what is essential to start the Dispute Resolution process. The Mediator can start the DR process and continue in parallel to finish the Ground rules and Framework Agreement.

3.2 Mediation Settlement

A Mediation Settlement Agreement is signed by the parties to a mediation process once they have agreed how to resolve the issues in dispute. The agreement should capture what the parties agreed, who will implement the agreed outcomes, how the outcomes will be implemented and when. A Mediation Settlement Agreement is used where there is full or partial settlement of issues during the mediation process.

Things to consider when drafting a Mediation Settlement Agreement

- The Mediator should check that all parties in the mediation process have signed the Settlement Agreement.
- The Mediator should check that all the signatories to the Settlement Agreement are parties to the mediation process.
- The Mediator should check that the person signing on behalf of the Complainants, Company or other Stakeholder (where applicable), have the mandate to bind the group or organization on whose behalf they are signing.
- Although the CAO process does not interfere with any ongoing or pending litigation process, if litigation is ongoing or pending, the Mediator should check how the parties wish to handle the litigation process once the Settlement Agreement has been signed and fully implemented.



Example of Mediation Settlement Agreement

The **Example of Mediation Settlement Agreement** below is an example of agreement clauses that can be used, with an explanation on the right-hand column regarding the relevance of the clause. Not all clauses will be relevant in all situations. Please disregard any clauses which are not applicable.

EXAMPLE OF CLAUSE	ANNOTATION
1. General	
<p>The Parties agreed that their complaint to CAO be dealt with through a dispute resolution process facilitated by CAO and governed by the Ground Rules and Framework Agreement dated [date];</p> <p>As a result of the voluntary dispute resolution process, the Parties voluntarily and mutually agree to resolve the dispute as follows;</p>	<p><i>This is a general clause that briefly sets out how the Parties got to this agreement.</i></p> <p><i>This clause should be brief and refrain from providing too much background information and history of the conflict. This is to avoid disagreement by the Party on the history of the conflict which can sometimes derail the settlement.</i></p>
2. Agreement	
<p>Issue 1 Parties agree that [what was agreed] [responsible Party to implement] [time frame for implementation]</p> <p>Issue 2 Parties agree that [what was agreed] [responsible Party to implement] [time frame for implementation]</p> <p>Issue 3 Parties agree that [what was agreed] [responsible Party to implement] [time frame for implementation]</p>	<p><i>This records what was agreed by the Parties. It is important to ensure that the Parties capture all agreements reached which resolve each issue identified for resolution in the Ground Rules and Framework Agreement.</i></p> <p><i>All the details should be captured to include timelines, persons responsible for implementation, and how implementation will take place. If there are issues which could not be resolved during the mediation process, these will be referred to CAO's Compliance function</i></p>
3. Non-Liability	
<p>Execution of this agreement and compliance with its terms is not intended to be an admission of wrongdoing or guilt by either Party.</p>	<p><i>It is important for the Parties to understand that agreements made to resolve the issues in dispute do not mean that any Party admits guilt. Agreements are reached by the Parties for various reasons, including maintaining good relationships.</i></p>
4. Binding	
<p>This Mediation Settlement Agreement is binding on all Parties upon signature. Initialing of each page confirms that all clauses on the page were explained and understood, and accurately reflect the terms of the agreement.</p>	<p><i>This clause is meant to protect a Party in a situation where an agreement is reached and signed by both Parties, but one of the Parties reneges on their obligation.</i></p>

5. Confidentiality

Parties agree that they will not disclose the terms of this agreement. For all other purposes of disclosure, the Parties will use a **joint statement**.

OR

Parties agree that this agreement is not confidential and can be shared with external parties to this process. The agreement will be published on the CAO website.

Parties decide whether they would like the agreement to remain confidential or if they wish it to be available publicly (including on the CAO website).

*If the Parties wish to keep the agreement confidential, **and if it is appropriate**, CAO should encourage them to draft a joint statement, highlighting the main points agreed. This can also be done via a CAO progress report*

6. Monitoring

A CAO dispute resolution team will monitor implementation of the agreement for **[duration]** after the agreement is signed. To monitor the implementation of the agreement, the CAO will contact the Parties **[frequency] [mode of communication]**.

After the agreement is signed, the Mediator and/or CAO team continue to monitor the agreement to ensure that all the matters agreed to by the Parties are fully implemented. Parties should also discuss the frequency of monitoring and how it will be done.

7. Entire Agreement

This Agreement constitutes the entire agreement between the Parties concerning the issues in dispute and supersedes any agreement or understanding, whether oral or written, made with respect to the issues resolved in this dispute resolution process, prior to the date of this Agreement. This Agreement may not be amended, except where the amendment is recorded in writing and signed by all the Parties.

If there were agreements made by the Parties prior to the CAO dispute resolution process, that affect the agreements reached in the CAO process, Parties should discuss how these agreements will be handled. In the absence of such discussions, this agreement will supersede any prior agreement reached on the same issues.

8. Invalidity

The invalidity, illegality, and unenforceability of one or more provisions in this agreement does not invalidate the legality and enforceability of the remaining provisions of this agreement.

If any of the provisions of this agreement are unenforceable for any reason, it does not invalidate all the other clauses of the agreement.

9. Full and Final Settlement

This agreement is made voluntarily by the parties in full and final settlement of the issues raised in the complaint brought to CAO.

This clause is inserted to prevent Parties from coming back and requesting further action from either Party where this action was not agreed on and captured in this document.

The Mediator can also consider adding whether the agreement precluded the parties from raising the issues resolve in the DR process in any other forum such as court or arbitration.

10. Disputes

Should any dispute arise about the interpretation or implementation of this agreement, the Parties will attempt to resolve the dispute through discussion among themselves. If the parties are not able to resolve the dispute by themselves, they may request the assistance of the CAO's dispute resolution team to facilitate resolution of such dispute.

Where the mediation by CAO does not result in the resolution of the dispute, the Parties may refer the dispute to arbitration in accordance with Arbitration Rules and Procedures of the country. In the event of arbitration, the Parties will agree on the arbitrator and how the arbitrator's cost will be covered.

At times, disputes arise after the agreement has been reached. Where such a dispute arises, Parties are encouraged to try and resolve the issues themselves. If this is not possible, the CAO may assist the Parties to try and resolve the dispute.

Where the Parties cannot resolve the dispute amicably, the Parties should consider other options, including arbitration or litigation through the courts. If Parties choose to refer the matter to arbitration, they should discuss details of how to select the arbitrator and how the costs will be covered. Where Parties are unable to resolve a dispute, which arises from the interpretation or implementation of the agreement, the dispute resolution process can be terminated, and the case referred to CAO's Compliance function, with the consent of the complainant.

11. Governing Law

This agreement will be governed and construed in accordance with the laws of **[country law]**, and each Party hereby irrevocably submits to the jurisdiction of the courts in **[country]** or arbitration as agreed to by both Parties.

Here, the Parties capture which laws should govern the agreement. This is important in case of breach of the agreement. The Parties may also opt to resolve the dispute through arbitration. If so, there should be an agreement on how the arbitration process will be conducted.

12. Execution

By signing this agreement, the signatory undertakes to have the necessary authority and mandate to bind the Party s/he represents in the dispute resolution process.

It is important that the Parties who negotiate and sign this agreement, which resolves the dispute, have the mandate to bind the Parties that they represent.

3.3 CAO Progress Report

In some cases, the CAO dispute resolution process continues for several years. A **Progress Report**, which is published on the CAO website, captures significant milestones during the dispute resolution and/or monitoring phase, but before the case is concluded.

3.4 CAO Dispute Resolution Conclusion Report

CAO issues a **Dispute Resolution Conclusion Report** which captures how the dispute resolution process was conducted and documents the outcomes of the process, how the agreements were monitored and implemented, and also highlights lessons learnt from the process. This template provides the format used for a CAO Conclusion Report.



CONCLUSION



The guidance contained in this Toolkit is based on current CAO dispute resolution practice and the templates shared herein will be updated periodically. Additional resources for mediators can be found at www.cao-ombudsman.org.

Other Useful Links

- <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy>
- <http://www.cao-dr-practice.org/>
- http://www.cao-ombudsman.org/newsroom/documents/documents/CAOApproachtoThreatsandIncidentsofReprisals_October2017.pdf