

# INDEPENDENT REVIEW OF CAO'S APPROACH TO RESPONDING TO CONCERNS OF THREATS AND REPRISALS

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# EXECUTIVE SUMMARY

## Introduction

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for projects supported by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group (WBG). CAO was established in 1999 and reports directly to the IFC and MIGA Boards of Executive Directors. As the independent recourse and accountability mechanism for IFC/MIGA, CAO facilitates the resolution of complaints related to their projects and subprojects, undertakes investigations of IFC's and MIGA's environmental and social compliance, fosters public accountability for their commitments, and enhances the environmental and social performance of IFC and MIGA.

In April 2018, CAO released its “Approach in Responding to Concerns of Threats and Instances of Reprisals in CAO Operations,”<sup>1</sup> following two years of consultation and development. This Approach was operationalized internally in advance of the launch; used in conducting an internal training with an external expert; and drawn upon to develop guidance materials for staff and consultants. This Approach was developed before the October 2018 zero-tolerance to threats and reprisals policy announced by IFC. This independent review of CAO's work on threats and reprisals (T&Rs) is being undertaken after five years of the Approach being in place, recognizing that during that period of time, the practice by CAO has evolved due to experience gained, greater capacity and training on threats and reprisals, additional developments in the field—including shared best practices by other independent accountability mechanisms (IAMs), and feedback from civil society organizations (CSOs) and other stakeholders, among others. It should also be noted that during this time, the COVID-19 pandemic impacted the work of CAO, limiting the options of what CAO staff could do and how CAO could operate.

## Methodology

This review was carried out by an expert consultant on T&Rs, Adam Shapiro, and managed by two CAO staff, Silvia De Rosa, Dispute Resolution Specialist, and Raquel Gómez Fernández, Research Analyst, Compliance. The review had four components:

1. A desk review of documentation selected by CAO, including policy documents, Risk Logs, reports, and other evaluation materials;
2. Interviews with staff from the different teams within CAO; staff from IFC and MIGA; staff from other IAMs; and staff from CSOs who have been engaged with CAO on specific cases and on policy matters;
3. Participation in two working group meetings—one between CAO, the World Bank Inspection Panel (IP) and the Dispute Resolution Service (DRS), and one between CAO, IFC, and MIGA; and
4. Analysis of materials and interviews, and reference to external resources and material.

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<sup>1</sup> Access file here: [https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-Approach%20to%20Responding%20to%20Threats%20and%20Reprisals-web\\_WITH%20EDITS%20for%20CAO%20POLICY.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-Approach%20to%20Responding%20to%20Threats%20and%20Reprisals-web_WITH%20EDITS%20for%20CAO%20POLICY.pdf)

The consultant was tasked with reviewing how CAO has been responding to T&Rs since the inception of the Approach, with a greater focus on the period from 2021 to 2023,<sup>2</sup> and with putting forward recommendations based on the input from the interviews, the analysis of the practices of CAO, and the consultant’s own experience both with working with communities at risk and prior engagement with IAMs on developing best practice with regard to T&Rs.

A key question undergirding this effort was to try to get an understanding about how CAO is working now and how to get to best possible outcomes for Complainants when it comes to T&Rs. The recommendations made in this report aim at improving the work in this direction, including those recommendations that involve how CAO interacts with other entities, how CAO collects, documents, and reports on information and experiences, and how CAO helps shape the IAM field with regard to T&Rs going forward.

The consultant interviewed staff from:

- CAO (4 from Dispute Resolution; 3 from Compliance; 2 from Advisory; 2 from Communications & Admin; and 1 from Management);
- IFC (2 based in Washington, DC headquarters; 3 based in the field);
- MIGA (1);
- WBG Information Technology (IT) Department (4 participants);
- Other IAMs, including the Independent Redress Mechanism (IRM) of the Green Climate Fund (GCF), the Independent Mechanism for Consultation and Investigation (MICI) of the Inter-American Development Bank (IDB), the Independent Project Accountability Mechanism (IPAM) of the European Bank for Reconstruction and Development (EBRD), and the Complaint Mechanism of the European Investment Bank (EIB); and
- 6 CSOs, including two CSOs that cover regional efforts.

The consultant also held a preparatory meeting before the workshop with staff from the Inspection Panel and Dispute Resolution Services and then facilitated the workshop discussion around approaches to key issues raised by T&Rs.

The consultant reviewed all CAO Risk Logs from 2021, 2022, and 2023, and held discussions about specific cases in the course of interviews with staff from the various institutions.

## **Key Recommendations**

The review makes the following main recommendations:

- Make options to file a complaint to CAO more accessible and user-friendly.
- Strengthen data collection and documentation, to allow for more analytical reporting.
- Strengthen tools and actions taken in response, to facilitate CAO learning, knowledge-sharing, and reporting.

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<sup>2</sup> This time period was selected—particularly with regard to the Risk Logs—for three main reasons. The first was to allow for CAO staff to become familiar with and develop practices in the first two years of the Approach, which would mean that by Year 3, there should be better and more consistent practice in implementing it, and thus offer a more robust and rich data set. The second reason was to ensure that there is not an over reliance on information from the period of greatest impact of the COVID-19 pandemic, particularly in 2020 and 2021. The third reason was to allow for recommendations to be based on contemporary practice, rather than being related to issues that might have already been addressed during the five-year period, but which could stand out in a review of older cases.

- Develop internal protocols for greater understanding of contextual risk.
- Ensure “continuity of care” throughout the case-handling process for affected individuals to maintain relationships of trust established through the process.
- Improve management of security for Complainant(s) during field missions.
- Improve digital security through encrypted applications and coordination with the WBG IT department.
- Dedicate additional resources for CAO staff well-being to help address challenges encountered, especially in particularly difficult cases.
- Establish formal and regular channels for cooperation and/or collaboration with other IAMs, IFC/MIGA, and CSOs.

## **Note about the Terminology Used in this Review**

The term “Complainant” will be used to describe the individual/group/community that has filed the complaint (and encompasses “any other persons involved in a CAO process or activity,” as per CAO Policy, paragraph 155), so as to be consistent with CAO internal documentation and protocols. However, at the end of this report, a Terminology section addresses the problematic nature of this term and offers alternatives. “Complainant” is also used in this report to mean “Concerned person/s,” as used in the CAO Policy.

The term “Accompanier” will be used to refer to a person or entity that is assisting a Complainant through the process.<sup>3</sup> The Accompanier may or may not be formally recognized by CAO as a Complainant or party to the complaint, but plays a role in advising, counseling, or strategizing with the primary Complainant.

Threats and reprisals can also be reported by participants in other CAO activities, including outreach activities. In those cases, they should be treated the same as threats and reprisals raised by a Complainant in the context of a project, and those reporting the threat and/or reprisal should have the opportunity to have an Accompanier if needed.

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<sup>3</sup> If a threat is reported by an employee of a Client or contractor to the Client and the employer is not the alleged perpetrator, then presumably that person would have recourse to legal support or other resources from the employer and would not need an Accompanier enabled through the CAO. However, this aspect can be considered on a case-by-case basis, as needed.

## CAO PROCESS

The system CAO has in place to identify and understand T&Rs in the context of a complaint is robust and gives ample space for Complainants to report T&Rs. As reported by staff throughout CAO, the leadership on the T&R issue and the development of the policy and practice over time means that all staff are aware of the importance of this issue and the need to be aware of any situation that is reported and/or might develop.

Staff generally reported that CAO has developed a good approach to T&Rs and is supportive of the staff developing capacity and knowledge on T&Rs and what to do. However, given staff turnover, the reliance on consultants, and the impact of remote working due to the COVID-19 pandemic, there have developed some inconsistencies (i.e., staff in-person experience with cases, full knowledge of what tools can be used to respond to T&R situations, depth of context analysis) even as the policy itself seems to have been strengthened. Some staff indicated that there should be more flexibility in how to respond to T&R situations in order to allow for innovation and testing in responding to T&Rs, so as to generate better outcomes for Complainants. There seemed to be a suggestion that because of the emphasis to develop a plan of action and protocols that some feel that it can constrain creative thinking/approaches. This was not expressed as a critique, but rather as a reminder to ensure that CAO's response does not become formulaic. Additionally, some staff identified the need for greater engagement by CAO with colleagues in IFC and elsewhere in the institution to raise awareness of and sensitivity to CAO processes and purpose. While this may exist among some more senior staff, as they move to different positions or responsibilities, those filling their places do not have the same level of engagement as when the zero-tolerance policy was first introduced and the T&R approaches were first developed.

### *Filing a Complaint*

It is clear that CAO offers multiple options for filing a complaint and initiating a process, including via email, phone, text, WhatsApp, and other messaging platforms, and even the possibility of oral communication in person (i.e., during a site visit). CAO staff have also made calls to individuals who have reached out indicating they have a complaint to file but are unable to make the call themselves. This flexibility is a strong asset of CAO and of its responsiveness to any and all communication.

The website offers a page that includes a form for filing a complaint, which is clear and easy to use. However, it is designed for someone using a computer. For someone using a mobile device, the form may be more difficult to engage with, given that it requires writing to explain the complaint, and while CAO will receive messages in various ways, the form itself is suggestive that there is a formal procedure, which may dissuade potential Complainants from following through with a complaint. While there might not be an easy way around this, it does mean that more remote or marginalized people and groups might not have technological access to be able to submit complaints, particularly for those who might not be literate. Recognizing that the form is not the only way a complaint can be registered, there are still ways to make it easier to interact with in order to submit information.

**Recommendation:** The form can be amended to include tick box or drop-down menu options, including to indicate if the Complainant has received a threat or reprisal or feels at risk of a threat or reprisal.

If a Complainant is on the Approach to Reprisals page and cannot use the form and wishes to send an email, the only indication for an email is the main CAO@worldbankgroup.org email address, listed under "Contact Us." This is a general inbox and is checked by staff, but it is not dedicated to complaints. This

is potentially confusing and does not align with the other messaging about the dedicated efforts around T&Rs and complaints more generally.

**Recommendation:** Add text under the “File a Complaint” button indicating that if the user cannot submit a file, they can also send an email (or other means of contact). A dedicated email address, using the domain @cao-ombudsman.org should be used to eliminate any possible confusion or suspicion about where the information is being sent.

On the How to File a Complaint page, the contact information is upfront and clear. However, the same issue is present with the email address (see recommendation above). Additionally, the text explaining the process indicates that a template for a complaint can be downloaded from the Documents section; however, that section is at the bottom of the page, and could easily be missed.

**Recommendation:** Move the Documents section up on the page, to just below the contact information for CAO. Another option is to create a link from the words “Complaint Letter Template” in the “How to File a Complaint” section to the template itself.

\*\* The formatting of the Arabic language page on reprisals is incorrect and needs to be fixed (<https://www.cao-ombudsman.org/cases/file-a-complaint>).

### *Options for CAO Actions*

The prioritization of confidentiality extended to Complainants, as it pertains to T&Rs, is a critical component in establishing trust, enabling the sharing of information, and building a relationship. Among the teams within CAO, including Eligibility, Assessment, Dispute Resolution and Compliance, there is a strong awareness that T&Rs are a serious issue that requires extra attention and prioritization. Furthermore, staff identified the ongoing check-ins and consultation with Complainants about their status, their needs, and to review documentation that CAO is producing as strengths of the approach. That said, many staff identified that they felt that they were extremely limited in what they could offer in terms of assistance. Additionally, the system is dependent on what Complainants request or suggest as possible actions, yet they may not be fully aware of what is possible or could be because they may not understand the institution or the dynamic between CAO, IFC/MIGA, the Client, the Board, etc. Particularly with new staff and consultants being brought in to work at CAO, the risk of institutional knowledge loss is great, even if trainings and workshops to orient staff to the T&R issue and to build their capacity in handling cases are being held.

**Recommendation:** As part of the documentation effort (see below), CAO should generate an internal list of actions that are available (albeit context-dependent) to CAO to respond to T&Rs reported by Complainant. This can be an adaptation of some of the resources in the “Confidential\_Internal Implementation Guidelines Approach\_February 2023” document. To make this a more enriched tool, this document should be turned into a user-friendly guide to help staff through the process, including where case narratives can be reviewed for better understanding by the team. This knowledge management should fall under the responsibility of the T&R Focal Point (see below).

### *Transitioning Cases through CAO*

As a case moves through the CAO process from Eligibility to Assessment to Dispute Resolution to (potentially) Compliance and Advisory, the staff needs to transition the Complainant to new staff and/or consultants. This process requires extra care and attention in order to maintain the relationship of trust that has been established. Some refer to this as the “Continuity of Care” and have suggested that CAO (and other IAMs) find a way to maintain the same staff person as a point of contact for the Complainant throughout the entire process—essentially a case manager who accompanies the entire process. While this approach would have implications for recruitment, staffing, and the dynamic between CAO staff, there is a compelling argument that from a perspective of enabling the institution to best be able to mitigate T&Rs and meet the policy objective intended by zero-tolerance, the long-term benefits of a “Continuity of Care” approach would outweigh the potential short-term costs.

**Recommendation:** There are at least two possible options to address “Continuity of Care” for a Complainant.

- Option 1 is to establish this as an internal function and to have the T&R Focal Point be the consistent attendant/guide/chaperone/safeguarder from the CAO side through the entire process up until the Compliance Management Action Plan (MAP) Process (if it gets to that stage). There are currently approximately 50 cases that would be eligible for such accompaniment by the T&R Focal Point, but it is not clear that all 50 have T&Rs reported.<sup>4</sup> Even so, this might be a manageable load. The T&R Focal Point should definitely have active engagement to work with the Eligibility team to pass the file to the Assessment team. The Focal Point would attend each reported case at least through the assessment stage. If at that point there are no T&Rs reported, the Focal Point can leave that case, and will reengage if T&Rs are reported later. If this role were to be established, then other internal dynamics (i.e., the “wall” between dispute resolution and compliance processes) might have to be amended or arranged to accommodate the Focal Point.<sup>5</sup>
- Option 2 is to establish an external function and to recruit an NGO or lawyer or some other type of advocate to formally accompany the Complainant through the process. Accompaniment of Complainants by CSOs or lawyers already occurs in a good number of the cases handled by CAO, but usually at the initiative of either the Complainant and/or the Accompanier. In order to assure that every Complainant has an Accompanier, CAO<sup>6</sup> would establish a roster of options for Complainants to select from and/or encourage the Complainant to bring their own Accompanier. The choice would ultimately be up to the Complainant, but CAO should provide as much guidance and information as possible as to the benefits of accompaniment (not just in terms of T&Rs, but also in terms of the complaint itself).

Option 2 is complicated by two factors:(1) CSOs tend to be associated with Complainants and may create a perception of weakened independence from the IFC Clients or IFC, which could undermine trust in the CAO process; and (2) CSOs or other Accompaniers can also face T&Rs.

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<sup>4</sup> According to CAO staff, just under half of the approximately 50 cases raise T&R concerns, which is similar to the percentage of all cases since 2018.

<sup>5</sup> It might be worth considering this role in the way a Child Advocate functions in custody cases. This is not to suggest that the dynamic is adversarial, but rather that there is a function for the Focal Point to consider the safety considerations of a Complainant all the way through CAO processes.

<sup>6</sup> This should not be just a CAO initiative, but rather something supported and organized by all IAMs. Furthermore, this could be established as a kind of “public defender” approach, whereby all Complainants would be encouraged to have an Accompanier, while the IAMs would contribute to an independent fund to provide resources for the costs of such work by an Accompanier. At present, CSOs and other Accompaniers are performing these roles in addition to their core work, including providing security support and resources to the Complainants. This is a heavy burden on a relatively limited number of actors, and can impact their work for years in some cases. Entering an IAM process puts a huge burden on both Complainant and Accompanier, yet these are the two least powerful and resourced stakeholders in the entire process.

Option 2 represents an effort by CAO to ensure that every Complainant has an experienced and professional ally supporting them through the process, and the accompaniment is not meant to be a CAO function, thus preserving the independence of CAO. Clients have ample resources to hire lawyers, etc. This option is about ensuring that Complainants have more effective ability to engage in a CAO process.

If some kind of continuity cannot be maintained for the Complainant through the process, then it does seem that the process of transition needs to be strengthened to ensure consistency and effectiveness, perhaps through periodic check-ins with a Complainant throughout the process and opportunities for the Complainant to give feedback to CAO that is outside the formal process (dispute resolution, compliance, etc.) in which they are engaged.

**Recommendation:** The T&R Focal Point should develop protocols for the transition of a case from one team to the next and should accompany that process until the transition is complete, including reviewing all documentation for consistency and quality of information, ensuring that all stakeholders are receiving timely and accurate information, and ensuring that the receiving team is well prepared and aware of key information being passed on about the Complainant, the nature of the T&Rs, the context of the situation, etc.

### *Field Missions*

When CAO staff go on field mission, they are required to interface with the WBG's in-country security personnel to receive information about risks and the conditions in the country. However, CAO is not able to share full information with WBG security staff, and this can create tensions or problems. While most staff consulted indicated that they were able to largely negotiate their way through such discussions/engagements, it would seem to make sense for CAO and WBG Security to prepare a form that covers the information CAO is able to share when it comes to upcoming travel. WBG Security should be sensitized to the need for CAO staff to carry out their missions with a degree of confidentiality for security purposes.

**Recommendation:** CAO leadership should meet with WBG Security Officers and establish a formal Memorandum of Understanding (MOU) or protocol for what information can be shared with field security offices and what the parameters are in terms of information and security measures to meet the dual needs of protection and fulfillment of the mission of CAO, including security for Complainants and affected communities.

### *Communications with Complainants*

CAO staff and the Risk Logs indicate that efforts are made to ensure secure communications with Complainants, including the use of encrypted messaging apps. However, there seems to be differing ideas as to what options exist for email and document-sharing. CAO should strive, and be supported by WBG IT specialists, to have the best available digital security tools available both for communications with Complainants and for receiving documents and other evidence. CAO staff should insist on the use of encrypted messaging apps with Complainants, and should those Complainants have difficulty accessing or using such tools, then CAO should make efforts to connect Complainants with CSOs or other specialists that can offer assistance. CAO already has a resource list of some of these CSOs at the international level, but this can be developed at the outset of a complaint on a country basis by consulting



with those international CSOs for local references. This is something that could be done by the T&R Focal Point or as part of context analysis prepared by the Assessment team. Furthermore, CAO staff should receive digital security training as part of their onboarding and have refresher/updated trainings on a regular basis; such trainings could be sourced from human rights sector specialist organizations such as Tactical Tech, Access Now, Front Line Defenders, and others.

**Recommendation:** All CAO staff should have access to encrypted messaging apps on their devices and should be familiar with explaining to Complainants how to set up and use one of these apps. CAO could have access to free encrypted email services, such as Protonmail. These can be set up on a case-by-case basis, such that when a case is closed, the email account is closed. This will allow Complainants to communicate and send attachments to CAO with end-to-end encryption. Developing protocols for using these apps can be done in conjunction with the WBG IT Department. The WBG IT Department should also enable an encrypted drop box using a service such as Tresorit to enable Complainants to share larger files, such as photos or videos. If that is not possible, or if such a service is not warranted by the size and number of files transferred, then staff should be permitted to use the free service [send.tresorit.com](https://send.tresorit.com), which allows for an encrypted transfer up to 5GB.

The WBG IT Department maintains specific standards and protocols, but indicated a willingness to accommodate specific needs related to encrypted communications as needed. Further conversation with CAO is warranted, in which CAO prepares information citing need and experience with using different apps and communications tools, so that a formal agreement can be reached with the WBG IT team and necessary measures can be taken to ensure security for institution systems and information.

### *External Communications*

At present, the public reporting on cases and T&Rs counts the number of cases/T&Rs across different metrics. This is a baseline, but CAO can offer more insight, analysis, and reporting that would reflect the issue better, raise greater awareness of the issue, and enable more stakeholders to engage with the institution to address T&Rs.

**Recommendation:** Together with the development of a more comprehensive Risk Log (see below), the different CAO teams should consider what kind of storytelling CAO wants to do about cases and T&Rs, and what kinds of questions need to be asked of the data. The Data page, as well as Annual Reports and internal reporting to the Board, can then offer more dynamic reports and tracking information in the aggregate, as well as analytical information about what CAO is seeing in the world and trends it can identify. While confidentiality is core to CAO's principles and work, it should be possible to generate data through aggregation that would enable this kind of reporting and analysis.

The communication of the CAO Approach on T&Rs is rather formal and not necessarily accessible to less literate populations.

**Recommendation:** CAO should commission/produce short videos that aim at presenting policy information aimed at communities and potential Complainants that is more user-friendly/understandable.

### *Newsletter*

Dedicated attention to T&Rs should be given in the quarterly CAO newsletter. In the three newsletters (September 2022, November 2022, February 2023) reviewed, there was no reference to the work on T&Rs, nor any examples of instances in which this issue came up as part of complaints. Reporting in the newsletters need not go into specifics or violate confidentiality issues, but could be information about lessons learned, analysis of past examples of successful mitigation or intervention, or even guest submissions by CSOs or Complainants who can reflect on positive examples of T&R harm reduction or elimination.

Case Tracker webpages are useful snapshots for following a case and understanding developments as a process moves forward.

***Recommendation:*** In order to distinguish the issues of T&Rs and to highlight them, there should be distinct subsection under the Synopsis about Threats & Reprisals, distinct from the complaint summary itself.

### *Staff Well-being*

A number of staff reflected on the toll the work takes on them and colleagues, particularly in instances where there are T&Rs and CAO staff feel ineffective in being able to provide support from a protection standpoint. One person indicated that there had previously been an emphasis on staff well-being that had retreated over the years as a point of emphasis coming from leadership, and it was left to colleagues to check in on one another or on the individual to seek out support on their own. This was also impacted by remote work during the COVID-19 pandemic.

***Recommendation:*** CAO leadership should make space regularly for staff debriefings and discussions around the challenges and frustrations they encounter. Additional resources could be allocated for staff well-being, with greater sensitivity to when individuals are involved with particularly difficult/challenging cases. There are a range of resources that could be deployed, from providing mental health and physical health benefits as part of employee benefits packages (i.e., counseling sessions, gym memberships, healthy lifestyle targets and benefits) to flexible work schedules, arranging non-work staff engagement time on a monthly basis (set times for book clubs, game-playing, etc.), and periodic team building/strengthening excursions out of the office.

## COOPERATION BETWEEN IAMs

By most accounts, other IAMs have looked to CAO and its practices to inform their own development of policies and practices with regard to T&Rs. This is a result of CAO's leadership on this issue in terms of its own internal development and its willingness to robustly engage with the IAM network and in bilateral engagements with other IAMs. That said, all IAMs consulted reported the challenge of turning principles into practice that can make a practical difference in terms of the safety and security of Complainants.

IAM staff consulted for this review reported referring to CAO policies and practices with regard to handling T&Rs. This included staff from newly established IAMs to those working for IAMs with years of experience. While some IAMs have developed different specific approaches, that had more to do with the way that institution functions and the capacity of that IAM. Given that the other IAMs offer dispute resolution services, CAO's dispute resolution process was highlighted as being quite effective at addressing the issue of T&Rs and other IAMs reported basing their own processes on CAO's model.

While there was an overall impression that CAO's work on T&Rs was strong and provided leadership in the IAM field, there were some recommendations borne out of experiences in which multiple IAMs, including CAO, were co-handling a complaint involving T&Rs. These recommendations largely come as a result of concerns related to information-sharing between IAMs and could be resolved by establishing more formal and regularized procedures between different IAMs, particularly when each IAM might have somewhat different protocols or policies when it comes to issues of confidentiality, information-sharing, relationships with their partner institution, and relationship with the Complainants and/or Accompanier. This came up primarily as an issue of information-sharing between IAMs.

One major concern was that CAO's establishment of a confidentiality agreement with a Complainant could impede the sharing of information with other IAMs and thus inhibit the ability of any of the concerned parties to provide meaningful support and response. While the confidentiality issue must be based on the wishes of the Complainant, when multiple IAMs are involved, there should be an ability to allow CAO's confidentiality agreement to be expanded to other IAMs to which a complaint has been made. It might mean going back to a Complainant and updating a confidentiality agreement, based on the joint work by IAMs to handle the complaint and T&R issues. One IAM reported a situation in which sorting out confidentiality between it and CAO took about one year, leading to frustration and potentially exposing the Complainant to T&Rs due to the IAMs' inability to respond until the agreement was established. This IAM staffer also identified that CAO was too bureaucratic and put more emphasis on process than on the needs of the Complainant.

**Recommendation:** In situations in which a Complainant submits to multiple IAMs or there are multiple complaints about a co-financed project, CAO and other involved IAMs will create a Memorandum of Understanding (MOU) to govern the T&R portion (at least) of the complaint/s. This MOU will establish: what information can be shared and with whom from each of the stakeholders based on a confidentiality agreement with the Complainant that aims to enable effective responses to T&Rs; streamline communications with the Complainant and Accompanier; specify which IAM will lead and the roles for each of the IAMs, including expectations and commitments to participation and engagement in the overall complaint process; outline a process by which measures intended to assist/address T&Rs are discussed and determined by IAM staff and how that gets actioned; and establish a process by which the institutions are engaged, per the wishes of the Complainant and the protocols of each IAM. This is meant to be an initial—not exhaustive—list of suggestions for a standard MOU between IAMs. This MOU should also address how T&R will be handled as it might come up at different stages of handling of the

complaint (Dispute Resolution, Compliance, etc.). Furthermore, if it makes more sense to have such a MOU cover all elements of the complaint—and not just the T&R element—that can certainly be a viable means of addressing this tension between IAMs.

While all IAMs reported strong consultation with Complainants about risks of T&Rs, and CAO staff do conduct their own research and add that to the Risk Log, a number of IAMs do not leave their assessment to only what Complainants report. The IAMs also undertake additional research and investigation to develop deeper contextual understanding and specific concerns around risks of T&Rs to the Complainants. This approach, which is used by the Independent Redress Mechanism (Green Climate Fund) and MICI (IDB), seems to be more robust than CAO’s approach to context risk analysis that was observed in the Risk Log documentation. These IAMs also will go back to the Complainant and present the information and concerns that the IAM has developed, which the Complainants might not have raised or have awareness of as potential risk factors. This kind of dynamic allows for two-way discussion on issues, rather than CAO only responding to what is received from the Complainant. This might not be necessary when a Complainant has an Accompanier at the early stages of the process, as it is more likely that a CSO or other expert will be available to provide more comprehensive information about the risks of T&Rs. It is possible that when Complainants are presented with additional risk information to consider, they may not agree or accept that these risks exist. Nonetheless, taking into account more potential risk factors should not negatively impact the CAO process or options for how to proceed with a complaint. In those instances where Complainants wish to set aside any risk factors that CAO might identify with which they do not agree, there is at least the documentation that these were considered, and if necessary, they can be reintegrated later in the process.

**Recommendation:** The T&R Focal Point can explore with other IAMs how they conduct their own risk assessment and present that to the Complainants in order to develop such practice at CAO. This might require additional capacity among Assessment staff. CAO should also undertake additional research and investigation to develop greater contextual understanding (develop familiarity with more resources and sources that can give deeper risk analysis) of risks to Complainants.

*Within the WBG—Inspection Panel and Dispute Resolution Service (DRS)*

The approaches to T&Rs are largely the same between CAO, the Inspection Panel (IP), and the Dispute Resolution Service (DRS), as there has been significant cooperation and collaboration among these entities. There is a consistency of approach by the IP and CAO and a strong sense that co-learning is valued and could be developed further.

The Consultant facilitated a meeting between CAO, IP, and DRS to discuss and compare approaches to and experiences with T&Rs. The discussion helped flesh out key points of concern about how to best provide support for Complainants reporting T&Rs, how to maintain confidentiality, how to handle investigations and field missions, and other components of each team’s processes. Among all the teams, commitment to confidentiality was tantamount, though there were minor variances in terms of how information was shared within each team, largely due to the different processes (dispute resolution and compliance) each team deploys.

In terms of assessing T&Rs, IP tends to rely on the Complainant to report at the outset of a complaint, though it does have the ability to respond later on in its process if T&Rs are reported later. CAO seems to have a more dynamic approach to T&Rs, with greater ongoing engagement with Complainants with regard to T&Rs. It was acknowledged by all three teams that greater awareness of and sensitivity to the

intersectionality of risk (including aspects such as race, gender, socioeconomic status, ethnicity, etc.) that Complainants may experience is needed, as well as ability to assess how measures to address T&Rs take these different elements into account.

In terms of reporting, IP has published a report on intimidation and reprisal, citing cases and lessons learned, which CAO is planning to do. It was also acknowledged that among all three that deeper analysis could be done based on more robust data collection and analysis, and that there is utility in having synchronicity among the three teams in terms of what kind of data are being used and collected and analysis is being done, for consistency, to be able to better assess the overall institutional response to T&Rs, and to better identify and understand trends.

Key issues of concern that were raised and that address the World Bank Group as a whole centered around the need for a systemic approach to T&Rs. There seemed to be a recognition that the ability of these teams to effectively make a bigger impact on T&Rs required a system from WBG Management on how to manifest the zero-tolerance policy in a way that would compel behavior change among potential perpetrators. What surfaced in the discussion was a perspective that the Bank Management (and this was not seen as limited to this institution) seems to act on this issue when either CAO or IP brings the issue forward. There may be other instances where the Bank acts on its own; the mechanisms cannot speak to such instances.

There is a strong coherence of approach between IP and CAO on the issue of T&Rs. What would benefit CAO and IP at this point is taking reporting, trends identification and analysis, and knowledge-building and knowledge-sharing to the next level (see recommendations elsewhere in this report on how CAO can advance its reporting and analysis).

## COOPERATION WITH IFC/MIGA

### *IFC*

Cooperation between CAO and IFC remains a problematic area. There are multiple facets to this dynamic and many are beyond the scope of this review. That said, resolving the issues and creating a new dynamic between CAO and IFC in relation to the T&R component of complaints is critical to delivering better outcomes for Complainants and generating greater trust and cooperation between the two entities and their staffs. Improving the CAO-IFC dynamic, increasing efficiencies, and generating meaningful outcomes would meet the Board's intent to address T&Rs and ensure the effectiveness of its zero-tolerance policy.

Among the issues identified by CAO staff were:

- Inconsistent response by IFC to requests for documentation on projects
- Lack of information on assessment of projects and context in terms of T&Rs
- Concerns over information-sharing in terms of how many people from IFC would end up having access to information shared by CAO (i.e., “telling IFC means telling 20 people”)
- Concern over IFC staff's interest in resolving the T&R situation for Complainant versus getting the project on track
- Inconsistency or lack of knowledge on IFC's approach to T&Rs on the ground, rather than on paper.

IFC staff also identified issues impacting the relationship between the two entities, including:

- Fear (for job security) if a project is referred to CAO (“red alert situation”)—prior to engaging in a CAO process (this fear has been mitigated once a process has begun)
- Impression that when CAO reviews a case, it makes things difficult for IFC project staff (advice from supervisor: “have to be very careful with CAO”)—prior to engaging in CAO process (this impression has been mitigated once a process has begun)
- Lack of sharing information by CAO that would otherwise enable IFC to address the problem of T&Rs (not complaint information)
- Lack of understanding by IFC staff as to why CAO is protecting information, even non-specific information (i.e., not sharing the number of T&R-affected persons in a case) on the basis of confidentiality
- Lack of understanding of the CAO process by IFC staff
- Frustration with CAO due to the above.

The issue of T&Rs, particularly in light of the overall zero-tolerance policy, should be something that can be addressed separate from the complaint itself (even if the two are interdependent). Efforts should be made to facilitate more cooperation and collaboration to resolve T&Rs, even if some of the information about the Complainant or details about the incident/s need to remain confidential. Given the work underway to develop IFC responses to T&Rs [Stakeholder Grievance Response (SGR) unit, new grievance mechanism], there could be opportunities to separate out response to T&Rs that enable resolution, while maintaining the independence of CAO to investigate and problem-solve the content of complaints.

***Recommendation:*** The T&R Focal Point should establish a regular channel of communication on a fixed basis (i.e., biweekly, monthly, etc.) with a point person from IFC and MIGA to confidentially review

instances of reported T&Rs at the initial stages of the reporting. CAO can bring whatever information is possible to share at that point, and this relationship can be covered by its own MOU on confidentiality. This would give the IFC point person the opportunity to conceptualize potential responses and begin to investigate background on the project and the Client to see whether there might be additional concerns. It would also give IFC the opportunity to review whether there have been other reported incidents that it received in connection to a project or Client. Given CAO's core principle of informed consent of the Complainant, there would also be a need to go back to the Complainant to get agreement to address the T&Rs in this way and what information could be shared.

IFC staff—particularly those who work on environmental and social (E&S) issues and/or who have worked on the institution's response to T&Rs—expressed interest in figuring out a better dynamic between IFC and CAO in order to respond to T&Rs and offer greater protection to Complainants. Similarly, CAO staff recognize that while CAO has little power to provide protection, IFC can exert leverage on Clients to address T&Rs. For the sake of the safety and protection of the Complainants, developing a solution for this gap has great potential to be effective. IFC staff indicated a strong willingness to want to respond to the issue of T&Rs and to be creative in what they can do; it is important to generate a new dynamic and protocols to translate that willingness into practical measures/actions without compromising safety and security.

The current dynamic that exists between CAO and IFC can get exacerbated by actions taken by either Complainants (and/or their Accompaniers) or Clients (or their partners/subcontractors/allies) that are out of either entities' control and yet are interpreted by one side or the other as either having intentionality, involvement, or foreknowledge by staff in those offices. In one instance, IFC (and also CAO) were caught off guard when information was made public from the Complainants' side, whereas previously IFC was told that information could not be shared because of confidentiality issues. Because of the lack of trust and understanding between IFC and CAO, this only furthered the poor dynamic, which can likely have impact on subsequent cases.

**Recommendation:** Convene a high-level CAO-IFC meeting to flesh out outstanding concerns about the interaction between the two entities and to establish a work plan and a formal structure for engagement [i.e., Terms of Reference (ToR) or MoU] for addressing the challenges that exist when it comes to addressing T&Rs.

One area in which there is interaction between CAO and IFC is in the dispute resolution phase, in those instances where IFC is involved in an observer role. There are no data to analyze the impact of IFC participation (currently not documented by IFC or CAO), but the general impression among all those consulted—including IFC staff who have participated in dispute resolution processes—was that having IFC participation in dispute resolution process leads to better outcomes both for T&Rs and for the complaint issues. The IFC participation also helped IFC staff understand the T&R situation better, understand CAO's role and process better, and enable a better conversation with the IFC Client. One IFC staff reported having a call with CAO and a Facilitator prior to the dispute resolution process beginning to explain expectations of the observer role and what could be expected of the process. This kind of communication enabled a better process and better engagement by the IFC staff member, who was quite apprehensive about the process. IFC staff who participated in dispute resolution processes as observers reported that they felt their presence made the dispute resolution process better and helped make the Client feel more comfortable in their participation. Another IFC staff member with experience in dispute resolution processes believes strongly that IFC participation should be mandatory (per no objection from the parties) and that it has an important effect on the Client, as a “soft power” form of leverage by expressing to the Client the importance of the process and the need to address the issues. Another IAM

(MICI) reported that as part of its dispute resolution process, the Bank itself (IDB) is a party to the process, and reports that it is an effective means of making sure that any T&R issue is addressed and taken seriously by Clients. One IFC staff member reported that after participating in a dispute resolution process as an observer that it was “eye opening that CAO was trying to resolve cases and not trying to find fault.”

***Recommendations:***

1. Develop data on the effect of having IFC participation as an observer in dispute resolution processes, including retroactively documenting IFC and CAO staff impressions in order to build the knowledge base.
2. Discuss and develop agreement with IFC about the utility of having IFC staff participate as observers—including defining the role and training for IFC staff—in dispute resolution processes.
3. Develop guidance to Complainants and any Accompaniers regarding the efficacy of having IFC as an observer in dispute resolution processes.
4. Develop an approach with CAO-contracted dispute resolution mediators to enable an effective observer role for IFC staff in dispute resolution processes.

Another issue that seems to cause tension due to the lack of clarity, difficulty in relationship, and confidentiality issues is around IFC staff understanding and accepting that CAO is not working to establish the veracity of T&Rs that are reported, but rather has an approach that all reports of T&Rs are taken seriously even before evidence can be confirmed. In such instances where IFC staff are made aware that there are T&Rs but not given additional information, they might also only be hearing from their Client, which is likely denying having any involvement in T&Rs. This comes up during dispute resolution processes as well, where IFC staff who played an observer role noted that Complainants were given 100 percent credibility for their claims of T&Rs even when evidence could not be produced. Nonetheless, it is a core CAO principle that reports of T&Rs are taken seriously and at face value and treating them as such is necessary in order for Complainants to have trust in any CAO process, including dispute resolution.

While there is a recognition by IFC staff that it might be difficult—or even impossible—to produce evidence, or that such evidence could not be shared out of security concerns, there was still frustration, which could likely be mitigated by developing better understanding between CAO and IFC. Furthermore, another possible remedy for addressing the T&R issue is to separate it out from the complaint itself in order to develop ways—including possible collaboration—to mitigate or stop T&Rs, even as the complaint process itself might not advance as quickly.

In some conversations, IFC field-based staff had difficulty assessing CAO’s role in terms of dealing with T&Rs and only referred to complaint-related developments, even when pressed to consider the T&R issue (when it was documented that there were T&Rs reported as part of the complaint). There are a number of reasons as to why this kind of response was received, but the lack of attention to T&Rs in discussing specific cases in which they were reported could be a signal that despite the zero-tolerance policy, the issue is not as much a priority for IFC field staff as are the project complaint issues. It is also a potential indicator that while headquarters-based IFC staff are more engaged with processes and policies concerning T&Rs in the institution, at the field level, priorities favor project implementation and fulfillment and the T&R issue is not as high on the radar screen. If that is the case (which is beyond the scope of this review to assess), then there could be practical steps for IFC to take to both emphasize T&Rs to its own staff and build in ways in which this issue is a higher priority for Clients at the outset of project approval and implementation.



In these conversations, IFC staff expressed a greater deal of mistrust about the Complainants, suggesting that they had motives that were not just about the project or were being supported by international CSOs that had specific agendas. The lack of distinction between the issue of T&Rs and the project complaint itself could be an indicator that there is a need to separate out T&Rs from the complaint in order to ensure that IFC project staff give the necessary attention to the T&R issue in light of the zero-tolerance policy. Certainly, if CAO is responding to this and working to address it through a dispute resolution process or some other means, IFC project staff should be aware and should have some role in supporting the effort to stop T&Rs.

For the instances where a complaint is referred from CAO to IFC following Eligibility (per the request of the Complainant), there needs to be a system of information-sharing and tracking for any T&Rs so that both CAO and IFC have the opportunity to monitor and learn from the case. Even though CAO might not have responsibility once it is handed over to IFC, it is well worth being able to develop data and analysis about the outcomes of such cases in order to provide better guidance and/or mitigation measures in the future. Additionally, it seems to be worth considering whether or not CAO should have an interest in first conducting a full assessment—at least on T&Rs—prior to transfer of a case to IFC. This could be understood as doing due diligence in line with the zero-tolerance policy, and building in additional insurance that T&R issues receive appropriate attention when the case is moved from CAO to IFC.

### *MIGA*

MIGA staff report that they do not have many cases with CAO. When they do assess a project, they do use the IFC Contextual Risk Tool and also conduct their own research. When approving financing, they do alert the Client to the existence of CAO and the potential for complaints to be reported to CAO. Similar to IFC, MIGA staff reported that due to the caution CAO exerts, including due to confidentiality, the information they receive from CAO makes it difficult to evaluate the complaint. For the Client, that makes it difficult for it to know if the complaint is a result of some action it took.

MIGA staff reported that it is possible to be involved in a dispute resolution process as an observer and reflected that it would likely be helpful for MIGA to be more proactive in such instances. This would also help clarify for the stakeholders that MIGA is neutral and its role is to support the policies of the institution, including on T&Rs.

MIGA can receive complaints directly and is learning from IFC about best practices on how to respond. But MIGA staff indicated that they would like to learn more from CAO about how to handle and respond to complaints and learn more about lessons learned and experiences. That said, MIGA staff reported that they are very likely to reach out to IFC colleagues for advice and help, and that reaching out to CAO was much less likely as it would be a “nightmare of bureaucracy to reach out to CAO for help.” This kind of dynamic seems to be anathema to finding solutions on T&Rs for the institution.

***Recommendation:*** Related to CAO documentation, the suggestion is to create a kind of “case law index” reference tool of CAO experiences that can be shared internally throughout the WBG. The index could be organized by T&R type and then offer information about what measures have been effective in responding to those T&Rs. While the effectiveness of any individual measure is necessarily context-dependent, such a compendium would offer ideas and lessons for consideration and allow those staff working on addressing the situation to consider a range of options that might not be apparent or with

which they have had prior experience. This process would necessarily need to remove any confidential information—or specifics that are not needed to impart lessons and best practice.

## RESPONSE FROM CSOs

CSOs appreciated the attention CAO has given to T&Rs internally, within the IAM sector, and in public forums. There was generally an appreciation of the care and attention given to Complainants in the process as CAO has developed over time, and taking an approach that is similar to a “victim-centered” approach with regard to T&Rs.

As is well documented, the experience of CSOs with CAO varies by region; in some regions, CSOs have had multiple cases to engage with CAO, while in other regions there is less awareness of and engagement with CAO (and other accountability mechanisms). CAO (and other IAMs) are working to increase awareness of their work and processes by conducting outreach events and workshops, though underlying contextual factors might continue to impact engagement levels.

Another key factor for building trust with IAMs concerns the understanding that participating in accountability processes can/will bring results for Complainants and communities. This is not limited to the T&R issue, and often is more about the content of the complaint. Complainants take on risk when bringing forward a complaint, and while the T&R element can be addressed, the perspective of the Complainant (and accompanying CSOs) is that the burden of the risk and the impact it has on lives (even if no specific threats are made or reprisals enacted) does not match or warrant the limited or negligible impact of the accountability process in terms of affecting projects. Particularly in places where there is massive corruption and repression, the bubble of an accountability process through an IAM seems to have little impact for the larger concerns faced by project-affected communities.

Some CSOs raised concerns about CAO’s understanding of certain contexts and how they impact Complainants.

**Recommendation:** CAO should undertake greater engagement with CSOs that are active on issues related to civil society, human rights defenders, and journalists in countries where they have little experience or in countries where there have been significant political/governance shifts in the last few years. Beyond desk research, full discussion and briefings on the security situation—including surveillance issues—and how it might impact Complainants will enhance the context risk work and enable CAO to interact better with Complainants.

In those instances where CSOs are supporting Complainants through a process, there needs to be awareness that how that process plays out can have negative reputation implications for the CSO. This can damage CAO relations with CSOs and make it more difficult to establish trust in the process.

Another factor that CSOs pointed out is that some of the processes have taken a very long time to work through. In general, time is an asset to Clients and to other stakeholders that have interest in the project, while it is likely to be detrimental to Complainants. The longer a process takes, the more likely Complainants are to lose trust/faith in it. There have been instances in which Clients have seemingly extended the time of the process (dispute resolution, in this example) to demonstrate to other lenders that it is engaged in an accountability process in order to improve its chances of receiving additional investment. CSOs suggest that CAO consider the time factor and establish guidelines for reviewing processes when timelines are extended, both because of the extension of risk factors for T&Rs over time and for the abuse of the process by the Client.

CSOs pointed out that in some countries it is simply inconceivable that WBG staff based in the country are not compromised somehow by government (this is also something that is quite regular among

nationals among United Nations staff in a number of countries) and that this poses a risk factor to Complainants. However, at the same time, CAO is often not known to project-affected communities and groups or it is not understood that CAO is an independent mechanism, so this is another reason why there may not be many complaints from a region or from certain countries. CSOs that work in this space are likely to have already been targeted by governments so they are unknown or considered risky to engage with, particularly by people who may not have had any previous engagement with CSOs.

CSOs raised the issue that WBG Board members have interfered with complaint processes by exerting pressure for complaints to be dropped. This is a serious matter and should be investigated by consulting with CSOs for specific instances where this may have happened and then conducting an internal investigation at the WBG. If this is happening/has happened, then this would seriously undermine the credibility of the policy and of the WBG's commitment to the issue. Particularly with the WBG undertaking to increase investments in more fragile state contexts, where corruption is also high, the potential for this problem to manifest will also increase, and CAO may not be able to create the appropriate safeguards on its own.

**Recommendation:** When a complaint is withdrawn, especially if there is already a report or assessment of possible T&Rs, either CAO or another entity in the WBG should inquire with Complainants as to whether there was any pressure exerted on them to withdraw, including by any actors from within the WBG.

One perspective CSOs maintain that is worth considering is that if there is retaliation in a project, then that represents a failure of the zero-tolerance policy. As such, this would imply that there should be more work done at the front-end of a project assessment, approval, and contracting. There was a suggestion that CAO could play a bigger role in raising awareness at that point.

Different CSOs reported different experiences with CAO depending on where in the process the case was being handled. Generally, there were strongly favorable reviews of CAO's handling of T&Rs through in dispute resolution processes. Some CSOs expressed concern that in compliance processes, CAO was not as effective in addressing T&Rs, but that could be due to the structure of the compliance reporting process (addressed below in the section on Performance Standards). One area of concern was when there was a Management Action Plan (MAP) developed and what CAO's role is in ensuring necessary safeguards. In one instance, a CSO reported that consultants and contractors hired in the field by IFC were extremely problematic and introduced new risks of T&Rs. There was a concern that contractors hired to execute the plan are not sensitized enough to the concerns around T&Rs and thus this issue gets minimized at the MAP stage. One suggestion was that CAO work with the SGR at this stage to ensure that the T&R issue continues to play an important role in how that plan is executed.

CSOs also flagged that when IFC does decide to withdraw from a project, the way it does so can have implications for T&Rs for Complainants. As such, it was recommended that—with CAO input via consultation with Complainants and Accompaniers—that IFC consider how it communicates such withdrawal and what, if any, public communications are made (see more below on Responsible Exit). The closing of a case or withdrawal from a project does not address issues around remedy to affected communities/individuals, including on issue of T&Rs. CSOs argue that the issue of remedy needs to be addressed and would serve as a leverage point to stop T&Rs.

CSOs expressed some concern over staff recruitment at CAO in the last couple of years, noting that there is the impression that there has not been an emphasis on bringing in staff with human rights backgrounds, which would help with CAO's ability to respond to T&Rs.

CSOs pointed out that CAO needs to be aware of and develop policy on the issue of Clients claiming that Complainants pose a risk of retaliation against the Client as a way to delegitimize and undermine the policy on T&Rs. While there may be some instances in which Clients or their staff may come under threat (though not necessarily by Complainants), that is very different than spurious claims by Clients as to reputation risk posed by Complainants engaging in this process. While CAO and IFC/MIGA have made the right to file complaints explicit, further guidance should be developed to dissuade Clients from making such claims.

Finally, it needs to be recognized that CSOs often bear huge burdens as Accompaniers to Complainants in terms of staff time, resources, and the potential to become a target of attack by various stakeholders. Next to Complainants, CSOs are the least resourced and most vulnerable of all the other stakeholders in any process. This is an increasing burden as CAO and other IAMs turn to CSOs for support to Complainants and as their role as Accompaniers in processes is determined to have added value to address T&R issues, as well as other project-related issues. There is not a CAO-specific way to address this issue, but perhaps CAO can consider driving a conversation with other IAMs and multilateral development banks and development finance institutions to address this imbalance and find ways to enable CSOs to be effective Accompaniers through these processes (see Support for Pro Bono System below).

## RISK LOG

The Risk Log has been established as the primary means of documenting reported threats, reprisals, and risks of reprisals to Complainants. It is also the basis for generating data by CAO on threats and reprisals for reporting. As such, Risk Logs were reviewed to assess in terms of consistency, accuracy, and relevancy. Additionally, a new Risk Log template is under development and that was reviewed and assessed.

### *Information Management*

The Risk Log is a Word document that is stored as a file in a folder system maintained by CAO (and unavailable to staff from the rest of the WBG). Each document is meant to refer to a specific complaint and is filed by year. There is not a standard naming convention, with some files named with the country and year; some with the country, Client, and year; some with the Client and year, etc. Furthermore, there is duplication of files, though each file might be stored in a different year's folder. When a file is updated, sometimes the word "Updated" is added to the file name; sometimes it is not. It does not appear that the file system allows for effective searching, which can lead to the use of older files or the inadvertent duplication of files.

**Recommendation:** CAO should invest in developing its own CRM (customer relationship management) software that can enable easy documentation in a database. Each complaint can be documented in the system as a complaint, while the various stakeholders and staff that engage with a case file can be documented in the system and connected to the case. Thus, a Client might have multiple cases on its record; a country might have multiple cases on its record; a Complainant might only be connected to one case, etc. Furthermore, by documenting by case, CAO will be able to keep a streamlined and clear documentation of information about the case, including informational updates by date, fields to indicate various metrics about the case, status updates, and additional documentation in attachments.

### *Documentation*

Overall, there is inconsistency in the reporting in the Risk Logs. In many instances the narrative reports name individuals without full identification of their role or relationship to the complaint. Risk Log updates sometimes put the date ahead of the narrative update, or sometimes just offer a list of dates at the top of the form, making it difficult to follow exactly what information corresponds to which date.

Many of the Risk Logs include contextual information about the political situation in the country, but offer little relevant information either to the sector of the project, the situation for human rights defenders and journalists, or reference to other experiences CAO, IP, or IFC may have had in the country in previous instances. Some Risk Logs, however, do not contain any contextual information.

**Recommendation:** The T&R Focal Point should develop protocols for what information should be included in a contextual risk assessment, and what sources of information should be consulted. These should be not only country-specific, but also be related to the nature of the complaint and sector in which the work takes place; the kind of reported T&Rs; the sector that the Complainant comes from; issues related to identity (gender, indigenous, etc.), etc.

**Recommendation:** CAO should engage with IFC about its new contextual risk tool to understand how it is generated and what inputs have been used to establish ratings. This tool should be used regularly by CAO, but depending on what inputs/sources used, CAO should also consult other sources, including

looking at reporting on issues around corruption (Transparency International), freedom of expression (IFEX, Article 19), human rights defenders (Front Line Defenders), political rights and civil liberties (Freedom House), etc. Local CSOs and the Office of the High Commissioner for Human Rights should also be consulted for context-related information.

There are also significant inconsistencies in terms of documenting what actions CAO has taken to communicate with Complainants, respond to reports of T&Rs, and other actions staff have taken to get support for the Complainants. Often, requests for action by CAO or IFC from the Complainants are noted in the narrative, but there is often no indication of what actions CAO took to respond or if such a response was not possible and why. In some instances where CAO did take action, including field visits, no additional information is documented, despite the relation of the visit to the issue of threats and reprisals.

**Recommendation:** In addition to having a CRM database system for documenting cases and systematizing information, CAO staff should be trained on how to document cases at different stages of the process. The CRM can include prompt questions for narrative sections, while the system should be designed to allow for drop-down fields to ensure consistency of information and reporting. All new cases created by the Assessment team should be reviewed by the T&R Focal Point (see Recommendations section below) for consistency and quality of information.

### *Learning and Reporting*

In order to use the data that are collected by CAO to generate learning, trends analysis, and reporting, it is imperative that the switch to a CRM database be made a priority. At present, knowledge is shared on an ad hoc basis and in team or working group meetings. Despite a general spirit of solidarity and support among CAO staff, between staff turnover, the employment of multiple consultants, remote working, and other factors, there are significant discrepancies among CAO staff in their capacity on T&Rs. This is not to doubt the commitment of the staff to the issue, but rather to comment on the way in which knowledge is generated, produced, and shared internally. Additionally, in order to generate more informative, insightful, and impactful reports for internal and external use—which will also likely shape future capacity and technical development of the T&R work—CAO needs to generate questions and then apply them to the design of the database system to best report on its work. At present, CAO (and other IAMs) are mainly counting the number of cases and the number of threats and reprisals therein, which ultimately just describes the problem. Using narrative data to generating meaningful data sets and trends analysis is critical to developing better policy and actions/responses, as well as staff better equipped to address these issues. Furthermore, by initiating the development of such data analysis, CAO can be a leader in the IAM field—as well as with mechanisms located within institutions—in advancing more robust responses to T&Rs.

**Recommendation:** The T&R Focal Point should look to tools that were developed in CAO in the past that can be adapted for current use on T&Rs, such as the “Lessons & Insights” template that was developed in the early 2010s. These kinds of tools require evaluation and review of CAO actions and assumptions, and should be part of building knowledge and learning institutionally, as well as for reporting and analysis.

## RECOMMENDATIONS

In addition to some of the tactical recommendations made above, this section presents other recommendations for CAO work, some of which necessarily require other parts of the WBG to engage and/or agree, and which may also require policy changes in order to implement.

### **Separate T&Rs from the complaint**

An overarching issue that was extracted from the various interviews and document review is that at present the way that CAO handles T&Rs is integrated with the overall complaint process. While CAO takes steps to identify T&Rs and risks of T&Rs for Complainants and tries to offer mitigation measures, these are wholly within the framework of engagement in the complaints process. This is not necessarily a problem by itself; however, problems do arise when CAO interacts with other stakeholders on the complaint and simultaneously is trying to address or stop T&Rs. Taking an approach that separates out T&Rs and measures to address T&Rs, including in coordination with CSOs, IFC, other IAMs, etc. might offer solutions to T&Rs and help change the dynamic that can improve the process to deal with the complaint itself.

Where this kind of approach can potentially have the most impact is during the assessment stage, when identification of T&Rs can come up in the process of reviewing the overall situation of the subject of the complaint. While that work proceeds, it might (should) be possible to separate out the T&R issue and work not only with the Complainant, but with IFC, for instance, to develop meaningful actions that can have an impact on T&Rs, even without disclosing confidential information related to the complaint itself. Certainly, it may be the case that a Client could discern the identity of a Complainant based on being confronted with information about the nature of a threat or reprisal that has been reported, and this should be something discussed with the Complainant, Accompaniers, CSOs, IFC staff, etc. But formally separating out T&Rs from the complaint process—inasmuch as is possible—could be a way to generate better outcomes for Complainants as they go through the process and also could help the dynamic of the CAO process—particularly in dispute resolution processes. That said, Dispute Resolution addresses T&Rs as part of the dispute resolution process, so each case would need to be considered on its own merits, including understanding at what point T&Rs are received and assessing—including in consultation with the Complainant—what might yield the best result; either separating out the T&Rs and addressing them separately from the complaint process, or addressing T&Rs within a dispute resolution process that is also addressing the issues of the complaint. Should the case go to Compliance, the prior separation out of the T&R issue can yield better responses by IFC than what has been described in some of the CAO Compliance reporting and generate better practice by IFC in terms of doing risk assessment and sensitizing Clients to T&R issues.

### **Enhance staff consistency and capacity**

It was raised in a number of different discussions with people from both inside and outside CAO that a key concern is about consistency of responses to T&Rs, which ultimately gets back to the issues of both staff capacity and documentation/learning. These have been referred to above, but on the issue of staff capacity, CAO should invest in more staff training for both full-time staff and consultants—including sessions with CSOs that work on security of human rights defenders, indigenous communities, journalists, etc.—and hold regular discussions around lessons being learned from real-world experiences. This can also be addressed by the appointment of a dedicated T&R Focal Point (referred to above and



detailed below), whose job will include responsibilities to ensure staff remain up to date on learnings, facilitate learning and knowledge-sharing, and organize capacity-building for the entire staff on T&Rs.

### **Assign a dedicated T&R Focal Point who is not a member of any other team**

There should be a dedicated T&R Focal Point staff person to oversee T&R work at CAO and operationalize a number of the recommendations made in this report. This should be a dedicated role and not the work of a staff member who has responsibilities to another team at CAO. The current configuration at CAO and other IAMs is to have a staff member from one of the teams act as a focal point in addition to their regular team work. However, given the caseload of CAO, creating a unique staff position of T&R Focal Point should be a priority. The beginning of a job description can be gleaned from the recommendations above, combined with other administrative and program work that CAO can define by reviewing what T&R work is being done at the moment by staff members on other teams and shifted to this role. The T&R Focal Point should be a great asset to all CAO staff and should be able to manage relationships with other entities within the World Bank Group, including IFC, MIGA, IP, DRS, etc. (This recommendation is not meant to denigrate anyone's work or effort to date, but rather to recognize that there is a need for greater capacity to grow out CAO's work on T&Rs to generate better outcomes, foster greater cooperation in the institution, and provide leadership in the IAM field.) Finally, the T&R Focal Point should be recruited from professionals in the development field, but ideally be someone who has a strong human rights background and who also has experience and a network in the CSO community.

### **Develop capacity for CAO to indicate if risk is higher than the Complainant indicates**

As part of the context risk analysis during the assessment stage, CAO staff should consult with knowledgeable, in-country CSOs to develop greater understanding of the potential risk of T&Rs to Complainants. CAO can consult with trusted international CSOs to get recommendations of local CSOs that would be trustworthy and not expose Complainants to greater risks. Whereas Complainants may report some T&Rs, they may not be able to fully assess the extent of risks they may encounter as part of entering a process with CAO when filing a complaint. As such, CAO, in addition to constantly consulting with and gathering information from the Complainant, should develop additional sources of information to ensure that a fuller picture of risk is understood. This practice is being used at other IAMs (MICI (IDB) and IRM (GCF)). CAO staff should develop capacity to undertake this practice at the assessment stage.

### **Ensure that dispute resolution processes do not become traps for Complainants**

Dispute resolution processes primarily serve the interest of advancing a project by problem-solving to the satisfaction of Complainants and with the acceptance of Clients. Successful dispute resolution processes mean that projects can go forward and do not need to be subjected to Compliance, a stage at which Clients and IFC/MIGA might find that problems are more difficult or costly to resolve. As such, the dispute resolution process is not a neutral process, even if steps are taken to give all stakeholders to the process an equal footing in that process. Additionally, power dynamics between the Client and the Complainant do not disappear just because it is a dispute resolution process, even if agreements are made to define specific behaviors. Within this context, it must be understood that time is a factor for dispute resolution processes; the longer a dispute resolution process goes on, the more it benefits the Client. Clients and Complainants have vastly different resources and staying power, often with less to lose for

Clients and more at stake for the Complainants. Clients may pursue a strategy of extending the time a dispute resolution process takes in order to wear out Complainants or use the process to advance other interests, such as using their participation in a dispute resolution process to enhance their reputation when seeking other investments (evidence strongly suggests that this occurred in one case that was reviewed as part of this review process). CAO and the facilitators it hires must be cognizant of these dynamics and be prepared to address them in the course of conducting a dispute resolution process. CAO should establish guidelines for seeing progress on the part of both parties, but should develop additional protocols—in discussion with IFC—about possible delay or time-wasting efforts by Clients. Even if a good resolution in terms of the project could be reached after an extended period of time, that may mean a negative situation for the Complainants overall and in terms of T&Rs. Furthermore, leaving the onus of possible withdrawal from the dispute resolution process to the Complainants in such a situation of time-wasting puts additional T&R risk on the Complainants, and thus generates a kind of trap for Complainants. In a scenario in which Complainants leave the dispute resolution process, they can be smeared or defamed or posited as the spoiler to that process; while in a scenario in which they stay in a dispute resolution process that is being delayed intentionally, Complainants risk extending something that will not yield results and maintain their exposure to potential T&Rs. Neither case is good for the Complainants and ultimately not good for CAO or IFC/MIGA.

### **Improve efficiency when handling multiple complaints about the same project**

When there are multiple complaints about the same project and/or Client, and these are not handled by the same people within CAO (e.g., one complaint is handled by Dispute Resolution and the other one is handled by Compliance at the same time), it can get confusing to the Client and create a strain with IFC staff. This includes generating inefficiencies in terms of information being requested by CAO from IFC as well as the Client. While it is not CAO's responsibility to make things easier for the Client, it does seem that generating inefficiencies and/or redundancies is not useful and unnecessarily can generate tension with IFC staff. Part of the solution here could be via a new CMS and handling projects as cases, with multiple complaints filed on the same case, and enabling the case file to contain all project documentation, such that there is a central repository for information in CAO's hands. While there would need to be provisions to limit access by different team members within CAO (i.e., to maintain the "wall" between Dispute Resolution and Compliance), having a single case record would enable better information management and subsequent analysis.

### **Develop means to ensure responsible exit**

The issue of responsible exit is one for the WBG as a whole, with CAO's role mainly limited to whether potential Complainants would still have access to CAO after exit. Other IAMs (such as MICI) do have a policy allowing for complaints to be filed after the exit of the institution from a project, recognizing that T&Rs may be generated by the exit of an institution if it came as the result of a complaint. Any such policy would necessarily have to be time-limited, and there are significant questions as to what leverage the institution might have upon exit. Given the nature of these projects and financing, the most effective measure would require there to be a system of information-sharing among international financial institutions and development finance institutions that allows for the listing of Clients that have been

documented to violate the zero-tolerance policy on T&Rs,<sup>7</sup> including after exit. Clients would be informed upon exit that the list exists and that it is reviewed by all international finance institutions and development finance institutions for pre-clearance for any new applications for funding for a period of no less than 10 years. In the financial world, such lists exist for other purposes, such as the black and grey lists maintained by the Financial Action Task Force (FATF), which coordinates global efforts to tackle money laundering, and terrorist and proliferation financing. While this is beyond CAO's direct remit, it would be to the IAMs that post-exit reports of T&Rs would be made and it would be CAO (and other IAMs) that would have to investigate, document, and report to the entity maintaining these lists.

Connected to the responsible exit issue is the possibility that awareness of reprisals occurring during the period of the project will only come to light after a project is ended, such as in digital surveillance/hacking/spyware, which is difficult to uncover in real time. In such cases, the Terms of Reference of a project should allow for retroactive eligibility for CAO review. The question then is what leverage the WBG has to affect the Client. The possibility of listing (described above) could be one option for accountability. A second option could be to write into the Terms of Reference some kind of financial punitive measure for remedy to the reprisal-affected population that can be enforced by a judicial mechanism in that country. This may be difficult in countries where there is little trust in the judicial system or high levels of corruption. IFC/MIGA could develop a practice whereby Clients must put funds aside in an account held by the WBG that would be held for some period of time after a project is completed or withdrawn from as a kind of insurance in the event that post-project remedies are required as a result of Client action. This kind of solution is beyond CAO's role, but it is useful for CAO to raise this issue institutionally for discussion and to propose various options for consideration that can assist with responsible exit, for the sake of the WBG's reputation.

### **Increase awareness about the zero-tolerance policy and the role of CAO**

The zero-tolerance policy on T&Rs that is now standard across the development finance sector is an important position for the WBG. However, it requires additional emphasis even before cases are raised or T&Rs are reported to whatever mechanism is utilized (CAO, IFC, etc.). This can be accomplished at the project approval and contract stage by having IFC lead an orientation with Clients on T&Rs and how they might be dealt with through complaints processes, including where CAO plays a role. Putting greater emphasis on T&Rs to match the "zero-tolerance" language and policy would shore up the current documentation and signal to Clients and other stakeholders that reports of T&Rs will have consequences for the project. Though not a focus of this review, when questioned about it, IFC staff reported that while documentation given to new Clients refers to T&Rs and sometimes IFC staff will give new Clients the CAO brochure, there seems to be limited effort to raise the awareness of Clients about the existence and role of CAO and particularly about T&Rs and the potential effects such reporting can have on a project. CAO could be brought into meetings with Clients at the outset of projects and could also use that opportunity to inform stakeholders in the field about their options for reporting to CAO. By flagging with Clients early on and informing a larger audience about reporting options, this should allow the institution to preemptively influence behavior and establish a firm and clear position aside from what might be in project documents. This orientation should involve Client leadership and should be reiterated when subcontractors are brought in (i.e., private security companies) or with local government officials for projects that are likely to draw interest from local officials. This is an area where CAO Advisory should play a lead role in working with IFC to accomplish.

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<sup>7</sup> This would need to be cases where T&Rs are reported and remain unresolved/unaddressed/unmediated by actions of the Client.

## **Support the creation of a Performance Standard on threats and reprisals**

The IFC/MIGA's zero-tolerance policy for T&Rs is clear; what is less clear is how that policy manifests practically. The CAO process—and other complaints processes—seek to address T&Rs within the complaints process, and seek to mitigate and end T&Rs as part of the overall response to a complaint. In this sense, zero-tolerance means that IFC/MIGA will find ways to stop T&Rs, leaving open the possibility that ultimately investment in a project could be withdrawn. When it comes to evaluating a project for compliance, including in CAO's work, however, T&Rs do not have their own dedicated Performance Standard (PS). T&Rs get documented in other Performance Standards, but this means that it is possible that the issue receives less attention or the information can get lost amidst other documentation. While Performance Standards get reviewed less frequently than new policies might get introduced, the lack of a specific PS for T&Rs can suggest to Clients and other stakeholders that the issue is not a priority for consideration when it comes to compliance and this can undermine the messaging of the policy itself. The issue of messaging is critical from a preventative standpoint and creating a specific PS on T&Rs is highly recommended—and will support CAO's efforts—at the next review and reform of Performance Standards by IFC. This is another area where CAO Advisory can play a critical role in developing a strategy and advocacy within the WBG to advance this issue.

## **Support a *pro bono* system**

CSOs, lawyers, and other advocates play an important part in accompanying Complainants through CAO and IAM processes, providing information to the institutions, helping Complainants navigate and make good decisions about engaging in processes, improving the impact of projects, and providing security support to Complainants. The burden on Accompaniers is great and these actors often do not have sufficient resources for this kind of work, particularly if it is additional to what is normally planned. Yet the anecdotal evidence suggests that having an Accompanier for a Complainant through a CAO/IAM process is critical to generating better outcomes in terms of T&Rs and also in terms of the complaint itself. To that end, IAMs should consider (and CAO can play an important role in leadership on this issue) establishing in collaboration with select CSOs a new independent foundation to enable pro bono accompaniment for Complainants through IAM processes. This new foundation should be formally established and funded by the multilateral development banks and development finance institutions (as a distinct/independent initiative from the IAMs) as their commitment to addressing T&Rs effectively and supporting processes that improve projects and address the impacts projects have. This is not a remedy mechanism (which is a distinct issue), but something similar to a public defender service. The new foundation could operate as a nonprofit organization and would be governed by a board of CSOs, which would ensure that there was adequate accompaniment for Complainants through IAM processes and that those Accompaniers would receive resources to provide that support. Additionally, this foundation would be able to provide security measures to Complainants where necessary and within bounds governed by the new foundation's rules. This could be piloted, reviewed, and expanded once it is established that it can be an effective means of supporting the distinct IAM processes that the multilateral development banks and development finance institutions have established.

## **Recommendation about Terminology**

The use of the term “Complainant” to refer to those who submit complaints about a project to IFC/MIGA is troublesome and immediately connotes something negative about the person, group, or community making the referral. In most, if not all, circumstances, the “Complainant” is at a significant disadvantage vis-à-vis the Client and IFC/MIGA (including CAO) in terms of access to power, access to resources, security, and capacity. Yet, in many ways, the reputations of all stakeholders are dependent on these “Complainants” being taken seriously, respected, and ultimately empowered through the process to achieve results for their concerns.

A more neutral term to use could be “petitioner,” which captures the dynamic of the relationship between those raising the concerns and CAO and IFC/MIGA. However, this term also carries with it an element of power dynamic and suggests that the validity and legitimacy of the “petition” is only determinable by the recipient. This does not reflect the reality of how CAO operates (determining eligibility and assessment) and the term “petitioner” offers a non-negative/neutral connotation.

Going further, the acronym “PIP” could be used, with it standing for “project-impacted petitioner.” By adding the adjective “project-impacted,” the term PIP connotes both neutral connotations for the stakeholders making the petition and indicates that the petition itself is not random or unmoored to the experience of how the project is impacting people’s lives and environment. PIP would displace the weight of responsibility of the generation of a CAO process from the petitioner to the project itself and make it understood to all that the process itself is contained within the project. While not explicitly referring to the role of the Client, the term PIP does center the process within the project and makes it clear that any problem solving is about the project and not the petitioner.

The downstream implications for T&Rs by not using the term “Complainant” can be quite consequential, particularly with regard to potential defamatory efforts toward those bringing a petition.