

CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
MIGA's Guarantee for the Morava Corridor Motorway in Serbia
(MIGA Project # 14629)**

February 2024

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org

About CAO Assessments

Any person who believes they may be harmed by an IFC or MIGA project can lodge a complaint to CAO. We apply three simple eligibility criteria to accept a complaint. For eligible complaints, we assess the concerns with the complainant(s), project sponsor, and other relevant stakeholders.

Once a complaint is determined to be eligible, we review the concerns raised in it. This assessment is conducted in consultation with the complainant, IFC and MIGA client and project teams, and other relevant stakeholders.

Purpose

The objective of the CAO assessment process is to develop a thorough understanding of the issues the complaint raises, work to understand all perspectives, engage with all key stakeholders to the complaint, consult with them to determine the process they choose to address the complaint, and consider the status of other grievance resolution efforts made to resolve the issues raised.

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ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
CoS	Koridori Srbije d.o.o. Beograd
PS	MIGA's Environmental and social performance standards
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

On August 23, 2023, a complaint was lodged with CAO by an individual on behalf of himself and his family members (“the Complainant”). The complaint raised concerns relating to economic displacement, health and safety, environmental impacts, and violations of laws and international standards in relation to the construction of the Morava Corridor Motorway in Serbia.

MIGA signed a contract of guarantee with various banks for loans to the Government of Serbia for the development, construction, and operation of an approximately 112 km motorway (Morava Corridor) linking the cities of Preljina and Pojate in central Serbia (the “Project”).

In October 2023, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint.

Prior to and during CAO’s assessment, the Complainant, MIGA, and Koridori Srbije d.o.o. Beograd (“CoS” or “the Company”), the company implementing the Project on behalf of the Republic of Serbia, continuously worked towards finding a resolution to the Complainant’s concerns. This effort led to resolution of the Complainant’s request for full expropriation of his property, which in turn resolved the complaint issues regarding economic displacement, health and safety and environmental impacts. However, the Complainant continued to express concerns regarding the expropriation process and the compensation offer he received, notably their alignment with MIGA’s environmental and social performance standards (PS). The parties did not express an interest in engaging in a CAO-facilitated dialogue. Thus, in accordance with CAO’s Policy,¹ the remaining issues regarding the expropriation process and the compensation offer will be transferred to the CAO Compliance function.

This Assessment Report provides an overview of the assessment process, including a description of the Project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project

On March 15, 2022, the Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group, signed a contract of guarantee² for approx. EUR 411.4 million (c.US\$ 451.8 million),³ providing Non-Honoring of a Sovereign Financial Obligation (NHSFO) coverage to (i) JPMorgan Chase Bank, N.A., London Branch, (ii) CaixaBank, S.A., (iii) Banco Santander, S.A., (iv) UBS Switzerland AG, (v) Credit Agricole Corporate and Investment Bank, and (vi) Raiffeisen Bank International AG (together, the “Guarantee Holders”), acting through J.P. Morgan SE as the agent, for their non-shareholder loans to the Government of Serbia (“GoS”) for the Project. On December 15, 2023, MIGA issued a new contract of guarantee for approx. EUR 901.1 million (c. US\$976.7 million) for an additional loan for the same Project.⁴

According to MIGA’s Environmental and Social Review Summary, the Project consists of a greenfield 112 km dual-carriageway tolled motorway, within a 900 meter right of way, located approximately 200 km south of Belgrade in a low-level flood plain running east/west along the West Morava River Valley. The Project also includes (i) aboveground structures such as interchanges, bridges, culverts, and over/under passes; (ii) a telecommunications network (digital corridor) supported by power lines and communication cables to connect the telecom

¹ CAO Policy: <https://www.cao-ombudsman.org/sites/default/files/documents/CAO%20Policy/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>

² Subsequently amended on January 17, 2023 and September 1, 2023 to increase the covered amount.

³ Following the amendments, increased to approx. EUR511.5 million (c. US\$543.1 million).

⁴ This new contract of guarantee has J.P. Morgan SE as the agent and Banco Santander, S.A., Credit Agricole Corporate and Investment Bank, JPMorgan Chase Bank, N.A., London Branch, and ING Bank, a branch of ING-DiBa AG., as the guarantee holders.

stations within the motorway (at rest areas, parking lots, and near traffic loops) and to manage traffic through various traffic control, surveillance, and tolling systems; and (iii) river regulation works intended to protect the Project and its surrounding areas from flooding.

Ownership of the Project sits with the Ministry of Construction, Transport and Infrastructure and CoS, fully owned by GoS, is a limited liability company mandated to oversee the construction of the Project.

The Project was classified as Category A under MIGA’s Policy on Environmental and Social Sustainability (2013).

2.2 The Complaint

On August 23, 2023, CAO received a complaint from an individual on behalf of himself and his family. The complaint raised concerns relating to economic displacement, health and safety, environmental impacts, and violations of laws and standards in relation to the construction of the Morava Highway in Serbia.

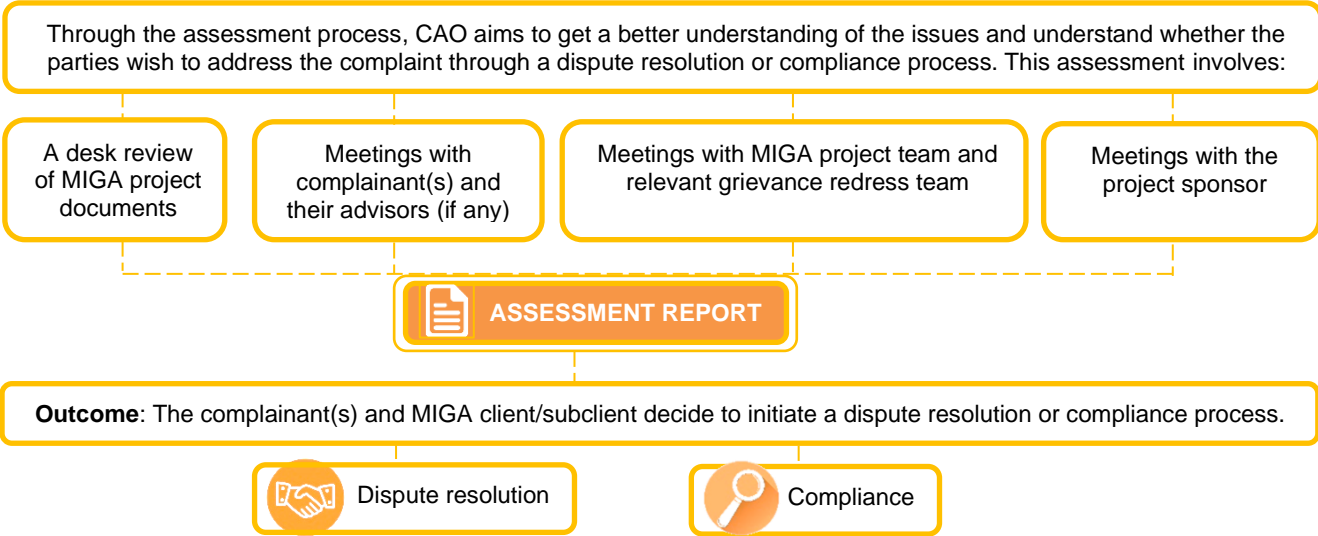
The issues raised in the complaint and during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1 Methodology

Figure 1 shows the approach and methodology to be applied in CAO’s assessment process.

Figure 1. CAO Assessment Process



The CAO assessment process does not entail a judgment on the merits of the complaint; rather, it seeks to understand the situation and assist those involved to make informed decisions on how to address the issues raised.

The issues raised in the complaint and during assessment by the Complainant, and the view of the Company are described below. CAO also held conversations during the assessment process with MIGA and J.P. Morgan SE, acting as the agent of the Guarantee Holders under MIGA's contracts of guarantee.

3.2 Summary of Views

Complainant's perspective

According to the Complainant, the Morava Motorway is being built next to a plot of land he owns in the Vraneši region of Serbia, on which his mother and stepfather live.

In 2020, the Complainant was informed that a small portion of his land was designated to be expropriated for the Project. However, the Complainant believed that the compensation he was offered for the expropriation was not in line with the Serbian law and the PS. Additionally, he requested expropriation for his entire area of land, given loss of development opportunities, health and safety concerns, and air and noise quality issues affecting his land and subsequent means of livelihood for him and his family.

Consequently, the Complainant submitted a complaint with the Company's grievance mechanism in 2020, along with judicial claims in the local courts. In 2022, the Complainant filed a complaint with MIGA. He also exchanged emails and held conversations with CoS and with MIGA, including an in-person meeting with representatives of CoS and MIGA in July 2023.

In October 2023, an expert appointed in the context of local judicial proceedings issued a report that concluded the construction and operation of the motorway would have negative environmental impacts on the Complainant's land,⁵ and would in turn negatively affect his livelihood and economic interests. Consequently, CoS offered to expropriate the Complainant's entire plot of land. The Complainant was satisfied by this measure, although frustrated that it occurred more than three years after his initial complaint. The issues in the complaint regarding economic displacement, health and safety and environmental impacts are thus resolved.

However, as described below, the Complainant believes that the compensation amount offered by CoS in December 2023 for full expropriation of his land and the expropriation process followed in this case were not compliant with the PS and were discriminatory.

He thus requested to continue the CAO process in relation to these specific issues.

(1) The Complainant's concerns regarding the December 2023 compensation offer are as follows:

- With regard to the compensation for buildings: According to the Complainant, CoS's Resettlement Action Plan (RAP), which, as per the PSs, should define the valuation methodology, indicates that compensation for buildings should be based on the cost of building replacement structures of similar quality. The Complainant raises concerns about CoS's calculations of such costs. According to him, the numbers in CoS's offer are much lower than (1) construction costs for new buildings mentioned on an official government website (which are 3.2 times higher than the offer), (2) what his expropriated neighbors received, and (3) actual construction costs in the region. The Complainant adds that CoS offered him 3.3 times more money to compensate for the septic tank in July 2023. Additionally, the Complainant is concerned that CoS seems to have applied a discount on the costs, which he feels is not in line with PS and the RAP, which both indicate that depreciation should not be applied to the building costs.

⁵ Such as flood, land, water, noise and air pollution, septic tank and well contamination, and safety issues due to potential accidents.

- With regard to the compensation for land: According to the Complainant, CoS's offer is based on the 2020 market value for land in the region, while the PS mandate that compensation be based on the current market value. According to the Complainant, there was high inflation between 2020 and 2023, which had an impact on the market values for land in the region. The Complainant believes this has not been properly taken into account in the compensation offer and that he was discriminated against, vis-a-vis his neighbours who received compensation in 2020.
- Finally, the Complainant believes that he should be compensated for the cost of capital for the 2020-2023 period during which he was waiting for his issues to be resolved, as well as for the lawyers' fees incurred⁶ and the time he personally spent trying to resolve the issue. According to the Complainant, it was necessary for him to use his accounting and treasury expertise as well as work with a solicitor in order to attain the expropriation he believes he was entitled to in the first place. According to the Complainant, lack of compensation for these costs would amount to discrimination, considering that his neighbours did not have to incur these costs before they were expropriated (in 2020).

According to the Complainant, he raised these concerns with CoS and asked them to do a comparative analysis of the offer with the PS, but CoS indicated they did not have the necessary expertise to do so and told him to either accept the offer or file an appeal in the courts. The Complainant expressed to the CAO that the compensation offer may well be in line with national standards, and that there was no point in handing the matter over to the courts, which would apply the national standards, not the PS. He added that he felt he had no other choice but to accept the offer, because if he did not, CoS would immediately send the case to the courts, and it would cost him more time (3 to 7 years) and money (especially lawyers' fees). On December 25, 2023, the Complainant accepted the offer and received the money a day later.

At that point, the Complainant requested to hear MIGA's view regarding the offer's compliance with the PS. On February 1, 2024, CAO facilitated a conversation between MIGA and the Complainant on that issue. MIGA emphasized in that meeting that MIGA and all parties involved had always taken the Complainant's complaint very seriously and have diligently worked towards finding mutually satisfactory solutions to his concerns. MIGA then explained that they had analysed the methodology in the Resettlement Action Plan that CoS applied to calculate compensation and their view was that such methodology would result in outcomes consistent with the requirements of PS 5, and that it had been applied consistently across the resettled community. MIGA added that it is not their role nor are they qualified to undertake valuation of land and buildings of individual properties. In this case, aiming to ensure appropriate due diligence and transparency to respond to the complaint, MIGA explained that they had engaged an independent consultant to review the real estate market in the Complainant's region and to reach out to local realtors and developers to obtain a ballpark estimate of the cost of building a new structure of similar size and quality as the Complainant's structure. According to MIGA, the results of the review and ballpark estimates indicated that the offer was in line with the "full replacement cost" standard applicable in this case. MIGA also reviewed the official government website referenced by the Complainant, and shared with the Complainant during the meeting that such website provides the market (sale) price of newly constructed buildings in the local municipality, not the cost of construction, and does not include information on location or materials used in construction. Therefore, according to MIGA, the figures provided on the website are not considered comparable to the cost of construction of a building similar to the Complainant's structure.⁷

The Complainant expressed that he did not trust MIGA's assessment, as MIGA had previously determined that, per PS 5 criteria, full expropriation of his property was not required, and in his

⁶ According to the Complainant, CoS only reimbursed a small portion of the lawyers' fees he incurred.

⁷ On that issue, the Complainant indicated during the meeting that a 224% building cost mark-up cannot be attributed to the sale risk.

opinion, that had now been determined to be incorrect. MIGA responded that, according to PS 5, full expropriation of the property was not required; however, the PS also require adherence to national laws. Given that the Municipality has mandated full expropriation of the property,⁸ the process has to be aligned with this decision of the Municipality.

The Complainant was not satisfied with that explanation.

The Complainant disagrees with MIGA's view that the PS do not require to expropriate him, for the following (but not exhaustive) reasons:

- In October 2023, an expert found that the construction and operation of the motorway would have negative environmental impacts on the land, which led to full expropriation,
- There was no buffer zone between the motorway and his land, which meant that in case of an accident occurring on the motorway, the life of people on the land would be in danger,
- Land use was limited due to the flood and contamination resulting from the construction of the motorway,
- The division of his land in various plots conducted in 2020 to justify partial expropriation was done unlawfully.

The Complainant also feels that his specific concerns about the compensation offer (as described above) are still not addressed. Additionally, he believes that the assessment of building costs requested by MIGA is not consistent with the reality of the prices in his region. The Complainant further considers that MIGA is not adhering to the transparency standards they are bound by, given that they did not share the basis on which they assessed compliance of the offer to the PS (i.e., the studies or the names of the experts which conducted the studies).

(2) The Complainant's concerns regarding the expropriation process are as follows:

- The Complainant maintains that he should have been expropriated fully in 2020 and he should never have been put in a situation where he has to fight during three and a half years to attain the full expropriation to which he believes was entitled from the start. According to the Complainant, not only did he spend a lot of time, money and effort in this fight, but he was also left in an uncomfortable and unclear position during this period. The Complainant believes that in this respect, the expropriation process did not comply with the PS.
- The Complainant also expresses concerns about the lack of transparency of the expropriation process. He believes he should have had access to the details of the offer, and to the documents substantiating the adequacy of the numbers provided.
- Additionally, he expresses concerns about the 30-day deadline given to him to vacate the premises. He feels that this is not a reasonable timeline to expect a family to find a new home and move, and that property owners should be allotted more time.

⁸ According to MIGA, between 2020 and 2022, several rulings and appeals took place. In 2022, the Municipality engaged independent experts to review the concerns raised by the Complainant and to evaluate whether the property in question should be fully expropriated. According to MIGA, the Complainant raised a new concern in September 2023 and the expert review and report issued in October 2023 (on the basis of which full expropriation was decided) was conducted to respond to that new concern.

Company's perspective

The Company highlighted that they have been working on developing infrastructure projects in the transportation sector in Serbia since 2009. They added that they were established as a special-purpose vehicle by GoS to manage this and other projects and that they have been doing so in line with national and international environmental and social standards.

The Company indicated that, before initiating the construction of the motorway, they conducted an environmental and social impact assessment. The plots located in the area of expropriation were identified on the basis of planning documents, and an expropriation plan was developed in line with these. The expropriation plan included a portion of the Complainant's property. Hence, as in all the other cases, the Company conducted the expropriation process on the identified portion of the Complainant's property.

However, the Complainant was dissatisfied with the decision and used legal remedies to contest it, lodging a complaint with the Ministry of Finance, which oversaw the procedure until the final decision to expropriate the Complainant's household was issued. The Company did not appeal the decision to expropriate, considering it adequate and in line with the PS.

The Complainant had also filed a complaint with the Company's grievance mechanism. The Company highlighted that they take all complaints very seriously, that they had acted in good faith during the entire appeals procedure and that they were willing to resolve this case. They explained that throughout the whole process, they have been in constant communication with the Complainant, and that all parties involved in this case, including MIGA, were dedicated to finding an amicable solution. Notably, they cited the in-person meeting with the Complainant organized in July 2023, in the household of the Complainant, his mother and stepfather and in the presence of the MIGA team, the aim of which was to find mutually acceptable solutions to the pending issues.

With a view to assess whether the complaint was well-founded, the Municipality - with the approval of the Company - engaged independent experts specialized in construction, agriculture, medicine, and geodesy. Each of those experts assessed the complaint from the perspective of their expertise in different phases of the procedure.

In September 2023, the Municipality engaged an expert to assess the Project's environmental impacts and associated consequences on the quality of life of the Complainant. Such expert submitted a report in October 2023 stating that the construction and operation of the motorway would negatively impact the Complainant's land and expected sources of income. The Company immediately thereafter offered to expropriate the remaining portion of the Complainant's land.

CoS indicated they took care of all necessary administrative issues, including transferring the case from the judicial system to the Vrnjačka Banja municipality, which is the entity entitled to issue expropriation decisions. On December 13, 2023, the Municipality officially issued the decision to expropriate.

With regard to the establishment of the compensation, CoS indicated that experts visited the Complainant's property in November 2023 to make an asset inventory and assess the value of the real estate. CoS made a compensation offer on the basis of the data and assessments of the certified experts and institutions. They explained they did their best to expedite the

process in order to help the Complainant and allow him to move his household from the adverse conditions as soon as possible. CoS highlighted that they took all necessary measures to ensure fair compensation for the Complainant's land and attached assets, and that they reviewed and adjusted the proposed offer on the basis of the comments made by the Complainant.

According to CoS, the Complainant accepted the offer and signed the agreement on December 25, 2023. He was paid on December 26, 2023. CoS highlighted that they made efforts to expedite the process of paying the Complainant, despite the difficulties of doing so given the time of year – before the closure of the State budget. They indicated that they were very surprised to hear from MIGA and the CAO later on that the Complainant still had concerns about the compensation amount he received. They highlighted that they had informed the Complainant that if he had issues with the compensation, he could go to the courts, which are the only authorized entities to rule on the matter, pursuant to the laws of Serbia. However, according to CoS, the Complainant accepted the offer and said he was satisfied with the amount offered. Hence, CoS is unable to understand what the remaining issues are.

CoS maintained that the compensation offer was not only in line with national law, but also with the PS. They added that, as the beneficiary of the budget funds, they have to comply with the law and do not have a mandate to negotiate the amount of compensation after agreement is reached, given that the agreement was consensual, and also given that the procedure and the amount of compensation itself are in line with national and international standards.

According to CoS, the deadline for the Complainant to vacate the property was also mutually agreed. As per national law, the standard deadline is 30 days and it was applied in other cases. According to the information CoS received, the Complainant is still negotiating with the Municipality with respect to defining the deadline for him to move out.

4. ASSESSMENT CONCLUSION

The parties did not express an interest in engaging in a CAO-facilitated dialogue. Thus, in accordance with CAO's Policy,⁹ the remaining issues regarding the expropriation process and the compensation offer will now be transferred to the CAO Compliance function.

⁹ CAO Policy: <https://www.cao-ombudsman.org/sites/default/files/documents/CAO%20Policy/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>

5. APPENDIX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function or whether the case should be reviewed by CAO's Compliance function.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,¹⁰ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgment** of receipt of the complaint.

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).

Step 3: **Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 90 business days, with the possibility of extension for a maximum of 30 additional business days if after the 90-business day period (1) the parties confirm that resolution of the complaint is likely; or (2) either party expresses interest in dispute resolution, and there is potential that the other party will agree.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected.¹¹

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one must provide explicit consent for the transfer, unless CAO is aware of concerns about threats and reprisals. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending by 20 business days in exceptional circumstances.

¹⁰ For more details on the role and work of CAO, please refer to the IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy>

¹¹ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of noncompliance and related harm. Third, in cases where noncompliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**