

RECOMMENDATION: The CAO should enable complainants to access dispute resolution and compliance review in the sequence of their choosing.

The CAO currently allows complainants to access dispute resolution, compliance review, or both functions; however, the CAO Operational Guidelines lack flexibility in sequencing the functions. Sections 2.3 and 2.4 of the Operational Guidelines state that during assessment parties will be given the option to undertake facilitated dispute resolution, but if there is no agreement to engage in dispute resolution, or the parties reach irreconcilable impasse during the process, the complaint will proceed to compliance review. The CAO's ability to transfer a case from dispute resolution to compliance review is further articulated in Section 4.2.1; however, the Operational Guidelines neither provide for transferring cases to dispute resolution after compliance review, nor for undertaking both functions simultaneously.

The CAO should also allow complainants to access dispute resolution after or at the same time as compliance review. The experience of communities in the Sindhuli district of Nepal affected by the World Bank-financed Khimti-Dhalkebar transmission line demonstrates that a robust dispute resolution process after a compliance review investigation could help redress known project-related harms, promote successful and sustainable project outcomes, and improve or restore an institution's standing with communities. In fact, dispute resolution can benefit from a preceding compliance review process that provides a neutral assessment of facts on which to base discussion.¹

Dispute Resolution Could Help Address Harm that Flows from Non-Compliance

In 2007, the Nepal Electricity Authority (NEA) began constructing the Khimti-Dhalkebar transmission line, which included a contentious 30 meter wide right of way stretching across residential zones, agricultural lands, sacred sites, school grounds, and urban areas. After several years of failed engagement with the Bank and the NEA, communities of the Sindhuli district, supported by Accountability Counsel and the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, filed a July 2013 [complaint](#) with the World Bank Inspection Panel. The communities urged consultation to address their concerns about the project's route, potential health and safety impacts, inadequate compensation for land takings, and police/security force aggression toward communities. The Panel found the complaint [eligible](#) and ultimately conducted a compliance investigation.

The Panel's July 2015 [investigation report](#) revealed several instances of non-compliance with respect to community engagement efforts, involuntary resettlement, and assessing client capacity to implement the project and control reprisals against communities. Unfortunately, the findings prompted little action from the Bank and the NEA, and community grievances remained largely unresolved. In this type of situation, a dispute resolution process could be immensely helpful to rectify problems resulting from known shortcomings in a project.

¹ The concept of flexible sequencing for dispute resolution and compliance review functions is neither novel nor impractical. See, e.g., [UNDP's Stakeholder Response Mechanism/Social and Environmental Compliance Unit Overview and Guidance, p. 18, Annex A, para. 2.](#)

Findings of Non-Compliance Absent Meaningful Engagement Hurts Project Sustainability

After the release of the Panel's report, the communities renewed their push for a fair dialogue process with the NEA and the Bank to address their concerns. As the Panel lacked a formal dispute resolution function, the Bank had to assemble an *ad hoc* process. After much advocacy, the Bank agreed to pay for a facilitator, and the first dialogue meeting convened nearly two years after the Panel report. The dialogue had great [potential](#), marking a rare opportunity for the Government of Nepal to constructively engage with communities affected by its development efforts and potentially setting a benchmark for community engagement in Nepal's developing power sector. Over six weeks, the Bank held three facilitated meetings with the NEA project team and Sindhuli community leadership. Newly elected local government officials, including the mayor, also participated in the dialogue.

Despite its potential, the dialogue ultimately failed because of weaknesses in the process. Setting aside the communities' concerns, the Bank relied on the NEA to hire and manage a facilitator, which created the perception of bias and compromised independence. The NEA's preferred facilitator also demonstrated a lack of experience in mediating disputes between communities and enterprises. For example, the NEA's facilitator departed from the terms of reference guiding the dialogue, asserting that he received contrary verbal instructions from the NEA and the Bank. Furthermore, when the Bank discontinued funding the facilitator, the process ended abruptly. To this day, the communities' original grievances remain largely unaddressed, to the detriment of local people and the reputation of the NEA and Bank.

Greater Flexibility in Sequencing Can More Holistically Resolve Adverse Project Impacts

Although the *ad hoc* dialogue process in Nepal ultimately dissolved, the case demonstrates the need for communities to have the option to access an independent and resourced dispute resolution function that utilizes experienced dispute resolution professionals and provides a fair and predictable process to facilitate redress after a compliance investigation. To better effectuate remedy, communities must have the option to seek dispute resolution, before, after, or alongside a compliance review investigation.