



CAO ASSESSMENT REPORT

Complaints 02 - 06 regarding IFC's Harmon Hall Project (#29753)

Mexico

February 2014

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

About the Compliance Advisor Ombudsman

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. Overview

CAO received five complaints by current and former employees of Harmon Hall English Language Schools in Mexico between September and November 2013. The complainants raise concerns about employment rights, benefits and compensation they feel Harmon Hall denied them. CAO determined that the complaints met its three eligibility criteria, and undertook an assessment of the complaints. In the course of the assessment, CAO was informed by the company that it would rather respond to concerns from its employees and former employees directly through company provided channels, and does not wish to engage in CAO-convened mediation with the complainants. These complaints will therefore be handled by CAO Compliance for appraisal of IFC's performance. 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

Harmon Hall (the company) is a chain of English Language schools in Mexico with a network of 101 schools, and 1,494 employees. The company is 60% owned by Nexxus Capital Private Equity Fund III L.P (Nexxus), a private equity fund that targets investments in middle-market Mexican companies. Nexxus' share of the company was acquired in April 2008.

The IFC project provides an equity investment in Harmon Hall that consists of two components: (i) the purchase of the founding shareholders' shares and (ii) a capital increase in Harmon Hall to finance the expansion plans of the company for an 18 month period. IFC provided a direct \$7.9 million equity investment after which it acquired a portion of the founding shareholders' stake in the company. The project was approved in July 2010 and is classified as a Category B project.

2.2. The Complaints

CAO received five complaints (Harmon Hall 02-06) in the course of three months from both current and former employees. The complaints state concerns about employment rights, compensation and benefits, including termination benefits, at Harmon Hall. Several complainants requested confidentiality due to the sensitive nature of the complaint.

Table 1: Harmon Hall 02-06 Complaints

Complaint	Issue
Harmon Hall 02:	<p><i>Unlawful dismissal with insufficient termination benefits</i></p> <ul style="list-style-type: none">• A former academic coordinator alleges to have been unlawfully dismissed after complaining about reduced wages• He further claims that Harmon Hall provided false information about his employment status to Mexico's social security which subsequently impacted his medical insurance and house mortgage credit (infonavit).• Concern that the full amount of legally mandated termination benefits were not paid• Concern that teachers continue to be asked to perform sales tasks and overtime without compensation, and are generally being denied

	<p>lawful benefits</p> <ul style="list-style-type: none"> • Teachers not being moved from <i>asimilados</i> (self-employed) to 'nomina' (employee) contracts • TOEFL discounts at this school not extended to <i>asimilados</i> teachers. • Complaints lodged with the company's complaints mechanism not being responded to. • Inconsistent payment of bonuses that teachers earn for re-enrollment of students
Harmon Hall 03:	<p><i>Teacher on self-employed contract not moved to employee status</i></p> <ul style="list-style-type: none"> • A current teacher expresses concern about not being moved from an <i>asimilados</i> to a <i>nomina</i> contract, as was promised at hiring. • Concern about teachers having to perform sales tasks. • TOEFL discounts at this school not extended to <i>asimilados</i> teachers.
Harmon Hall 04:	<p><i>Working conditions and unpaid hours for sales employee</i></p> <ul style="list-style-type: none"> • A current sales employee raises concerns about changed working hours, and work arrangements that force employees to be present at the school for additional unpaid hours.
Harmon Hall 05:	<p><i>Remedial actions agreement not being adhered to</i></p> <ul style="list-style-type: none"> • Increased qualifications and teaching of higher level courses do not translate into higher wages as per the remedial agreement. • Agreed discount is not available for obligatory TOEFL exam • Unpaid work, including attendance of office meetings and requirement to make phone calls to students.
Harmon Hall 06:	<p><i>Withheld benefits and insufficient termination benefits</i></p> <ul style="list-style-type: none"> • A former teacher who claims that the company stopped contributing to his social security and medical benefits the moment he gave lawful notice, rather than at the termination of his working relationship, resulting in uncovered medical bills and untreated medical conditions. • Termination benefits very low, short of what is required by Mexican law. • Expressing concerns translates into being assigned fewer hours.

An additional two former teachers contacted CAO sharing similar concerns and additional background information to support the complainants' claims, but did not choose for their concerns to be handled as a complaint.

An earlier complaint to CAO (Harmon Hall 01) by 19 current and former Harmon Hall employees was addressed through a CAO convened dispute resolution process that resulted in a set of agreed remedial actions to address systemic concerns ("remedial actions agreement", summarized in Annex B), and a number of individual complaints were mediated. A July 2013 CAO compliance appraisal of two unresolved complaints was completed in August 2013. CAO Compliance did not find that these cases warranted a compliance investigation of IFC, and closed the case.

3. Assessment

3.1. Methodology

The purpose of a CAO assessment is to clarify issues and concerns raised by complainants, to understand how other stakeholders see the situation, and to help complainants and companies determine the best alternatives for resolving the complaint via one of CAO's two functions: a cooperative / mediated solution, or a compliance investigation of the IFC's performance vis-à-vis the project.

During the assessment, CAO does not gather information to make a judgment on the merits of the complaint. (See Annex A for a complete description of the CAO complaint handling process.)

The CAO assessment of the complaint consisted of:

- Desk review of project documents
- Written correspondence and phone interviews with the complainants, Harmon Hall, and Nexxus representatives.

3.2. Outcomes

The parties' perspectives:

The complainants' perspectives:

During assessment, the complainants expressed that full and effective implementation of the remedial actions agreement resulting from the first dispute resolution process regarding Harmon Hall (Harmon Hall 01) would have prevented the impacts they felt, or would address their current concerns. The complainants feel that these agreements have not been consistently implemented, and express that high staff turn-over, including management, and significant pressure to increase profit at the schools leads to commercial pressures that ultimately translate into these agreements not being honored, with the result that staff are routinely being denied employment rights and benefits. The complainants further express doubts that the company's grievance mechanism can be trusted to resolve staff concerns in a fair and effective manner.

The company's perspective

Harmon Hall stated that continuous efforts are being made to fully implement the remedial actions agreement. Part of this agreement was the strengthening of the company's complaints mechanism, which the company believes can adequately address the complaints in question. The company states that it prefers to handle employee complaints internally than to engage in a CAO-convened dispute resolution process. Further, the company notes that its actions are in line with Mexican Law, and that disagreements about termination benefits are the result of differing interpretations as to the employees' lawful termination benefits.

Next Steps:

The company:

The company informed CAO that they preferred to handle any outstanding complaints through their internal grievance mechanisms, and that as a result, they will not participate in any CAO-convened mediation process. The company committed to addressing any complaint that is

received through its internal systems. CAO will inform the complainants of this company decision and encourage them to seek redress through the company mechanism.

IFC:

IFC, as part of its routine project supervision, will follow up with the company on its implementation of the remedial actions agreement that resulted from CAO's first Harmon Hall complaint (Harmon Hall 01).

CAO:

CAO is concluding the assessment phase of these complaints and transferring the Harmon Hall 02-06 complaints to CAO's compliance function for appraisal of IFC's role. This is standard practice as per CAO's Operational Guidelines.

Annex A: CAO Complaint Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. 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; and (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.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

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

Step 3: **CAO assessment:** CAO conducts an assessment of the issues and provides 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 120 working days.

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 or initiated by a Memorandum of Understanding and/or a 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 goal. 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 affected².

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013_ENGLISH.pdf

² 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

or

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case closure**

of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

Annex B:

Table 2: Summary of Remedial Actions, CAO Harmon Hall 01

ISSUE	REMEDIAL ACTION
Respectful treatment	<ul style="list-style-type: none"> • A web training program on communication for directors, academic coordinators, teacher trainers and master teachers.
Teachers' role and work program	<ul style="list-style-type: none"> • Redefined teachers' job descriptions in order to maintain a greater degree of transparency and to ensure that employees understand what is, and is not, required of them.
Clarification of which teachers' tasks are compensated by the hour	<ul style="list-style-type: none"> • Teachers will be compensated for extra help sessions whenever an established validation system is adhered to. • An additional half hour (per course taught) will be paid to cover administrative tasks. • No compensation for time taken for teacher training/tests, however such tests should directly translate into professional development opportunities, such as the ability to teach more advanced classes, and higher earnings potential. • Discounts given to teachers for taking TOEFL (Test of English as a Foreign Language) tests, an employment requirement.
Contracts	<ul style="list-style-type: none"> • All employees were provided with a copy of their employment contract.
Moving from self-employed ('asimilados') to employee ('nomina') status	<ul style="list-style-type: none"> • Management's strategy is to employ as many teachers as possible on "nomima" rather than "asimilados" contracts. A policy to this effect has been implemented and communicated to teachers.
Wage levels	<ul style="list-style-type: none"> • Management clarified its aim to ensure teachers receive four to ten times Mexico's daily minimum wage. Wages will be strictly aligned with a transparent matrix that links individual teacher wage levels to the levels of classes taught, performance, and class levels to relevant qualifications (a combination of training and tests taken and relevant experience). Subsequently, the wage level will be inflation-linked when the market benchmark allows.
Availability of information and effectiveness of communication	<ul style="list-style-type: none"> • Management acknowledged the need for greater sensitivity when implementing and announcing changes. • Clarification of the calculation and payment of teachers' social security contributions via a direct communication to staff.
Grievance Mechanism	<ul style="list-style-type: none"> • To provide an independent mechanism for receiving and addressing any future employee concerns, management initially hired a third-party ombudsman service provider. In February 2013, this was replaced by a strengthened internal complaints response. • In addition, a class assignment methodology has been released for application in all schools: how classes were assigned had been a significant source of anxiety among teachers.