



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding Concerns about
IFC's Harmon Hall Project (#29753)**

Mexico

July 2012

*Office of the Compliance Advisor Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
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. Introduction

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. The CAO reports directly to the President of the World Bank Group. 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 purpose of CAO's assessment is to: (1) clarify the issues and concerns raised in the complaint; (2) gather information on how relevant stakeholders see the situation; and (3) help stakeholders understand and determine whether a collaborative solution is possible through a process facilitated by CAO's Ombudsman, or whether the case should be dealt with through CAO Compliance.

This document is a summary of the views heard by the CAO team and an explanation of the next steps in CAO's process. Annex 1 presents CAO's process steps in response to a complaint. This assessment report does not claim to present a comprehensive picture of all of the issues raised in the complaint or input received from relevant stakeholders. Further, the CAO does not make any judgment on the merits of the complaint.

2. 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 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.

3. The Complaint

In December 2011, the CAO received an initial complaint from a former employee of a Harmon Hall English Language School in Mexico. Following correspondence with the first complainant, further information and official complaints were received from eight other complainants consisting of both current and past employees.

The complainants raised concerns regarding employment rights, benefits, compensation, and fair and respectful treatment for workers employed by Harmon Hall. Specifically, the complainants contend that working conditions, wages, and working hours are contrary to Mexican legal regulations and employment law.

The complainants requested for their identities to remain confidential.

4. Assessment Methodology

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainants and to help the CAO Ombudsman and the parties to determine whether and how they might be able to resolve the issues in the complaint. The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.

A CAO team travelled to Mexico City and Puerto Vallarta in February 2012 to meet with complainants and Harmon Hall and Nexxus representatives. During visits to two schools, CAO informed teachers of the team's presence and role and shared contact information should Harmon Hall staff wish to come forward and share their perspectives. The identity of each teacher that was in contact with the CAO team was kept confidential and not disclosed to the company or the other complainants. In total, CAO held private and confidential telephone conversations and face-to-face meetings with 17 teachers from 3 schools. About half of these teachers were currently employed by Harmon Hall and another half were previous employees. CAO's trip agenda is included in Annex 2.

The initial assessment trip was followed by a series of conversations about the concerns raised and possible management responses both with management and individual complainants. This "shuttle diplomacy" approach was necessary to protect the identities of current teachers who had requested confidentiality.

5. Assessment Findings

In discussions with CAO, teachers at Harmon Hall consistently expressed high levels of satisfaction with their work in the classroom. They believe in the company's teaching method and love working with their students. Many express a willingness to go the extra mile in the interest of the school and students, but feel that their commitment to the school is not being reciprocated by management, or fairly compensated. Teachers feel that conditions have worsened for them over a number of years, a process that in their view started when the original owner handed over control of the firm to his sons earlier in the 2000s.

Company management clearly expressed their openness to addressing the concerns that were raised. Harmon Hall management highlights that since taking over the school in 2008, their intention has been to professionalize the way that the schools are run through the introduction of new systems, processes and management. Management expects that the changes they are implementing will ultimately create a better work place for teachers and ensure the commercial success and survival of the school against its competitors. Management notes that they understand that this has meant a significant amount of change for the individual schools and teachers, and concedes that some mistakes were made, especially in how some of these changes have been communicated.

Specifically, teachers and management are willing to address the following areas of concern:

- **Respectful treatment:** The need for respect in day-to-day treatment. For example, teachers had reported instances of being reprimanded in front of students by the directors of specific schools.
- **Teachers role and work program:** A lack of clarity around the exact delineation of the teachers' role and responsibilities, e.g. whether sales related activities such as calling students to encourage them to re-enroll in courses should be part of the teacher's job. The teachers also reported being asked to perform such tasks without pay, and feel that they should not be tasked with sales activities, and certainly not without pay.
- **Clarification of which teachers' tasks are compensated by the hour:** A sense that teachers are expected to perform a number of tasks for which they are not being compensated by the school. Examples cited include class preparation time, administrative tasks such as data entry, providing additional support to students ("extra help"), taking tests or trainings, and sales related tasks.
- **Contracts:** That employees are not provided copies of their employment contract, a situation which teachers feel makes the lack of clarity around the delineation of their role worse. Also, how contract renewals are conducted in a fair and transparent manner ensuring that both parties understand the contract terms.
- **Moving from self-employed ('asimilados') to employee ('nomina') status:** Teachers expressed concern about the company's use of self employment, or 'asimilados' contracts, questioning whether this was legal under Mexican Labor Law, and highlighting the need for clear guidelines as to when and how teachers move from self-employed, or 'asimilados' status to employee, or 'nomina' status with access to benefits.
- **Wage levels:** There is a sense of erosion of wages and benefits over several years, and some teachers express frustration that they have not received a raise for three years despite inflation.
- **Availability of information and effectiveness of communication:** Teachers have many questions about their entitlements and obligations, how management decisions are taken, how the bonus system and incentives work, the calculation of social security in their paychecks etc. They further report instances where late notifications by management render it difficult for teachers to adapt to the announced changes, for example when the company reduced the amount of hours to be worked and paid during last year's Christmas break from 4 to 1.5 hours per day with only some two weeks' notice. In the absence of clearly understood rules and procedures, and effective communication, teachers fear their rights are being abused without access to trusted recourse.
- **Grievance mechanism:** Teachers mostly address their school directors with concerns and report inconsistent follow up. Many teachers also believe that speaking up when they fear their rights are not being respected may result in fewer or less attractive classes being assigned, and/or in teachers ultimately losing their jobs.

5.1 Summary of Stakeholder Goals and Interests

Based on the discussions with Harmon Hall management and teachers, the CAO heard and understood the following key goals and interests, shared by management and employees:

- A respectful workplace;
- Human resources management conducted in strict adherence to Mexican labor laws;

- Clarity on move from self-employed ('asimilados') to employee ('nomina') status;
- Timely, open, and trusted channels of communication;
- Management sensitivity and understanding of impact and consequences when implementing policies;
- Transparency, fairness and predictability in work processes, such as how classes are assigned;
- Clarity around roles and responsibilities, and pay for all work performed according to these responsibilities;
- Avenues for teachers to earn more during holiday times when there are fewer classes;
- Contracts in the hands of all employees;
- Predictable career path and development options;
- A trusted and confidential recourse mechanism through which employees can raise questions and concerns and see them addressed.

When asked about their expectations for the outcome of a CAO-convened process, current teachers highlighted their desire to be treated with dignity and respect, for employment conditions to be fair and compliant with Mexican labor law. Previous employees expressed their wish for conditions to improve for their former colleagues.

5.2 Conclusion and Next Steps

Both the complainants and Harmon Hall management have agreed to work with CAO in a collaborative problem solving process to develop a number of key remedial actions in response to teacher concerns raised in the complaint to CAO. CAO will act as an intermediary between the parties to help finalize a list of remedial actions, which will be set out in a separate document. CAO will stay involved in a monitoring capacity for a period of six months after the agreed remedial actions have been fully implemented. The case will be closed thereafter.

Annex 1: CAO Process

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: **Ombudsman assessment**: Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement**: If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective 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 problem-solving process, in a way that is acceptable to the parties affected.²

OR

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's involvement in the project is merited.

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

Step 6: **Conclusion**/Case closure

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

Annex 2: Trip Agenda

Date	Meeting Purpose	Location	Points of Discussion
February 6	Meeting with complainants	Mexico City	<ul style="list-style-type: none"> • Explain CAO's mandate and role • Learn about complainants' perspective
	Meeting with external stakeholders / labor experts	Mexico City	<ul style="list-style-type: none"> • Understanding of labor issues and labor law in Mexico
February 7	Meeting with School Management <ul style="list-style-type: none"> • Harmon Hall (HH) Management • Nexxus Fund Representatives 	Mexico City	<ul style="list-style-type: none"> • Explain CAO's mandate and role • Learn about Harmon Hall operations • Learn about Harmon Hall and Nexxus's perspective regarding the issues raised in the complaint
	Visit to School and Meeting with Teachers <ul style="list-style-type: none"> • Current Employees • Management Representatives 	Mexico City	<ul style="list-style-type: none"> • Explain CAO's mandate and role • Learn about perspectives of school employees • Inform employees about CAO's presence and offer confidential avenues of communication should they wish to engage with CAO.
February 8 - 10	Visit to School and Meetings with Teachers <ul style="list-style-type: none"> • Current Employees • Management Representatives 	Puerto Vallarta	<ul style="list-style-type: none"> • Explain CAO's mandate and role • Learn about perspectives of school employees • Inform employees about CAO's presence and offer confidential avenues of communication should they wish to engage with CAO.
	Meetings and calls with current and former teachers <i>*This included face-to-face meetings and telephone conversations with 17 individuals.</i>	Puerto Vallarta	<ul style="list-style-type: none"> • Explain CAO's mandate and role • Learn about teachers' perspective