



December 16, 2021
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Pan American Energy (IFC Projects: #24118, #25838, #28079/28970, and #36146)
Argentina*

Complaint 01

Pan American Energy (PAE) is an Argentinian energy company involved in upstream oil and natural gas production, as well as downstream oil refining and commercialization of fuel, lubricants, and chemical products. As part of its upstream activities, Pan American Energy operates the Cerro Dragón oil and gas field, located in the Golfo de San Jorge basin in Chubut Province in southern Argentina.

IFC provided four loans to PAE for its upstream activities, one of which is currently active. The first three of these loans (IFC projects: #24118, #25838, and #28079/28970) were provided in 2005, 2007, and 2009 to finance the development of the company's oil production assets, including the Cerro Dragón field. IFC's total investment from these loans was up to \$320 million from its own account, in addition to syndicated loans and financing mobilized from other lenders. Between 2016 and 2017 these three projects were closed.

In 2015, while the above-mentioned projects were still active, IFC provided an additional loan of up to \$120 million from its own account to fund PAE's further development of the Cerro Dragón oil and gas field and other hydrocarbon resources in Argentina (IFC project: #36146). As of December 2021, this project remains active.

On September 21, 2020, a former worker of a former PAE contractor submitted a complaint to CAO on behalf of himself and a group of former contract workers. The complaint relates to the violent seizure of PAE's Cerro Dragón field in June 2012 and associated consequences for the complainants. According to public reports, a local union associated with the protest was demanding pay increases and legal recognition. In this context, protesting workers took over the field, blocking access roads for several days and damaging equipment necessary for PAE's oil and gas production.

The complainants used to work at the Cerro Dragón field as employees of PAE contractors. They claim to not have participated in the seizure or property destruction that took place at Cerro Dragón in 2012. The complainants allege that PAE wrongfully terminated them following the June 2012 incident, initiated criminal proceedings against them, and labeled them as "terrorists," impeding their ability to obtain employment at the Cerro Dragón field. The complainants also claim they are owed economic compensation as set out in an out-of-court agreement which PAE purportedly signed in 2019.

CAO found the complaint eligible for further assessment in December 2020. The complainants and PAE did not reach an agreement to participate in a CAO supported dispute resolution

process, and as a result, the complaint was transferred to CAO's compliance function for appraisal.

On October 1, 2021, CAO received an IFC Management Response to the complaint. In summary, the Management Response asserts that: a) IFC followed up with PAE at the time of the Cerro Dragón seizure to learn more about the incident and determine required actions; b) IFC adequately supervised project compliance with its labor requirements including human resources policies, worker grievance mechanism, labor law compliance, freedom of association, and contractor management; and c) there was no out-of-court settlement of the complainants' claims, with PAE filing a criminal complaint against the attorney who drafted the agreement.

According to the 2021 CAO Policy, the purpose of the CAO compliance appraisal process is to determine whether a complaint merits a compliance investigation applying the following criteria:

- a) Whether there are preliminary indications of Harm or potential Harm;
- b) Whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies; and
- c) Whether the alleged Harm is plausibly linked to the potential non-compliance.

Based on interviews with the complainants and review of publicly available information, CAO found preliminary indications that the complainants have experienced material adverse impacts due to the termination of their employment in 2012 and ongoing challenges in obtaining employment with contractors working on PAE operations. This constitutes a Harm as defined in the CAO Policy.

CAO reviewed available documentation, interviewed IFC staff and PAE representatives, finding preliminary indications of non-compliance in three areas.

First, IFC's documentation of E&S activities in relation to their investments in PAE was significantly limited and incomplete. Key documents required for conducting IFC's E&S pre-investment review and supervision in accordance with IFC's policies, such as IFC's reviews of E&S documentation submitted by PAE, were absent from the documentation IFC made available to CAO. IFC informed CAO this was due to changes in personnel and filing systems. These gaps in IFC's E&S documentation for its investments in PAE represent a departure from IFC's Environmental and Social Review Procedures and indicate potential non-compliance with IFC's Sustainability Policy.

Second, CAO's preliminary review of documentation and interviews with IFC staff suggest potential shortcomings in IFC's response following the 2012 seizure of the Cerro Dragón field. CAO notes a lack of information to indicate that IFC required from the client or reviewed detailed information on the incident or its impacts on workers. The information available to CAO also suggests a lack of engagement with PAE in relation to the need for: (a) root cause analysis following the seizure, and (b) action plans to address the underlying causes and reduce the risk of recurrence, as required by IFC's Environmental and Social Review Procedures.

Third, IFC noted gaps, capacity issues, and delays in implementation of PAE's labor and social management systems over an extended period of time, including the lack of a written labor grievance redress procedure as required by Performance Standard 2. However, there are indications that IFC may not have taken steps to ensure that the client addressed these gaps in a timely manner as part of project supervision or before making new investments in PAE.

Based on the above analysis, CAO concludes that there are preliminary indications of both harm and potential IFC non-compliance with its E&S requirements.

Following the CAO Policy, the question then arises whether there is a plausible link between the alleged harm and the potential non-compliance. The termination of the complainant's employment by the PAE contractor, ongoing challenges in obtaining employment, and non-payment of the out-of-court agreement all raise serious legal questions and represent harm to the complainants, some of which are being considered before Argentinian courts. However, they do not raise issues of compliance with IFC's Performance Standards for the following reasons. First, the complainants lost their jobs as employees of PAE contractors following the Cerro Dragón incident, but Performance Standard provisions on retrenchment do not extend to contracted workers. Second, the issue of security clearances for individuals facing criminal proceedings and the contested out-of-court agreement similarly do not relate to Performance Standard requirements. Third, with respect to the out-of-court agreement mentioned above, all parties advised CAO that they believe that a third-party lawyer who drafted the agreement was acting dishonestly. As a result, CAO concludes that there is no plausible link between the potential shortcomings in IFC's review and supervision of labor issues at PAE and the harms alleged by the complainants.

Following application of the compliance appraisal criteria and finding that there is not a plausible link between the preliminary indications of harm and IFC non-compliance with its E&S requirements, CAO will not proceed with a compliance investigation and will close the case.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is an independent recourse and accountability mechanism that receives complaints from communities and persons who may be affected by the projects that the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) support. The CAO reports directly to the Boards of IFC and MIGA (“the Board”) and is fully independent of IFC/MIGA management.

CAO carries out its work in accordance with the IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“the CAO Policy”).

Through the exercise of its complementary dispute resolution, compliance, and advisory functions, CAO’s mandate is to:

- Facilitate the resolution of complaints from people who may be affected by IFC/MIGA projects or sub-projects in a manner that is fair, objective, and constructive;
- Enhance the environmental and social outcomes of projects in which those institutions play a role; and
- Foster public accountability and learning to enhance the environmental and social performance of IFC/MIGA and reduce the risk of harm to people and the environment.

For more information about CAO, please visit: www.cao-ombudsman.org.

Table of Contents

Acronyms	6
I. Overview of the Compliance Function and Appraisal Process	7
II. Background	8
<i>Investment</i>	8
<i>Complaint and CAO Assessment</i>	9
III. Appraisal Scope and Methodology	10
IV. Appraisal Analysis	10
a. Analysis of Complaint Allegations	10
b. IFC Policy Framework	12
<i>IFC E&S requirements for investments active at the time of the 2012 Cerro Dragón seizure</i>	12
<i>IFC E&S requirements for current investments</i>	12
c. IFC’s E&S Actions in Relation to Concerns Raised in the Complaint	14
<i>IFC Supervision of investments active at the time of the 2012 Cerro Dragón seizure</i>	14
<i>IFC pre-investment review and supervision of current investment</i>	15
d. Analysis of Plausible Link between Non-Compliance and Harm	18
V. CAO Decision	18

Acronyms

Acronym	Definition
AEPR	Annual Environmental Performance Report
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FI	Financial Intermediary
FPIC	Free, Prior and Informed Consultation
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standards (IFC)
SII	Summary of Investment Information
SP	Sustainability Policy

I. Overview of the Compliance Function and Appraisal Process

*“The purpose of the CAO compliance function is to carry out reviews of IFC/MIGA’s compliance with E&S [Environmental and Social] Policies, assess related Harm, and recommend remedial actions where appropriate.”*¹ The compliance function does not evaluate the adequacy or suitability of E&S Policies, nor does it make findings in relation to the compliance of a project, sub-project, client, or sub-client with the IFC Performance Standards. However, in carrying out its role, the CAO compliance function will assess IFC/MIGA’s review and supervision of its E&S requirements at the project- or sub-project level and consider project- or sub-project-level environmental and social performance.²

CAO’s compliance function has three phases:

1. A **compliance appraisal**, which is a preliminary review to determine whether a complaint or internal request merits a compliance investigation.
2. Where warranted, a **compliance investigation**, which is a systematic and objective review to determine whether IFC/MIGA complied with its E&S policies, and whether there is harm related to any IFC/MIGA non-compliance. On completion of a compliance investigation leading to findings of non-compliance and related harm, CAO makes recommendations for IFC/MIGA to consider when preparing its Management Action Plan (MAP), which IFC/MIGA submits for Board approval.
3. Where there is an approved MAP, CAO will conduct a **compliance monitoring** process and report on the effective implementation of any corrective measures included in the MAP.

Overview of the compliance appraisal process

Following the transfer of a complaint from a CAO assessment or dispute resolution process to compliance, CAO has 45 business days to complete an appraisal of issues raised in the complaint or identified during the CAO assessment phase, excluding any matters resolved during any CAO dispute resolution process.³ The appraisal process involves the review and consideration of the CAO assessment report, the complaint, IFC/MIGA’s response to the complaint, the client response to the complaint (if available), and any additional information obtained by CAO from the complainants or other relevant parties over the course of the appraisal. Appraisal processes responding to an internal request should also conclude within 45 business days and should respond to issues raised in the internal request.⁴

A CAO appraisal involves a preliminary review of available information. It does not lead to any definitive assessments or findings of harm or IFC/MIGA non-compliance—findings are only established in the context of a compliance investigation.⁵ To determine whether a compliance investigation is warranted, CAO applies the following appraisal criteria:

- d) *Whether there are preliminary indications of Harm or potential Harm;*

¹ CAO Policy, Sec. X, para. 76.

² CAO Policy, Sec. X, para. 77.

³ CAO Policy, Sec. X, paras. 88 and 95.

⁴ CAO Policy, Sec. X, para. 89.

⁵ CAO Policy, Sec. X, para. 94.

- e) *Whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies; and*
- f) *Whether the alleged Harm is plausibly linked to the potential non-compliance.*⁶

CAO's appraisal considers the following additional factors as relevant:

- a) *For any Project or Sub-Project where an IFC/MIGA Exit has occurred at the time CAO completes its compliance appraisal, whether an investigation would provide particular value in terms of accountability, learning, or remedial action despite an IFC/MIGA Exit.*
- b) *The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint.*
- c) *Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant or in the internal request and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies.*
- d) *Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant.*⁷

Applying the above criteria and considerations, the CAO Director General (CAO DG) may decide to investigate a complaint/internal request or close the case. Alternatively, in response to a request from IFC/MIGA management, the CAO DG may defer any decision to investigate.⁸

II. Background

Investment

Pan American Energy (PAE) is an Argentinian energy company involved in upstream oil and natural gas production, as well as downstream oil refining and commercialization of fuel, lubricants, and chemical products. As part of its upstream activities, Pan American Energy operates the Cerro Dragón oil and gas field, located in the Golfo de San Jorge basin in the Chubut Province in southern Argentina.

IFC has provided financing to PAE for its upstream and downstream activities. In 2005, 2007, and 2009, IFC provided three loans to PAE (#24118, #25838, and #28079/28970) to finance the company's capital expenditure programs for the continued development and production of its oil production assets, including the Cerro Dragón field. Project #24118 included an investment of up to \$120 million from IFC's own account and up to \$130 million in syndicated loans.⁹ Project #25838 comprised a loan of \$150 million from IFC's own account and up to \$400 million mobilized from other lenders. Project #28079/28970 involved an investment of \$50 million from IFC's own account and expected to mobilize up to \$200 million from other lenders. Between 2016 and 2017 these three projects were closed.

⁶ CAO Policy, Sec. X, para. 91.

⁷ CAO Policy, Sec. X, para. 92.

⁸ CAO Policy, Sec. X, para. 97.

⁹ Investments from IFC's own account refers to any funded or unfunded participation in the investment project made by IFC using its own borrowings or capital.

In 2015, while the above-mentioned projects were still active, IFC provided an additional loan of up to \$120 million from IFC's own account to partially fund PAE's capital expenditure program for further development of the Cerro Dragón oil and gas field and other hydrocarbon resources in Argentina (#36146). The project encompassed activities including drilling, secondary recovery, facility expansions and improvements. IFC disbursed this loan between August and December 2015. As of December 2021, this project remains active.

IFC's financing of PAE's downstream refinery and retail business includes a loan provided in 2016 to Axion Energy, which merged with PAE in 2018. The purpose of this loan (#36221, renumbered to #41440 after the merger) was to expand the company's refinery located in Campana, Buenos Aires, improve fuel quality and the company's retail network. In 2019, IFC provided an additional loan to PAE for the continued upgrade of the Campana refinery to increase and improve production of refined products (#42169). To date, both of these projects also remain active.

This appraisal considers the closed investments (#24118, #25838, and #28079/28970) as well as one open investment (#36146) used to fund PAE's upstream operations, including oil and gas production in Cerro Dragón, as relevant to the issues raised in the complaint.

Complaint and CAO Assessment

On September 21, 2020, a former worker of a former PAE contractor submitted a complaint to CAO on behalf of himself and a group of other former contract workers. The complaint relates to the violent seizure of PAE's Cerro Dragón oil and gas field in June 2012 and the ongoing consequences on complainants. According to public reports, a local union associated with the protest was demanding pay increases and legal recognition. In this context, protesting workers took over the field, blocking access roads for several days and damaging equipment necessary for PAE's oil and gas production.¹⁰ The seizure led to the interruption of oil production in the field for several weeks. The complainants used to work at the Cerro Dragón field for PAE contractors but claim not to have participated in the seizure or property destruction.

The complaint submitted to CAO asserts that PAE wrongfully terminated complainants' employment following the June 2012 violent seizure of the Cerro Dragón field. Complainants also allege that PAE initiated criminal indictments against them and other workers for their alleged involvement in the June 2012 incident and has since denied them access to other job opportunities at Cerro Dragón, labelling them as "terrorists." Lastly, the complainants claim economic compensation they believe is owed to them on the basis of an out-of-court settlement purportedly signed with PAE in 2019.

CAO found the complaint eligible for further assessment in December 2020. The complainants and PAE did not reach a consensus to undertake a dispute resolution process, and on September 2, 2021, the complaint was transferred to CAO's Compliance function. CAO has not previously investigated any complaints related to IFC's investment in PAE.

¹⁰ The protest and seizure of the Cerro Dragón field were widely reported in national and international media:

"Strikers leave Argentina's biggest oil field," available at: <https://www.reuters.com/article/argentina-panamerican/update-1-strikers-leave-argentinas-biggest-oil-field-idUSL2E8I6J5Z20120706>.

"Denuncian que en Cerro Dragón "hubo destrucción y salvajismo y no hay nadie preso," available at: <https://www.lanacion.com.ar/politica/denuncian-que-en-cerro-dragon-hubo-destruccion-y-salvajismo-y-no-hay-nadie-presonid1485294/>.

"Guido Dickason, de 'Dragones': 'nos sacrificaron por el Petróleo Plus,'" available at: <https://www.elpatagonico.com/guido-dickason-dragones-nos-sacrificaron-el-petroleo-plus-n720302>.

"A un año de la toma de Cerro Dragón," available at: <https://www.elpatagonico.com/a-un-ano-la-toma-cerro-dragon-n697636>.

On October 1, 2021, CAO received an IFC Management Response to the complaint. In summary, the Management Response asserts that: a) IFC followed up with PAE at the time of the Cerro Dragón seizure to learn more about the incident and determine required actions; b) IFC has adequately supervised project compliance with PS2 requirements, including human resources policies, worker grievance mechanism, labor law compliance, respect and engagement with unions, and adequate contractor management; and c) there was no out-of-court settlement of the complainants' claims, with PAE filing a criminal complaint against the attorney who drafted the agreement.

III. Appraisal Scope and Methodology

This compliance appraisal was conducted by CAO Staff. Its scope is limited to issues raised in the complaint and CAO's assessment report.¹¹ CAO has made its appraisal decision based on the appraisal criteria and other applicable considerations as set out in the CAO Policy, considering the complaint, CAO's assessment report, and IFC/MIGA's Management Response to the complaint. In this case, the compliance appraisal process also considered: a) additional documentation provided by the complainant, b) IFC and client documentation related to the implementation of project E&S requirements, c) a review of media and publicly available documentation, and d) interviews with the primary complainant, former and current IFC staff involved in the project, and PAE representatives.

CAO extends its appreciation to all parties mentioned in this report who have shared their perspective, knowledge, and time with CAO.

IV. Appraisal Analysis

This section outlines: (i) analysis of complaint allegations to identify indications of Harm or potential Harm; (ii) applicable E&S policies and procedures concerning the complainants' allegations; (iii) analysis of IFC compliance with its E&S requirements; (iv) analysis of plausible link between non-compliance and harm; and (v) CAO's decision of whether the matters presented merit a compliance investigation based on the appraisal criteria and considerations outlined in the CAO Policy.

a. Analysis of Complaint Allegations

Unfair Dismissal

The complainants allege they were wrongfully dismissed from their position following the 2012 incident. The primary complainant asserts that he had no prior knowledge of union plans to seize the oil field before arriving at work on the day of the Cerro Dragón incident. He says he was not involved in any criminal activity at the site. Though he acknowledges he was present at the Cerro Dragón field during the seizure, he says he was unable to leave because all access routes had been blocked.

¹¹ CAO Policy, Sec. X, para. 88.

PAE notes that following the 2012 incident, they terminated their contracts with the contracting company that employed the complainants. Upon termination of the contract, all workers who had been hired specifically for that contract lost their jobs. PAE asserts that they compensated the contractor for the termination of the contract, and that any payment due to workers would have been the contractor's responsibility. PAE asserts the termination of their contractor's employees was carried out in compliance with Argentinian law though no legal analysis was presented to support this claim.

Retaliation and Blacklisting

The complainants raise concerns that PAE initiated the criminal proceedings against former workers of their contractors, including against workers who were not involved in criminal activity. In addition, the complainants note that they and other workers implicated in the criminal proceedings have been "blacklisted" from employment by contractors working with PAE. In one case, the complainant states that he was accepted to a position with one of PAE's contractors, passed the medical and physical tests, but was denied employment as he was about to begin work. CAO was told that several workers have had similar experiences.

PAE informed CAO that they filed a criminal complaint related to the 2012 seizure to the relevant authorities, but that it was the decision of the regional prosecutor to pursue criminal proceedings (Management Response, para. 23). PAE is an official party to the litigation, known as a *parte querellante* in Argentinian law, and has provided evidence to the court, including photographic and video evidence from the Cerro Dragón seizure.

PAE denies maintaining a list or database of individuals they bar from employment or access to PAE operations. PAE informed CAO that they use a case-by-case assessment for granting security clearance to prospective employees involved in criminal cases. This could include denying security clearance to access PAE operations for individuals they believe caused property damage at the Cerro Dragón field, including individuals criminally indicted for their alleged role in the 2012 incident.

Out-of-Court Agreement

The complainants believe they are owed compensation for the wrongful termination, criminal prosecution, and ongoing harm resulting from the blacklisting by PAE, promised in the out-of-court agreement. The complainants allege that, with the assistance of a third-party lawyer, they signed out-of-court agreements with PAE in 2019 (amended in 2020), in which PAE agreed to compensate complainants for the 2012 Cerro Dragón seizure criminal prosecution and related impacts on their employment opportunities. All parties advised CAO that they believe that the lawyer involved in drafting the out-of-court agreement was acting dishonestly. PAE has filed a criminal fraud complaint against the lawyer, which is currently being considered in Argentinian courts.

Conclusion

CAO finds preliminary indications that the complainants have suffered harm relating to their employment by PAE contractors, specifically (a) the termination of their employment following the 2012 incident, and (b) the ongoing challenges that they face in securing employment with oil and gas contractors.

b. IFC Policy Framework

IFC E&S requirements for investments active at the time of the 2012 Cerro Dragón seizure

IFC's three active investments in PAE at the time of the Cerro Dragón seizure (#24118, 25838, and 28079/28970) were made prior to IFC's 2012 Sustainability Framework. The earliest investment (#24118) was made in 2005 and was subject to IFC's 1998 Operational Policy 4.01 on Environmental Assessment. Subsequent investments made in 2007 and 2009 (#25838, and 28079/28970 respectively) were subject to the 2006 Sustainability Policy and Performance Standards. The 2006 Sustainability Policy required IFC to conduct an E&S review of proposed projects, which would determine the scope of the E&S conditions of IFC financing.¹² Also, the 2006 Sustainability Policy required IFC to monitor the client's E&S performance throughout the life of its investment.¹³ The 2006 Performance Standards included PS2, which required clients to provide reasonable working conditions and terms of employment.¹⁴

At the time of the Cerro Dragón seizure, IFC's Environmental and Social Review Procedure 5 (ESRP 5, July 2010), established requirements for IFC staff on the "management of eventualities" in investment projects. In this context, ESRP 5 established that, if IFC E&S staff were informed of serious incidents, the following actions were to be implemented: i) notification to relevant IFC staff, ii) request to the client to provide detailed information, iii) recording of the incident in the Environmental and Social Review Document (ESRD) and update of Environmental and Social Risk Rating (ESRR), iv) schedule a Site Supervision Visit (SSV) to collect and analyze information, if required v) request the client to investigate root causes for the incident and prepare an Environmental and Social Action Plan (ESAP) with short-term and long-term actions to prevent recurrence and implementation schedule, vi) monitor client activity to ensure that root causes were identified and remedial measures are developed appropriately.¹⁵

IFC E&S requirements for current investments

IFC's active investments in the client (#36146, #36221 renumbered #41440 after PAE's merger with Axion, and #42169) were made under IFC's 2012 Sustainability Framework, which includes the 2012 Sustainability Policy and Performance Standards (PS). The Sustainability Policy provides that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to 'do no harm' to people and the environment."¹⁶ Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards."¹⁷ IFC will invest in a project only when the activities it finances "are expected to meet the requirements of the Performance Standards within a reasonable period of time."¹⁸

¹² IFC Sustainability Policy, 2006, para. 5.

¹³ IFC Sustainability Policy, 2006, para. 11.

¹⁴ IFC Performance Standard 2, 2006, para. 8.

¹⁵ IFC Environmental and Social Review Procedure (ESRP) 5, 2010, para. 2.2.

¹⁶ IFC Sustainability Policy (SP), 2012, para. 9.

¹⁷ *Ibid*, para. 7.

¹⁸ *Ibid*, para. 22.

The Sustainability Policy provides that IFC's due diligence will determine the scope of the E&S conditions of IFC financing.¹⁹ These conditions will include "complying with the applicable requirements of the Performance Standards and specific conditions included in action plans, as well as relevant provisions for environmental and social reporting, and supervision visits by IFC staff or representatives, as appropriate."²⁰ When conducting its E&S due diligence, IFC will ensure it is "commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social risks and impacts."²¹

The key components of IFC's E&S due diligence include: i) the review of relevant information and documentation regarding the E&S risks and impacts of the business activity to be financed, ii) site visits and interviews with client personnel and relevant stakeholders, iii) assessment of client performance in relation to the PS and other relevant guidelines, iv) identification of gaps in PS compliance and definition of an Environmental and Social Action Plan (ESAP) including measures and actions to address such gaps.²² Records and documentation of IFC's due diligence, including appraisal mission reports, are to be created and filed.²³

Once a project has been financed, IFC conducts supervision activities on a regular basis. Project supervision includes reviewing the client's performance against the E&S conditions for investment, as reported by the client in the Annual Monitoring Report (AMR), and considering progress on the ESAP.²⁴ Supervision activities should be in accordance with the requirements of IFC's Environmental and Social Review Procedures (ESRP).²⁵

During supervision, IFC will identify and review opportunities for improving client E&S performance and, if the client fails to comply with E&S commitments, IFC will work with the client to bring it back into compliance or will exercise remedies as appropriate.²⁶

Relevant to the issues raised in the complaint, PS2 includes labor and working condition requirements for the client, including the provision to workers of clear and understandable documented information regarding their rights upon beginning the working relationship and when any material changes occur,²⁷ ensuring equal opportunity, fair treatment and non-discrimination in all aspects of the employment relationship.²⁸ and in case of dismissals, ensuring timely notice and severance payment according to the law and collective agreements.²⁹

PS2 also requires the client to ensure that contractors comply with the above-mentioned labor and working conditions regarding contractor workers. To this end, PS2 requires clients to: i) ensure their contractors have an appropriate ESMS which aligns with PS2,³⁰ ii) implement policies and procedures for managing and monitoring contractor performance in relation to PS2 requirements,³¹ iii) use commercially reasonable efforts to incorporate PS2 requirements in contractual agreements with contractors,³² and ensure contractor compliance with PS2 through audits, visits and visual inspections, the assessment of contractors' track record, and training for

¹⁹ Ibid, para. 7.

²⁰ Ibid, para. 24.

²¹ Ibid, para. 26.

²² Ibid, para. 28.

²³ IFC ESRP 8, 2016, para. 3.4.

²⁴ SP, para. 45.

²⁵ Ibid.

²⁶ Ibid.

²⁷ IFC Performance Standard 2 (PS2), 2012, para. 9.

²⁸ Ibid, para. 15.

²⁹ Ibid, para. 19.

³⁰ Ibid, para. 24.

³¹ Ibid, para. 25. Also see IFC Guidance Note 2 (GN), 2012, 11 and 86.

³² PS2, para. 25.

contractor workers,³³ iv) ensure contractor employees have access to a grievance mechanism or extend the client's own grievance mechanism to third party workers when the third party is not able to provide one.³⁴

c. IFC's E&S Actions in Relation to Concerns Raised in the Complaint

CAO faced challenges locating IFC E&S documentation related to the pre-investment review and supervision of IFC's investments in PAE (#24118, #25838, #28079/28970, and #36146). The Management Response explains that detailed information from this period is limited "due to changes in IFC personnel and systems."³⁵ Based on the information available to CAO, relevant points of fact are presented below.

IFC Supervision of investments active at the time of the 2012 Cerro Dragón seizure

The pre-2006 safeguards did not include specific requirements on labor and working conditions, and these issues were not identified as a risk in the 2005 investment. However, the 2007 and 2009 investments included requirements related to labor and working conditions under PS2. Based on the ESRS for these two investments, IFC reviewed PAE's human resources policies, health and safety measures, contractor management system, and union relations for the 2007 investment. However, there are no ESAPs associated with these investments and it is unclear whether IFC recommended improvements to labor and working conditions or monitored the client's performance related to labor issues over the life of the investments.

In 2012, when the seizure of the Cerro Dragón field occurred, PAE notified IFC "within days."³⁶ Though the notification was not documented, PAE sent IFC a public press release about the seizure dated June 21, 2012. IFC told CAO that they followed up with PAE after the incident "to determine what, if any, actions may be required."³⁷ However, PAE's annual E&S reports, IFC's supervision documentation between 2012 and 2013, and interviews with IFC staff do not indicate that IFC discussed with PAE the labor issues that were the root cause of the protest, specifically concerns about pay equity between different classes of workers. Similarly, there is no indication that IFC and PAE discussed any measures to prevent recurrence of an incident like the seizure of the Cerro Dragón field. According to PAE, their discussions with IFC at the time focused primarily on the operational and financial consequences of the seizure and associated property destruction.

The first mention of the 2012 incident in IFC's documents appears in a 2014 site visit supervision report. IFC carried out a site visit to PAE's headquarters and operations from April 1-4, 2012. A report summarizing the supervision visit notes that there were no major safety or environmental incidents resulting from the 2012 seizure, and that PAE had taken measures to prevent recurrence, specifically intelligence gathering and remote operation of the field. Separately, the report notes that PAE's Labor Relations department manages negotiations with unions. However, the report made no mention of how root causes, specifically issues that triggered the seizure, for

³³ PS2 and GN 88.

³⁴ PS2, para. 26.

³⁵ IFC Management Response to the CAO Complaint on Pan American Energy (MR), October 1, 2021, para. 18.

³⁶ MR, para. 19.

³⁷ Ibid.

example concerns about pay equity between different classes of workers, had been considered or addressed.

IFC's Management Response notes that in April 2014, "PAE signed an agreement with the Province of Chubut and two local unions, to address labor conflicts in the area, referring amongst others to the seizure of the Cerro Dragón field in 2012."³⁸ The 2014 agreement includes an obligatory reconciliation and arbitration process for all collective labor conflicts (Articles 10-14). It also includes agreements on environmental compliance, payments for social initiatives, and the creation of a standing committee with representatives of the provincial government. Despite being a direct response to the 2012 incident, there is no indication from documentation or interviews that PAE reported on or discussed the 2014 agreement with IFC until the appraisal for the 2015 investment. IFC was not able to provide any additional information about its monitoring of the 2014 agreement.

In conclusion, the information reviewed suggests shortcomings in IFC's response to the Cerro Dragón seizure. There is no indication that IFC required from the client or reviewed detailed information on the incident and its labor or social impacts. CAO's review also suggests a lack of engagement with PAE on the need for a root cause analysis following the seizure as well as action plans to address the underlying causes of the incident and reduce the risk of recurrence as required by the ESRP.

IFC pre-investment review and supervision of current investment

PAE approached IFC for additional financing to support their capital expenditure program in late 2014 (#36146). IFC undertook a pre-investment review in 2015 and published a summary of the review in an ESRS on April 24, 2015.

According to the ESRS, IFC applied PS2 on labor and working conditions to the 2015 investment. The summary of IFC's assessment notes that PAE has systems in place to address contractor management, particularly application of national labor laws; workplace health and safety; union engagement; and a labor grievance mechanism that is "accessible to all employees."³⁹

The ESRS does not discuss the 2012 incident, its root causes, or actions taken by PAE in response to the seizure. The ESRS does note that PAE signed an agreement with the provincial government of Chubut and two local unions in April 2014. Based on a review of documentation and interviews, it is unclear the extent to which, if at all, IFC engaged with PAE on the implementation of the elements of that agreement that relate to the 2012 incident or union relations more generally.

The ESAP published following the 2015 pre-investment review notes a number of actions required to bring PAE into compliance with the PS. The ESAP required a revision of PAE's corporate Social Management System (ESAP #1) to strengthen social management and document practices, particularly related to stakeholder engagement and the operation of a grievance mechanism. IFC's Management Response notes the "importance of maintaining robust social management...to mitigate risks to workers and staff related to union strikes."⁴⁰ The ESAP also

³⁸ Ibid, para. 22.

³⁹ ESRS, #36146

⁴⁰ MR, para. 12.

required PAE to review its existing human resources policy to ensure alignment with PS2 (ESAP #5), specifically the requirement to recognize freedom of association as a core labor right.

With respect to IFC's supervision of the investment, CAO notes a lack of detail in PAE's annual E&S reporting to IFC and IFC's reviews of the same. As a result, it is difficult to assess the quality of IFC supervision of client compliance with IFC's E&S requirements relevant to issues raised in the complaint. IFC's follow up on actions they recommended to address gaps in PAE's E&S performance was also inconsistent.⁴¹

IFC's review of PAE's 2014 annual E&S report did not occur until 2016 and does not include a review of 2015 actions. IFC concludes the 2014 report does not include sufficient information for IFC to determine whether PAE is fully in compliance with the PS. IFC's review of PAE's 2016 annual reporting is missing from the records.

PAE's 2017 annual E&S report notes that the company had received grievances raising concerns about access to job opportunities, and that it is working with its contractors to assess the situation and improve equitable distribution of jobs. IFC's review of this and subsequent reports noted that it did not include information on grievances, including theme, risk classification, status, and corrective actions, which should be incorporated in future years. IFC's recommendation that PAE report all grievances and related information was repeated in IFC's review of the 2018 and 2019 reports. PAE's 2020 annual report did not include any such overview of grievances or corrective actions, but IFC's review no longer includes this recommendation.

IFC conducted regular E&S site visits to supervise PAE in 2015, 2017, 2018, and a virtual visit in 2021. During each of these visits, IFC engaged with PAE to ensure progress was made to achieve the ESAP objectives, including the improvement of its social management system, worker grievance mechanism, and human resources policy.

Despite regular supervision visits, the implementation of various ESAP items was delayed. ESAP #5 on updating PAE's human resource policy to be in line with PS2 had an initial deadline of September 2015. IFC's supervision documentation from 2018 shows that IFC determined PAE to be in compliance with PS2, noting that PAE explains working conditions and labor rights during worker induction and in their contracts, but does not specify whether PAE's human resources policy was updated to recognize freedom of association.

ESAP #1 on revising a Social Management System, including developing a labor grievance mechanism procedure, was expected 16 months after disbursement in December 2016, but was not completed until 2020. IFC documentation from a December 2015 site visit and 2019 supervision document note that PAE did not have a written labor grievance procedure, finding varied understanding among workers about the implementation of the labor grievance policy. IFC's 2021 virtual visit report notes that PAE presented a grievance mechanism and log of complaints from 2020, indicating progress in terms of grievance handling, but the report does not comment on the number or nature of complaints. PAE shared a written grievance redress procedure with IFC (document undated) following the receipt of the CAO complaint.

⁴¹ For example, the form for client annual E&S reporting includes a question about significant events or problems. PAE did not respond to this question in any annual report for its upstream activities until 2020. The form also requires PAE to report on engagement with third parties in relation to E&S issues that would have provided an opportunity to discuss PAE's engagement with unions and others following the Cerro Dragón incident, which was not included in the annual reports. IFC did not request PAE to include information about significant events or union engagement.

Despite extended delays in delivery on key ESAP objectives, IFC maintained a satisfactory E&S rating for PAE.

Regarding supervision of other IFC E&S requirements relevant to the complaint, IFC identified in the ESRS that PAE had systems in place to address contractor management. While noting progress on capacity building, selection, and performance evaluations for contractors, IFC's supervision does not detail how PAE's contractor management programs ensure contractors complied with labor and working condition requirements. IFC submitted to CAO one of PAE's contractor management procedures, which includes PAE staff roles and responsibilities in granting access to contractor employees to PAE facilities. However, this procedure is dated August 2021 and there is no record of IFC's engagement with the client regarding this document or how it is implemented in practice.

Upon learning of the specific issues raised in the CAO complaint about PAE in January 2021, IFC engaged with their client and former IFC staff to understand the context for the complaint, gather documentation, and develop the Management Response. IFC also worked with PAE to ensure completion of the Social Management System and worker grievance mechanism during this period.

Notably, IFC did not attempt to engage PAE regarding the root causes of the 2012 incident, the 2014 agreement, and other actions taken to address root causes, or attempt to determine whether the complainants had been wrongfully blocked from employment.

Conclusion

Based on an initial review, CAO finds there are preliminary indications that IFC may not have complied with its E&S Policies. Specifically, CAO's appraisal raises questions about: (1) IFC's documentation of its pre-investment E&S review and supervision of PAE, (2) IFC's response to the Cerro Dragón incident, and (3) the overall quality of IFC's appraisal and supervision activities as related to the client's compliance with PS2 requirements. Each of these points is elaborated further below.

IFC's documentation of E&S activities in relation to their investments in PAE was limited and incomplete. Many documents related to closed investments (#24118, 25838, and 28079/28970) were missing due to changes in filing systems. Documents related to the pre-investment review for the 2015 investment (#36146) were also unavailable. The significant lack of E&S documentation encountered in conducting the appraisal indicates a departure from IFC's ESRP, pointing to potential non-compliance with IFC policy requirements for effective environmental and social due diligence and supervision of a project by IFC.

IFC's ESRP requires IFC staff to respond to serious incidents by requesting detailed information, requiring the client to investigate root causes of an incident, and supporting appropriate corrective actions to prevent recurrence. CAO was unable to find evidence that IFC engaged with PAE on the root causes of the seizure or that IFC followed up to ensure that corrective actions were being implemented. IFC did not engage PAE on the criminal case against former employees of PAE contractors related to the 2012 incident or the allegations related to "blacklisting" of former contract workers who were alleged to be involved in the Cerro Dragón seizure. Though IFC was aware of a 2014 agreement with two local unions in response to the 2012 incident, IFC does not appear to have monitored its implementation.

Lastly, IFC's pre-investment and supervision noted gaps in PAE's labor and social management systems, including the lack of a written labor grievance redress procedure over an extended period of time. IFC documentation also noted capacity issues and delays in implementing ESAP items. Despite these shortcomings noted by IFC, the project's E&S rating was maintained as "satisfactory" and IFC made two additional investments in the project.

d. Analysis of Plausible Link between Non-Compliance and Harm

While the information provided indicates that there may be potential non-compliance with IFC's sustainability policy, it is not clear that it is plausibly linked to the harm experienced by the complainants, as is elaborated below.

First, while the primary complainant clearly lost his job as a contracted employee following the Cerro Dragón incident, it is not apparent that he was wrongfully terminated. Rather, the available evidence indicates that he lost his job in a retrenchment once PAE terminated its contractual relationship with his employer. PS2 provisions on retrenchment do not extend to contracted workers. As a result, CAO concludes that the complainants' unfair dismissal complaint does not raise an issue of non-compliance with IFC's PS.

Second, available evidence suggests that PAE may be denying security clearances to workers, including the complainants, who are facing criminal proceedings in relation to the Cerro Dragón incident. While this represents an adverse impact on the complainants, it is not apparent that it raises a PS2 compliance issue.

Finally, as discussed above, there are questions regarding the legitimacy of the out-of-court agreement for compensation for harms suffered by the complainants, which are currently being addressed by Argentinian courts. However, this, similarly to the issues above does not raise a PS compliance issue.

As a result, CAO does not find a plausible link between IFC's potential non-compliance with its E&S pre-investment review and supervision policy obligations as outlined above and the harms alleged by the complainants.

V. CAO Decision

Based on the analysis detailed in this appraisal report, CAO concludes:

1. That there are preliminary indications of harm to the complainant(s); and
2. That there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies in exercising its responsibilities concerning its investments in PAE.

However, CAO does not find:

3. That the alleged harm to the Complainants is plausibly linked to IFC/MIGA's potential non-compliance.

Following application of the compliance appraisal criteria, CAO will not proceed with a compliance investigation and will close the case.

CAO's appraisal decision does not preclude future complaints related to the project based on new circumstances, knowledge, or alleged harms/potential harms not known at the time of this report's completion.

This appraisal report will be shared with the Board, the World Bank Group President, IFC/MIGA Management, the Client, and the Complainants. CAO will publish this appraisal report and IFC's Management Response on its website.⁴²

Annex 1: Complaint

Annex 2: Management Response

⁴² CAO Policy, Sec. X, para. 106.

Sent: Monday, September 21, 2020 8:21:01 AM (UTC+00:00) Monrovia, Reykjavik
To: CAO Compliance
Subject: Obligaciones negociables de PAE energy Argentina incumplidas- IFC

[External]

Estimados. Me presento mi nombre es Luis Muñoz Óscar. Soy de Argentina, Chubut, ciudad Comodoro Rivadavia. Les quiero escribir ya que estuve investigando y se que ustedes me podrán ayudar y entender la situación tremendamente injusta e ilegítima por la que estoy pasando yo y 800 familias más. He leído en su página acerca de quienes pueden remitirse a escribir un reclamo.

Quién puede presentar una reclamación?

Pueden presentar una reclamación a la CAO las personas, los grupos, las comunidades u otras partes que consideren que han sido o podrían verse afectados por proyectos de la IFC o el MIGA. Pueden hacerlo por intermedio de un representante o una organización.

Yo soy un trabajador normal, junto con mis compañeros hemos quedado injustamente sin trabajo durante 8 años, desde el 2012. Pan American Energy es la operadora que se encargó de que esto sucediera. 8 Años después de haberse cerrado la causa porque no tenían pruebas de lo que nos acusaban, piden a los trabajadores que cobremos un dinero que nos corresponde para no ir a juicio. Es un acuerdo extrajudicial. Aquí es donde PAE presenta ante quien corresponde todo el dinero que se va a destinar a las Obligaciones Negociables y es donde entramos más de 1000 personas a cobrar \$12.000.000 por la causa. Este acuerdo se firmó en 2019 Agosto. Bien informado de que el dinero que obtienen para poder costear todo este dinero sale de IFC. Este acuerdo que se firmó, quiero que sepan que nunca llegó a la gente. PAE en Argentina está representada al parecer por gente corrupta que se burla del trabajador. Sabemos que la abogada que tomó Pae para que se encargue de llevar a cabo este trámite se llevó la mayor parte y no nos quieren pagar. Algo que está firmado y homologado legalmente. Recorro a ustedes para que por favor pudieran ayudarnos. Ellos al parecer no quieren pagar, la abogada ya nos ha dicho que ellos están haciendo sus negocios con dinero que nos corresponde mínimamente por los 8 años de que nos dejaron sin trabajo. Atrás de cada trabajador hay una familia, y nosotros en este momento nos sentimos vulnerables, humillados y tristes, porque la abogada siempre pone excusas para los pagos, reta a todos cuando quieren exponer lo que sucede, y sinceramente nos sentimos desprotegidos. Por favor, solicito ayuda urgentemente. Desde ya, muchas gracias. aguardo respuesta.

Luis Muñoz Óscar

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT RESPONSE
TO THE CAO COMPLAINT**

ON

**PAN AMERICAN ENERGY
(PROJECTS #36146, #41440, #42169)**

October 1, 2021

TABLE OF CONTENTS

Abbreviations and Acronyms	3
Executive Summary	4
I. Introduction.....	6
II. Project Background.....	6
III. CAO Complaint	8
IV. Management Response	8
V. Conclusion	12
Annex 1: Timeline of Company’s History and IFC’s Projects	14

ABBREVIATIONS AND ACRONYMS

AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
HR	Human Resources
ESRS	Environmental and Social Review Summary
IFC	International Finance Corporation
O&G	Oil and Gas
PAE	Pan American Energy S.L.
PS	IFC's Environmental and Social Performance Standards
PS2	IFC's Environmental and Social Performance Standard 2: Labor and Working Conditions
SSV	Site Supervision Visit
WGM	Workers' Grievance Mechanism

EXECUTIVE SUMMARY

- i. In September 2020, CAO received a complaint from an individual on behalf of himself and 10 others (collectively, the “Complainants”) who worked for a contractor of Pan American Energy S.L. (“PAE” or the “Company”). The contractor hired them to perform services in the Cerro Dragón oil field in the Chubut Province of Argentina. PAE is one of the largest, fully integrated energy companies in the country, comprising (a) oil and gas (“O&G”) production, (b) an oil refinery, and (c) a retail fuel network.
- ii. The Complainants allege: (a) that they were unfairly accused of participating in a violent seizure of the Cerro Dragón O&G field, which occurred in June 2012; (b) that they were subsequently dismissed by the contractor at PAE’s request; (c) that they have not been able to obtain employment in the sector; and (d) that they are entitled to economic compensation from PAE under a 2019 out-of-court settlement, signed by PAE (which PAE has not honored). The complaint letter sent to the CAO also stated that the compensation due from PAE under the alleged agreement in 2019 would be provided by IFC. Some of the Complainants have been indicted in the Argentine courts for their participation in the 2012 incident at the Cerro Dragón oil field.
- iii. At the time of the incident at the Cerro Dragón field, the labor union environment in Argentina was volatile and there were blockades by unions involving other companies that affected the O&G industry in the region. Prior to the incident in 2012, PAE had established a dedicated labor unit that included skilled mediators to ensure an ongoing engagement with its unions and workers.
- iv. This Management Response responds to the issues raised in the complaint, specifically PAE’s compliance with the applicable requirements of IFC’s Performance Standards (“PSs”) at the project level. The Management Response includes information on IFC’s ongoing due diligence on the implementation of such requirements for post-2012 investments.
- v. The complaint relates specifically to IFC’s PS on Labor and Working Conditions (“PS2”), covering wrongful dismissal by PAE contractor, lack of compensation, and retaliation. These issues are linked to PS2 requirements including workers’ grievance mechanism, management of contractors and fair treatment, implementation of disciplinary measures, and freedom of association.
- vi. IFC has a long and positive history with PAE, which has demonstrated its commitment to the PSs. In June 2012, when the Cerro Dragón incident occurred, IFC had three projects open with PAE, reflecting investments made between 2005-2009 for the financing of O&G operations, all of which are now closed. Currently, there are three open projects with PAE, which were committed to between 2015-2019. The last two projects are related to PAE’s refinery alone (not O&G operations). IFC’s reviews at the time of each investment did not

identify any significant adverse environmental and social (“E&S”) impacts or unmitigated high-risk exposure.

- vii. IFC has regularly supervised PAE’s performance on E&S issues. The Company has demonstrated both an institutional commitment and an operational capacity to comply with the PSs, including the requirements relating to labor and contractor management, which include regular audits of Human Resources. As part of the pre-investment preparation in 2015, IFC verified that PAE has a well-functioning workers’ grievance mechanism in place, which is aligned with PS requirements, to receive and address both direct and contractor workers’ grievances and concerns. In the past year four grievances were received related to unfair treatment by supervisors, all of which were resolved within five weeks of being received.
- viii. PAE’s Compliance Department is designed to ensure confidentiality and monitor the fair treatment of workers through direct reporting of sensitive grievances directly to the Vice-President of Human Resources, the implementation of an investigation protocol, and quarterly reports to a committee which includes senior management representation. The existence of this department and its capacity has been verified by IFC through on-site visits and documentation review. In 2020, PAE continued strengthening a culture of respect and compliance, and the Company provided 144 training sessions for a total of 732 hours on integrity and compliance, reaching 3,452 employees. IFC has also confirmed the implementation of PAE’s policies and risk management practices. The Company has a Labor Relations team dedicated to maintaining the relationship with unions through ongoing dialogue with union representatives which is supported by a Collective Bargaining Agreement.
- ix. The claim mentioned in the original letter sent to the CAO that IFC would approve or provide funding to PAE to compensate the Complainants under an out-of-court settlement is erroneous. IFC’s loan agreement for the project (a multi-year upgrade at PAE’s refinery) included a contractual obligation that IFC financing was only available for that specific project and could not be used for PAE’s O&G operations, much less payment of any labor claims.
- x. PAE has indicated to IFC that it never signed any such out-of-court settlement with the Complainants and has informed them of such. Further, PAE has initiated legal action against the Complainants’ lawyer, alleging fraud through the forgery of public, legal documents. As the CAO Assessment Report notes, the case is currently pending in Argentine court.¹

¹ CAO Assessment Report, pg. 7 (July 20, 2021); *Justicia Nacional en lo Criminal y Correccional*, “Duffey Laxague Maria Auxiliadora/estafa procesal, defraudación por contrato simulado, falsificación documentos públicos y uso de documento adulterado o falso (Art. 296 of Argentina Criminal Code).

I. INTRODUCTION

1. In September 2020, CAO received a complaint from an individual (on behalf of himself and other workers) who worked for a contractor of PAE performing services in the Cerro Dragón oil field, which is located in the Chubut Province of Argentina. The complaint relates to a violent seizure of the oil field in June 2012 by workers from different unions.
2. CAO considered the complaint as eligible for further assessment in December 2020 and issued a CAO Assessment Report on July 20, 2021. This Management Response presents IFC's understanding of the issues raised in the complaint.

II. PROJECT BACKGROUND

A. IFC Investment with PAE

3. PAE is today the largest, fully integrated private sector energy company in Argentina, with O&G production, a refinery, and a retail fuels network. The Company is a long-standing IFC client with the first investment in 1987 with PAE's predecessor. IFC has since provided financing for some of PAE's upstream O&G production in Argentina and in more recent years for its refinery.
4. Until a few years ago, PAE was a standalone upstream O&G producer with nearly all its production in Argentina. Its main area has been the Cerro Dragón O&G field, one of the largest and most productive in the country. In 2018, PAE merged with Axion Energy Argentina S.A ("Axion"), one of Argentina's largest private sector downstream refining companies supplying a network of its own, branded retail stations. The merger made PAE Argentina's largest private sector energy company with upstream (O&G production) and downstream (refinery and retail) operations.
5. In 2012 (the year referenced in the complaint), IFC had three active projects with PAE pursuant to investments made in 2005, 2007 and 2009 to support the Company's O&G production efforts (*IFC Projects #24118, #25838, and #28970*, respectively). All were related to helping PAE finance its production efforts in the Cerro Dragón O&G field and other areas and were subject to the 2006 PS. The last of these projects was closed in August 2017.
6. IFC financing in 2015 supported PAE as a standalone O&G upstream company. The investment supported an increase in O&G production in the Cerro Dragón field (*IFC Project #36146*). This and the subsequent projects are required to comply with the 2012 PS.
7. In 2016, IFC provided financing to Axion, then a separate company from PAE, to help implement a large, multi-year upgrade program at the company's refinery located in Campana, Buenos Aires Province (*IFC Project #36221*, later renumbered to *#41440* to account for the merger with PAE).
8. In 2019, IFC provided financing to PAE (which had merged with Axion) to support the completion of the upgrade program at the Campana refinery (*IFC Project #42169*). To date, this is IFC's last financing to PAE. (See Annex 1 for a timeline of IFC projects with PAE and Axion.)

9. Only the projects IFC financed in 2015, 2016, and 2019 (*IFC Projects #36146, #41440, and #42169*) currently remain open. The use of their proceeds was defined and restricted in the loan agreements to specific activities. Neither of the latter two projects committed in 2016 and 2019 allowed for the IFC loans to be used for any upstream O&G operations or related purposes, including labor compensation, as suggested in the complaint.

B. Environmental and Social Assessments and Activities

10. Throughout its investments in PAE, IFC has monitored and supported the improvement of the Company's E&S performance, which has been monitored in accordance with the applicable PSs since their inception in 2006. The three active investments that IFC financed in 2015, 2016 and 2019 were all rated Category B projects according to IFC's Sustainability Policy (2012). IFC's reviews at the time of each investment did not identify any significant adverse E&S impacts or unmitigated high-risk exposures.

11. In March 2012, three months before the incident cited in the complaint, IFC conducted a Site Supervision Visit ("SSV"). The SSV noted that the labor union environment in Argentina was volatile and that blockades by unions were common in the area of PAE's operations that affected O&G companies and the industry in general. To ensure an ongoing engagement with the workers and unions, PAE had established a dedicated labor unit which included skilled mediators with experience in O&G concerns in the region. This labor unit also worked closely with the security management team to monitor potential blockades and strikes.

12. During the SSV of April 2014 and during IFC's review of the 2015 IFC investment (Project #36146), the 2012 incident was discussed, with IFC noting the importance of maintaining robust social management and strengthening PAE's security management system to mitigate risks to workers and staff related to union strikes.

13. PAE's Human Resources ("HR") policy was compliant with IFC's 2006 PS2, in accordance with the requirements of the loan agreements for the 2007 and 2009 projects. The Environmental and Social Action Plan ("ESAP") that PAE agreed to implement for Project #36146 included a requirement that PAE update its HR policy to better align with the 2012 PSs that replaced the 2006 version, notably PS2. The ESAP also contained measures to help PAE build internal capacity to manage social and labor issues, including the use of external expertise to support the process. In May 2016, IFC verified the alignment of PAE's HR policy with the updated PSs. As a result of the implementation of the revised HR policy and continuous cooperative work between IFC and PAE, the Company made improvements to its organization and procedures to reduce the risk of potential negative impacts to its operations and workers. These improvements included strengthening of the grievance mechanism, implementation of measures to support the well-being of workers and enhancement of the contractor management systems.

14. The 2015 Environmental and Social Review Summary ("ESRS") specifically addressed PS2, including PAE's relationship with unions. The ESRS stated that "Contractors' employees are usually affiliated to a given union on the basis of the type of work they perform."²

² <https://disclosures.ifc.org/project-detail/ESRS/36146/pan-american-energy-2015>

15. In March 2019, during the appraisal for its investment to upgrade the refinery (Project #42169), IFC reviewed PAE's E&S management system. Throughout 2020, due to restrictions, monitoring of the Company's E&S performance was conducted through video conferences and report reviews and one-on-one engagement with workers and union representatives was not possible. Virtual supervision meetings were undertaken in March and June 2021 to review the Company's E&S performance in its upstream and downstream operations, respectively. IFC has consistently considered the three open projects currently under supervision to have a satisfactory E&S performance.

III. CAO COMPLAINT

16. In September 2020, CAO received a complaint letter from an individual who had been a worker of a PAE contractor in Cerro Dragón at the time of the 2012 violent seizure of the oil field. The individual indicated that he represented approximately ten others, who also worked for the same unnamed contractor at the time. The Complainants alleged³ that:

- They were unfairly accused by PAE of participating in the violent seizure of the Cerro Dragón field;
- They were subsequently dismissed by the contractor at PAE's request;
- PAE deprived them of their right to work and ability to work and ability to gain employment in the sector; and
- They are entitled to economic compensation from PAE under a 2019 out-of-court settlement signed by PAE (which PAE has not honored). The complaint letter also indicated the economic compensation would be financed with funds provided by IFC.

17. CAO finalized its Assessment Report in July 2021. As there was no agreement to a dispute resolution process between PAE and the Complainants, the complaint was referred to CAO's compliance function in September 2021.

IV. MANAGEMENT RESPONSE

18. This Management Response responds to the issues raised in the complaint, specifically PAE's compliance with the PSs at the project level. The following sections address each of the allegations in the complaint as reflected in the original complaint letter and summarized in the CAO Assessment Report. Responses reflect information gathered from IFC's currently active projects with PAE, discussions with the Company, public sources and other sources. Specific detail in the IFC files related to the period 2006 to 2015 and in particular to the 2012 event is limited primarily due to changes in IFC personnel and systems.

A. Seizure of Cerro Dragón Oil Field

19. The June 2012 seizure of the Cerro Dragón oil field was communicated by PAE to all of its creditors, including IFC, within days. IFC followed up with PAE to learn more about the

³ CAO Assessment Report, pg. 7 (July 20, 2021).

circumstances and to determine what, if any, actions may be required, given that a recent SSV had been conducted shortly (March 2012) before the incident.

20. IFC was informed by PAE that the seizure of the oil field originated from a broader conflict among rival union factions. The conflict was partially rooted in internal conflicts of representation of two factions of the construction union of Argentina and in differences in compensation for workers of different industrial sectors. During the protests, Company assets were destroyed, and its oil production was affected for several weeks. Both domestic and international press reported that union members openly admitted that the takeover of the Cerro Dragón facility was planned as part of the seizure but claimed damages were caused by others.⁴ The unions in conflict had a significant presence in the Chubut Province affecting O&G companies, including PAE and its contractors, several of whom were working in its Cerro Dragón field.

21. The Company informed governmental authorities at all levels—national, state/provincial and municipal—of the violent seizure and damage to property, as indicated in a press release dated June 21, 2012. As a private company, PAE can only report an incident to the authorities, and it cannot initiate criminal proceedings, as the Complainants allege. The Regional Prosecutor’s Office of Chubut Province investigated and brought indictments against some of the Complainants. IFC understands from its discussions with PAE that the judge in the criminal matter has ordered a trial and the case is still pending in Argentine court (Chubut Province).

22. In April 2014, PAE signed an agreement with the Province of Chubut and two local unions, to address labor conflicts in the area, referring amongst others to the seizure of the Cerro Dragón field in 2012. The agreement recognizes the establishment of a conflict resolution procedure through which the agreement was reached and the establishment of a permanent commission to address past and future controversies. PAE guarantees that it complies with applicable labor and social legislation and requires compliance by all contractors.

B. Wrongful Dismissal

23. The complaint raises concerns of unfair dismissal and lack of employment, which relates to compliance with PS2, as a result of PAE’s actions. IFC has confirmed that PAE followed the established process in a case like this one and reported to the authorities the significant damage done during the incident, after which the investigation and indictments were carried out by the Regional Prosecutor of Chubut Province (not by PAE).

24. PAE indicated to IFC that over 500 employees of contractors were involved in the 2012 incident, which was considered a criminal act under law, and many were indicted in provincial court as part of the judicial process. PAE also recently informed IFC that (a) the Company terminated its service contracts with the contractors who had employees involved in the incident; (b) the services were awarded to other contractors, who hired back most of the workers; and (c)

⁴ <https://www.pagina12.com.ar/diario/elpais/1-197641-2012-07-01.html>
<https://www.lanacion.com.ar/politica/dragones-nid1499757/>
<https://www.lanacion.com.ar/politica/la-violencia-solo-dejo-ruinas-en-cerro-dragon-nid1485821/>
<https://www.reuters.com/article/argentina-panamerican/update-1-strikers-leave-argentinas-biggest-oil-field-idUSL2E8I6J5Z20120706>

the individual who signed the complaint to the CAO is one of those indicted and currently awaiting trial.

25. The Summary of Investment Information for each of the projects referenced in the complaint, which describe IFC's intent to provide financing to PAE, were published on IFC's website. No external comments were received related to these projects after the making of these disclosures, nor were any complaints received by IFC from former or current workers.

26. Through reviews of PAE's contractually required Annual Monitoring Reports ("AMRs"), and through site supervision visits, which include meetings with (a) PAE's management, (b) workers, and (c) contractors, IFC evaluated PAE's E&S procedures, management plans, and environmental, social, and labor practices to review compliance with PS2.

27. Topics that have been consistently reviewed by IFC include HR policies, the workers' grievance mechanism, channels to voice complaints, labor law compliance, relationship with unions, and contractor management, including on labor issues. IFC has also followed up on ESAP items, undertaken additional checks during SSVs as needed, and worked with PAE to help the Company to develop tools and systems aligned with PS2 requirements to enable fair treatment, non-discrimination and equal opportunity for workers, and compliance with national labor laws and PS2. These actions together have contributed to fostering what IFC views as good worker-management relationships.

C. Workers' Grievance Mechanism

28. From 2007 to the present, IFC's appraisal and E&S oversight have included a focus on verifying that PAE has an effective workers' grievance mechanism ("WGM") to receive and address grievances and concerns available to direct and contractor workers, as required by PS2. IFC has also overseen the evolution of the PS2 compliant WGM to become increasingly more effective, transparent, and accessible to all workers (direct and those hired by contractors) through such efforts as digitalization and outreach.

29. Grievances are received by PAE through the following sources: (a) PAE's website; (b) mail to the address indicated for each management unit; and (c) in person at PAE's offices. Grievances can be submitted anonymously. Once received, a grievance is analyzed and forwarded to the relevant department for a response. PAE sends a note of acknowledgment to the sender (by fax, mail, or via the web), indicating the steps of its internal grievance process and the estimated date for a definitive answer. If the complaint is made verbally, the same will be registered in the grievance book, and signed by the sender and the person who registered it.

30. In addition to the dedicated WGM, PAE registers community grievances through a complaint book which is available to the general community at Company offices.

31. As part of its WGM, PAE adopted a *Protocol on the Receipt & Management of Complaints* (the "Protocol"). The Protocol specifically states that the Company will not engage in reprisals against any employee or third party who files a legitimate complaint or shares information which may lead to an investigation. Further, the Protocol states that it is a violation of PAE's internal procedures for anyone to take adverse measures against a complainant, including those who may collaborate in an investigation, and anyone found to be engaging in such behavior would be the

subject of disciplinary measures. IFC confirmed the Protocol was established, including PAE's position of protecting complainants as part of verifying compliance of the HR policy with PS2.

D. Management of Contractors

32. IFC's project appraisals confirmed that PAE's ISO⁵ 14001 certified environmental management system has helped the Company to manage the E&S risks and impacts of its operations. IFC also determined that the Company assesses the performance of its contractors based on their technical, organizational, and E&S management performance and requires all contractors to comply with national labor laws.

33. PAE's procurement department, which manages the hiring process for contractors, applies a ranking system of potential contractors based on environmental, health, and safety performance and management indicators. The procurement department also performs compliance reviews to ensure that all contractors follow PAE policies, including labor-related directives and procedures as per Argentinian labor regulations. Based on these systems and processes, IFC considers PAE's compliance with PS2 requirements related to labor and working conditions to be satisfactory.

E. Disciplinary Measures and Fair Treatment of Workers

34. IFC has regularly monitored PAE's relations with unions, including actions related to disciplinary measures and fair treatment of workers. Over the course of several investments, IFC has evaluated PAE's performance as satisfactory as to the fair treatment of workers (gender equality, non-discrimination and protection of all workers' rights, including direct and contractor employees). Notably, PAE has Collective Bargaining Agreements (which in Argentina include requirements for labor-related disciplinary measures) in place with two different unions in Chubut Province.

35. IFC notes that all new PAE employees receive written contracts, copies of the Company's policies on safety, security and Human Resources, as well as its Code of Conduct, all of which are explained through participatory sessions as part of their orientation.

36. PAE's labor management framework continues to evolve through the Company's continuous improvement process and as a result of IFC's E&S engagement. To facilitate PAE's ongoing compliance with IFC requirements, IFC will continue to supervise PAE's E&S performance and provide guidance as needed. This includes the following actions:

- (a) Continue monitoring PAE's WGM, specifically related to (a) communicating awareness of the mechanism throughout PAE's operations; (b) refinements to registering and responding to grievances; (c) confirmation that all contractors have their own grievance mechanisms, audited by PAE; and (d) contractors' workers' continued access to PAE's WGM.
- (b) Monitoring PAE's internal audit of contractors' labor and working conditions in relation to compliance with PAE's HR policies, as contractually required.

⁵ International Organization for Standardization

- (c) Continue its review of the Company's interaction with workers (direct and contractors), with a focus on disciplinary processes.

37. Independent of this complaint, IFC has recognized the need to develop further expertise and strengthen guidance on fair treatment, including prevention of retaliation and reprisals and has taken the following steps:

- October 2018: IFC released a *Position Statement on Retaliation Against Civil Society and Project Stakeholders*.
- December 2019: IFC initiated a contextual risk pilot, including a reprisals dimension, together with a program to support Lead Environmental/Social Specialists in screening of high-risk contexts and possible project-level risks.
- March 2020: IFC posted a *Good Practice Note for the Private Sector: Addressing the Risks of Retaliation Against Project Stakeholders*.
- June 2020: IFC developed a Tip Sheet for IFC clients titled *Preventing Reprisals During the Covid-19 Pandemic*.
- June 2020: IFC sent an internal communication to all its E&S staff regarding countries and sectors with high reprisal risk.
- April 2021: IFC published, jointly with IDB-Invest, practical guidance for clients on addressing reprisal risks.⁶

F. Alleged Out-of-Court Settlement

38. While PAE shared information about the incident, until the CAO complaint, IFC had not received any complaint regarding the 2012 seizure in Cerro Dragón. Following receipt of the complaint and contact with PAE, IFC was advised by the Company that it has filed a legal case of fraud against the Complainants' attorney. PAE has alleged that the lawyer forged an out-of-court settlement purportedly binding PAE to pay compensation to the Complainants (and others). PAE has confirmed to IFC (and to the Complainants) that PAE has not engaged in any discussions (much less arrived at a settlement) in this regard. PAE has confirmed their filing continues in the Argentine judicial system against the attorney.

39. IFC has not provided any financing to PAE for the alleged 2019 out-of-court settlement referenced by the Complainants. The loan agreement for IFC's financing in 2019 restricted the use of proceeds to only the completion of the multi-year upgrade at PAE's refinery.

V. CONCLUSION

40. In relation to the specific items raised in the complaint, IFC notes that: (a) some of the Complainants have been indicted in relation to the 2012 incident; (b) IFC has found no evidence of PAE's involvement in any wrongful dismissal of the Complainants by the contractor nor non-

⁶ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_reprisalrisks

compliance with the PSs; (c) the validity of the alleged settlement agreement is being challenged in court; and (d) IFC did not provide financing to PAE for payment under the alleged settlement agreement.

41. IFC understands that the 2012 incident at Cerro Dragón stemmed from an internal rivalry related to union disputes. Charges brought by the Regional Prosecutor of the Chubut Province against workers who may have been involved in the 2012 violence are still pending in Argentine court and are unrelated to PAE's compliance with the PSs.

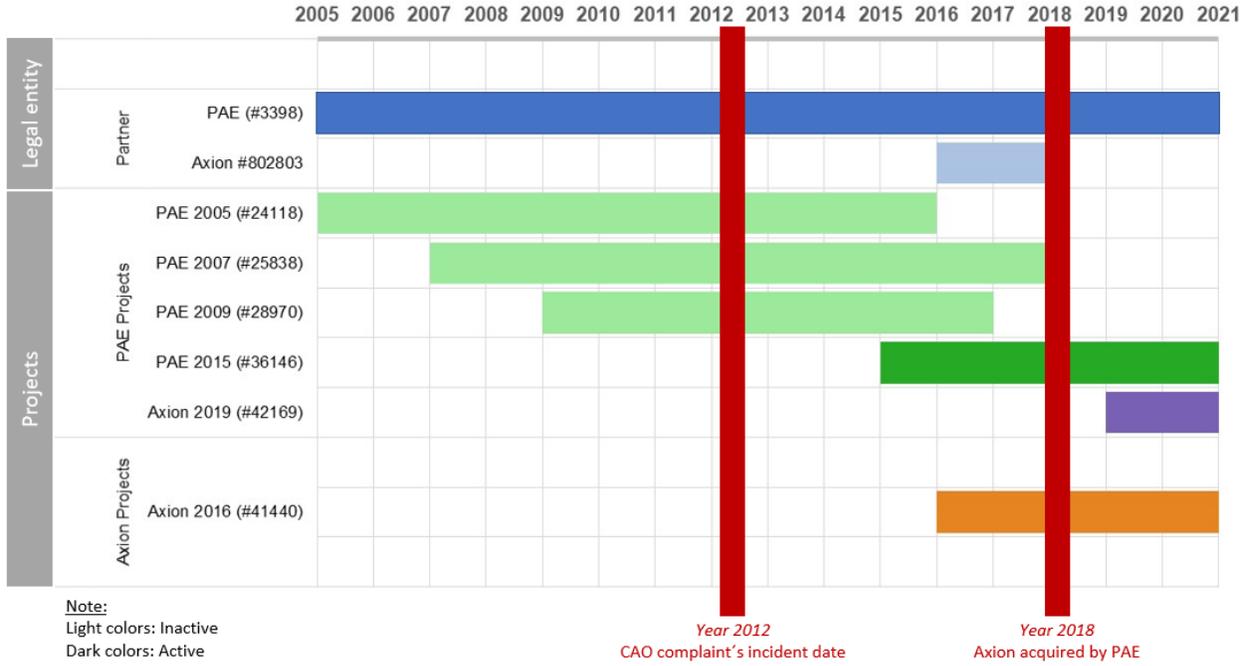
42. Regarding the allegations involving unfair dismissal and lack of employment, IFC has conducted regular appraisals, supervision, and monitoring, closely examining PAE's compliance with PS2, including implementation of its WGM. PAE's labor management system includes a well-functioning WGM that allows workers to raise concerns in a safe and confidential matter. PAE's oversight of contractors considers environmental, labor, health, and safety performance (a) during the screening and tender process to assess proponents' capacity to comply with PAE's policies; (b) during the contracting phase to ensure the contracts include requirements to align with PAE's E&S management system; and (c) during the service period through monitoring to ensure compliance. PAE's labor disciplinary measures are regulated by law in Argentina, are included in Collective Bargaining Agreements, and are applicable to unionized and non-unionized workers. PAE's management functions include a dedicated Labor Relations Specialist who is in continuous contact with union representatives.

43. The Complainants' claim that IFC provided funding to PAE in 2019 to compensate the Complainants under an alleged out-of-court agreement is incorrect. IFC has no evidence of such an agreement, and the loan for Project #42169 in 2019 includes a contractual obligation that the use of proceeds is only for the refinery located in Campana. Loan proceeds were not available for any of PAE's upstream operations.

44. Through a review of documentation of site visits and other material, consultations with current and former IFC staff/consultants and the Company's management, IFC has found PAE's labor and working conditions have consistently been in alignment with PS2.

45. Going forward, IFC will continue working with PAE to further strengthen its practices through E&S supervision activities and the implementation of the actions described above.

ANNEX 1: TIMELINE OF COMPANY'S HISTORY AND IFC'S PROJECTS



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