
Compliance Appraisal Report

Regarding Workers' Complaint about IFC's Investments in Indorama Eleme Fertilizer and Chemicals Limited, Nigeria

About CAO

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

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

About the Compliance Function

CAO’s compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO’s compliance function follows a three-step approach:

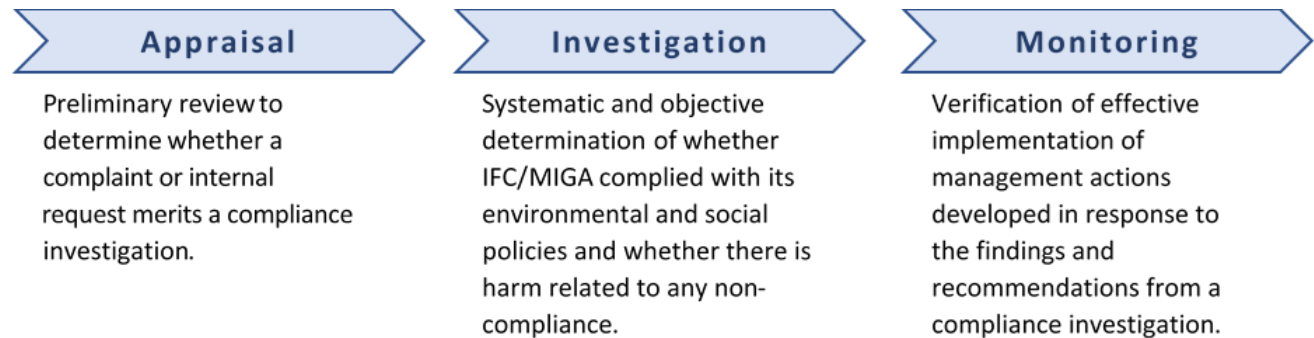


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Acronyms

CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CAP	Corrective Action Plan
CBA	Collective Bargaining Agreement
CSO	Civil Society Organization
DG	Director General
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
FCS	Fragile and Conflict-affected Situation
FCV	Fragility, Conflict, and Violence
IDA	International Development Association
IEFCL	Indorama Eleme Fertilizer & Chemicals Limited
IFC	International Finance Corporation
MAP	Management Action Plan
MIGA	Multilateral Investment Guarantee Agency
MR	Management Response
PPE	Personal Protective Equipment
PS	IFC Performance Standards
PS1	Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
PS2	Performance Standard 2: Labor and Working Conditions
SSV	Site Supervision Visit
WBG	World Bank Group

Executive Summary

This compliance appraisal report documents CAO’s preliminary review of a complaint submitted on behalf of contractor employees who worked for the Indorama Eleme Fertilizer & Chemicals Limited at a fertilizer facility in Port Harcourt, Nigeria. The complaint raised concerns about labor and working conditions affecting contractor workers at the facility. However, CAO did not identify preliminary indications of IFC non-compliance with its E&S Policies and therefore has decided not to initiate a compliance investigation.

IFC Investment

In 2010, Indorama Corporation established a subsidiary, Indorama Eleme Fertilizer & Chemicals Limited (IEFCL/the company), to develop and operate a nitrogenous fertilizer facility at a site in Port Harcourt, Nigeria, owned by Indorama. In 2012, IFC approved a loan package to finance this development, and in 2018 and 2024, IFC provided additional finance for the facility’s expansion.

The Complaint

In November 2023, CAO received a complaint from contract workers raising the following concerns about conditions at the fertilizer facility:

- **Labor and working conditions:** Concerns related to fair salary, implementation of the site’s collective bargaining agreement (CBA), and handling of worker grievances
- **Occupational health and safety:** Unsafe working conditions including lack of personal protective equipment
- **Unfair termination:** The lead complainant alleges he lost his job in retaliation for fulfilling his duties as the union chair.

Summary of IFC Response

IFC Management acknowledges that the labor issues raised in the complaint are serious but notes that IFC implemented an action plan from June 2022 to July 2023 with the company in response to a prior CAO case about the same site. The action plan focused on ensuring the company met its labor commitments under Performance Standard 2 (PS2), particularly regarding fair treatment of workers and their ability to raise grievances without any retribution. A third-party consultant hired by IFC confirmed the plan’s implementation during two rounds of monitoring.

IFC also states that its ongoing supervision of the company in terms of labor issues has been appropriate, and there are no preliminary indications of IFC noncompliance with its E&S policies that would merit a second compliance investigation of labor issues. IFC maintains that the company has implemented sufficiently robust processes and procedures for subcontractor management and has implemented the collective bargaining agreement as intended. As a result, IFC has no reason to believe that the concerns raised are systemic in nature, and it is IFC’s view that the issues raised in the current complaint have been adequately addressed.

CAO Analysis

The purpose of the CAO appraisal process is to determine whether a complaint merits a compliance investigation. CAO applies the following criteria in determining whether a compliance investigation is necessary: (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 (CAO Policy, para. 91). Based on an initial review of available information, CAO concludes that not all three criteria have been met. Specifically, CAO concludes:

a) Preliminary indications of harm to the complainants

CAO concludes there are preliminary indications of Harm or potential Harm to contractor workers related to some complaint issues, on the basis of complainant testimony of harm and additional documentation received during the CAO Assessment phase. The relevant complaint issues include delays in salary payments, pension contributions, excessive overtime hours, provision of adequate PPE, and termination of employment.

b) No preliminary indications that IFC may not have complied with its E&S Policies

During investment supervision, IFC was required to obtain information to assess its client’s compliance with the requirements of PS2: Labor and Working Conditions. In turn, Indorama Eleme Fertilizer & Chemicals was required both to ascertain that its contractor applied PS2 requirements to its workers and to establish policies and procedures for managing and monitoring PS2 application by contractor firms. CAO’s review of available documentation indicates that the company established a forum to supervise contractor PS2 implementation. Where the IFC consultant subsequently found gaps, IFC supervision documents show implementation of measures to address these gaps.

Regarding the complainants’ labor concerns, CAO’s review of available documentation, including third party assessments commissioned by IFC, indicates that IFC has adequately supervised the company in relation to the issues raised. In some instances, workers have previously raised similar issues to those in the complaint via the company’s Workers Grievance Mechanism, and IFC’s supervision records confirm that its client implements a WGM that applies relevant PS2 standards, including to contract workers. Other issues raised in the complaint (salary tax treatment, housing allowance, dry rations, and medical coverage) either do not present a compliance issue or are requests for changes to the collective bargaining agreement.

In relation to occupational health and safety, an IFC client is required to provide a safe and healthy work environment. As necessary, this includes taking into account inherent risks in its sector and hazards relevant to its business activity and providing adequate personal protective equipment (PPE). Based on IFC’s supervision documentation, CAO notes that the third-party consultant reached a positive view on the company’s OHS systems and PPE provision after conducting a site walk-through and interviews with staff. Given available information, CAO has not identified a preliminary indication of IFC non-compliance of its supervision of OHS.

Regarding the complaint’s concerns over unfair termination, IFC has a responsibility to ascertain that a client who relies on contractors for core business activities assures the contractor has a fair termination procedure in place. While it is not IFC’s role to review individual terminations, the dismissal of a worker representative raises the bar for IFC to ensure the procedure was followed and the rationale was in line with the company’s and contractor’s disciplinary procedures. In this case, IFC asked a third-party consultant to review the termination, which concluded that due procedure was followed but could not reach a view on termination rationale.¹ In the absence of additional evidence of retaliatory actions by the company against union officials, or evidence of inadequate IFC action in response, CAO does not find preliminary indications of IFC non-compliance on this issue. However, CAO notes that both complaints it has received about this IFC client raise concerns about worker intimidation and retaliation. While IFC has taken action to ensure the company implements anti-retaliation measures, CAO considers that it would be prudent for IFC to commission a worker perception study and for its ongoing monitoring of the client to ascertain whether there are additional instances of the company disciplining worker representative employees.

c) The alleged harms to the complainants are not plausibly linked to potential non-compliance in IFC’s application of its E&S standards

While CAO concludes that there are preliminary indications of Harm or potential Harm to contractor workers at the fertilizer facility, based on available evidence CAO has not found preliminary indications that IFC may not have complied with its E&S Policies. Consequently, CAO concludes that the alleged Harm is not plausibly linked to any potential non-compliance, as no potential non-compliance has been identified.

CAO Decision

CAO concludes that the complaint does not meet the criteria for a compliance investigation.

This appraisal report is published on the CAO website and shared with the Board, the World Bank Group President, IFC Management, the company, and the complainants.

¹ IFC Management Response, June 2024

1. Introduction

This section provides a summary of IFC’s direct investments in Indorama Eleme Fertilizer and Chemicals Limited (IEFCL or the company), and a summary of CAO’s compliance appraisal process, scope, and methodology for this case.

1.1 IFC Investment

In 2010, Indorama Corporation established Indorama Eleme Fertilizer & Chemicals Limited for the purpose of developing and operating a nitrogenous fertilizer facility at a site it owned in Port Harcourt.² The Indorama Corporation operates a petrochemical facility at the same site.

In 2012, IFC approved a loan package to IEFCL to build the fertilizer plant. This included a US\$150 million loan from IFC’s own account, US\$75 million in syndicated loans, and US\$150 million mobilized from several other development finance institutions.³ The fertilizer facility was commissioned in June 2016 and the loan repaid in February 2024.⁴

In June 2018, IFC agreed to finance the company’s expansion of its fertilizer facility (‘Line II’). This package consisted of: a loan of US\$120 million from IFC’s own account; a US\$50 million loan with IFC acting in its capacity as implementing entity for the Managed Co-Lending Portfolio Program (MCP); and up to \$850 million in syndicated loans.⁵ In March 2024, IFC financed further expansion at the facility (‘Line III’) in the form of: a loan of US\$215.5 million from its own account; (b) US\$94.5 million in MCP loans; and US\$940 million in syndicated loans.⁶

1.2 Compliance Appraisal Scope and Methodology

In November 2023, CAO received a complaint from contract workers raising labor and occupational health and safety concerns about the fertilizer facility. After the parties failed to reach agreement on a CAO-supported dispute resolution process, the complaint was referred to CAO’s compliance function for appraisal in May 2024.

The scope of this compliance appraisal⁷ is limited to issues raised in the complaint and CAO’s Assessment Report.⁸ A CAO appraisal involves a preliminary review of available information. It does not lead to any definitive assessments or findings of harm or IFC non-compliance.⁹ CAO

² Bloomberg, Indorama Eleme Fertilizer and Chemicals Ltd Available at <https://bloom.bg/2zqs73u>. Indorama Corporation has majority ownership and control of IEFCL.

³ IFC Disclosure, Summary of Investment Information, project number 30967. Available at <http://bit.ly/2OydgFS>

⁴ IFC Disclosure, Summary of Investment Information, project number 42187. Available at <http://bit.ly/2RdTrdH>. IFC Management Response to CAO Complaint on Indorama Eleme Fertilizer and Chemical Limited, Nigeria. June 13, 2024

⁵ IFC Disclosure, Summary of Investment Information, project number 40420. Available at <http://bit.ly/2GGN6Da>. CAO Assessment Report, February 2019. Available at <http://bit.ly/33nkM2i>.

⁶ IFC Disclosure, Summary of Investment Information, project number 47723. Available at <https://bit.ly/4fmvWJS>

⁷ CAO Policy, para. 88.

⁸ CAO. 2024. CAO Assessment Report Regarding a Complaint Received in Relation to IFC’s investments in Eleme Fertilizer-02, Nigeria, available at: <https://bit.ly/4dnd0sw>

⁹ CAO Policy, para. 94.

made the appraisal decision based on the appraisal criteria and other relevant considerations in accordance with the CAO Policy.¹⁰

The appraisal involved a preliminary review of the following information:

- Documentation related to the complaint, CAO’s Assessment Report, and IFC’s Management Response to the complaint
- Available IFC and company documentation on the project pre-investment E&S due diligence and implementation of E&S requirements
- Additional documentation provided by the complainants, the company, and the IFC project team
- Relevant public reports, academic literature, and media reports.

CAO previously conducted a compliance process into a 2018 complaint about IFC’s investment in Indorama Eleme Fertilizer and Chemicals Limited. This circumstance triggered a CAO policy provision which requires CAO to consider whether this complaint presents new issues or new evidence. CAO’s view on this is described in sections 2.4 and 2.5.

CAO extends its appreciation to all parties who have shared their perspectives, knowledge, and time with the compliance team.

2. The Complaint

The complaint to CAO raises a series concerns regarding (a) labor and working conditions; (b) occupational health and safety; and, (c) unfair termination. As noted earlier, the complainants work for subcontractors employed by the fertilizer company, and are therefore not directly employed by the IFC client.

2.1 Labor and Working Conditions

Salary and benefits: The contractor complainants raise concerns about the following:

- Fairness of current wages in the context of the Nigerian economy
- Delays in salary payment date
- Deductions in union dues not being received by the branch union
- Inclusion of benefits in their salary such as housing, transport, dry rations, and overtime, leading to these items being taxed (the complainants claim they are non-taxable).

¹⁰ CAO Policy, paras. 96-97.

- **Housing:** Contractor workers receive a monthly allowance but state in the Nigerian context they should instead receive an annual lump sum upfront of rent payment. They therefore advocate for an annual housing allowance payment.
- **Dry rations:** They claim the monetary allowance of 2,500 Naira they receive is not sufficient. They would prefer receiving rations to a monetary allowance.
- **Medical coverage:** The medical benefits they receive are less beneficial than those provided to the company’s direct employees.

The complainants advocate for the company to pay salary directly to them rather than through the subcontractor.

Pension: The complainants state that each employee and their employer are mandated under Nigerian law to make contributions to a retirement savings account. The complainants report irregularities in the company’s implementation, noting that some complainants have experienced extended periods without any deposit into their retirement saving account.

Working hours: The complainants allege that they work hours beyond the legal requirements of Nigerian labor law and the terms of the contractor Collective Bargaining Agreement (CBA). Specifically, they claim to have worked 12-hour shifts for five consecutive days, which they assert is mandatory and contrary to regulations stipulating two days of rest for every two days of 12-hour shifts. They also raise concerns with how overtime payments are calculated, noting inconsistencies in pay across different months.

Promotion: The complainants perceived a lack of opportunities for promotion from contract worker status to regular staff positions at Indorama. They state that they have not been given a pathway to advancement and note some instances where younger and less-qualified individuals are promoted ahead of longer-serving contract employees. They also state that, under Nigerian law, contract workers must be regularized after a certain period of continuous employment.

Employment letters: The complainants assert that many of them have not signed an employment contract, and they report the absence of formal employment documentation. They note that when they raise this issue with their subcontractor employer, some complainants have received documentation but assert that these documents do not serve as proof of employment by Indorama.

Intimidation and retaliation: The complainants described a pervasive atmosphere of intimidation and retaliation within the workplace by both Indorama and its subcontractors. They allege that when they raise grievances, they are met with threats and reprisals. They note that if they miss a work day, deductions from their wages exceed the amount corresponding to the absence. They also allege coercion and intimidation tactics aimed at preventing them joining a union, and state that a separate union was set up for contract workers employed as drivers which they see as a tactic to fragment the workforce.

Grievance Mechanism: The complainants shared their frustrations with the existing grievance procedures, noting that despite utilizing available channels their concerns remain unaddressed.

2.2 Occupational Health and Safety (OHS)

The complainants shared their concerns regarding workplace safety conditions. They allege that IEFCL offers limited PPE provision and that where it is provided it, it wears out. In particular, they claim the company provides inadequate masks for working with gaseous ammonia, exposing them to potential inhalation risks. As a result, they often resort to purchasing their own PPE.

2.3 Unfair termination

The lead complainant alleged that his termination was an act of retaliation for fulfilling his duties as chair of the contract workers’ union. He asserted that he had been in communication with Indorama’s Human Resources (HR) management team regarding non-compliance with the terms of the CBA and the challenging working conditions faced by contract workers. When his efforts to facilitate change were unsuccessful, he recorded a video of the working conditions and shared it via WhatsApp with Indorama HR management. He alleges that his termination process was flawed as elected worker organization representatives did not participate in the proceedings.

2.4 Prior CAO compliance case and CAO Policy provision

In April 2018, 134 employees of the IFC client Indorama Eleme Fertilizer & Chemicals filed a complaint with CAO¹¹, citing concerns about labor and working conditions and use of security forces. Specifically, complainants raised salary and welfare issues, discrimination between expatriate and Nigerian employees, health and safety hazards, lack of freedom to join worker trade unions, and an inadequate employee healthcare plan. The complaint also alleged that a worker protest in July 2017 led to violent treatment by company security and the Nigerian military, and that IEFCL subsequently initiated disciplinary procedures against seven employees, dismissing three of them. The complainants argued that these actions constituted retaliatory measures designed to dissuade employees from raising concerns about their working conditions.

In December 2019, CAO completed a compliance appraisal report of this complaint. CAO decided not to proceed with an investigation of salary and welfare issues, discrimination between expatriate and Nigerian employees, health and safety hazards, lack of freedom to join worker trade unions, and inadequate employee healthcare plan. However, CAO did proceed with an investigation of IFC’s response to allegations that the company had taken a retaliatory approach to workers who had raised grievances.

CAO’s investigation report, published in September 2021, found that IFC did not take sufficient action to assure itself that the client’s actions reflected PS2 commitments to “fair treatment” of workers and met the requirement that workers could raise grievances “without any retribution”. In response to this finding, IFC committed to work with the company to assess the worker grievance mechanism and implement corrective actions. IFC commissioned an assessment by a third-party

¹¹ For details of this CAO case are available here: <https://bit.ly/46lj8bE>

consultant, developed a series of action items for IEFCL to implement, and confirmed their implementation via two rounds of monitoring by a third-party consultant.

CAO closed this first complaint in May 2024 after CAO monitoring confirmed the company had updated its employee policies on the handling of anti-retaliation concerns, and had provided anti-retaliation training. As these anti-retaliation provisions had not yet been used by employees, CAO did not reach a determination about the effectiveness of their implementation.

2.5 CAO Policy provision for additional complaints about an IFC investment

The CAO Policy (para. 93) provides that CAO may initiate a new compliance investigation only where the complaint raises new issues or new evidence is available.

There are material differences between the April 2018 CAO complaint and the complaint subject to this compliance appraisal. Namely:

- The first complaint was submitted by direct employees and the second complaint by contract workers. CAO’s compliance reports in relation to the first complaint do not consider IFC’s review and supervision of the company’s management and monitoring of the application of PS2 by contractor firms.
- The complaint to CAO raises concern from contract workers in relation to issues that occurred primarily post 2019. For example, a core concern for these complainants is the adequacy and implementation of the 2022 Collective Bargaining Agreement for contract workers. This is both a new issue (contract workers agreement) and new evidence as it post-dates CAO’s 2019 compliance appraisal decision.

In addition, since CAO decided not to proceed with an investigation in December 2019 in relation to employee concerns about labor and working conditions and occupational health and safety, CAO’s compliance function has not reviewed IFC’s performance in relation to these issues.

Where there is similarity between the first and second complaint:

- CAO’s 2021 compliance investigation of the first complaint, and IFC actions in response (2021-2023), focus primarily on the company’s disciplinary procedures and grievance handling. As the company applies its grievance handling to both direct and contract workers, there is convergence on this issue between the first and second complaints.

3. Summary of IFC Management Response

In its Management Response,¹² IFC Management acknowledges that the labor issues raised in the complaint are serious and that it respects CAO’s process in assessing the complaint. IFC notes that CAO’s compliance function handled the prior complaint raising similar labor and working conditions, and describes its response to the prior CAO case. This involved IFC

¹² See Appendix B. IFC’s Management Response (June 13, 2024).

implementing an action plan from June 2022 to July 2023 with the company to ensure the client’s treatment of workers reflected Performance Standard 2 commitments, particularly fair treatment and the ability to raise grievances without any retribution. IFC noted that it hired a third-party consultant to assess the company’s management of worker grievances and measures to prevent retaliation against workers. This consultant confirmed the client’s implementation of the action by conducting two rounds of monitoring.

IFC’s Management Response summarized each issue raised in the current complaint and presents IFC’s view. In summary:

- (a) **Labor and working conditions:** IFC states that, through its ongoing supervision, it has reviewed each of these issues and has not identified evidence of non-compliance with relevant labor requirements, including the CBA.
- (b) **Occupational health and safety:** IFC notes that its ongoing supervision of the client has not identified any non-compliances in relation to workplace health and safety. IFC’s April 2024 supervision report records that various PPE distribution registers were reviewed and no concerns noted. IFC also affirms that the company has established safety management systems that align with good international industry practice (GIIP) and implements an ongoing medical surveillance program to identify occupational diseases.
- (c) **Unfair termination:** In response to the termination of the lead complainant, IFC requested the independent lender’s advisor to conduct an assessment of the case, which determined that due procedure was followed.

IFC contends that its ongoing supervision of longstanding client Indorama Eleme Fertilizer & Chemicals in relation to labor issues is appropriate. Together with the action plan implemented in response to the first complaint, IFC states its view that there are no preliminary indications that IFC may not have complied with its E&S policies that would merit a second compliance investigation on labor issues. IFC further maintains that the company has implemented sufficiently robust management processes and procedures in relation to subcontractor management, and has implemented the CBA as intended. As a result, IFC has no reason to believe that the concerns raised are systemic in nature. Based on the above, it is IFC’s view that the issues raised in the complaint have been adequately addressed and, where gaps were identified, IFC has followed up with the company as part of its ongoing supervision.

IFC further notes that CAO Policy (Para. 93) stipulates that CAO may initiate a new compliance investigation only where the complaint raises new issues or new evidence is available. IFC notes that as the second complaint raises labor issues that overlap with the first compliance investigation for which IFC implemented an action plan, there is not a basis for CAO to initiate a second compliance investigation.

4. CAO Analysis

This section presents CAO’s analysis of the three appraisal criteria required to determine whether to initiate a compliance investigation.¹³ These criteria are:

- Whether there are preliminary indications of Harm or potential Harm
- Whether there are preliminary indications that IFC may not have complied with its E&S Policies
- Whether the alleged Harm is plausibly linked to the potential non-compliance.

Based on the analysis below, CAO concludes that this 2023 labor complaint regarding IFC investments in Indorama Eleme Fertilizer & Chemicals does not meet the second and third criteria for a compliance investigation.

4.1 Analysis of Preliminary Indications of Harm or potential Harm

A CAO compliance appraisal is required to consider whether a complaint raises “preliminary indications of Harm or potential Harm.”¹⁴ The CAO Policy defines harm as “Any material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future.”¹⁵ A preliminary indication of Harm, determined at the appraisal stage, is present when CAO’s initial review of available information generates a plausible or credible concern that harm has happened or is reasonably likely to occur. It is not equivalent to a finding of harm, which may only result from a compliance investigation.¹⁶

CAO concludes there are preliminary indications of Harm or potential Harm related to some of the issues raised in the complaint. CAO reaches this preliminary conclusion on the basis of complainant testimony of harm and additional documentation received during the CAO assessment phase. Specifically, there are preliminary indications of Harm or potential Harm in relation to (i) delays in salary payments, (ii) delays in pension contributions, (iii) adequate and consistent use of PPE, (iv) working excessive overtime hours, and (v) the termination of employment.

Each of these issues, if confirmed, has the potential to result in a material adverse E&S effect on a person resulting directly or indirectly from an IFC-financed project. In relation to issues (i)-(iii), CAO notes that a review of IFC and client documentation records the existence of these issues and actions the company has taken to address them. Nonetheless, the existence of these issues, and the fact that there are PS2 standards designed to protect against them, raises preliminary indications of Harm. In relation to (iv), CAO notes IFC’s Management Response regarding IFC

¹³ CAO Policy, para. 91.

¹⁴ CAO Policy, para. 91.

¹⁵ CAO Policy, glossary.

¹⁶ In this regard, para. 94 of the CAO Policy establishes that “the appraisal process does not lead to a definitive assessment of IFC/MIGA’s compliance with its E&S Policies or related Harm. CAO may make these assessments only in the context of an investigation.”

concern that contract workers are working excessive overtime hours. In relation to issue (v), the fact that the complainant was terminated is not contested. Loss of one’s employment is considered a preliminary indication of Harm to the complainant.

4.2 Relevant IFC E&S Policy Requirements

4.2.1 IFC Sustainability Framework and procedural requirements

IFC made its investment in the company under the 2012 Policy on Environmental and Social Sustainability (Sustainability Policy), which is binding on IFC, and the Performance Standards (PS), which are client requirements, together referred to as the Sustainability Framework. 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

Prior to investment, IFC’s role is to assess client E&S policy and performance, “identifying any gaps therewith, and corresponding additional measures” required to meet IFC standards.¹⁸ During supervision IFC is required to obtain information to “assess the status of project’s compliance with the PS and other specific E&S requirements agreed at commitment.”¹⁹ In the event of client non-compliance with IFC E&S requirements, IFC is required to “work with the client to bring it back into compliance, and if the client fails to reestablish compliance, IFC [is required to] exercise its rights and remedies, as appropriate.”²⁰

4.2.2 Applicable Performance Standards requirements

The following Performance Standards are particularly relevant to this complaint:

PS 1: Assessment and Management of Environmental and Social Risks and Impacts

IFC clients are required to identify and evaluate project-related E&S risks and impacts, and to avoid/minimize such risks and impacts. In order to support this, IFC clients are required to establish and maintain an E&S Management System (ESMS) appropriate to the nature and scale of the project and commensurate with the level of its environmental and social (E&S) risks and impacts. The identification of risks and impacts and the application of mitigation measures should include contractors over which the client has control or influence.²¹

PS 2: Labor and Working Conditions

Where an IFC client utilizes contracted workers, the client is required to ascertain that PS2 requirements are applied by the contractor firm to contracted workers (with the exception of PS2 Retrenchment and Supply Chain requirements – which are not relevant to this CAO complaint).

¹⁷ IFC, 2012, Sustainability Policy, para. 7.

¹⁸ IFC, 2012, Sustainability Policy, para. 28.

¹⁹ IFC ESRP 6, para. 1.

²⁰ Sustainability Policy, para. 24.

²¹ IFC PS1, para. 5, 8 and 14.

IFC requires clients to establish policies and procedures for managing and monitoring PS2 application by contractors. Relevant to the issues raised in this case, the IFC client should ensure the following PS2 requirements are met by the contractor firm:²²

- Adopt and implement human resources policies and procedures consistent with PS2 requirements and national law. These must comply with national law that recognizes workers’ rights to form and join workers’ organizations of their choosing without interference and to bargain collectively. IFC clients and contractors must not discourage workers from electing worker representatives, forming or joining workers’ organizations of their choosing, or bargaining collectively, or discriminate/retaliate against workers who participate in such organizations and collective bargaining. PS2 requires IFC clients and contractors to base their employment relationship with workers on the principle of equal opportunity and fair treatment, and to provide reasonable working conditions and terms of employment. Contractors must provide a clear and safe WGM channel for workers to raise concerns which will be addressed expeditiously and fairly without reprisal. Where a contractor firm is not able to provide a WGM, the IFC client will extend its own grievance mechanism to serve contracted workers.²³
- Provide a safe and healthy work environment, taking into account inherent sector risks and hazards relevant to the client’s business activity. IFC clients must take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work. Where it is not feasible to completely eliminate a hazard, a client should take appropriate protective measures including provision of adequate personal protective equipment at no cost to the worker. As relevant, the client should document, and report occupational injuries and illnesses and worker monitoring data (such as exposure levels and health testing) should be retained and reviewed. IFC clients are required to extend a safe and healthy work environment to contracted workers. Contract specifications for contractors providing workers should include provisions that meet the client’s own OHS requirements, and clients should monitor contractor performance on these requirements and suggest corrective actions if necessary.²⁴
- “Base the employment relationship on the principle of equal opportunity and fair treatment, and do not discriminate with respect to any aspects of the employment relationship, such as... termination of employment or retirement, and disciplinary practices.” PS2 also requires clients to not “discriminate or retaliate against workers who participate, or seek to participate, in [workers’] organizations and collective bargaining.”²⁵

4.3 Analysis of Preliminary Indications of IFC E&S Policy Non Compliance

A compliance appraisal must consider whether there are “preliminary indications that IFC may not have complied with its E&S Policies.”²⁶ Based on a review of IFC supervision of Indorama Eleme Fertilizer & Chemicals and additional documentation received during CAO assessment and

²² IFC PS2, para 24-26

²³ IFC PS2

²⁴ IFC PS2, para 23 and IFC PS2 Guidance Notes 76-83

²⁵ IFC PS2, para 15

²⁶ CAO Policy, para. 91.

compliance appraisal, CAO does not find any preliminary indications of IFC non-compliance with its E&S Policies.

This section first summarizes of IFC’s requirement to assure itself that the company has in place policies and procedures for managing and monitoring the application of PS2 by contractor firms. It then presents summary analysis of CAO’s appraisal in relation to each complaint issue.

4.3.1 IFC’s review and supervision of PS2 contractor oversight requirements

IFC is required to assure itself that the company has established policies and procedures for managing and monitoring PS2 application by contractor firms. As part of IFC’s 2018 investment to support the Line II fertilizer facility expansion, IFC required IEFCL to: i) develop a procedure to select contractors that includes labor compliance issues; ii) include provisions in the contractors’ contracts that requires compliance with the company’s human resources policies and procedures, national law, and PS2; and iii) monitor the performance of contractors.

IFC documentation notes that it received a copy of the company’s Procedure for Selection of Contractors. At various points, two separate third-party consultants reviewed IEFCL’s management and monitoring of PS2 application by contractor firms. Where these consultants identified gaps in the company’s approach, corrective action plans were developed. Subsequent monitoring by one of the third-party consultants concluded that the company implemented the corrective measures. Furthermore, IFC’s supervision documentation has not raised concerns about the client’s Contractor Management Cell, which has oversight of all contractor activities, including payment of salaries and benefits, and union deductions.

4.3.2 IFC review and supervision of labor and working conditions

The complainants’ salary and pension concerns (fairness of wages in Nigerian context, salary payment dates, contributions to pensions, union deductions, and tax treatment of allowances), are relevant to IFC’s role in ascertaining the client’s PS2 compliance. Based on a preliminary review of IFC documentation, CAO notes that IFC verified that contractor salaries are in accordance with national law and that the company transferred union dues to the relevant trade union. Regarding allegations of late payment of salaries and contractor contributions to pensions, CAO notes that this issue has been raised in the past by contractor workers via the Workers Grievance Mechanism (WGM), which documents actions the company has taken to this point. CAO does not view this issue as a systemic and persistence challenge that the company has failed to address, and therefore has not considered IFC supervision responsibility beyond IFC’s assurance that the WGM is operating. Regarding the complainants’ assertion that certain allowances workers receive should be non-taxable, CAO understands that Nigerian Law was amended in 2011 with the effect that such allowances are now taxable.²⁷

Working Hours: CAO notes that the CBA (2022) regulates hours for contract staff with the company operating two 12-hours shifts each day. Where workers are requested to work beyond

²⁷ For further details see PWC Nigeria (2011), Update on Personal Income Tax (Amendment) Act 2011, available at <https://bit.ly/3YtQday>

normal working hours (Monday to Friday, 08:00-17:00), the CBA provides for an overtime rate. The agreement does not define a rest period between work shifts, but such rest periods are mandated under the Nigerian Labor Act (2004).²⁸ IFC records note that during its supervision activity in 2024 IFC ascertained that some contract workers were working excessive overtime hours and that the client needed to determine a reasonable limit on overtime hours considering the nature of the work and potential consequences of physical and mental fatigue.²⁹ IFC confirmed to CAO that the Company has committed to review this issue with relevant contractors. Accordingly, at this time, this does not present a preliminary indication of IFC noncompliance since IFC exercised its supervisory obligations in addressing the overtime concern with its client.

Promotion: The company confirmed to CAO that it has an Equal Employment Opportunity (EEO) policy and offers training to contractor workers to enhance their skills. IFC stated that during ongoing supervision it has not identified any evidence of discrimination or unfair practices in relation to promotions. CAO notes that the Company’s EEO policy includes provisions to protect against discrimination, and finds no preliminary indication of IFC non-compliance in relation to its supervision of this issue.

Employment Letters: Indorama Eleme Fertilizer & Chemicals requires contractor firms to issue appointment letters to contract workers and IFC affirms that its client monitors this requirement via its Contractor Management Cell (CMC). However, IFC noted it is not able to verify every contractor’s appointment letter. CAO reviewed the workers’ grievance logs for the plant and notes that contract workers have raised this issue through the company’s WGM, and that IEFCL has documented the actions it has taken in response and has implemented CMC oversight on this issue. As a result, CAO finds that this issue does not raise a specific IFC supervision responsibility beyond IFC’s assurance that the WGM and CMC are operating.

Intimidation and Retaliation: This issue was previously raised in the 2018 complaint, when employees of the IFC client claimed that workers were transferred and their employment terminated after advocating for their rights. CAO’s compliance investigation found that IFC’s response to these concerns was insufficient, while concluding that available evidence was insufficient to make findings of adverse outcomes in relation to the complainants’ allegations.

In response to this prior case, IFC worked with its client to update its policies and procedures to ensure an explicit approach to anti-retaliation policies and procedures and enhance awareness and understanding among workers and management. IFC’s third-party consultant subsequently concluded that the company had demonstrated implementation of these measures. The consultants interviewed a wide range of parties, including worker representatives.

CAO is concerned that both complaints over a long time period raise concerns that workers at the fertilizer facility face threats and reprisals for advocating workers’ rights. However, CAO acknowledges that IFC acted to enhance the company’s approach to grievance handling and anti-

²⁸ For further details, please see Nigeria Labor Act (2004) available at <https://bit.ly/3WxbbCy> . Further, Nigerian labor law and the CBA does not set a maximum for overtime. ILO Hours of Work (Industry) of 1919, article 4, indicates maximum hours of work shall not exceed 56 in a week on average.

²⁹ IFC Management Response, June 13 2024.

retaliation protections following the 2018 complaint, and that during subsequent supervision IFC confirmed implementation of these measures, including through discussions with worker representatives. Absent a workers perception survey, IFC’s supervision to date has broadly confirmed implementation of anti-retaliation measures. Based on available evidence, CAO concludes that there are not preliminary indications that IFC may not have complied with its E&S Policies.

Workers Grievance Mechanism: CAO’s compliance investigation of the 2018 complaint reviewed this issue in relation to direct employees and identified material gaps in IFC’s supervision. In response, IFC committed to commission a third-party consultant to review the company’s WGM. Following this review, the company committed to implement improved implementation procedures, awareness-raising among workers and management about the grievance process, training and capacity building, and monitoring and evaluation. IFC’s third-party consultant subsequently confirmed that the client implemented these measures.³⁰

The WGM remains relevant to this case as the IFC client extended its grievance mechanism to contract workers. IEFCL continues to report on implementation of its workers grievance mechanism for both employees and contract workers, including the handling of contract worker complaints and actions taken in response. In the absence of a more detailed review of a sample of contract worker complaints, CAO has not identified preliminary indications of IFC E&S policy non-compliance.

Other Labor and Working Conditions Issues: Based on CAO’s preliminary review, complainant concerns related to housing allowance, dry rations, and medical coverages do not present obvious PS2 requirements for which IFC should assure itself of client implementation. These issues are provided for in the CBA (2022), and the complainants have not contested their implementation but rather advocated for improvements to the CBA provisions.

4.3.3 IFC review and supervision of occupational health and safety

In response to the complainants’ OHS concerns, including alleged lack of PPE, the company asserts that it implements a safe working environment via periodic inspections, effective health, safety, and environment programs, and well-defined procedures on the use of PPE and its replacement in cases of damage. IEFCL asserts that it procures all PPE used within its facility and that any concerns about damaged equipment are promptly addressed. IFC states that its ongoing supervision has not identified any non-compliance in relation to health and safety in the workplace. It notes that the client implements an ongoing medical surveillance program to identify occupational diseases (respiratory illnesses, noise induced hearing loss, muscular skeletal ailments etc.), and allocates PPE in line with existing standard operating procedures. CAO notes that a third-party consultant commissioned by IFC reached a positive view on the Company’s OHS systems and provision of PPE based on a walk-through of the company’s facilities and interviews with staff.

³⁰ IFC Management Progress Report on Implementation of the Management Action Plan, September 2022. Available at <https://bit.ly/46lj8bE>

Based on a review of available information, CAO has therefore not identified a preliminary indication of IFC non-compliance with its supervision of OHS requirements.

4.3.4 IFC review and supervision of unfair termination

For investments where a client relies on contractors for core business activities, IFC has a responsibility to ascertain that the company has assured itself that its contractor has a fair termination procedure in place. While it is not IFC’s role to review individual terminations, the dismissal of a worker representative raises the bar for IFC to ensure that the correct procedure was followed, and the rationale for dismissal was in line with the company’s and contractor’s disciplinary procedures.

In August 2023, the lead complainant was notified of a query for gross misconduct and called to a Company Disciplinary Committee (CDC) comprised of three management and two union representatives. Following this meeting, in September 2023, he was told that his employment was terminated. The company noted that the complainant had an opportunity to challenge the decision through the branch union, zonal union, national union, Ministry of Labor, and National Industrial Court, but did not challenge the decision through these forums.

IFC subsequently asked a third-party consultant to review the termination. The consultant concluded that the company followed due procedure for the termination but could not reach a view on termination rationale.³¹

CAO considers that aspects of this particular termination raise flags. The individual dismissed was a worker representative who was actively raising labor and working condition concerns and the third-party consultant could not form a view on whether or not the company’s termination rationale could be substantiated. As an investor, it is difficult for IFC to ascertain whether a single termination is retaliatory. IFC has taken action to review this incident, and while the review is not conclusive, IFC’s ability to further review this incident is limited. In the absence of additional evidence of retaliatory actions by the company against union officials, and evidence of inadequate IFC action in response, CAO concludes that there are no preliminary indications of IFC non-compliance. At the same time, CAO considers that it would be prudent for IFC to commission a worker perception study and for its ongoing monitoring of the client to ascertain whether there are additional instances of the company disciplining worker representative employees.

4.4 Analysis of Plausible Link between Harm Allegations and Potential IFC Non-compliance

A compliance appraisal must consider whether the harm alleged in a complaint is plausibly linked to potential non-compliance. While CAO concludes there are preliminary indications of Harm to the complainants, based on available evidence, CAO concludes there are no preliminary indications that IFC may not have complied with its E&S Policies. Consequently, CAO concludes

³¹ IFC Management Response, June 2024

that the alleged Harm is not plausibly linked to any potential non-compliance, as no potential non-compliance has been identified.

4.5 Additional Policy Requirements for Consideration in the Appraisal

A CAO compliance appraisal must take into account relevant additional considerations (CAO Policy para. 92), including the following:

4.5.1 Whether IFC appropriately dealt with complaint issues

CAO must consider:

Whether Management has clearly demonstrated that it dealt appropriately with the issues raised by the Complainant...and followed E&S Policies or whether Management acknowledged that it did not comply with relevant E&S Policies (CAO Policy, para. 92(c)).

In its Management Response, IFC asserts that its ongoing monitoring and supervision of the company is appropriate to all areas of the CAO complaint. Given this, and the successfully and satisfactorily implemented MAP in response to the 2018 complaint, IFC argues that there are no preliminary indications that it may not have complied with its E&S policies that would merit a second compliance investigation on labor issues. IFC further affirmed its view that the company has implemented sufficiently robust management processes and procedures in relation to contractor management, and has implemented the CBA as intended, and hence IFC has no reason to believe that the concerns raised are systemic in nature.

In response to this complaint, IFC asked its third-party consultant to review the complaint allegation of unfair termination, and the consultant concluded that due procedure was followed. IFC also engaged with the company to monitor closer PS2 application to contract firms.

CAO has not identified preliminary indications of IFC E&S Policy non-compliance in its supervision of the investment. At the same time, CAO considers that it would be prudent for IFC to commission a worker perception study.

A summary of CAO’s analysis of each of the considerations is presented in Appendix C.

5. CAO Decision

CAO concludes that the complaint does not meet the criteria for a compliance investigation.

This appraisal report is published on the CAO website and shared with the Board, the World Bank Group President, IFC Management, the company, and the complainants.³²

³² CAO Policy, para. 106.

Appendix A: Complaint to CAO

CAO has not published the Complaint. A summary of the complaint issues is available in the [CAO Assessment Report](#), May 2024.

Appendix B: IFC Management Response

INTERNATIONAL FINANCE CORPORATION

**MANAGEMENT RESPONSE
TO THE CAO COMPLAINT
ON**

**INDORAMA ELEME FERTILIZER AND CHEMICALS LIMITED
NIGERIA – SUB_SAHARAN AFRICA**

(PROJECT No. 30967, 40420 and 47723)

June 13, 2024

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ABBREVIATIONS AND ACRONYMS

CAO	Compliance Advisor Ombudsman
CAP	Corrective Action Plan
CASA	Conflict Affected States in Africa
CBA	Collective Bargaining Agreement
CDC	Company Disciplinary Committee
CMC	Contractor Management Cell
CSI	Corporate Social Investment
EEO	Equal Opportunity Employment
FCS	Fragile and Conflict-Affected Situation
GIIP	Good International Industry Practice
IEFCL	Indorama Eleme Fertilizer and Chemicals Limited
IEPL	Indorama Eleme Petrochemicals Limited
IFC	International Finance Corporation
ILO	International Labor Organization
LTI	Lost Time Injuries
MAP	Management Action Plan
MCP	Managed Co-Lending Portfolio Program
MMTPA	Million Metric Tons per Annum
MoU	Memorandum of Understanding
NUCFRLANMPE	National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Employees
PPE	Personal Protective Equipment
PS	IFC Performance Standards
RSA	Retirement Savings Account
US\$	United States Dollar
WBG	World Bank Group

EXECUTIVE SUMMARY

i. This Management Response has been prepared by the International Finance Corporation (IFC) to address the issues raised in a complaint received on November 17, 2023, Eleme Fertilizer II-02 ([Eleme-02](#)), by the Compliance Advisor Ombudsman (CAO) concerning the IFC investments in Indorama Eleme Fertilizer and Chemicals Limited (IEFCL or the Company).¹ Since 2012, IFC has supported IEFCL in the Niger Delta region of Nigeria where the company has built and is operating two urea fertilizer factories in Port Harcourt, and as of June 2024 has been developing a third. The Company is contributing substantially to job creation and supporting climate smart agricultural production amid a challenging fragile and conflict-affected situation (FCS).

ii. The Eleme-02 complaint was lodged in November 2023 by the branch chair of the National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Employees (NUCFRLANMPE) on behalf of several former and current IEFCL contract workers, employed at IEFCL through third-party subcontractors (the Complainants). The Complainants raise several concerns relating to labor and working conditions of contract workers, health and safety, and unfair termination of employment. CAO found the complaint eligible in January 2024. The case was transferred to the CAO Compliance function, as the parties could not agree to pursue a CAO facilitated Dispute Resolution Process. The CAO issued its Compliance Assessment Report in May 2024.²

iii. This complaint follows CAO's first compliance investigation on the Project, the recently closed Eleme Fertilizer II-01 case ([Eleme-01](#)). The Eleme-01 complaint was filed in April 2018 by 134 employees of IEFCL who raised concerns related to IEFCL's use of security forces, and labor and working conditions. Following a Compliance Appraisal, CAO concluded that a compliance investigation was warranted. The scope of CAO's investigation focused on IFC's appraisal and supervision of requirements under IFC Performance Standard (PS) 2 on Labor and Working Conditions, particularly on IEFCL's workplace disciplinary procedures and approach to grievance handling, as well as IFC's response to allegations of reprisals against workers. IFC successfully implemented a Board-approved Management Action Plan (MAP) to confirm IEFCL's compliance with PS2 requirements. IFC commissioned an independent assessment report and developed a Corrective Action Plan (CAP) which was completed in June 2022. Subsequent independent monitoring reports were completed by an external third-party consultant in April 2023 and July 2023.³ The Eleme-01 complaint was closed as "satisfactory" by CAO in May 2024.

iv. In communicating the eligibility of the Eleme-02 complaint to IFC, CAO noted that the complaint was filed by a group of individuals that were not part of the Eleme-01 complaint and the 2021-2023 timeframe the complainants refer to in Eleme-02 is also different from the one in Eleme-01, which was submitted to CAO in 2018. CAO further noted. Eleme-02 was submitted after the establishment of a union and a collective bargaining agreement (CBA) in 2022. While taking into consideration the perspective of CAO on the eligibility of Eleme-02, Management highlights that both complaints relate to labor and working conditions. Except for the termination

¹ <https://disclosures.ifc.org/project-detail/SPI/30967/eleme-fertilizer>; <https://disclosures.ifc.org/project-detail/SII/40420/eleme-fertilizer-ii>; <https://disclosures.ifc.org/project-detail/SII/47723/indorama-eleme-fertilizer-iii>

² <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO%20Assessment%20Report%20-%20Nigeria%20Eleme%2002.pdf>

³ <https://www.cao-ombudsman.org/cases/nigeria-eleme-fertilizer-ii-01port-harcourt>

of the chair of the branch union, concerns raised in Eleme-02 were also raised in Eleme-01— these include compensation, employee deductions, health and safety hazards, and healthcare provisions for workers. In its Compliance Investigation Report⁴ for Eleme-01, CAO found these concerns had already been adequately addressed by IFC. Through its CAP implemented from June 2022 to July 2023, which was monitored by an independent consultant, as well as its ongoing supervision, IFC has demonstrated it appropriately addressed all the concerns raised in Eleme-01 which are also raised in Eleme-02. Moreover, IFC has continued to supervise the client’s PS2 performance as per the requirements of IFC’s Sustainability Framework. With regards to the termination of the chair of the branch union, IFC requested an independent assessment, which concluded that due procedure was followed. IFC therefore considers that its ongoing monitoring and supervision of the project is appropriate as it regards all the areas of the complaint and together with the satisfactory implementation of the MAP in response to CAO’s Eleme-01 investigation, there are no preliminary indications that IFC may not have complied with its E&S policies and this case does not meet the criteria for a Compliance Investigation as set out in paragraphs 91 through 93 of the CAO Policy.⁵

⁴ https://www.cao-ombudsman.org/sites/default/files/downloads/CAOInvestigationReportIEFCL_Nigeria_FINAL.pdf

⁵ <https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>

I. INTRODUCTION

1. The International Finance Corporation (IFC) has supported the Indorama Corporation (Indorama), the parent company of Indorama Eleme Fertilizer and Chemicals (IEFCL or the Company), through investment projects for over 30 years. Indorama has expanded from a medium-sized, domestically focused entity into a global business, becoming one of the world's fastest growing petrochemical companies, with operations in Asia, Africa, Europe, and the United States. IEFCL is owned 26 percent by Indorama Eleme Petrochemicals Limited (IEPL) and 74 percent by Indorama.

2. As of June 2024, IFC has six active investments in Indorama. IFC investment in IEFCL in the Niger Delta region of Nigeria began in 2012, as it supported the development of two urea fertilizer plants, with a third under construction. The fertilizer plant is the largest in sub-Saharan Africa. Among IFC's investment aims was promoting economic diversification, direct and indirect employment and climate smart agriculture. A Memorandum of Understanding (MoU) between the Company and the host communities has defined and formalized IEFCL's engagement approach, grievance management, and corporate social investment (CSI) planning.

3. The World Bank Group (WBG) is committed to promoting diversified growth and job creation in Nigeria, particularly in marginalized areas such as the Niger Delta region.⁶ The IFC investment in IEFCL was part of institutional efforts aimed at supporting private sector investment and economic growth in fragile and conflict-affected situations (FCS) as part of the Conflict Affected States in Africa (CASA) initiative, a five-year program launched in 2008 that endeavored to help design and implement integrated strategies to support economic recovery in FCS countries.⁷ In accordance with these commitments, IFC provided a series of loans to support development of the IEFCL fertilizer plants.

4. In April 2018, 134 employees of IEFCL filed a first complaint Eleme Fertilizer II-01 ([Eleme-01](#)) with the Compliance Advisor Ombudsman (CAO), who issued a Compliance Investigation Report in June 2021.⁸ IFC developed a Management Action Plan (MAP) in response to CAO's recommendations and committed to working with the client to properly reflect the Performance Standard (PS) 2 commitments, particularly for fair treatment and the ability to raise grievances without any retribution. In June 2022, IFC commissioned a third-party consultant to conduct an independent assessment of IEFCL's management of worker grievances and measures to prevent retaliation against workers. Following the assessment, IFC agreed with the client on a Corrective Action Plan (CAP) focused on strengthening implementation of the IEFCL's worker grievance mechanism and its approach to preventing and managing instances of worker retaliation. Successful implementation of the CAP was confirmed by two rounds of independent third-party monitoring in April and July 2023 respectively.⁹ In its compliance investigation report, CAO confirmed IEFCL had adequately implemented the required actions, and IFC was compliant with its due diligence and supervision requirements under the Sustainability Framework in relation to

⁶ <https://www.worldbank.org/en/country/nigeria/overview#2>

⁷ <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=23862>

⁸ https://www.cao-ombudsman.org/sites/default/files/downloads/CAOInvestigationReportIEFCL_Nigeria_FINAL.pdf

⁹ <https://www.cao-ombudsman.org/cases/nigeria-eleme-fertilizer-ii-01port-harcourt>

the other labor issues raised in the complaint – compensation, choice of union, discrimination, employee deductions, health/safety hazards, healthcare and worker protests.

5. In November 2023, CAO received a second complaint, Eleme Fertilizer II-02 ([Eleme-02](#)), related to labor and working conditions submitted by the branch chair of the National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Employees (NUCFRLANMPE) on behalf of several former and current IEFCL contract workers, employed by third-party subcontractors (the Complainants). Eleme-02 raises concerns about the labor and working conditions of contract workers, health and safety, and unfair employment termination. CAO found the complaint eligible in January 2024. During the assessment process, the Complainants indicated their preference to pursue a CAO-facilitated dispute resolution, while IEFCL preferred to proceed with the CAO Compliance process. CAO transferred the case to its Compliance function and issued its Compliance Assessment Report in May 2024.

6. Management has reviewed the concerns raised by the Complainants as presented in the CAO Assessment Report. The subsequent sections provide an overview of the Project and IFC Management’s Response to each concern raised by the complainants, and IFC’s views regarding the application of the criteria outlined in the CAO Policy for initiating a compliance investigation.

II. PROJECT OVERVIEW

7. IFC's original A loan to IEFCL for US\$150 million, approved in December 2012, was for the development of the first fertilizer plant (#30967).¹⁰ Another A loan of US\$120 million, a Managed Co-Lending Portfolio Program (MCP) loan of US\$50 million, and up to US\$830 million in B loan syndication and parallel loans along with US\$100 million equity subscription by the shareholders was approved in April 2018 for the expansion of the fertilizer plant (#40420).¹¹ The most recently committed IFC financing was for a US\$215.5 million IFC A loan, US\$940 million in mobilization of B loan syndication and parallel loans, and US\$94.5 million of MCP loans (#47723).¹² As of May 2024, IFC has disbursed all of its committed funds relating to #30967 and #40420, while first disbursement has yet to occur for #47723. The first loan (#30967) was fully disbursed as of August 2016 and was repaid in February 2024. The second loan (#40420), including all financing components, was fully disbursed as of September 2021.

8. In June 2016, IEFCL successfully commissioned a 1.4 million metric ton per annum urea fertilizer facility (“Line 1”). A second urea fertilizer line (“Line 2”), located at the same site as Line 1, was commissioned by IEFCL in May 2021, which increased capacity from 1.4 Million Metric Tons per Annum (MMTPA) to 2.8 MMTPA. IEFCL has now commenced with the construction of a third urea fertilizer line (“Line 3”) within the same complex as Lines 1 and 2 in Port Harcourt, Nigeria, which will increase current capacity from 2.8 MMTPA to 4.2 MMTPA.

¹⁰ <https://disclosures.ifc.org/project-detail/SII/42187/indorama-eleme-fertilizer-and-chemicals-limited>

¹¹ <https://disclosures.ifc.org/project-detail/ESRS/40420/eleme-fertilizer-ii>

¹² <https://disclosures.ifc.org/project-detail/SII/47723/indorama-eleme-fertilizer-iii>

III. CAO COMPLAINT

9. In November 2023, CAO notified IFC of a complaint that had been filed, Eleme-02, relating to a number of reported labor issues involving: (i) labor and working conditions of contract workers; (ii) health and safety; and (iii) unfair termination of employment. CAO found Eleme-02 eligible in January 2024.

10. IFC notes that Eleme-02 relates to labor and working conditions, which except for the termination of the chair of the branch union, were also raised in Eleme-01— including compensation, employee deductions, health and safety hazards, and healthcare provisions for workers. In communicating the eligibility of Eleme-02 to IFC, CAO noted that the complaint was filed by a group of individuals that were not part of the Eleme-01 complaint and the 2021-2023 timeframe that the complainants refer to in Eleme-02 is also different from the one in Eleme-01 which was submitted to CAO in 2018. CAO further noted that Eleme-02 was submitted after the establishment of a union and a collective bargaining agreement (CBA) in 2022. During its compliance investigation of Eleme-01, CAO found IFC had already addressed the concerns through the implementation of supplementary E&S action plans and ongoing supervision. Through its CAP implemented from June 2022 to July 2023 and monitored by an independent consultant, as well as its ongoing supervision, IFC has demonstrated that it appropriately addressed all the concerns raised in Eleme-01 which are also raised in Eleme-02. Moreover, IFC has continued to supervise the client's PS2 performance as per the requirements of IFC's Sustainability Framework. With regards to the termination of the chair of the branch union, an independent assessment requested by IFC indicated that due procedure was followed.

11. It is IFC's view that the concerns raised by complainants in the Eleme-02 complaint relate to IEFCL's monitoring of contractor and sub-contractor performance and the interpretation and implementation of elements of the CBA.

IV. MANAGEMENT RESPONSE

12. IFC Management acknowledges that the labor issues raised in the complaint are serious and respects CAO's process in its assessment of the complaint. This section explains IFC's requirements under the PS in relation to the concerns raised in the complaint and actions taken throughout its appraisal and supervision of the project. As per the Sustainability Policy (paragraph 7), IFC is required to seek assurance through its due diligence, monitoring and supervision efforts that the client's business activities are implemented in accordance with the requirements of the PS,¹³ including PS2, whereby IEFCL is required to comply with national legislation and the existing CBA that governs the respective labor and working conditions for all contract employees.

A. Working Conditions

13. The complaint raises a range of concerns regarding labor and working conditions including salary, pension, housing benefits, working hours, promotion, formal employment documentation, intimidation and retaliation, and the grievance mechanism.

¹³ IFC Policy on Environmental and Social Sustainability (2012)

14. **Salary.** Complainants raise concerns relating to (i) fairness of their wages in relation to the current Nigerian economy, (ii) delayed salary payments, (iii) non-payment of union dues, (iv) salary deductions, and (v) taxation of benefits. Concerns relating to salaries/welfare, union dues, and tax calculations were also raised in the first complaint. As per CAO's 2019 Compliance Appraisal report, it was confirmed that no ongoing compliance concerns were identified in relation to IEFCL's salaries and allowances. The Compliance Appraisal further noted that based on available evidence, concerns relating to the withholding of union dues did not present a project-level compliance issue that warranted further investigation by CAO.

15. All areas of the complainants' concerns relating to salaries are included as part of IFC's ongoing project supervision. As a part of its supervision in April 2024, IFC reviewed a sample of contractor payment schedules from October 2023 to March 2024 demonstrating that IEFCL wages are in line with the existing CBA, industry standards and national minimum wage requirements. Union dues are remitted to the branch union, and then to the national union, as per the requirements of the CBA. IFC has not identified any evidence of undue salary deductions or delays in salary payments by subcontractors. In relation to the taxation of benefits (housing and transport), as per national legislative requirements, these are managed under the auspices of the Personal Income Tax Act (2004) and are fully taxable. IEFCL has a responsibility to monitor contractors' adherence with the existing CBA and has commissioned a Contractor Management Cell (CMC) that is responsible for the oversight of all contractor activities, including payment of salaries, benefits, and check-off of union due payments. Based on IFC's ongoing supervision, the CMC is an adequate structure to monitor contractors' adherence with the existing CBA, and no gaps in this regard were identified.

16. **Pension.** Complainants raise concerns relating to the irregular or prolonged non-payment of pension dues. As per the requirements of PS2, IEFCL is required to comply with national legislative requirements and the existing CBA. In this case, pension contributions are governed under the auspices of the Pension Reforms Act (2005) and reflected as such in the existing CBA. IEFCL monitors, through the CMC, the statutory remittance of pensions into respective Retirement Savings Accounts (RSAs). As part of its ongoing supervision, including a sample review of payment schedules from October 2023 to March 2024, IFC has not identified any evidence of prolonged periods of non-payment.

17. **Housing.** Complainants raise concerns relating to the timing of housing allowance payments. As per the existing CBA, rental allowances are calculated and paid as a component of the total monthly emolument. Hence, the nature of these payments, as raised in the complaint, does not constitute a nonconformity with the CBA or local labor law.

18. **Working Hours.** Complainants raise concerns relating to the subcontractor's nonconformity with Nigerian labor law and the CBA in relation to working hours. Specifically, the complainants raised concerns regarding the enforcement of shift work and overtime allowances. Working hours, shift work, and overtime are detailed in the existing CBA, and are aligned with national labor law and International Labor Organization (ILO) requirements. As part of its ongoing supervision, IFC has not identified any non-compliances with the application of the CBA requirements in this regard. IFC does however note that recent supervision identified contract

workers who are working excessive overtime hours. While neither Nigerian labor law nor the ILO prescribe any specific limits to the total number of allowable overtime hours, IEFCL should determine what is considered a ‘reasonable’ limit taking into account the nature of the work, and potential consequences of physical and mental fatigue. IFC recommended that IEFCL review this concern in the April 2024 monitoring report and the company has provided adequate feedback to address the recommendation.

19. **Promotion.** Complainants raise concerns relating to the lack of opportunities for promotion for contract workers, elements of discrimination in the promotion process, and formalization of employment terms. As per CAO’s 2019 Compliance Appraisal in relation to Eleme-01, the report found that “*IFC’s supervision documentation provided an adequate response in the context of the anti-discrimination requirements of PS2.*” As part of its ongoing supervision, IFC has not seen any evidence of discriminatory or unfair practices in relation to promotions. IEFCL has implemented a policy of Equal Opportunity Employment (EEO), and vacancies are advertised in accordance with this policy. IFC understands that contract employees are free to apply for such vacancies. As per the Nigerian Labor Act, casual workers should be formalized after a period of three months of employment. IEFCL do not employ casual workers, and all contract workers are provided with a formal contract as required under national legislation and the existing CBA.

20. **Formal Employment Documentation.** Complainants raise concerns relating to the lack of formal employment documentation. IEFCL is required to comply with the national Labor Act and the existing CBA that require the provision of formal employment documentation. While IEFCL, through the CMC, monitors the provision of formal appointment letters, IFC is not able to verify every contractor’s appointment letter. However, as noted, IFC considers IEFCL’s general approach to contractor monitoring, including verification of employment documentation, adequate.

21. **Intimidation and Retaliation.** Complainants raise concerns relating to intimidation and retaliation in the workforce, including threats of reprisal, wage deductions, and union membership. IFC notes that similar allegations relating to retaliation and reprisal were raised in the first CAO case. CAO confirmed that IEFCL — as reflected in their independent assessment, subsequent monitoring and as detailed in their FY24 Q4 Omnibus Compliance Monitoring Case Report— has updated its employee policies to provide for the handling of anti-retaliation concerns, and the Company has provided anti-retaliation training.

22. **Worker Grievance Mechanism.** Complainants raise concerns relating to the effectiveness of the existing grievance mechanism. This issue was raised in the first CAO complaint, and following an independent assessment and subsequent monitoring, IFC concluded that IEFCL has implemented its grievance management system in a manner consistent with PS2 requirements. In its monitoring of IFC’s actions in response to CAO’s investigation of the first case, CAO considered this action addressed and closed it satisfactorily in their FY24 Q4 Omnibus Compliance Monitoring Omnibus Case Report.

B. Health and Safety

23. The Complainants raise a range of concerns regarding health and safety including: (i) general safety conditions in the workplace and the provision of personal protective equipment (PPE); (ii) adequacy of medical coverage, and (iii) the adequacy of dry food rations. Similar concerns were raised in the first complaint relating to workplace safety, hazards, and healthcare coverage. As per the CAO Compliance Appraisal, CAO determined that there is no available evidence to support a conclusion that there are substantial concerns regarding the E&S outcomes of the project in relation to worker health and safety, such that would warrant a CAO compliance investigation. IFC's supervision from February 2023 to February 2024 was ongoing when the complaint was filed in November 2023 further supporting the view that no material concerns in relation to health and safety were identified.

24. **Health and Safety Conditions.** Complainants raise concerns relating to the unsafe working conditions and lack of adequate PPE. As per PS2, IEFCL is required to provide workers with a safe and healthy working environment. IFC's ongoing supervision has not identified any non-compliances in relation to health and safety in the workplace. As per IFC's April 2024 supervision report, various PPE distribution registers were reviewed, and no concerns were noted. IEFCL has established safety management systems, aligned with good international industry practice (GIIP), and continues to demonstrate positive performance with no lost time injuries (LTI) since 2018. IEFCL also implements an ongoing medical surveillance program to identify occupational diseases (respiratory illnesses, noise induced hearing loss, muscular skeletal ailments etc.), and allocates PPE as per existing standard operating procedures.

25. **Medical Coverage.** Complainants raise concerns relating to the adequacy of medical coverage, and potential disparities between contract and direct workers. The existing CBA details the required provision of medical insurance coverage for all contract workers. It is further noted that IEFCL provides additional support by assuming the entire 15 percent contribution, while national legislation only requires employers to contribute 10 percent.

26. **Dry Food Rations.** Complainants raise concerns relating to the adequacy of dry food ration allowances, including payment in cash rather than provision of actual rations. The payment of dry ration allowances is regulated within the existing CBA. In addition to dry ration allowances, IEFCL also provides contract workers with a monthly meal allowance.

C. Unfair Termination

27. The lead complainant, the branch chair of the NUCFRLANMPE, raises concerns that his termination of employment was an act of retaliation, and the dismissal process was procedurally flawed. As part of the first complaint (Eleeme-01), IEFCL updated its anti-retaliatory policies and practices. These anti-retaliatory policies and practices were found to be in line with PS2 requirements by CAO following independent assessment and subsequent monitoring. The process for termination of employment is defined in the CBA and includes a process for query, response, constitution of a company disciplinary committee (CDC), investigation, findings, and recommendations. Also, as part of the April 2024 supervision, IFC requested the independent lender's advisor conduct an assessment of this case. The assessment determined that due procedure

was followed for the termination of employment of the branch chair.

V. CAO POLICY APPLICATION

28. The CAO Policy sets out appraisal criteria set out in paragraphs 91, 92 and 93 of the CAO Policy in determining whether a compliance investigation is necessary.¹⁴

29. In considering paragraph 91(b) and 92(c), it is IFC's view that its ongoing monitoring and supervision of the project is appropriate as it regards all the areas of the complaint and together with the successfully and satisfactorily implemented MAP in response to the first complaint on labor issues, there are no preliminary indications that IFC may not have complied with its E&S policies that would merit a second compliance investigation on labor issues. IFC further maintains that IEFCL has implemented sufficiently robust management processes and procedures in relation to contractor management, has implemented the subsisting CBA as intended, and hence has no reason to believe that the concerns raised are systemic in nature. Based on this, it is IFC's view that the issues raised in the complaint have been adequately addressed and, where gaps were identified, IFC has followed up with its client as part of its ongoing supervision of the project.

29. Management notes that paragraph 93 of the CAO Policy defines that in relation to a Project that has already been the subject of a compliance investigation, CAO may initiate a new compliance investigation only where the complaint raises new issues or new evidence is available. As detailed above, the second complaint also relates to labor issues and many concerns raised overlap with CAO's first compliance investigation for which the IFC has successfully implemented a MAP to the satisfaction of the complainants and CAO.

¹⁴ CAO Policy 2021, paragraph 91 "(a) whether there are preliminary indications of Harm or potential Harm; (b) whether there are preliminary indications that IFC may not have complied with its E&S Policies; and (c) whether the alleged Harm is plausibly linked to the potential non-compliance"

CAO Policy 2021, paragraph 92 "(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 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."

Para 93. In relation to a Project or Sub-Project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available.

VI. CONCLUSION

30. IFC acknowledges the issues raised in the complaint are serious. Nevertheless, it is IFC's view that this case does not meet the criteria for a compliance investigation as per the CAO Policy.

Disclaimer

This IFC Management Response is provided in response to the Assessment Report of the Office of the Compliance Advisor Ombudsman (CAO) finding a complaint to a project supported by IFC finance or investment eligible for compliance appraisal.

Nothing in this IFC Management Response or in the process provided for in the CAO Policy (“CAO Process”) (1) creates any legal duty, (2) asserts or waives any legal position, (3) determines any legal responsibility, liability, or wrongdoing, (4) constitutes an acknowledgment or acceptance of any factual circumstance or evidence of any mistake or wrongdoing, or (5) constitutes any waiver of any of IFC’s rights, privileges, or immunities under its Articles of Agreement, international conventions, or any other applicable law. IFC expressly reserves all rights, privileges, and immunities. IFC does not create, accept, or assume any legal obligation or duty, or identify or accept any allegation of breach of any legal obligation or duty by virtue of this IFC Management Response.

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Appendix C: Considerations Relevant to the Appraisal

Under the CAO Policy³³ this compliance appraisal must take into account relevant additional considerations as outlined in the table below.

CAO Policy provision	Analysis for this case
<p>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 (para. 92a).</p>	<p>Not applicable</p>
<p>The relevance of any concluded, pending or ongoing judicial or non-judicial proceeding regarding the subject matter of the complaint (para. 92b).</p>	<p>Not applicable</p>
<p>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 (para. 92c).</p>	<p>A review of IFC's ongoing supervision of the Company does not provide a preliminary indication of IFC non-compliance with its E&S Policies</p>
<p>Whether Management has provided a statement of specific remedial actions, and whether, in CAO's judgment after considering the</p>	<p>Not applicable</p>

³³ CAO Policy, para. 92

<p>Complainant's views, these proposed remedial actions substantively address the matters raised by the Complainant (para. 92d).</p>	
<p>In relation to a Project or Sub-Project that has already been the subject of a compliance investigation, CAO may: (a) close the complaint; (b) merge the complaint with the earlier compliance process, if still open, and the complaint is substantially related to the same issues as the earlier compliance process; or (c) initiate a new compliance investigation only where the complaint raises new issues or new evidence is available (para. 93).</p>	<p>Not applicable</p>