



CAO ASSESSMENT REPORT

**Regarding concerns in relation to
IFC's investment in Pan American Energy (PAE) (#36146, #41440 and #42169) in
Argentina**

July 20, 2021

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

About the CAO

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

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

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PAE	Pan American Energy

1. OVERVIEW

In September 2020, CAO received a complaint from a former worker of a former contractor of Pan American Energy (PAE or the “Company”). The complaint was filed on behalf of himself and other former workers (the “Complainants”) regarding PAE’s upstream oil and gas operations in Cerro Dragón, Comodoro Rivadavia, in the Province of Chubut, Argentina (Complainants and PAE together will be referred to as the “Parties”). The Complainants raised concerns related to labor issues such as unfair dismissal, lack of compensation and inability to work in the region.

CAO found the complaint eligible for further assessment in December 2020. During CAO’s assessment, the Complainants indicated a willingness to engage in a Dispute Resolution process, while the Company preferred that the complaint be handled by CAO’s Compliance function. Since no consensus was reached on a Dispute Resolution process, which is voluntary, the complaint will be referred to CAO Compliance for appraisal of IFC’s performance, as per CAO’s Operational Guidelines.

2. BACKGROUND

2.1. The Projects

In 2015, IFC made an investment of USD 120 million for its account and mobilized USD 400 million in B Loan and Parallel Loans to partially fund PAE’s 2015/2016 capital expenditure program. The investment was made to further develop PAE’s oil and gas assets in the Cerro Dragón block in the Golfo San Jorge Basin, and in the Lindero Atravesado block, in the Neuquén Basin. The engagement encompassed activities related to drilling, secondary recovery, facility expansions, improvements, and parts of the 2015/2016 investment program to support increased oil and gas production (IFC Project #36146).

In 2016, IFC committed a total A Loan amount of \$86 million and \$334 million in B Loans with Axion Energy Argentina S.A (“Axion”) to support an ongoing multi-year refinery upgrade program at the Company’s Campana refinery in Argentina, which would increase the supply of refined products, enhance the quality of its fuels with lower sulfur content, reduce air emissions, and increase efficiencies and expand Axion’s retail network (IFC Project #36221).

In 2018, PAE and Axion were merged into one company. The IFC Project #36221 was changed to IFC Project #41440.

In 2019, IFC made an investment in PAE composed of an A Loan of USD 135 million and B Loan/Parallel loans of USD 365 million (IFC Project #42169) to help support the completion of the refinery upgrade project initiated at the time by Axion.

For the purposes of this CAO assessment report, we will refer to the IFC projects #36146, #41440 and #42169 collectively as the “Projects”.

2.2. The Complaint

In September 2020, CAO received a complaint from a former worker of one of PAE's former contractors in Cerro Dragón, on behalf of himself and approximately ten other former workers of the same and other contractors. The Complainants allege that PAE has deprived them of their right to work by unfairly accusing them in court of actively participating in a violent seizure of the Cerro Dragón oil filed in 2012. As a result, they believe they are entitled to economic compensation and allege that the Company has failed to honor an out-of-court settlement agreement stating that the Complainants are entitled to compensation. The Complainants did not request confidentiality.

The issues raised during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1. Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainant(s), gather information on the views of different stakeholders, and determine whether the Complainant(s) and the IFC Project Sponsor would like to pursue a Dispute Resolution process facilitated by CAO, or whether the complaint should be referred to CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process). CAO does not make any judgement regarding the merits of the complaint at this stage.

In this case, CAO's assessment of the complaint included:

- video conferences and email correspondence with the IFC team in charge of the Projects,
- video conferences and email correspondence with the Complainants,
- video conferences and email correspondence with PAE representatives, and
- desk-top review of Projects' documentation, information shared by the Complainants, and other background information on the case.

A CAO assessment typically involves a field visit to meet with the Complainants and Company to gain a better understanding of the situation. Due to COVID-19-related restrictions on travel and social gatherings, CAO could not arrange in-person meetings with the relevant stakeholders involved in this case. However, with the consent of both the Complainants and the Company, CAO decided not to delay the assessment of the complaint and conducted the assessment via virtual platforms.

3.2. Summary of Views

This section presents a broad overview of the issues and perspectives of the Parties, as expressed by the Complainants and PAE management, respectively. It does not comprise a judgment by CAO about the merits of the complaint.

Complainants' perspective

The Complainants stated they were unfairly cited (and in some cases, indicted) in criminal court proceedings initiated by PAE for a violent seizure of the Cerro Dragón oil field in 2012, operated by PAE. The Complainants claimed that they were not involved in the violent incidents that took place in 2012, but that PAE's contractors nevertheless laid them off at the request of PAE.

The Complainants additionally claimed that because of the criminal court proceedings and the violent incidents from 2012, PAE labelled them as 'terrorists' and thereafter, no other company in the oil and gas sector in Argentina would hire them. They alleged that, as a result, PAE has deprived them of their right to work for the past eight years, and they believe they are entitled to economic compensation for the years during which they have not been able to access jobs.

The Complainants also alleged that they signed out-of-court settlement agreements with PAE in 2019 (amended in 2020), whereby PAE agreed to pay each Complainant the sum of ARS \$12 million (USD \$120,000 approx.) in compensation for affecting their right to work as a consequence of the criminal court proceedings they were involved with, related to the 2012 seizure of the Cerro Dragón oil field. The Complainants informed CAO that they were approached and allegedly represented by a lawyer called María Duffey Laxague in the process of the signing the out-of-court settlements, but believe she later turned on them and partnered with PAE in bad faith to deceive them. The Complainants stated that that payments stipulated in the agreement were not met by PAE. The Complainants have also expressed distrust regarding PAE's allegations that no such dealings with the lawyer exist and that legal action for fraud has been filed against her by the Company. The Complainants informed CAO that they had sent PAE a letter (*carta-documento*) as a formal notification of their intention to pursue legal action if PAE does not pay the economic compensation that they believe they are entitled to. Nonetheless, they have expressed their willingness to address the issue of the complaint through dialogue under the auspices of the Dispute Resolution function of the CAO.

Company's perspective

PAE stated that the violent incidents in the Cerro Dragón oil field in 2012 were an unprecedented attack on private property. Following the violent incidents, several individuals, including the individual who filed the complaint, were prosecuted by the State in criminal courts (not by PAE).

PAE also shared that it is not their policy or practice to label or retaliate against former workers of its contractors, or anyone. They stated that the violent seizure of the oil field Cerro Dragón in 2012 is public knowledge for everyone in the industry and there is an ongoing criminal judicial proceeding before the Federal Courts in Comodoro Rivadavia, in the Province of Chubut in relation to the seizure. They also stated that PAE did not have any influence on the Complainants' alleged inability to access jobs.

PAE additionally rejected the Complainants' claim that economic compensation was due to them. PAE stated that they had not entered into an out-of-court settlement agreement with any of the Complainants. The Company claimed that the alleged out-of-court settlement agreements were fraudulent and were forged by the Complainants' lawyer María Duffey Laxague. As a result, PAE has taken legal action against the lawyer for the crimes of fraud and falsification of public

documents, currently before Criminal Court nbr. 54 (Juzgado Nacional en lo Criminal y Correccional Nro. 54), under court proceeding nbr. 24.082/2020 (*“Imputada: Duffey Laxagüe, María Auxliadora s/ Estafa procesal, defraudación por contrato simulado, falsificación de documentos públicos, y uso de documento falso o adulterado (art. 296 Código Penal)”*). The court's jurisdiction has been confirmed in the City of Buenos Aires, and PAE has appeared before the court as the plaintiff (*parte querellante*).

PAE expressed their preference that the complaint be handled by CAO's Compliance function.

4. NEXT STEPS

The CAO Dispute Resolution process requires voluntary agreement to participate by the Complainants and the Company. During CAO's assessment, while the Complainants indicated a willingness to engage with PAE to discuss the issues raised in the complaint, the Company expressed their preference that the complaint be handled by CAO's Compliance function. Accordingly, the complaint will be referred to CAO Compliance for appraisal of IFC's performance, as per CAO's Operational Guidelines.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the Complainant (s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

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

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

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

Step 3: **CAO Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating Settlement:** If the Parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The Dispute Resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the Parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the Dispute Resolution process, in a way that is acceptable to the Parties affected.²

OR

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

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

Step 6: **Conclusion/Case Closure**

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

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