



**December 9, 2019**  
*Office of the Compliance Advisor Ombudsman (CAO)*

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## **Terms of reference for Compliance Investigation of IFC**

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*IFC Investments in Indorama Eleme Fertilizer & Chemicals Limited (IEFCL)*  
*(IFC Project #30967, #40420)*  
*Nigeria*

### **About CAO**

*CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

Once CAO concludes a compliance appraisal, a summary of the appraisal results is made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO prepares a terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

## Background

In 2007 Indorama Corporation purchased a petrochemical facility at Port Harcourt, Nigeria.<sup>1</sup> In 2010, Indorama established a subsidiary, Indorama Eleme Fertilizer & Chemicals Limited (IEFCL or “the company”), to develop a large fertilizer facility next to the Port Harcourt petrochemical facility. In 2013, IFC provided a loan to IEFCL to support development of the fertilizer facility.<sup>2</sup> The fertilizer facility commenced operations in 2016. In 2018, IFC provided a second loan to IEFCL to support an expansion of the fertilizer facility.<sup>3</sup>

## The complaint

In April 2018, CAO received a complaint from 134 IEFCL employees (“the complainants”) raising a series of concerns regarding the company’s labor and working conditions and use of security forces. Specifically, these concerns pertain to: (a) salaries/welfare; (b) discrimination; (c) unionization; (d) tax calculation and union dues withholdings; (e) discipline and treatment of employees who complained to CAO and/or who criticize management; (f) workplace safety, hazards, and hazard allowance; (g) healthcare coverage; and, (h) impacts associated with a July 2017 protest. In response to these concerns, the company noted that it invests significantly in its workers and asserts that it operates in accordance with, or beyond, the requirements of national law.

The complaint was transferred to CAO’s compliance function for appraisal in February 2019. Based on a preliminary review of IFC’s documentation and discussions with the IFC team, CAO decided to trigger an investigation.<sup>4</sup>

## Scope of the compliance investigation

In December 2019, CAO released a compliance appraisal report. CAO’s appraisal report identified questions regarding IFC review and supervision of the company’s work place disciplinary procedures and approach to grievance handling, including its response to the specific grievances raised in the complaint.

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities,

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<sup>1</sup> IFC Disclosure, Summary of Proposed Investment, project number 24802. Available at <http://bit.ly/2K82D18>.

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

<sup>3</sup> 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>.

<sup>4</sup> CAO Appraisal available at <http://bit.ly/33nkM2i>.

conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investments in IEFCL in relation to the issues raised in the complaint.

Given the issues raised by the complainants and the outcomes of CAO's compliance appraisal, the compliance investigation will consider whether

1. IFC's pre-investment review and supervision of its investments provided assurance that the company's work place disciplinary procedures and approach to grievance handling were consistent with PS2 requirements.
2. IFC took sufficient action to assure itself of the company's PS2 compliance in response to allegations of reprisals against workers.

The Compliance Investigation will consider IFC's performance in the context of its E&S policies, procedures and standards. It will also consider whether these policies, procedures and standards as applied to this project provide an adequate level of protection.

### **Compliance Investigation Process and Preliminary Timeline**

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by April 2020.

A draft Investigation Report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

## **External Panelist(s)**

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in evaluating labor practices of private sector companies in accordance with IFC Performance Standard 2
- Experience with handling allegations of reprisals against workers
- Knowledge of IFC's E&S policies, standards and procedures
- Experience of conducting compliance reviews of private sector companies and/or of multilateral investments in private sector companies
- Extensive knowledge of Nigerian labor law.