

## Notice of Admissibility

### Independent Complaints Mechanism

20 January 2023

ICM complaint 22-004 re: FMO-financed project Niche Cocoa, Ghana

#### **Procedural History**

On 1 December 2022, the Complaints Office of FMO received a complaint concerning FMO-financed operation Niche Cocoa Industry Ltd. The complaint was lodged by company workers of Niche Cocoa Industry Ltd (hereafter “The Company”). The Company is the largest privately owned cocoa processor in Ghana, with around 600 employees, producing finished chocolate goods such as drinks, bars, and spreads for the local market as well as for export purposes. Niche Cocoa Industry Ltd. is located in Tema, Ghana.

On 6 December 2022, the FMO Complaints Office confirmed receipt of the complaint and informed the Independent Expert Panel (hereafter “the Panel”). On 12 December 2022, the Panel conducted a virtual call with the complainants in order to obtain further information for its admissibility assessment. Consequently, the Panel received a second complaint document on 13 December 2022. This complaint was signed by 14 company workers. On 14 December 2022, the ICM Secretary confirmed receipt of the second complaint document (collectively referred to as “the Complaint”).

#### **The Complaint**

In their Complaint, the Complainants allege that their right to join or form a labour union has been violated. The Complainants started the process for the formation of a Workers’ Council with the purpose of bargaining collectively with the Company on working terms and conditions. According to the Complaint, the Managing Director of

the Company confronted and threatened employees who had expressed interest in joining the Union. The Company later decided to establish a Workers' Council. However, the Complainants claim that representatives in this council have been forcefully appointed by the Company and were subjected to threats of dismissal if they refused to do so.

In addition, the Complainants raise several concrete allegations of the Company's failure to comply with labour standards. The Complainants argue that: (1) despite being exposed to health and safety risks, adequate health insurance is not provided to worker who are most exposed to risks; (2) the Company does not provide sufficient food to workers who work 12-hours shifts without being able to leave the Company's premises during their work day; (3) the Company violates legal requirements regarding adequate compensation for overtime and work during holidays; (4) the Company did not institute a project-level complaints mechanism, while workers who raise concerns or complaints suffer reprisals and face unfair termination of their employment; (5) the Company has never complied with its own guidelines to provide long service awards, and when raised by workers, the Company threatened in legal action and declared the guidelines as "under review"; (6) a recent salary review led to a mere negligible increase in workers' salaries; (7) the Company refuses to adjust salaries despite high inflation rates. Instead, it offered to pay some employees a 13<sup>th</sup>-month salary, but that it perceived as unfair since the Company is allegedly supposed to anyway pay the 13<sup>th</sup>-month bonus salary under the free zone policy of Ghana; (8) while adding roles and responsibilities to employees, the Company continues to pay them the same salaries; (9) the Company does not provide appropriate protection for pregnant and nursing mothers is allocation of assignments.

The Complainants claim that these violations of their rights have impacted the workers' general welfare for over a decade. They add that the Company only took certain actions toward compliance where it was under audit and that those

improvements were merely temporary in nature until the Company achieved its objective to meet audit requirements.

### **Admissibility criteria**

The ICM Panel assesses admissibility of complaints based on criteria laid out in paragraph 3.1.4 of the ICM Policy.<sup>1</sup> The ICM Policy requires that: (i) FMO must have or will have an active financial relationship with the Client; (ii) the complaint must contain allegations of (potentially) substantial and (in)direct and adverse impacts or risks, and (iii) there must be an indication of a relationship between the FMO-Financed Operation and the subject of the Complaint. Any allegation of harm that could fall within the ICM Policy must therefore be related to the social, environmental, and human rights standards which the ICM Policy aims to safeguard.

### **Admissibility Assessment**

The Panel notes that FMO has an active financial relationship with Niche Cocoa Industry Ltd.<sup>2</sup> FMO has committed EUR 26.5 million in loans to Niche Cocoa Industry Ltd. and Niche Confectionery Ltd. to be used to (i) purchase solar panels, (ii) finance the Company's working capital requirements resulting from its sustainable bean sourcing program, and (iii) expand the Company's total processing capacity.

The Complaint contains allegations of substantial harms. The allegations of harms, as summarised above, related to a broad scope of issues. They paint a picture of harsh conditions, a culture of fear and retaliation as well as disrespect to labour standards, which affect a large number of employees in the Company.

The Panel also finds that there is sufficient indication of a relationship between the FMO-financed operation and the subject of the Complaint. Generally, the Panel accepts complaints relating to labour issues only when there is sufficient indication

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<sup>1</sup> [https://www.fmo.nl/l/en/library/download/urn:uuid:851c7e33-6391-49fb-9f0b-009a62a0ebc0/independent+complaints+mechanism+policy\\_updated.pdf](https://www.fmo.nl/l/en/library/download/urn:uuid:851c7e33-6391-49fb-9f0b-009a62a0ebc0/independent+complaints+mechanism+policy_updated.pdf)

<sup>2</sup> <https://www.fmo.nl/project-detail/58419> .

that the issues are of a systemic nature and are thus sufficiently linked to the application of IFC Performance Standard 2: Labour and Working Conditions. The alleged harms in this case clearly exceed the scope of an individual dispute and concern broader issues that affect FMO's obligations.

In particular, the Complaint triggers further examination for potential non-compliances with IFC Performance Standard 2 concerning labour and working conditions. The Panel notes that the alleged harms include issues related to health and safety risks, adequate compensation and working conditions. Additionally, with respect to the formation of a labour union, paragraphs 13 and 14 of the IFC PS2 explicitly articulate that the client should not discourage workers from forming or joining workers' organizations of their choosing and should not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining.<sup>3</sup> Therefore, all of these issues fall within the scope of the ICM.

In light of the above, the Panel considers that the Complaint fulfils the admissibility criteria. The Panel concludes that this complaint should thus proceed to the Preliminary Review phase in order to determine the next appropriate steps under the terms of the ICM Policy.



Michael Windfuhr



Arntraud Hartmann



Inbal Djalovski

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<sup>3</sup> IFC Performance Standards, January 2012, para. 14, [https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h](https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h).