



COMMUNIQUÉ

CAO Releases Investigation of IFC Investments in Tea Estates in India

November 7, 2016 – The Office of the Compliance Advisor Ombudsman (CAO) has released a compliance investigation related to investments made by the International Finance Corporation (IFC) in Amalgamated Plantations Private Limited (APPL) in northeast India. APPL is the second largest producer and supplier of tea in India and employs over 30,000 people on its 25 tea estates in Assam and West Bengal.

IFC's equity investment was designed to support the implementation of a sustainable employee-owned plantation model. Employees were provided the opportunity to purchase shares in APPL. As part of the investment, IFC was required to assure itself that its client operated in accordance with IFC's Performance Standards on Environmental and Social Sustainability.

The investigation considers IFC's performance in relation to concerns raised by workers about living and working conditions on APPL's tea estates, the adequacy of consultation on implementation of the employee share ownership program and IFC's response to two security incidents at APPL's tea estates in 2009 and 2010.

While noting that IFC's equity investment in the company had potential for significant development impact, CAO's investigation identifies a number of non-compliances related to IFC's assessment and management of environmental and social (E&S) risk associated with the investment.

Given the vulnerable status of workers and the client's responsibility to provide a range of basic services to workers, CAO finds that IFC's pre-investment E&S review was not commensurate to risk. Shortcomings in this review led to the development of mitigation measures which were insufficiently detailed and did not address key risk areas. During supervision, CAO found that IFC did not assure itself of compliance with its Performance Standards. As a result, E&S compliance issues raised by the complainants remain unaddressed.

CAO's investigation makes a number of specific non-compliance findings in relation to IFC's assessment and supervision of living and working conditions on the plantations, reported use of banned pesticides, information disclosure, consultation, and response to security incidents (see attached Summary of Findings).

IFC has released a public response to CAO's investigation report. CAO will monitor IFC's actions in response to the investigation findings and will issue a monitoring report within a year.

More details on the case are available at www.cao-ombudsman.org.

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About CAO:

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 address complaints from people affected by IFC and MIGA projects in a manner that is fair, objective, and constructive with the goal of enhancing environmental and social outcomes on the ground. CAO reports to the President of the World Bank Group. CAO's investigations, conducted with the participation of external experts, focus on IFC's performance and do not make compliance findings in relation IFC clients or their business activities.

SUMMARY OF FINDINGS

Whether IFC exercised due diligence in its E&S review of the project:

IFC's investment in APPL was a challenging one, but one with potential for significant positive development impact.

In these circumstances, IFC did not conduct an E&S review that was "appropriate to the nature and scale of the project" or "commensurate with the level of social and environmental risks and impacts," as required by the 2006 Sustainability Policy (para.13).

Specific weaknesses identified by CAO include: (a) an absence of contextual analysis of risk, including long-standing conflict and security-related risks associated with the tea industry in the region; (b) lack of objective assessment of living and working conditions on the tea plantations; (c) inadequate verification of E&S information provided by the client; and (d) an absence of consultations with workers or their representatives in relation to E&S issues.

Crucially, IFC's E&S review lacked commensurate consideration of the client's E&S management system and its capacity to manage the range of E&S risks associated with its business in accordance with IFC requirements.

IFC incorrectly concluded that the investment had a limited number of specific environmental and social impacts that could be readily addressed through standard mitigation measures (the requirement for a Category B project).

The Environmental and Social Action Plan (ESAP) was insufficiently detailed and did not address key risk areas.

As a result, IFC did not have a basis to conclude that this project could meet the requirements of the Performance Standards.

Whether IFC exercised due diligence in its E&S supervision of the project:

IFC's supervision of its investment in APPL did not meet the requirements of the Sustainability Policy or relevant ESRP.

Firstly, conditions of disbursement (COD) agreed with the client and disclosed publicly in the ESAP were omitted from the investment agreement. Given later events, those of particular relevance included requirements in relation to handling and storage of chemicals. CAO also finds that IFC E&S staff were not involved in the clearance of the E&S COD, contrary to the requirements of the ESRP.

Secondly, in relation to IFC's general supervision of the project, IFC has failed to "develop and retain the information needed to assess its client's compliance with the Performance Standards" (ESRP). Where IFC has identified gaps in compliance, IFC has not ensured that these are translated into time-bound and resourced Action Plans of the type required by PS1. As a result, E&S compliance issues raised by the complainants remain unaddressed.

Whether IFC gave adequate consideration to the application of its E&S requirements in relation to the specific concerns raised by the complainants and the incidents that triggered CAO's initial compliance appraisal, including:

- a. Living conditions for workers on the client's tea estates;

While there were well-documented concerns about the living conditions of tea workers in northeast India, IFC's pre-investment due diligence did not include a review of client compliance with requirements to provide housing or other basic services to workers under national law. Similarly, IFC did not assure itself that its client was discharging its obligation to provide housing and other services in a manner that met the PS2 standard of promoting safe and healthy working conditions or protecting and promoting the health of workers.

Given the objective of PS2 to “promote safe and healthy working conditions, and to protect and promote the health of workers,” CAO finds that IFC’s consideration of worker health indicators has been insufficient.

During supervision, IFC has not responded systematically to issues regarding housing and living conditions as raised by the complainants. Indeed, it was only when TGB took the initiative following release of the Columbia Law School report in 2014 that a range of deficiencies related to housing and living conditions were confirmed and an Action Plan developed.

While the development of the TGB Action Plan has led to some progress in addressing the issues raised by the complainants, given the client’s capitalization and progress reported to date, CAO notes that timely delivery of the commitments in the Action Plan may not be possible. In this context, CAO finds that IFC has not been successful in working with the client to bring it back into compliance as required by the Sustainability Policy.

b. Compensation practices;

In response to the allegations that the client compensates workers at a level below the minimum wage, IFC took appropriate action in obtaining external legal advice on the issue. However, the advice was not current at the time that it was delivered and as such requires revisiting.

IFC has not assured itself that the client is systematically presenting wage-related information in a “clear, easily understandable, and accurate, and in the language of the employee or directly contracted worker.”

IFC has not assured itself that wages and working conditions for temporary and permanent workers are consistent with IFC commitments to support jobs that “protect and promote the health” of workers, and thus provide a way out of poverty.

c. Issues related to freedom of association and handling of grievances;

Union issues are known to be contentious in the tea industry in Assam. IFC’s pre-investment due diligence did not include a review of its client’s approach to the management of these issues.

In light of ongoing concerns regarding freedom of association and collective bargaining as raised by the complainants, global unions and a social audit commissioned by the client, IFC has not assured itself of compliance with the relevant requirements of PS2.

IFC’s approach to the review and supervision of the grievance mechanism requirements of PS1 and PS2 is similarly deficient.

Despite ample evidence of worker grievances in the tea sector, IFC did not review or collect baseline data on its client’s approach to grievance handling.

This issue was further neglected during early supervision (2009–2012), despite indications of shortcomings in the client’s approach to grievance handling.

Since 2013, IFC and the client have been discussing improvements in the client’s approach to grievance handling. However, CAO notes that, to date, IFC does not have assurance that the client is operating a grievance mechanism that is compliant with PS1/PS2.

d. Risks related to the employment of children on the client’s tea estates;

Child labor is known to be prevalent in India’s agricultural sector, including on tea plantations. In this context, CAO finds that IFC’s pre-investment due diligence of the risk of child labor on its client’s plantations was inadequate. Similarly, since receipt of the CAO complaint, IFC has not taken adequate measures to assure itself that the client currently complies with its child labor requirements.

e. Risks related to the client's use of pesticides;

IFC has not properly applied its requirements regarding the handling and use of pesticides to this project, with the result that workers have been exposed to extremely hazardous chemicals. In particular, IFC did not identify in a timely manner the client's use of pesticides that are prohibited or restricted under IFC requirements. Further, IFC has failed to provide adequate guidance to the client on how to address compliance issues related to pesticide use.

It is of significant concern that, to date, IFC is not assured that specific issues of noncompliance related to the client's use of pesticides have been addressed. These include issues related to the inadequate use of personal protective equipment (PPE), which have been raised by external stakeholders since 2010, and were confirmed as concerns by external audits conducted in 2011 and 2014.

f. Risks related to the client's approach to security;

CAO finds IFC's pre-investment assessment of the client's approach to the use of security forces to be inadequate. Specifically, IFC did not consider risks related to the client's reliance on government security forces in a region and sector with a history of violent incidents.

Similarly, and following a number of violent incidents on or near the client's estates, IFC did not assure itself during supervision that the client's approach to the use of security forces is in accordance with Performance Standard 4.

g. Allegations of economic displacement as a result of the project;

IFC has not assured itself of proper application of PS5 requirements by the client in relation to the potential economic displacement of workers' supplemental agricultural activities.

h. Application of Performance Standard 7 (Indigenous Peoples) to the project;

CAO finds that IFC did not assure itself that PS7 was properly applied to this investment.

i. Consultation and disclosure requirements in relation to the share program; and

Considering that: (a) the project required the majority of workers to participate in the share program; (b) the purchase of shares entails risk; and (c) tea workers are a disadvantaged and vulnerable group, CAO finds that:

- IFC's pre-investment review did not adequately consider the potential adverse impacts of the employee shareholder program on workers;
- Neither at IFC's first disbursement nor during supervision, has IFC had a basis to conclude that the company has met its requirements for effective consultation with workers in relation to the program;
- IFC has not assured itself that specific allegations of lack of consultation raised by the complainants have been addressed.

In 2014, IFC participated in a rights issue which had potential adverse impacts on the value of workers' shareholdings. In this context, there is no evidence to suggest that IFC required its client to consult with affected workers as required by PS1.

j. Consultation and disclosure requirements more generally.

IFC has not assured itself of proper application of PS1 consultation and disclosure requirements in relation to the project.

In particular, IFC has not ensured that the client disclosed required E&S assessment documents, Action Plans and monitoring reports in a manner that is accessible to workers.

Similarly, IFC has not assured itself that key E&S assessment processes and Action Plans were prepared following effective consultation with workers.