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Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE INVESTIGATION

IFC Advisory Services Project with Vizhinjam International Seaport Limited (IFC Project #28991) India

Complaints 01 to 03

**CAO Investigation of IFC Environmental and Social Performance in Relation to:
Kerala Port Project (#28991)**

Office of the Compliance Advisor Ombudsman for the
International Finance Corporation
Multilateral Investment Guarantee Agency
Members of the World Bank Group

Executive Summary

Since the early 1990s, the Government of Kerala (GoK), India, has worked to establish a seaport south of the state capital, Thiruvananthapuram. IFC became involved in the Kerala Port project in 2009, when it agreed to support the design and implementation of a public-private partnership to construct and operate the new port. In this advisory role, IFC worked directly with Vizhinjam International Seaport Limited (VISL or the client)—a company incorporated by GoK to lead the development of the Port at a pre-identified site at Vizhinjam.

The scope of IFC's advice included the preparation of an environmental and social impact assessment (ESIA) and Environmental Management Plan (EMP) for the project, as well as supervising the work carried out by the client's own consultants. IFC's financial advisory role ended in 2012, when the client decided not to award the project to the selected private partner. However, IFC remained engaged in the preparation of the ESIA until April 2013. Subsequently, the client awarded a concession to construct a port at Vizhinjam in July 2015.

This compliance investigation considers issues raised in three complaints filed with CAO on behalf of communities potentially affected by the Kerala Port project. The complainants raised concerns about the potential environmental and social impacts of the port and its associated infrastructure. They raised concerns about how the project would impact the livelihoods of people who depend on tourism and fisheries. They also raised concerns regarding impact on farmland related to the construction of infrastructure associated with the port development.

In responding to the complaints CAO has considered whether, during the time of its involvement until April 2013, IFC met its own requirements for approving and implementing the advisory services (AS) project. Key requirements in this respect included: (a) that IFC should not support AS projects that contravene IFC's Performance Standards (PS); and (b) that IFC should provide advice consistent with the PS. In turn, the PS contain relevant requirements relating to consultation and disclosure (PS1), land acquisition and economic displacement (PS5). The compliance investigation does not consider the development or construction of a port at Vizhinjam after IFC's involvement.

A summary of investigation findings for IFC response is set out in Annex 1. CAO finds that IFC prepared a partial ESIA for the project that was in some respects consistent with the PS. While acknowledging this role, CAO makes two broad non-compliance findings in relation to IFC's involvement in the project:

1. IFC took on the role of lead transaction advisor in relation to the Kerala Port project without a reasonable assurance of the client's commitment to develop the project in accordance with the Performance Standards; and
2. The ESIA as delivered by IFC was not fully consistent with the Performance Standards, particularly in relation to land acquisition and project impacts on livelihoods.

In relation to the decision to take on the AS project, CAO notes that IFC identified a range of environmental and social (E&S) risks associated with the construction of the Kerala Port. In order to mitigate these risks, IFC agreed to oversee the preparation of an ESIA and EMP for the project in accordance with the PS. This approach was consistent with the requirements of IFC's policies and procedures for AS projects at the time. At the same time, CAO finds that IFC staff were aware that the client intended to proceed with land acquisition in a way that was inconsistent with the requirements of PS5. At the time of approval, IFC did not advise the client to suspend its ongoing

land acquisition activities until the ESIA and other required plans had been completed. CAO finds that IFC's advice to the client was not consistent with the PS in this respect. IFC's support for the project while land acquisition was proceeding outside the framework of the Performance Standards was not consistent with IFC requirements for AS projects set out in the 2006 Advisory Guidelines and Policy.

In relation to the adequacy of the IFC-supervised ESIA, CAO makes a number of findings. Firstly, CAO finds that IFC agreed to a narrowing of its E&S mandate over the period of the AS project. Thus, rather than overseeing the full ESIA and EMP for the project, as originally envisaged, IFC finally oversaw only one component of the project ESIA—an assessment of marine-side port facilities that excluded land-based infrastructure such as road, rail and back-up facilities. This change of scope meant that IFC did not have assurance that impacts on land or cumulative impacts arising from the project were being addressed in accordance with IFC's E&S requirements.

Secondly, CAO finds that the marine-side ESIA delivered by IFC to its client lacked certain essential components of an ESIA for a major infrastructure project at the relevant stage of development. In particular, CAO finds that the IFC ESIA lacked adequate socio-economic baseline information on tourism based livelihoods, an assessment of project impacts on tourism based livelihoods and livelihood restoration plans for project impacts on tourism and fisheries as required by PS1 and PS5. CAO also finds that the IFC ESIA did not go through a process of consultation and participation, or disclosure as required by PS1.

Taken together, CAO finds that these shortcomings in IFC's application of its E&S requirements gave rise to a situation where IFC was supporting a project that was not in compliance with the Performance Standards.

CAO's TOR for this investigation includes the analysis of the immediate and underlying causes for any non-compliance found as well as an analysis of whether IFC's policies, procedures, and practices as they were applied to selection and structuring of this AS project provided an adequate level of guidance and protection.

In considering these questions, CAO finds that IFC's E&S policy framework as applied to the Kerala Port AS project was generally adequate and compatible with IFC's higher level sustainability commitments. Following existing procedures, IFC staff reviewed the E&S risk associated with the project and recommended that an ESIA and EMP for the project consistent with the PS be prepared. During its negotiation with the client, IFC agreed to include the preparation of the ESIA and EMP within IFC's scope of services. Had these been prepared in accordance with the PS as originally envisaged, the non-compliance findings in this report would have been substantially avoided. CAO sees instances of non-compliance in this case arising primarily from: (a) a lack of structured assessment of the client's commitment to the Performance Standards as a framework for the development of the port; and (b) an underestimation by IFC of the complexity of producing a PS compliant ESIA for the project.

Dealing with these issues in turn, CAO notes limited discussions between IFC and the client regarding the implications of conducting the ESIA for the project in accordance with the Performance Standards. CAO also notes that IFC's policy and procedures do not require the client to commit to develop the project in accordance with the Performance Standards as a condition of IFC's involvement. As a result, IFC did not test the client's commitment to the Performance Standards prior to approval of the project. Without a clear commitment from the

client to the Performance Standards, IFC also lacked leverage when issues regarding the application of the Performance Standards arose during project implementation, for example in relation to land acquisition and economic displacement of tourism operators.

IFC also underestimated the complexity of preparing an ESIA and EMP for the project. While consultants were engaged to conduct the ESIA itself, IFC did not resource supervision of E&S aspects of the project sufficiently. As a result, IFC identified gaps in the ESIA late in the preparation process when opportunities to course correct or complete necessary components of the work were limited. These included insufficient analysis of project impacts on tourism; under developed livelihood restoration plans; and shortcomings in consultation and disclosure around the ESIA process.

In the course of the investigation, IFC indicated that it had strengthened a number of procedures in order to address the risks IFC identified from its experience in the Kerala Port project. IFC's timeline of these actions is set out in Annex 2. CAO notes, in particular, that initiatives introduced during the Kerala Port project have been enhanced and applied across the C3P portfolio—for example, by providing E&S specialist support to all C3P projects, and preparing analysis of E&S issues at the early stages of each project. IFC also highlights that it currently requires AS clients to apply the PS to the extent that they do not contradict applicable laws.

In accordance with its Operational Guidelines, CAO will monitor IFC's response to this investigation report. Although IFC is no longer directly engaged in the Kerala Port project, CAO will consider actions taken by IFC to address the investigation findings at a systemic level, and will produce a monitoring report no later than one year from the date of publication of this report.

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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).

CAO compliance oversees investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance.

For more information about CAO, please visit www.cao-ombudsman.org

1 Background to the IFC Advisory Services Project

1.1 Kerala Port Project

In the early 1990s, the state Government of Kerala (GoK) proposed and began preparations to develop a new seaport on the coast south of the state capital city, Thiruvananthapuram.¹ A potential private partner was engaged in 1995, but development did not proceed.²

GoK led two rounds of bidding to identify a private sector partner to develop a new port in 2004-2006 and 2007-2009. During this time, GoK carried out preliminary technical and environmental studies and identified its preferred site at Vizhinjam.

In September 2009, GoK formally cancelled the tender process. Technical reports and designs prepared for the 2007-2009 bidding round became the initial project information available for IFC's later engagement with GoK.

The town of Vizhinjam has a population of approximately 50,000. Economic activity in the region includes farming, fishing and Ayurvedic tourism.³ The proposed port would result in transformational change in local land use: a large scale, industrial transshipment marine port development and related road and rail connectivity.

1.2 Vizhinjam International Seaport Limited: Structure and Purpose

In 2004, GoK incorporated Vizhinjam International Seaport Limited (VISL) as a company under the Companies Act, 1956. The purpose of VISL was to lead the development of a greenfield port at a pre-identified site at Vizhinjam through a Public Private Partnership (PPP) model on behalf of GoK.

To increase the chances of successful development of the port, GoK provided VISL with funds and authority to acquire the necessary land, develop access infrastructure, and structure the PPP transaction. VISL was authorized to select, through competitive bidding, a private partner for construction, financing, operation and management of the port. While various models for development were considered, the PPP was developed on a Build-Operate-Transfer basis with the intention that port facility would be eventually transferred back to GoK ownership.

1.3 IFC Advisory Services and Public Private Partnerships

IFC works with public sector clients to design and implement PPPs for infrastructure and basic public services. IFC's PPP business line (C3P) is part of its Advisory Services (AS) department. C3P does not give loans to clients to develop PPP projects, although private sector investors may later seek IFC financing. C3P typically acts as lead advisor to provide advice on technical, legal and regulatory requirements, build client capacity, address social and sustainability issues, and devise strategies to deliver PPPs.⁴ In some cases, IFC also sources donor funding to cover

¹ S. Anil Radhakrishnan, "Vizhinjam to become reality," *The Hindu*, August 17, 2015, available at: <https://goo.gl/C1MjH2>.

² N.J. Nair, "Feasibility study on Vizhinjam port project completed," *The Hindu*, July 3, 2003, available at: <https://goo.gl/j3GDaX>.

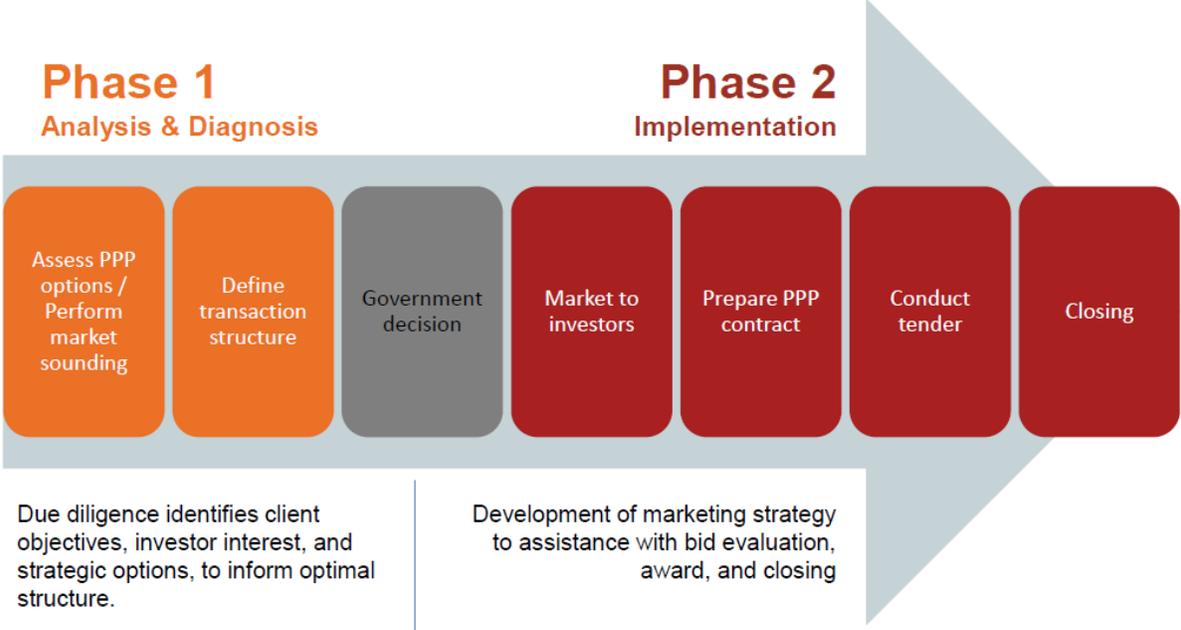
³ Royal Haskoning, "Environmental and Social Impact Assessment for the Development of Vizhinjam Port: Scoping Document," (August 2010), ("ESIA Scoping Document") Section 3.17, available at: <https://goo.gl/NfTNhZ>.

⁴ IFC website, "IFC's Priorities in PPPs," available at: <https://goo.gl/G7ntkf>.

transactional and advisory costs such as fees for technical consultants that provide advice and reporting. C3P provides these services to its public-sector client in return for a fee. In addition to a general retainer fee, IFC may earn a “success fee” if the PPP is successfully awarded to a bidder, and the deal is concluded.

The general phases of C3P advisory work are outlined in Figure 1 below.

Figure 1: Phases of C3P Advisory Work



Source: Adapted from Dan Croft, “IFC Transaction Advisory Services: Creating opportunities where it’s needed most, From Concept Design to Project Execution,” ECREEE, Abidjan, March 2014.

1.4 IFC Engagement in the Kerala Port Project

An IFC AS project is reviewed internally before it is agreed with the client. IFC’s early review materials for the Kerala Port Advisory Services Project (the AS project) noted that its role would be to assist the client with structuring and implementing the bidding process. The documentation identified several motivating factors for IFC engagement, including helping to promote industrial growth and development of the region. IFC also noted that the AS project was consistent with IFC’s objectives of promoting sustainable private sector development in the region and financing large infrastructure projects in India.

IFC identified that the construction and private operation of the Vizhinjam Port was expected to lead to increased employment during the construction and operation phases, including 5000 direct and 150,000 indirect jobs. These figures were based on previous studies commissioned by the client. IFC also noted that the port would lead to “tourism and industry investment in the region, fiscal receipts to government in concession fees and taxes, growth in transshipment traffic achieving positive backward and forward linkages to the broader economy, and more efficient port operations resulting in cost and time reduction.”

In relation to the Kerala Port project, IFC’s client was VISL (“the client”)—a corporation owned by GoK. IFC agreed on its mandate for the AS project in a Financial Advisory Services Agreement

that was signed with VISL and GoK in November 2009 (the FASA).⁵ Throughout the AS project, IFC dealt primarily with VISL, but also carried out briefings and consultation with GoK. IFC's role was to act as lead transaction advisor, to supervise the work of technical and environmental consultants, and to market the project to potential investors. As part of its mandate, IFC also agreed to coordinate and supervise the preparation of environmental studies needed for submission to the relevant government agency.

IFC's engagement with VISL was publicly announced in November 2009, and the FASA signing was attended by the IFC Executive Vice President at the time.⁶ However, the Kerala Port concession was not awarded to a private sector partner during IFC's involvement. IFC's financial advisory role concluded when the client chose not to proceed with awarding the PPP to the selected private partner. The FASA expired in December 2012. However, IFC remained engaged in the E&S aspects of the project until April 2013 when it delivered the final draft Port Environmental & Social Impact Assessment (ESIA) to the client.

1.5 Port Development Post-IFC Project

After IFC's exit as transaction advisor, the IFC client engaged a private sector firm as its transaction advisor and reopened bidding for the port development. The client submitted a comprehensive environmental impact assessment (CEIA) to the Indian Ministry of Environment and Forests (MoEF) in August 2013.⁷ The CEIA references IFC's inputs. VISL received environmental clearance to construct a port at Vizhinjam in January 2014. In May 2015, a GoK committee recommended the award of the revised port project to the sole bidder, Adani Ports and Special Economic Zone Ltd (APSEZ).⁸ Construction of a port at Vizhinjam commenced in December 2015. As noted by IFC, this construction project was prepared with separate advisors, changes to the implementation methodology and different commercial and legal structuring. In addition, IFC notes that there were major changes in the project concept and technical configurations. This report does not evaluate the port construction project as implemented by VISL and APSEZ.

⁵ "Kerala appoints IFC as advisor to Vizhinjam terminal project," *The Hindu*, Kochi, November 13, 2009, available at: <https://goo.gl/yBwsXC>.

⁶ *Ibid.*

⁷ *Comprehensive EIA for Vizhinjam Deepwater Port: Final CEIA Report*, available at: <https://goo.gl/Lluj6B>.

⁸ Business Standard (May 7, 2015) 'Empowered Committee recommends Adani for Vizhinjam,' available at: <http://goo.gl/gMZA4s>.

2 Background to CAO's Kerala Port Compliance Investigation

2.1 Kerala Port Project Complaints

This compliance investigation addresses the issues raised in three complaints filed with CAO between August 2012 and April 2013 in relation to the AS Project (“the CAO complaints”), on behalf of affected communities including fishing and tourism groups, local residents, and business-owners (together, the “complainants”).⁹

The first complaint was filed in August 2012 by representatives of affected communities.¹⁰ It raised concerns about the design and site selection of the port project, its socio-economic and environmental impacts on tourism and fishing activities, and about stakeholder consultation activities. The complainants also expressed concern that IFC in its role of transaction advisor was in violation of IFC's standards on environmental and social performance, and had not ensured that its advice was provided in compliance with national laws. The impacts of the port project noted by the complainants included water scarcity, loss of livelihood, and loss of land.

The second complaint was filed in November 2012 by a local fishing group, Kerala Swathantra Malsya Thozhilali Federation (Kerala Independent Fish Workers Federation).¹¹ The complaint raised concerns about the impact of the port on fishing activities, food supply, marine biodiversity, pollution, soil erosion, loss of land, and safety of the fishing community. In particular, the complainant raised concerns about potential displacement of fishermen and their families from the area, and livelihood impacts on fishing communities in the vicinity of the project site. The complainant requested information regarding project benefits for the fishing community members, especially employment opportunities.

The third complaint was filed in April 2013 by 14 residents of the village of Mullor, a coastal village near the project site.¹² This complaint raised concerns about the impact on farmland and access to water in relation to infrastructure associated with the port development, including the construction of drainage channels alongside a road leading to the port, and dumping of construction waste material on farmlands.

Based on the letters of complaint and CAO's Assessment Reports,¹³ the complaints can be summarized as raising allegations in relation to the following:

- a) Insufficient analysis by IFC of the potential environmental and social impacts of the proposed Kerala Port;
- b) Lack of analysis of alternative sites for the Kerala Port, in contravention of Indian law;
- c) Inadequate analysis of existing and potential environmental impacts on the marine environment, and on water supplies, as a result of the Kerala Port construction and operation;

⁹ Information in relation to each complaint is available on CAO's website, Vizhinjam-01 available at: <https://goo.gl/BAMGB6>; Vizhinjam-02 available at: <https://goo.gl/CjlbR0>; Vizhinjam-03 available at: <https://goo.gl/cS7vyh>.

¹⁰ Concerns of affected Stakeholders, Joint Complaint on the Proposed Vizhinjam Port Project, August 14, 2012, available at: <https://goo.gl/lb6l4s>.

¹¹ Complaint concerning Vizhinjam Port Project, November 28, 2012, available at: <https://goo.gl/G8cyaS>.

¹² Vizhinjam International Seaport construction – rainwater availability crisis, April 11, 2013, available at: <https://goo.gl/nWjzae>.

¹³ CAO *Assessment Report*, Vizhinjam-01, available at: <http://goo.gl/aw0Blf>; Vizhinjam-02 available at: <http://goo.gl/6MveLh>; Vizhinjam-03 available at: <http://goo.gl/FrA89u>.

- d) Potential socio-economic impacts on the local community, including tourism and fishing activities; and
- e) Potential disruption and safety issues for local fisher people, as a result of port construction and increased traffic of large vessels.

In relation to each of the complaints, CAO found no agreement among the key parties (complainants, the IFC client, and the GoK) to proceed with a dispute resolution process under CAO auspices. The IFC client felt that the complainants' concerns could and would be addressed through the domestic Indian regulatory framework and procedures.

In accordance with CAO's Operational Guidelines, the complaint then proceeded to CAO's Compliance function for appraisal.

2.2 CAO Compliance Appraisal and Investigation Terms of Reference

In June 2015, CAO completed a compliance appraisal of the Kerala Port complaints.¹⁴ The appraisal found that CAO's Operational Guidelines criteria for investigation were met.¹⁵

Based on Terms of Reference ("TOR") issued in December 2015, this investigation considers whether IFC's Kerala Port AS project was developed, implemented and supervised in accordance with applicable IFC policies, procedures and standards.¹⁶ Considering the issues raised in the complaints, it addresses the following questions in particular:

1. Whether IFC's advice in relation to E&S issues addressed or was otherwise consistent with the requirements of the PS, particularly regarding the:
 - a. assessment of the E&S impacts of land-based infrastructure associated with the project;
 - b. application of Performance Standard 5 (PS5) to assess and manage potential impacts of the project on tourism operators and fishing communities, specifically economic displacement; and
 - c. application of Performance Standards 1 (PS1) and 6 (PS6) as they apply to stakeholder consultation and project impacts on ecosystem services.
2. Whether IFC's policies, procedures, and practices as they were applied to selection and structuring of the AS project provided an adequate level of guidance and protection, in particular regarding:
 - a. when E&S risks, including client commitment and capacity to manage such risks, should preclude IFC from engaging as an advisor to a project; and
 - b. the scope of E&S responsibility that IFC should take on in relation to a high risk AS project.

¹⁴ CAO, *Compliance Appraisal: IFC Advisory Services Project with Vizhinjam International Seaport Limited, India*, June 1, 2015: available at, <https://goo.gl/HMIEii>.

¹⁵ CAO, *CAO Operational Guidelines* (2013), available at: <http://goo.gl/mdL4Rz>.

¹⁶ CAO, *Terms of Reference for Compliance Investigation of IFC: IFC Advisory Services Project with Vizhinjam International Seaport Limited (IFC Project #28991) India*, December 2, 2015: available at, <https://goo.gl/cQwK9x>.

The TOR also noted that any IFC exposure to the construction of the port, either directly or through a financial intermediary, would be of relevance in the context of CAO's compliance mandate.¹⁷ In the course of this compliance investigation, CAO requested from IFC information in relation to possible IFC exposure to the port construction through investments in banks and funds. IFC did not provide requested information in relation to these issues. As a result, CAO does not further explore this issue as part of the compliance investigation.

CAO's investigation considers the port project as it was configured up until the time of IFC's final delivery of the draft Port ESIA in April 2013. It does not assess the port project as implemented subsequently by VISL and APSEZ.

2.3 Methodology

This investigation was conducted in accordance with the CAO Operational Guidelines (2013)¹⁸ with inputs from CAO staff and two expert panelists. From December 2015 to May 2016, the investigation panel reviewed a range of relevant documentation, and conducted interviews with IFC management and staff who had direct knowledge of the project as well as representatives of the complainants.

CAO sought to undertake a site visit to Kerala in February 2016 but was unable to gain approval for a site visit from the Government of India.

In considering the adequacy of IFC's E&S performance in relation to this project, CAO has been conscious not to expect performance at a level that requires the benefit of hindsight. Rather, the question is whether there is evidence that IFC applied relevant requirements considering sources of information available at the time.

CAO's compliance mandate is focused on IFC's E&S performance. As a result, CAO makes no findings, adverse or otherwise, in relation to the performance of the IFC client. In the preparation of this report, CAO reviewed work carried out under the supervision of IFC during its participation in the project. CAO did not review and does not make any assessment of the work carried out by the client or its consultants outside of or subsequent to IFC's participation.

CAO notes that the CEIA in relation to the Kerala Port project was submitted to MoEF four months after IFC ended its involvement.¹⁹ Although the CEIA contains contributions from IFC, the CEIA was not reviewed by IFC and was not an IFC deliverable.

¹⁷ CAO, *Compliance Appraisal: IFC Advisory Services Project with Vizhinjam International Seaport Limited, India*, June 1, 2015: available at, <https://goo.gl/DWsWQd>.

¹⁸ CAO, *CAO Operational Guidelines* (2013), available at: <http://goo.gl/mdL4Rz>.

¹⁹ *Comprehensive EIA for Vizhinjam Deepwater Port, Final CEIA Report*, August 2013, available at: <https://goo.gl/Lluj6B>.

2.4 Project Timeline

The timeline below sets out the key events that occurred in relation to the Kerala Port AS project and the three complaints.

Date	Milestones, Events and Documents
2009	
November	IFC concluded Financial Advisory Services Agreement with Government of Kerala (GoK) and Vizhinjam International Seaport Ltd. (VISL).
December	IFC team carried out field visit and project launch in Thiruvananthapuram.
2010	
May	IFC engaged Royal Haskoning as primary technical consultant. Terms of Reference (TOR) include preparation of the Environmental and Social Impact Assessment (ESIA).
May	IFC issued Vizhinjam Port PPP Project Inception Report.
August	ESIA Scoping Study prepared by Royal Haskoning, including Terms of Reference for ESIA.
September	Strategic Options Report issued by IFC, including an update on the ESIA and detailed studies to be undertaken.
October	VISL with consultants L&T Ramboll prepared and submitted TOR for comprehensive ESIA studies to Government of India (GoI) Expert Committee. IFC established dedicated E&S team to provide guidance on Advisory Services (AS) and commenced monthly updates of high E&S risk AS projects.
2011	
March	Complaint made to Minister of State about land acquisition for connectivity infrastructure. Noted that acquisition commenced without a social and environmental assessment, and had included areas that were key to the local population's access to water.
April	Land acquisition complaint forwarded to IFC by VISL.
April	World Bank Group President issued updated IFC Sustainability Framework. ²⁰
May	IFC Board of Directors approved the updated IFC Sustainability Framework, resolving that the policy be adopted effective January 12, 2012. ²¹
June	Site-specific TOR for ESIA approved by GoI environmental clearance Expert Committee with suggested modifications.
August	Two technically compliant PPP bids received.
October	Meeting between IFC, VISL, and consultants to determine action plan for ESIA completion agreed scope of mandate for E&S analysis.

²⁰ Update of IFC's Policy and Performance Standards on Environmental and Social Sustainability, and IFC's Access to Information Policy (IFC/R2011-0082, dated April 19 2011).

²¹ Minutes of the Meeting of the Board of Directors of IFC [May 12, 2011].

2012	
January	Implementation of IFC 2012 Sustainability Framework from January 12.
February	One bidder denied security clearance by Gol. Single remaining financial bid opened. IFC issued internal tip-sheet outlining the scope of IFC's responsibility in relation to E&S due diligence in C3P projects.
August	GoK decided not to award the PPP contract to the final bidder. IFC financial advisory work on the Kerala Port concludes. First complaint received by CAO from Kerala Hotels and Restaurants Association.
September	IFC visited Vizhinjam and meets with its client and with stakeholders.
November	Second complaint received by CAO from Kerala Swathantra Malsya Thozhilali Federation
December	IFC met with complainants in Delhi.
2013	
March	IFC Advisory Services Completion Report issued. IFC issued staff guidance in relation to associated facilities and role of IFC in relation to ESIA's carried out by the client.
April	Third complaint received by CAO from residents of Mulloor. Location-Specific Draft ESIA for the sea part of Vizhinjam Port presented by IFC to VISL. IFC concluded its engagement with client in relation to Kerala Port
Conclusion of IFC engagement in Kerala Port	
August	Comprehensive EIA for Vizhinjam International Deepwater Seaport presented to the GoK, incorporating components from IFC's Location-Specific Draft Port ESIA.
December	GoK commenced fourth round of PPP bidding for construction of a port at Vizhinjam.
2014	
January	Ministry of Environment granted environmental permit for construction of a port at Vizhinjam.
2015	
May	GoK awarded PPP concession for construction of a port at Vizhinjam to Adani Ports and SEZ Ltd. (APSEZ).
December	APSEZ commenced construction of a port at Vizhinjam.

3 Analysis of IFC's Performance

3.1 Preliminary issue: What standard of E&S advice was required of IFC?

In 2009, when IFC approved the AS project, its Sustainability Policy and Performance Standards (2006) were applicable. The Sustainability Policy (2006) described IFC's "efforts to carry out its investment operations and advisory services in a manner that "do no harm" to people and the environment" as central to its development mission.²²

AS clients were not required to comply with the PS. Rather, the Sustainability Policy (2006) required that when IFC was providing advice for large scale investment projects, "the Performance Standards [would be] used as a reference in addition to national laws."²³

Further provisions for the application of E&S standards to advisory services projects were set out in IFC's E&S Review Procedures (2009) approved by senior management of the E&S department, as well as an "Advisory Guidelines and Policy" document (2006) issued by the relevant IFC department.²⁴

These internal procedures required IFC teams working on AS projects to:

- i. "Review potential E&S risks associated with the AS project";²⁵
- ii. "Incorporate E&S best practices" into the AS project design based on recommendations from E&S staff;²⁶ and
- iii. For AS activities related to large scale enterprises, "ensure that the activities are in compliance with applicable national laws and regulations and IFC Performance Standards (PS)."²⁷

IFC's approval documentation for the Kerala Port AS project incorporated a recommendation from E&S staff that the PS be applied to the design and implementation of the project given its potentially significant E&S impacts. Accordingly, IFC required that the ESIA, which it commissioned, comply with the PS.

In January 2012, IFC's Sustainability Framework (2012) came into effect. Under this framework, IFC was required to provide advice "consistent with the Performance Standards as a framework of good international industry practice."²⁸ The project record indicates that IFC staff took into account requirements of both the 2006 and 2012 PS in the course of the project. CAO notes that IFC incorporated language in the Kerala Port draft concession agreements requiring the private sector partner to comply with the 2006 PS. Internal documentation indicates that IFC referred to the 2012 Performance Standards when carrying out its review and preparation of the Port ESIA.

²² Sustainability Policy (2006), para. 8.

²³ Sustainability Policy (2006), para. 30.

²⁴ IFC Environmental and Social Review Procedures (ESRP) (version 4.0, August 14, 2009) available at: <https://goo.gl/FMDgV1>; IFC (2006) "Advisory Guidelines and Policy" (Internal IFC document. On file with CAO). The Advisory Guidelines and Policy (2006) were superseded in May 2011 by a new "Procedure on Advisory Services Project Governance."

²⁵ IFC ESRP (v4, 2009), para 11.3.1.

²⁶ IFC ESRP (v4, 2009), para 11.3.3.

²⁷ IFC, Advisory Guidelines and Policy (2006), "Social and Environmental Requirements for Standalone Advisory Services."

²⁸ Sustainability Policy (2012), para. 39.

While IFC delivered the Port ESIA to its client in April 2013, it indicated that the document was “consistent with the principles” of the 2006 PS.

Given that the AS project was approved on the basis that the PS would be applied to the design and implementation of the project, and given the requirements of the 2012 Sustainability Framework, which was in place at the time the ESIA was delivered, this compliance investigation considers whether IFC’s advice to its client was consistent with the PS.

CAO notes IFC’s position, that the 2012 Sustainability Framework applies only to projects that were approved on or after January 1st 2012. However, the IFC board decision approving the updated framework indicated that the new standards be adopted effective January 2012, without qualification.

3.2 Preparation and scope of the Advisory Services Project

The concerns raised by the complainants in 2012 and 2013 related to the potential environmental and social impacts of a port and its associated infrastructure. The complainants specifically pointed to the role of IFC as transaction advisor, and questioned the analysis supporting IFC’s decision to engage with the project. This section considers IFC’s preparation of the AS project in 2009 with a focus on IFC’s assessment of the project as appropriate for AS support.

Summary of CAO Analysis

IFC’s E&S staff were engaged in pre-approval review of the Kerala Port AS project, and identified a range of E&S risks associated with the project. In order to mitigate these risks, IFC agreed to oversee the preparation of an ESIA and environmental management plan (EMP) for the project in accordance with IFC’s Performance Standards. This approach was consistent with the requirements of IFC’s policies and procedures for AS projects at the time.

Internal guidance in effect in 2009 also stated that IFC would not provide AS support to projects that contravened IFC’s Performance Standards. At the time IFC approved the AS project, the team was aware that its client intended to proceed with land acquisition for the project and its associated facilities as a priority.

In accordance with Performance Standard 5 (PS5) IFC advised its client of the need to conduct an ESIA in relation to planned land-based developments as part of the project. However, IFC did not advise the client to suspend its ongoing land acquisition activities until the ESIA and other required plans had been completed. CAO finds that IFC’s advice to the client was not consistent with the Performance Standards in this respect.

3.2.1 Preparation and scope – IFC requirements

Key requirements relevant to the preparation of this project are set out in section 3.1 above. Under this framework, IFC was required to conduct a pre-approval review of E&S and reputational risks related to an AS project and incorporate mitigation measures recommended by E&S staff.²⁹

IFC’s Sustainability Policy (2006) did not provide guidance on AS project selection or the scope of responsibility that IFC should accept in relation to E&S issues. However, internal IFC requirements for AS projects in effect at the time noted that, in seeking to facilitate increased

²⁹ IFC ESRP (v4, 2009), paras 11.3.3; 11.5.2; 11.5.3.

development impact in emerging markets, IFC had made it a priority to understand and to articulate the business case for addressing E&S concerns.³⁰ The requirements stated that IFC would not undertake advisory operations in any of the areas identified in its exclusion list (e.g. tobacco, armaments, or the gambling industry) and would not “support projects that contravene IFC’s Performance Standards.”³¹

3.2.2 Preparation and scope – IFC action

As part of IFC’s pre-approval review of the AS project in 2009, staff noted that the construction of the Vizhinjam port involved potential E&S risks and impacts. For this reason, the team decided to engage IFC E&S staff at an early stage to review the risks and to check the standards that would be required for investors and for IFC investment.

Risks related to land acquisition were specifically noted in IFC’s approval documentation. As early as October 2009, IFC was aware that the client intended to acquire 120 hectares of land for the project within three months. It was noted that this may lead to protests and social issues. Meeting notes from early December indicate that the proposed compensation package for road and rail land acquisition would be shared with IFC for review and comment, but no assessment of this information is documented in the project record. Correspondence from IFC staff also in December 2009 indicated that they understood the client intended to carry out a Social Impact Assessment (SIA) of land acquisition for road construction.

IFC documentation from this period does not discuss relevant PS5 requirements in relation to land acquisition—namely that resettlement should be preceded by disclosure and consultation, a census, and preparation of a resettlement action plan (RAP) or framework.³² There was no discussion of whether the client’s planned timeframe for land acquisition would allow compliance with these requirements. There is also no indication that IFC advised its client to postpone land acquisition pending the development of a PS5-compliant approach. It was not until April 2011, following complaints to local authorities, that IFC recommended to the client that land acquisition be put on hold. Internal documentation from May 2011 stated that IFC’s E&S department had repeatedly indicated to the project team that land acquisition should only take place after an adequate EIA, RAP, public consultation and disclosure. The documentation noted that a situation where land acquisition had taken place before an EIA would be a serious issue if project developers were to approach IFC for finance, even if the land acquisition was not for the port *per se* but for associated facilities. CAO notes that inconsistencies in land acquisition for road construction were later raised and considered in the MoEF environmental clearance process.³³

Other potential impacts on the marine environment and on communities dependent on fishing and tourism were identified at the early stages of IFC’s involvement. As a result, IFC E&S staff recommended that the project include the preparation of an Environmental and Social Impact Assessment (ESIA) and an Environmental Management Plan (EMP) in accordance with IFC’s

³⁰ IFC, (2006) “Advisory Guidelines and Policy,” Eligibility of Enterprises and Activities.

³¹ *Ibid.*

³² PS5, (2006), paras. 22-23.

³³ GOI, MoEF, “Minutes of the 128th Meeting of the Expert Appraisal Committee for Projects related to Infrastructure Development, Coastal Regulation Zone, Building/Construction and Miscellaneous projects,” 20-23 November, 2013, available at: <https://goo.gl/UqTgaV>, see (viii) Violation/construction of approach road without prior CRZ/EC, p. 50, and stipulated conditions of Environmental/CRZ clearance “(xv) The Ministry will examine and take necessary action in accordance with the prevailing regulation against the construction of temporary service road by project proponent,” p. 52.

PS. According to IFC's project documentation, the client did not have capacity to undertake an ESIA study that was consistent with the PS. Further, the client saw IFC's expertise in E&S issues as a key value-add of IFC's involvement in the project. Therefore, the client requested IFC to include the conduct of the EIA in the technical consultant TOR. In consultation with IFC's E&S department (CES), the project team agreed to hire and supervise technical consultants to carry out the ESIA in relation to the proposed construction of the port, including the land to be acquired for the port facilities. Also in the FASA, IFC agreed to assume overall oversight over the performance by the consultants hired by the client ("client consultants") of their respective duties. This responsibility extended to consultants that provided services in respect of access infrastructure related projects.

Early documentation of IFC's planned risk mitigation approach for the project indicated that IFC would ensure approval of TORs for the EIA by the MoEF, closely supervise the completion of the EIA, and would follow up to gain government approval of the study. However, from June 2010, the MoEF implemented restrictions so that only consultants accredited by Quality Council of India (or having applied for accreditation) could certify or present ESIA documentation for clearance.³⁴ IFC reported to CAO that, as the primary IFC consultant did not meet these criteria, IFC agreed with the client that the client consultant would take the role of "lead consultant" for the entire development.

3.2.3 Preparation and scope – CAO Findings

IFC involved E&S staff in pre-approval review of the AS project as required by the ESRP. This review identified a range of E&S risks associated with the project. In order to mitigate these risks, IFC agreed to oversee the preparation of the EIA and EMP for the project in accordance with IFC's PS. This approach was consistent with the requirements of IFC's E&S procedures in place at the time.

However, CAO finds that information available to IFC at the time of project approval indicated that the client, which had been granted authority by the GoK to acquire land for the project, intended to proceed with that land acquisition in a manner that did not meet the requirements of PS5. The social and environmental risks presented by this plan were not adequately addressed by IFC's proposed mitigation measures. In particular, IFC did not identify that the client's intention to acquire land in a short period of time was inconsistent with PS5 requirements that land acquisition resulting in involuntary resettlement should be preceded by an impact assessment and resettlement framework.³⁵ At the time of approval, IFC did not advise its client to put land acquisition on hold while the studies were being completed. As a result, CAO finds that IFC's approval of the project was inconsistent with the Advisory Guidelines and Policy in effect at that time which provided that IFC would not support projects that contravene the PS.³⁶

3.3 Division of mandate for the ESIA Work

Each of the complaints brought to CAO in relation to the AS project were received before public disclosure of comprehensive environmental and social assessments by IFC or its client. The complaints raised concerns about the potential impacts of marine-side port facilities (such as

³⁴ GoI, MoEF (I.A. Division) "Office Memorandum: Accreditation of EIA Consultant by Quality Council of India." 28 June 2010 and 9 August, 2010, F. No. J-11013/77/2004-IA II (I), available at: <https://goo.gl/9oDmAQ> and <https://goo.gl/b8rz4F>.

³⁵ PS5, (2006), paras. 11-12;

³⁶ IFC, Advisory Guidelines and Policy (2006), "Eligibility of Enterprises and Activities."

dredging and reclamation) and land-based facilities such as road and rail linkages that were intended to provide access to the port. The complainants also questioned IFC's analysis of alternative sites for the proposed port.

This section addresses the changes in IFC's E&S mandate in relation to the project. It considers how IFC and its client defined the mandate in relation to the marine-side port facilities, the land-based port facilities and infrastructure, and the analysis of alternative project sites.

Summary of CAO Analysis

IFC embarked on the AS project on the basis that the preparation of a PS compliant ESIA and EMP were required risk mitigation measures. As part of its mandate, IFC and the client agreed that as lead advisor IFC would: (a) be responsible for a full technical/environmental due diligence review; (b) lead the ESIA for the project; and (c) at all times assume an overall oversight role over the performance of the client's consultants.

However, IFC did not ensure that component parts of the port were assessed in accordance with the Performance Standards. For this reason, IFC's approach to the preparation of the ESIA was not consistent with the PS1 requirement that environmental and social risks and impacts be identified in the context of the project's area of influence.

Under Performance Standard 1 the project ESIA was required to include an assessment of all port infrastructure including the associated facilities, an assessment of cumulative impacts, and an analysis of project alternatives.

During project implementation, however, IFC agreed that it would not have oversight of the full project ESIA and EMP. Rather, IFC oversaw only one component of the project ESIA, focused on the marine-side port facilities. Analysis of the risks and impacts of land based port facilities and associated facilities such as road and rail infrastructure was carried out by a client consultant without IFC supervision. Further, IFC determined that analysis of alternative project sites fell outside of its mandate. In this context, IFC did not have assurance that the ESIA and EMP for the port project were PS compliant.

3.3.1 IFC Mandate – IFC requirements

PS1 provides for a client's social and environmental assessment (such as an ESIA) to be analyzed in the context of the project's "area of influence." The 2006 PS define this as:³⁷

- i. the primary project site(s) and related facilities that the client (including its contractors) develops or controls, such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps;
- ii. associated facilities that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project;
- iii. areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are

³⁷ PS1, (2006), para. 5.

realistically defined at the time the Social and Environmental Assessment is undertaken;
and

- iv. areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location.

Further, PS1 requires that, where the project involves facilities that are likely to generate E&S impacts, the identification of risks and impacts will take into account findings and conclusions of related plans, including alternatives analysis.³⁸ The Guidance Note to PS1 states that the alternatives analysis should be conducted as early as possible in the assessment process and should examine feasible alternatives such as alternative project locations, designs or operational processes. Further, the analysis should consider potential environmental impacts of alternatives, the feasibility of mitigating these impacts, and their suitability under local conditions (among other things).³⁹

3.3.2 IFC Mandate – IFC Actions

IFC Mandate as defined in the FASA

The FASA defined the project as the development of a greenfield port at a pre-identified site at Vizhinjam through a public private partnership (PPP) model. IFC's objective was defined as assisting the client to attract a private entity or entities, through a competitive bidding process, to award the development, operation and maintenance rights for the port.

The preamble to the agreement also outlined the client's expectation that IFC would advise it on an adequate division of risks and responsibilities between GoK and private partners in the PPP. This included specific and time bound commitments for development of access infrastructure.

As noted above, IFC agreed to act as lead advisor for the project. In this role, the FASA recognized that IFC's analysis and recommendations would be based largely on information provided by the client, and on the reports prepared by consultants. The agreement stated that IFC could reasonably assume the accuracy, completeness, and sufficiency of that information and work product without undertaking to independently verify them. Nevertheless, IFC committed to assume an overall oversight role over the performance by the client's consultants of their respective duties at all times. This included a commitment to review previous work and existing studies, and coordinate with consultants to conduct a full technical/environmental due diligence review

The FASA provided that IFC would supervise the preparation of the ESIA for the project, without detailing the precise scope of the ESIA. IFC has advised CAO that its mandate was from the outset intended to be limited solely to the "marine-side" port facilities, such as terminals, berth, dredging and breakwater that were part of the larger associated development under the client's responsibility. However, the FASA was clear that IFC would oversee Environmental and Social Consultants that would perform a social impact assessment (SIA) for land to be acquired for the port facilities, indicating that the IFC role was not restricted to marine-side infrastructure.

³⁸ IFC, (2006) PS1, para. 9; (2012), para. 11.

³⁹ IFC, (2006) *Guidance Note 1: Social and Environmental Assessment and Management Systems*, Annex 1, available at <https://goo.gl/4fBx8Y>.

As discussed above, IFC was aware at approval that the client intended to acquire land for the project within an ambitious timeframe. A meeting between IFC and the client in December 2009 indicated that a compensation package for land acquisition for road and rail had been sent to the Cabinet for approval. At that stage, the client agreed to send the package to IFC for review and comment. However, IFC did not document any review of the proposed compensation package against PS requirements.

IFC engagement with project site and land acquisition issues

Early project documentation notes a need to construct 2km of road connectivity to the port and at least 10km of rail. The FASA indicated that “access infrastructure related projects” would be handled by client-hired consultants,⁴⁰ but that IFC would assume an overall oversight role over the performance of their duties.⁴¹ IFC’s supervision documentation from February 2010 noted, for the first time in writing, that this connectivity infrastructure would be outside the scope of IFC’s advisory mandate. At the same time, IFC noted that it had advised the client to retain a consultant (“the client consultant”) to carry out a SIA for the connectivity infrastructure separately to the ESIA for the port, which IFC would continue to oversee.

A February 2010 proposal for a “Road and Rail Connectivity ESIA” to be carried out by the client consultant was shared with IFC. The scope of this study covered road and rail infrastructure needed to access the port site, but did not include land based components of the project such as storage facilities, a truck terminal and a back-up area. This proposal included a requirement that the connectivity ESIA be prepared in accordance with IFC’s PS, however, IFC did not assume oversight of the client consultant’s work and CAO finds no evidence that IFC reviewed the client consultant’s work for consistency with the PS.

IFC staff reported to CAO that in the early stages of the project, they had stressed to the client that affected communities would likely not differentiate the port construction from the construction of associated infrastructure such as road and rail. Accordingly, IFC recommended to its client that stakeholder engagement should address the project’s impact more broadly.

Project documentation suggests that it was originally envisaged that IFC would lead the engagement with the national regulator, MoEF, to obtain environmental clearance for the port. However, no such undertaking was included in the FASA⁴² and, in April 2010, minutes of a project meeting noted that the client consultant would initiate regulatory processes to achieve environmental and coastal zone clearances for the project.

IFC confirmed the appointment of its own technical and environmental consultant (the “IFC consultant”) in May 2010. The IFC consultant was not accredited to appear before MoEF in India.

The TOR for the ESIA to be carried out by the IFC consultant (“the Port ESIA”) included all activities within the boundary of the port as well as an associated workers’ camp and a possible container storage facility. The TOR emphasized that it would be important that the Port ESIA consider the cumulative impacts of these infrastructure components. The TOR, however, does not clearly define the responsibility for analyzing alternative project sites. The document noted that a techno-commercial feasibility report had been prepared by the client’s consultant in 2004

⁴⁰ FASA, Annex 3, Clause I. 1. b.

⁴¹ FASA, Section 1. (b).

⁴² FASA, Annex 3, Clause I. 1. c. notes that the IFC supervised E&S Consultants would prepare documentation and provide them to GoK for submission to MoEF.

and revised in 2007. IFC specified that its consultant should examine the intellectual inputs for the feasibility report afresh and should submit an independent preliminary project report. The TOR noted that the earlier feasibility report had compared three possible sites for the greenfield port, each within a 10km stretch of the Kerala coast, and stated that the work under the IFC consultant's assignment should be for the location previously chosen (i.e. the location at Vizhinjam). At the same time, the TOR prescribe that the contents of the ESIA should include a comparison of feasible alternatives to the proposed project site in terms of their potential environmental and social impacts, among other things. An E&S scoping document was completed in accordance with these TOR in August 2010, and included provision for an "assessment of alternatives."

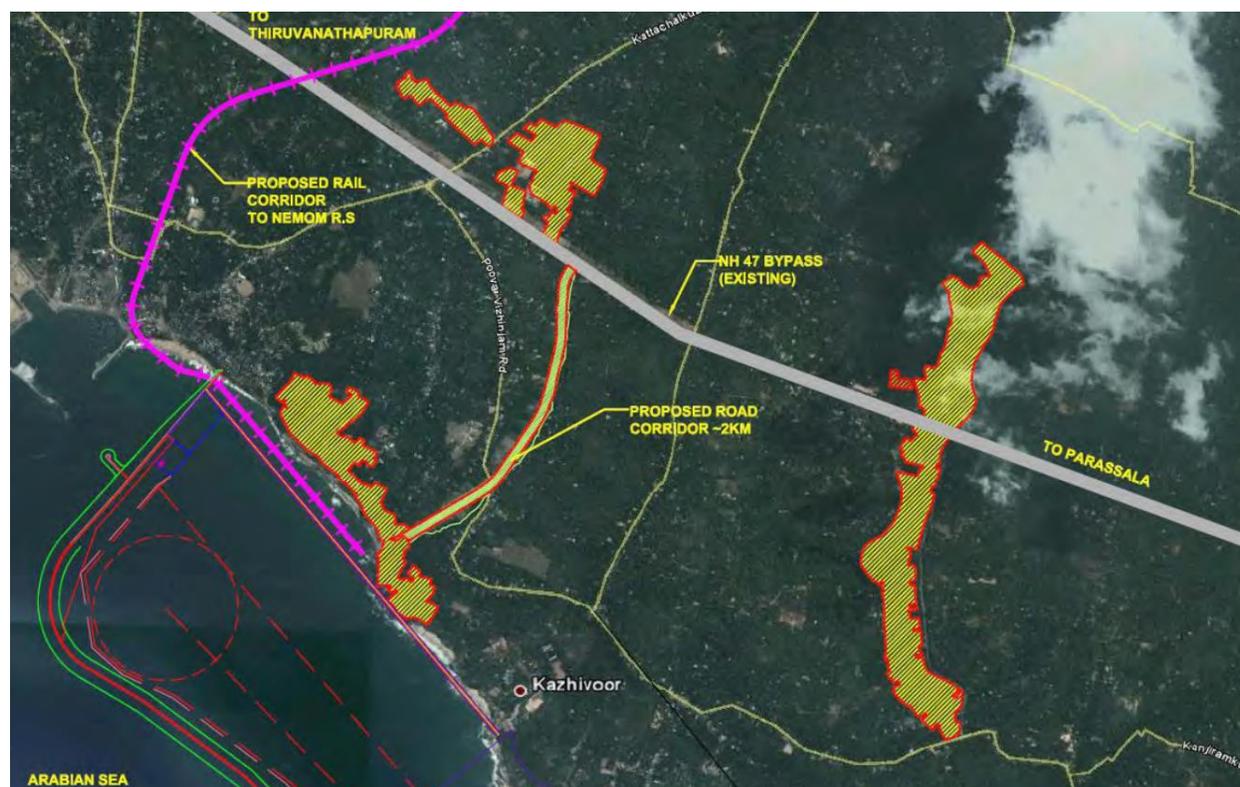
In October 2010, the IFC consultant produced a preliminary project plan that summarized previous analysis of alternative sites for the port development.⁴³ Of the three possible sites, the selected Vizhinjam site was explained as having lower impacts on local residents, fishing activities, relocation and rehabilitation requirements, and impact on the shoreline and rivers. It is not clear whether the IFC consultant reviewed the intellectual inputs for the original site selection analysis.

The preliminary project plan identified land areas that had been acquired by the client for port related activities, and noted that VISL was in the process of acquiring additional land. The IFC consultant recommended that the client target acquisition of strategic areas nearby the port and access routes.⁴⁴

⁴³ Royal Haskoning, "Preliminary Project Plan" (October 2010), section 2.1 "Project Location," available at: <https://goo.gl/KDi8z4>.

⁴⁴ Preliminary Project Plan (October 2010), p. 45.

Figure 2: Ancillary Sites of proposed Vizhinjam Port



Source: *Comprehensive EIA for Vizhinjam Deepwater Port: Final CEIA Report*, p. 2-41, indicating land area for ancillary facilities, available at: <https://goo.gl/Lluj6B>

Stakeholder concerns and MoEF queries

In March 2011, IFC became aware of complaints about land acquisition made to local authorities. In supervision documentation from May 2011 IFC noted that the client was already in the process of acquiring land for the access road and land-based components of the port. IFC noted that its standards would require that both the port and associated facilities comply with PS5 on land acquisition. IFC reported that it had advised the client to put its land acquisition process on hold until the completion of an EIA and RAP in accordance with IFC and national law requirements.

Also in May 2011, the MoEF examined proposed Terms of Reference for the comprehensive project ESIA.⁴⁵ The authority queried the location of the site and the likely impacts to the existing fishing harbor and requested further study of alternative sites.⁴⁶ The client submitted additional

⁴⁵ Minutes of the 101st Meeting of the Expert Appraisal Committee for Building/ Construction Projects/ Township and Area Development Projects, Coastal Regulation Zone, Infrastructure Development and Miscellaneous projects (May 2011), New Delhi, available at: <https://goo.gl/MvvMr5>.

⁴⁶ In particular, the MoEF expert committee requested that the client re-examine in detail all the identified sites, including the financial implications for dredging/filling of the area, the impact on surrounding developments including fishing harbors and habitations. *Ibid.*, p. 2.

details in June, and the MoEF approved “site-specific” Terms of Reference.⁴⁷ There is no evidence that IFC assured itself that the alternative site analysis was carried out in accordance with PS1.

Consultant roles and responsibilities

In October 2011, the role and responsibility of each consultant was clarified. A meeting between IFC, VISL and their respective consultants determined that the scope of work for the road and rail ESIA to be conducted by client’s consultant would be expanded to include ancillary sites and other land-based facilities to be constructed as part of the project.⁴⁸ The scope of work of the IFC consultant would be limited to port facilities largely to be constructed on reclaimed land and thus not requiring land acquisition. The ESIA’s would be compiled by the client consultant into the CEIA for submission to MoEF. This represented a significant change in the scope of IFC’s role as defined in the FASA.

In November 2012, IFC supervision material noted that the client had requested reassessment of the alternative project sites by the IFC consultant. In particular, the client noted that the alternative sites fell within the IFC consultant’s study area. However, IFC stated that the analysis of alternative sites fell under the client consultant’s scope. The draft Port ESIA, discussed below, did include alternative project layouts but presented only a summary analysis of the “no project” alternative and stated that site selection analysis was carried out by the client consultant.

3.3.3 IFC Mandate – CAO Findings

CAO finds that IFC did not ensure that component parts of the port were assessed in accordance with the PS.

IFC embarked on the AS project on the basis that the preparation of a PS-compliant ESIA and EMP were required risk mitigation measures. As part of its mandate, IFC and the client agreed that as lead advisor IFC would: (a) be responsible for a full technical/environmental due diligence review; (b) lead the ESIA for the project; and (c) at all times assume overall oversight role over the performance of the client’s consultants. In particular, it was noted in the FASA that IFC would oversee Environmental and Social Consultants that would perform a Social Impact Assessment for the land to be acquired for the port facilities.

Under Performance Standard 1 the project ESIA was required to include an assessment of all port infrastructure including associated facilities, an assessment of cumulative impacts, and an analysis of project alternatives. CAO finds that IFC’s approach to the preparation of the ESIA was not consistent with this requirement.

In IFC’s view, the scope of work completed by the client consultant and the IFC consultant, when viewed together, covered the entire area of influence—thereby meeting PS1 requirements.

However, CAO finds that IFC did not supervise the ESIA for road, rail, and ancillary facilities as originally envisaged consistently with the PS. During project implementation, IFC agreed that it would not have oversight of the full project ESIA and EMP. Rather, IFC oversaw only one component of the project ESIA, focused on the marine-side port facilities.

⁴⁷ Letter, MoEF to VISL, “Finalization of site specific ToR for the Vizhinjam International Container Transshipment Terminal at Vizhinjam by M/s Vizhinjam International Seaport Ltd. – Reg” (July 1, 2011). available at: <https://goo.gl/bTEPLv>

⁴⁸ These included back up areas, warehouses, truck terminal, water pipeline, transmission line and resettlement sites.

In IFC's view, this detailing of scope was a normal result of the standard ESIA scoping process whereby the focus of the assessment is clarified based on further details being available. According to IFC, the proposed model for development of the port, a "landlord" model, meant that the land-side infrastructure would have to be planned, designed and constructed by the client. IFC stated that, in such case, including the E&S related assessments in the client consultant's scope was determined to be the most efficient approach. IFC stated that this was consistent with IFC's understanding with the client from the start of the project.

IFC also stated that, if the advisory project had continued, IFC would have reviewed and provided comments on the comprehensive ESIA to ensure it aligned with the 2006 PS and to ensure the marine-side ESIA was integrated. IFC stated that, although it was not responsible for supervision of the land-side ESIA, it had several meetings and conversations with the client consultant and explained what undertaking a PS-compliant ESIA for land-side developments would entail. CAO did not find any documentation of these exchanges.

During the Kerala Port project, IFC maintained that analysis of alternative project sites fell outside of its mandate. In this context, CAO finds that IFC did not have assurance that the ESIA and EMP for the port project were PS-compliant.

IFC now recognizes that before signing up to a location specific mandate, IFC should undertake a review of the key E&S risks at the location and assess the feasibility of adhering to the approach of risk and impact avoidance, minimization and compensation set out in the PS. IFC reports that when IFC is asked to advise on a PPP for a project in an already selected site, its current approach pays greater attention to the alternative analysis undertaken before IFC's involvement. In the case of projects where a site has not yet been selected, IFC procedures now require robust alternative site analysis.

3.4 Preparation of the Port ESIA – Consultant Supervision

The complainants raised a number of concerns about the potential impacts of the proposed Kerala Port on fishing and tourism activities carried out in Vizhinjam. As noted above, IFC undertook to lead a complete due diligence review, to supervise the preparation of an ESIA and EMP, and to oversee the consultants retained by the client. However, the scope of IFC's responsibility narrowed to focus primarily on the port facilities to be constructed on reclaimed land.

This section outlines the development of IFC's engagement with the environmental and social consultants hired to carry out the Port ESIA, and assesses the steps taken by IFC to ensure that its advice to the client was consistent with the PS and with national law.

Summary of CAO Analysis

IFC delivered an ESIA that was in some respects consistent with the Performance Standards, in particular in that it set out useful environmental baseline data and socio-economic baseline data in relation to fisheries. The ESIA also identified key impacts in relation to fisheries-based livelihoods.

However, IFC's advice to the client was not fully consistent with the Performance Standards in that the Port ESIA which IFC delivered to the client lacked essential components of an ESIA. In particular, the document did not:

- incorporate a detailed socio-economic baseline for tourism-based livelihoods; or
- incorporate framework-level resettlement action or livelihood restoration plans.

IFC did not oversee the preparation of an Environmental Management Plan (EMP) as contemplated at the time of project approval.

3.4.1 ESIA Preparation – IFC requirements

The IFC PS set out requirements for E&S assessments to be carried out by IFC investment clients. However, as an AS client, VISL had no commitment to meet these obligations. This section considers the relevant PS requirements for E&S assessment as they are relevant to assess the consistency of IFC advice to its client.

PS1 requires that the scope of the risks and impacts identification process will consist of an adequate, accurate, and objective evaluation and presentation, prepared by competent professionals,⁴⁹ and will be consistent with good international industry practice (GIIP).⁵⁰

The objectives of PS1 include to identify and evaluate E&S risks and impacts of the project, and to adopt a mitigation hierarchy to anticipate and avoid, or where avoidance is not possible, minimize, and where residual impacts remain, compensate/offset for risks and impacts to workers, affected communities, and the environment.

To meet Performance Standards requirements, PS1 requires that the process undertaken to identify the E&S risks and impacts of the project should be appropriate in light of the type, scale, location, and stage of development of the project.⁵¹ In some cases, this will require a full-scale ESIA⁵² as well as reference to broader assessments such as regional, sectoral, or strategic assessments.⁵³ As described in the Guidance Note to PS1, key process elements for an ESIA include:⁵⁴

- (i) Initial screening of the project and the scoping of the assessment process;
- (ii) Examination of alternatives;
- (iii) Stakeholder identification (focusing on those directly affected) and gathering of social and environmental baseline data;
- (iv) Impact identification, prediction and analysis;
- (v) Generation of mitigation or management measures and actions;

⁴⁹ PS1, (2012), para. 19; PS1 (2006), para. 7.

⁵⁰ PS1, (2012), para. 7.

⁵¹ PS1, (2012), para. 7; PS1 (2006), para. 8.

⁵² PS1, (2006) required that projects with “potential significant adverse impacts that are diverse, irreversible, or unprecedented will have comprehensive social environmental impact assessments” that would include “an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed.” (para. 9). Under PS1 (2012) specific mention is made that, for greenfield developments “with specifically identified physical elements, aspects, and facilities that are likely to generate potential significant environmental or social impacts, the client will conduct a comprehensive ESIA, including an examination of alternatives “where appropriate.” para. 7, note 11.

⁵³ PS1, (2012), para. 11; PS1 (2006), para. 9.

⁵⁴ Guidance Note 1: Social and Environmental Assessment and Management Systems (2012), GN23, cf. (2007), G10. See also detailed guidance in relation to preparation of an ESIA in the Annex to Guidance Note 1.

- (vi) Significance of impacts and evaluation of residual impacts; and
- (vii) Documentation of the assessment process (i.e. ESIA report).

Relevant to the issues raised in the complaints, the PS require that a project complies with the applicable laws and regulations of the jurisdiction in which it is being undertaken, including those laws implementing host country obligations under international law.⁵⁵ The Guidance Note to PS1 also highlights that an assessment must conform to the requirements of the host country's environmental assessment laws and regulations, including the relevant disclosure of information and public consultation requirements.⁵⁶

3.4.2 ESIA Preparation – IFC Actions

Throughout the AS project, IFC completed biannual supervision reports that noted recent developments, identified key E&S risks, and summarized planned mitigation measures.

From October 2009 to August 2010, IFC engaged a consultant, set out TORs, and approved a scoping study for the ESIA. In its review of the scoping study, IFC provided comments with a view to ensuring consistency with the PS. This included adding requirements to: (i) assess social as well as environmental baselines; (ii) assess dependence on existing natural and/or common property resources; (iii) develop a community engagement plan comprising an information disclosure and community consultation plan; and (iv) develop a community grievance redress procedure.

Over the following year, IFC turned its attention to the structuring of the PPP and bidding process and ensured that E&S commitments were included in the draft PPP concession documents. However, available project documentation does not indicate that IFC played an active role in overseeing the IFC consultant's work on the ESIA during this period.

At the same time, an E&S risk management team was formed specifically for IFC Advisory Services ("the AS E&S Team"). Its mandate was to advise on all C3P projects and "High Risk" projects in other business lines, to build tools for E&S risk management in AS projects, and to carry out capacity building on the ESRPs and the IFC Sustainability Framework. The team identified a number of High Risk projects to be monitored on an ongoing basis, including the Kerala Port AS project.

Commencing in May 2011, the AS E&S Team circulated the first of several internal memoranda relating to the E&S issues raised by the Kerala Port AS project ("the E&S Notes"). The E&S Notes provide an important record of IFC's approach to addressing the PS compliance issues raised by the project. They also document the increasing concern of IFC staff in relation to the management of E&S issues associated with the project.

From October 2011 to July 2012, IFC documentation shows that staff actively engaged with its consultant and its client to clarify the scope of the ESIA and to supervise preparation of TORs for the SIA. Supervision documentation noted the long duration and high intensity of IFC's involvement, especially in supporting the client to secure E&S clearances for the project. IFC acknowledged that the coordination of inputs from the IFC consultant and the client consultant each working on their separate ESIA's posed an operational risk for the project as each item of the GoK-approved TORs needed to be completed within the given timeframe so that the project

⁵⁵ Performance Standards, "Introduction" (2012), para. 5, and (2006), para. 3.

⁵⁶ Guidance Note 1: Social and Environmental Assessment and Management Systems (2007), G10.

could secure clearances before the planned handover date. In early 2012, the IFC consultant began work on the marine-side Port ESIA, with IFC supervising closely.

In August 2012, the Government of Kerala decided not to award the PPP. In the same month, the first complaint relating to the project was lodged by affected community members with CAO. During this final phase, IFC continued to work with VISL on preparation and review of the marine part of the Port ESIA. In the course of these reviews, IFC supervision documents note that the project team was not satisfied with the level of expertise brought to the project by the IFC consultant. At this stage, the project team mobilized internal resources in an effort to address gaps in the analysis. IFC staff contributed substantially to drafting sections of the report, particularly in relation to the social aspects of the ESIA. IFC extended the completion deadline for the ESIA—originally September 2012—a number of times.

In light of the cancellation of the bidding process and discussions with GoK, IFC progressively narrowed the scope of the ESIA to provide less detail on impacts and mitigation measures. This was particularly in relation to the level of compensation for economic displacement required under PS5. CAO notes IFC's view that it was not possible to calculate exact compensation calculations, as this would have required further detailed assessments of affected people. In turn, IFC stated that this would depend on the final port configuration adopted by the client.

Internal IFC correspondence from December 2012 acknowledged that the document to be produced by IFC would not, on its own, be consistent with the PS. However, the project team emphasized that ESIA recommendations to the GoK would be fully consistent with the PS, and that detailed TOR would be provided to the GoK to conduct the remaining assessments and consultations. IFC's supervision material indicates that in the final months of IFC's engagement, the client requested that IFC revise the ESIA to eliminate recommendations for additional studies and consultations, thereby conforming only to the requirements set by Indian law and by the MoEF standards, and not the IFC PS. IFC did not make all of the requested amendments.

The final draft Port ESIA was delivered to the client in April 2013. According to IFC, the master plan for the port area was finalized by the client's consultant several months later.

3.4.3 ESIA Preparation – CAO Findings

Specific compliance issues relating to consultation and disclosure, tourism livelihoods, fisheries livelihoods, and biodiversity are each discussed in further detail below. The document produced by IFC and its consultant and presented to its client as the draft Port ESIA set out useful environmental baseline data and socio-economic baseline data in relation to, for example, fisheries. The ESIA also identified key potential impacts in relation to fisheries-based livelihoods. However, the document lacked essential components of a PS-compliant ESIA. In particular, the document did not include framework-level resettlement action and livelihood restoration plans that would have been appropriate given the stage of development of the project.

During discussions with CAO, IFC management acknowledged that the draft Port ESIA fell short of what would be expected of an international standard ESIA but emphasized that the document was intended to be integrated into the CEIA being produced by VISL's consultants. Further, IFC argues that it was not possible to finish a full ESIA including mitigation plans without final design details and without a private sector partner identified. In particular, IFC emphasized that, during its involvement in the project, critical changes to the master plan were being contemplated without any certainty and without any clear indication of timeline.

CAO finds that IFC did not provide a level of oversight of the ESIA preparation work carried out by its consultant that was sufficient to ensure an output consistent with the PS. This was particularly in relation to the analysis of social impacts. CAO notes IFC's position that it was not possible to present a more detailed impact analysis in the draft Port ESIA, because the port master plan was not confirmed until November 2012. However, in CAO's view the port plans were sufficiently advanced that they were "reasonably understood" as contemplated by PS1 at the time when substantive work on the ESIA was being carried out.⁵⁷ Given the magnitude of the impacts expected and the stage of development of the project, CAO finds that GIIP required that the draft Port ESIA present at least framework-level livelihood restoration plans, outlining typical compensation packages and providing estimated budgets.

IFC responded to this context by delivering an ESIA that was not fully consistent with the PS while at the same time providing recommendations that the client complete additional studies to bring its ESIA documentation into alignment with the PS. Given, however, that IFC had committed to deliver a PS compliant ESIA and EMP and given IFC's knowledge of its client's intention to proceed to environmental clearance as soon as possible, CAO finds that these measures were insufficient to meet the standard of providing advice consistent with the PS.

The sections below set out compliance issues CAO has identified in relation to IFC's advice, applying the specific requirements of the PS as relevant to the issues raised in the complaints.

3.5 Consultation and Disclosure

In their complaints to CAO, the complainants requested information about the potential benefits of the planned port and expressed concern that IFC had advised GoK to consider bids from investors at a time when key components of the EIA had not been completed, including stakeholder consultations and public hearings. The complainants argued that an emphasis on moving forward with the project quickly had marginalized the voices of affected communities and stakeholders.

This section considers how IFC supervised disclosure, consultation and community engagement activities in relation to the Port ESIA.

Summary of CAO Analysis

IFC recognized the importance of stakeholder engagement to the project and gave early advice to its client on consultation and disclosure that was consistent with the PS. Similarly, IFC drafted TOR for the Port ESIA that included consultation and disclosure requirements. IFC later reaffirmed that its consultant would take responsibility for conducting public consultations.

However, consultation activities envisaged by IFC when it embarked on preparation of the ESIA were not completed during IFC's involvement in the project. When affected communities raised concerns about potential impacts of the project, IFC made public representations that it would, as lead advisor, disclose and carry out public consultation locally (separately and prior to public hearings required under national law). IFC did not carry out separate public consultations, and did not support the public hearing convened by the Kerala State Pollution Control Board in June 2013.

As a result, the draft Port ESIA that IFC delivered to its client in April 2013 did not reflect a process of informed consultation and participation or a process of disclosure as required by PS1. Inadequacies around stakeholder engagement contributed to deficiencies in the Port

⁵⁷ PS1, (2012), para. 7.

ESIA's handling of project risks and impacts on biodiversity, tourism and fisheries, as concerns raised by affected communities in relation to these issues were not reflected or fully reflected in the ESIA as delivered by IFC to its client.

3.5.1 Consultation and Disclosure – IFC requirements

Performance Standard 1 requires that the client undertake a process of stakeholder engagement as part of E&S assessment. Stakeholder engagement is an ongoing process that may involve stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, the establishment of a grievance mechanism, and ongoing reporting to affected communities.⁵⁸ To be effective, consultation should be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information.⁵⁹

For projects with potentially significant adverse impacts on affected communities, PS1 requires an Informed Consultation and Participation (ICP) process that involves a more in-depth exchange of views and information, and an organized and iterative consultation, leading to the incorporation of affected communities' views on matters that affect them directly into the decision-making process.⁶⁰

PS1 also acknowledges that, in some cases, stakeholder engagement will be government led. The standard contemplates collaboration between the private sector and the responsible government agency (to the extent permitted by the agency) to achieve outcomes consistent with the objectives of the PS. If the process conducted by the government does not meet the requirements of PS1, a complementary process may be conducted and, where appropriate, supplemental actions should be identified.⁶¹

3.5.2 Consultation and Disclosure – IFC Actions

IFC's approach to consultation and disclosure changed over the course of the project, from an initial commitment to undertake stakeholder engagement, to later providing guidance to the client on how to carry out its own stakeholder engagement.

Consultant mandates and early stakeholder engagement

IFC staff recognized at an early stage of the project that stakeholder consultation and engagement would be crucial in relation to land acquisition. Staff also recognized that the affected community would not distinguish between impacts of the road and port components of the project. For this reason, IFC recommended that the planned baseline survey for the SIA for land acquisition be extended to incorporate socio-economic impacts of the combined developments.

In the course of preparing the ESIA Scoping Document, the IFC consultant carried out 14 meetings with stakeholders in June 2010.⁶² Stakeholders identified potential issues related to the impacts of the project on the landscape/seascape (tourism), the marine ecosystem, the local fishing community and the Vizhinjam fishing harbor. When IFC reviewed the Scoping Document, it incorporated a requirement for the IFC consultant to develop a community engagement plan.

⁵⁸ PS1, (2012), para. 25 ff.

⁵⁹ PS1, (2012), para. 30.

⁶⁰ PS1, (2012), para. 31.

⁶¹ PS1, (2012), para. 33.

⁶² *ESIA Scoping Document*, Annex 1: Minutes of Scoping Consultation Meetings.

This included requirements for a community consultation plan and a community grievance redress procedure.

IFC engagement with stakeholders

Stakeholder concerns drew attention from IFC staff in April 2011, after community members lodged complaints with local authorities about the impacts of land acquisition for the connectivity infrastructure. At that time, IFC reported that it had advised its client to put all land acquisition on hold until an EIA and RAP could be developed. There is no evidence that IFC provided support to its client or to the client consultant in relation to the application of IFC PS on stakeholder engagement in these circumstances. In October of the same year, the IFC consultant was noted as being responsible for conducting public consultations and drafting a “Social Impact Mitigation Plan.”

In December 2011, February 2012, and May 2012, specific meetings related to the rail and road connectivity were held with local community members, with the client consultants attending.⁶³

From April to June 2012, the IFC consultant carried out a household survey on a sample basis to collect information about baseline socio-economic issues and to seek feedback from affected communities about potential impacts of the port, road, and rail infrastructure. In addition, the IFC consultant carried out focus group discussions in May 2012 to understand project impacts on fishery and tourism in the study area.⁶⁴ The IFC consultant reported that it had carried out 43 focus group discussions, attended by 425 people in total.

In early 2012, IFC supervision documentation had noted “medium” level risks in relation to impacts from dredging, marine impacts, breakwater construction and land acquisition. However, IFC supervision materials do not discuss the concerns raised by particular stakeholder groups such as impacts on tourism or fisheries. It was not until after the first complaint was made to CAO, in August 2012, that documentation records IFC engagement with affected communities.

IFC staff visited the project area in September 2012 and, along with the IFC consultant, met with representatives of affected communities. Stakeholders expressed a range of concerns during a full day session, including concerns about the project’s potential impacts on tourism and fishing communities. IFC’s record of this meeting states that IFC conveyed to participants that the ESIA was still ongoing and that public consultation was still ongoing. In particular, IFC conveyed to community members that there would be other opportunities to voice concern when the ESIA was disclosed locally as part of IFC consultation and as part of the public hearing for the entire project.⁶⁵

During the CAO compliance investigation process, complainants expressed concern that this meeting with stakeholders had been “stage managed” to ensure that a large number of project supporters were in attendance, as well as those with concerns about the port’s E&S impacts. The

⁶³ *Comprehensive EIA for Vizhinjam Deepwater Port, Final CEIA Report*, section 7.1.7.4, Annex 7.3, Annex 7.4, Annex 7.5, available at: <https://goo.gl/Lluj6B>.

⁶⁴ *Comprehensive EIA for Vizhinjam Deepwater Port, Final CEIA Report*, section 7.1.7.3, available at: <https://goo.gl/Lluj6B>.

⁶⁵ September 25, 2012, “IFC allays fears over ‘flawed’ study for Vizhinjam project,” *The Hindu Business Line*, available at: <https://goo.gl/w8nHLD> September 26, 2012, Dredging Today, “India: IFC Meets Vizhinjam Port Project Stakeholders,” available at <https://goo.gl/gx3nZ5>.

IFC consultant did subsequently reach out to complainants requesting their help to collect baseline information about beach resorts in the project area, as discussed further in Section 3.7.

In December 2012, complainants traveled to Delhi to meet with IFC staff and management. The meeting was attended by a CAO observer and by several members of the IFC project team. IFC's summary of the meeting states that the IFC team answered queries and concerns with detailed references to documents, and that it was explained to the complainants that IFC had a limited advisory role in the wider potential port development. No specific follow-up actions are noted.

Disclosure and consultation on the final draft Port ESIA and the comprehensive EIA

In February 2013, IFC issued internal guidance to staff noting that IFC could not carry out consultation and disclosure on behalf of its clients. This guidance was informed by IFC's experience in relation to the Kerala Port advisory services project.

IFC delivered its final draft Port ESIA to the client in April 2013. Neither IFC nor its consultants were involved any further community consultation or engagement in relation to the CSIA. The draft Port ESIA was not disclosed to affected communities. When complainants requested a copy of the document in May 2013 IFC declined to share it on confidentiality grounds. IFC has reported to CAO that, as its FASA with the client expired in December 2012, it was not legally possible for IFC to engage as an observer and provide additional advice.

The draft Port ESIA stated that it was based on information including a household survey, focus group discussions and public consultation. The draft Port ESIA included guidelines for the completion of several social management plans to be developed by the IFC client, including a Stakeholder Engagement Plan, a Community Development Plan, a Community Grievance Mechanism, and an "Assessment of Impact on Tourism." The ESIA states that the plans should be completed during further design and before construction starts and sets out information about the intent of each plan, as well as the basic steps needed to implement the plan with recommendations to VISL on its implementation, structure, and scope.

After IFC ended its engagement with the client, the draft CEIA was released for public consultation under the national law framework. The Kerala State Pollution Control Board (KSPCB) convened a public hearing on June 29th, 2013 at Vizhinjam.⁶⁶ Relevant to IFC's role, the public hearing materials include complaints from stakeholders about the disclosure and content of the IFC-commissioned draft Port ESIA. In particular, submissions alleged that the draft Port ESIA had not been published for public viewing by the IFC client or KSPCB on their websites, and had not been translated into the local language of Malayalam.⁶⁷

3.5.3 Consultation and Disclosure – CAO Findings

At the outset, IFC recognized that the Kerala Port project would have potentially significant adverse impacts on affected communities and that engagement and consultation with stakeholders was necessary to ensure the success of the project. IFC's early advice to its client in relation to consultation and disclosure and its instructions to its ESIA consultant were consistent with the PS in including stakeholder engagement requirements.

⁶⁶ A list of participants, summary of oral submissions, and copies of written submissions are included as Volume III of the Comprehensive EIA, available at: <https://goo.gl/Lluj6B>.

⁶⁷ Comprehensive EIA, Table 7-23: Category 2 – Support and Comments, S. No 2.

The work initially undertaken by the IFC consultant appropriately collected primary and secondary data about the potential impacts of the project. The household survey included questions about environmental impacts, tourism-based livelihoods, and detailed questions about fisheries.

IFC represented to stakeholders that they would have opportunities to raise concerns and seek clarification about project impacts through a consultation and disclosure process on the draft Port ESIA. Up until October 2012, IFC internal documentation indicates that the project team intended to carry out local disclosure and consultation on the draft Port ESIA before it was submitted to the client and integrated into the CEIA. However, IFC did not disclose the draft Port ESIA or obtain comments. IFC delivered the draft Port ESIA to its client without required levels of consultation and disclosure.

In light of its experience in the Kerala Port project, IFC recognized that assuming the responsibility for consultation and disclosure at the project onset was not the appropriate course of action. In February 2013, IFC issued internal guidance to staff noting that IFC cannot consult and disclose on behalf of the client because such activities involve responsibility and accountability from the parties who own the project (i.e. the sponsor/developer) and the parties who will be involved in project development.

The CEIA was subsequently presented for public comment in a government-led process. IFC did not assure itself that this met the requirements of PS1. While IFC did recommend that its client carry out further processes of engagement, these were identified late in the preparation of the Port ESIA and IFC did not oversee their implementation. CAO notes IFC's view that, as the CEIA disclosure and consultation was performed after IFC disengaged from the project, IFC was not legally in a position to influence the process. Nevertheless, CAO finds that inadequacies around stakeholder engagement contributed to deficiencies in the draft Port ESIA's handling of project risks and impacts on biodiversity, tourism, and fisheries, as concerns raised by affected communities in relation to these issues were not reflected or not fully reflected in the ESIA as delivered by IFC to its client.

3.6 Fisheries Impacts

The complainants raised a number of concerns about the potential impact of the port on fishing activities, fisheries, and the coastal environment. This section addresses the specific compliance issues related to these impacts, including the social impacts of the project under PS1 and economic displacement of fisheries-based livelihoods under PS5.

Summary of CAO Analysis

IFC committed to prepare an ESIA including an ESMP to mitigate E&S risk associated with the project. During the scoping phase, and through primary data collection, IFC and its consultants worked consistently within the framework of PS1 to establish a socio-economic baseline, to identify the social impacts of the port on fishing communities, and to recognize the vulnerability of this population.

The draft Port ESIA recognizes that PS5 provisions on economic displacement are triggered by the project in relation to fisheries-based livelihoods.

However, the ESIA presents only high-level principles for livelihood restoration, together with guidelines for preparing a draft Livelihood Restoration Framework (LRF).

Given the stage of development of the project at the time IFC conducted the ESIA and the significance of the expected impacts, CAO finds that the lack of detailed mitigation and livelihood restoration planning in relation to fisheries related impacts was not consistent with the requirements of PS1 or PS5.

3.6.1 Impacts on Livelihoods – IFC requirements

Impacts on Livelihoods in PS1 and PS5

As noted above, PS1 requires a risks and impacts identification process that is consistent with GIIP.⁶⁸ A full-scale ESIA is required for large scale greenfield developments once “physical elements, assets, and facilities are reasonably understood.”⁶⁹ An ESIA must consider “all relevant E&S risks and impacts of the project.”⁷⁰

PS1 requires that environmental and social risks and impacts be identified in the context of the project’s area of influence.⁷¹ The area of influence includes direct project impacts as well as indirect impacts “on biodiversity or on ecosystem services upon with Affected Communities’ livelihoods are dependent.”⁷²

The PS set out two main approaches to addressing livelihood impacts: where the impacts result from project-related land acquisition, impacts should be addressed through PS5; where impacts result from other project activities, they should be addressed under PS1.

Beyond the standard framework for avoidance, mitigation and compensation set out in PS1, PS5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. It sets out specific standards for

⁶⁸ PS1 (2012), para. 7.

⁶⁹ PS1, (2012), para. 7.

⁷⁰ PS1 (2012), para. 7.

⁷¹ PS1, (2012), para. 8.

⁷² PS1, (2012), para. 8.

avoidance and mitigation of “involuntary resettlement.”⁷³ This term refers to both physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use.

PS5 also applies in project situations where involuntary restrictions on land use and access to natural resources cause a community or groups within a community to lose access to resource usage where they have traditional or recognizable usage rights, and where there is a restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources.⁷⁴

One of the objectives of PS5 is to improve, or restore, the livelihoods and standards of living of displaced persons. The term “livelihood” refers to the full range of means that individuals, families and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural-resource based livelihoods, petty trade, and bartering. The Guidance Note to PS5 recognizes that economic displacement associated with fisheries covered by PS5 and should be mitigated and compensated according to the principles set out below.⁷⁵

The requirements of PS5 span project design, compensation and benefits for displaced persons, community engagement, creation of a grievance mechanism, as well as livelihood restoration planning and implementation. When displacement cannot be avoided, PS5 requires that displaced communities and persons be offered assistance to help them improve or restore their standards of living or livelihoods.⁷⁶ Where only economic displacement is predicted, the following steps are required:

- A census will be carried out to collect socio-economic baseline data to identify persons who will be displaced by the project and determine eligibility for assistance.
- A Livelihood Restoration Plan (LRP) will be developed to compensate affected persons and/or communities and offer other assistance in a transparent, consistent, and equitable manner in accordance with the following principles:
 - in addition to compensation for lost assets, if any, economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living;
 - for persons whose livelihoods are natural resource-based and where project related restrictions on access apply, implementation of measures will be made to either allow continued access to affected resources or provide access to alternative resources with equivalent livelihood-earning potential and accessibility. Where appropriate, benefits and compensation associated with natural resource

⁷³ According to PS5, resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail (see para. 1).

⁷⁴ PS5 notes that in such situations, affected persons frequently do not have formal ownership, such as in marine environments (PS5, para. 5, FN. 7.).

⁷⁵ Guidance Note 5, 2012, GN20.

⁷⁶ PS5, para. 9.

usage may be collective in nature rather than directly oriented towards individuals or households;

- where circumstances prevent provision of similar resources, alternative income earning opportunities may be provided, such as credit facilities, training, cash, or employment opportunities.
- Develop an Environmental and Social Action Plan to complement government action planned to compensate Affected Communities and persons where government measures do not meet the relevant requirements of PS5. This may include additional efforts to restore lost livelihoods.⁷⁷

Where the magnitude of economic displacement is unknown due to the stage of project development, the requirement is to develop an LRF outlining general principles compatible with PS5.⁷⁸ Once individual project components are defined, the requirement is to develop a LRP that establishes the entitlements of affected persons and communities.⁷⁹ The Guidance Note to PS5 emphasizes that the potential cost of mitigation for economic and physical displacement should be scoped early in the project design phase and integrated into consideration of project design and development. Since mitigation and compensation for physical and economic displacement can be costly, early assessment is important to ascertain the viability of alternative project designs, technologies, routes or sites.⁸⁰

3.6.2 Fisheries Impacts – IFC Actions

Impacts on Livelihood and Economic Displacement

The IFC project team and the IFC consultant recognized potential impacts on fisheries-based livelihoods at an early stage. Focus group discussions and the household survey focused substantially on households dependent on fishing. As a result, baseline socio-economic data presented in the ESIA is more robust for fishing-related livelihoods than it is for tourism-related livelihoods.

The Scoping Study released in August 2010 provided a brief account of the existing commercial fisheries in the Vizhinjam area, and identified some potential impacts on fishing during the construction and operational phases of the project.⁸¹ The study notes feedback provided during initial consultations and acknowledges that, given “heavy dependence on fishing in the local communities, the effects of the port on the fish resource and fishing activity is important to assess and mitigate/compensate effectively.”⁸²

Two months later, in October 2010, the IFC consultant released a Preliminary Project Plan, that incorporated an “economic Cost Benefit Analysis” (CBA). The CBA purported to assess the economic viability of the port including:

1. Direct costs and benefits generated by the development of the port such as:
 - a. Financial benefits for other parties who benefit from the project;

⁷⁷ PS5, (2012) para. 2, para. 41.

⁷⁸ PS5, (2012), para. 16.

⁷⁹ PS5, (2012), para. 25.

⁸⁰ Guidance Note 5: Land Acquisition and Involuntary Resettlement, (2012) GN 21.

⁸¹ ESIA Scoping Document, p. 24, p. 33, available at: <https://goo.gl/pxTt0q>

⁸² ESIA Scoping Document, p. 33.

- b. Benefits from transfer payments like concession payments, taxes and subsidies paid and received as a consequence of the project.
2. Indirect effects to the region through additional employment and additional economic activity in the region.
3. Costs of (quantifiable) externalities, such as social and environmental impacts.

The report summary stated that the results of the CBA analysis showed an economic benefit for India as a whole of 214 million USD (Net Present Value) and close to 160 million for the State of Kerala.⁸³ However, the body of the report clarifies that “externalities” including costs and benefits related to welfare and other social and environmental impacts are not included in the evaluation,⁸⁴ but would be “qualitatively assessed” in the ESIA.⁸⁵ The report does not analyze the cost of impact mitigation measures that would be required under the PS or potential costs related to mitigation efforts or even compensation for economic displacement.

The draft Port ESIA noted particular types of fishing activities that are likely to be more impacted by port construction and operation and stresses the importance of preparing a robust and comprehensive LRF since impacts would be permanent and irreversible. In relation to fishing, the ESIA defined “economic displacement” and recommended guiding principles that VISL should follow in the development of an LRF. It also identified the key impacts on fishing community livelihoods with reference to PS5 and recommends compensation or mitigation actions for each group in general terms. Key impacts included loss of beaches, loss of fishing grounds, a longer route to the existing fishing harbor, damage to/loss of gear, equipment and boats, and loss of income. In relation to loss of beaches, the ESIA recognized that project affected fishermen eligible in line with PS5 included boat and gear owners, crew members, and laborers who carry out loading and unloading. For these groups, the ESIA recommended (among other things) cash compensation equivalent to actual income lost during the construction phase until a new fishing harbor is ready or access to alternate beaches is provided. The ESIA recommended that the draft LRF should be finalized in consultation with affected fishermen and should form a basis for developing a more detailed LRP.

3.6.3 Fisheries Impacts – CAO Findings

During the scoping phase, and through the primary data collection, IFC and its consultants worked to establish a socio-economic baseline, to identify the social impacts of the port on the fishing communities, and to recognize the vulnerability of this population as required by PS1. This work is evident in the details presented in the draft Port ESIA, which account for the different kinds of fishing-dependent livelihoods and the various project impacts anticipated.

The draft Port ESIA appropriately recognized that, for fisheries-based livelihoods, PS5 provisions on economic displacement are triggered and that targeted measures are needed to help restore the livelihoods of fisher people in the project’s area of influence. The ESIA suggested potential mitigation and assistance for affected communities, which are broadly consistent with PS5. However, the measures proposed are intended to inform the preparation of a draft LRF and did not meet the requirements for specificity where key project components have been defined.

⁸³ Vizhinjam Port PPP – Preliminary Project Plan, Final Report, 14 October 2010, p. iv, available at <https://goo.gl/FuIROX>

⁸⁴ *Ibid.*, p. 117.

⁸⁵ *Ibid.*, p. 124.

CAO notes IFC's view that, given the status of project development and its advisory role, IFC was not in a position to deliver detailed mitigation and livelihood restoration planning since it did not own the project, it could not commit to something it did not own, and could not provide mitigations for something it did not control. Further, IFC stated that because impacts on communities would be a result of land-side, marine-side, and associated facility developments, any ESIA covering only the marine impacts would be substantially deficient and potentially erroneous. CAO agrees: the approach of limiting the scope of the IFC's inputs to one part of the ESIA gave rise to a situation where IFC was supporting the preparation of a project that was not in compliance with the PS.

Given the stage of project development, the significance of the impacts involved and IFC undertaking to prepare an ESIA and ESMP for the project, CAO finds the advice IFC presented to its client was not consistent with the requirements of PS1 or PS5.

3.7 Tourism Impacts

The complainants raised a number of concerns in relation to the potential impact of the project on tourism, including tourism businesses and individuals whose livelihoods depend on tourism in the project area.

This section addresses the specific issues related to the impact of the project on tourism, including the social impacts of the project under PS1, economic displacement related to tourism-based livelihoods under PS5, and the ecosystem services relevant to tourism under PS6.

Summary of CAO Analysis

IFC did not ensure that the ESIA considered risks and impacts on tourism based on "recent social baseline data at an appropriate level of detail" as required by PS1.

IFC incorrectly concluded that project impacts on tourism-related livelihoods fell outside the scope of PS5. IFC's rationale for this decision is not supported by the language of PS5, or by IFC's own guidance material. As a result, the ESIA did not include an adequate assessment of potential economic displacement of people with tourism-dependent livelihoods. CAO notes that IFC's approach to the application of PS5 narrowed in December 2012 after the client stated a position that it would not provide compensation for economic displacement.

Although IFC recommended that the client complete a Tourism Impact Assessment, CAO finds that this occurred too late in the ESIA process. CAO also finds that a direction included in the ESIA to assess entitlements on the basis of the "legality" of resorts gave rise to potential inconsistencies with PS5 requirements that provide for compensation of economically displaced persons who are without legally recognizable claims to land.

In accordance with PS5, the likely impacts on tourism-based livelihoods required an LRP with express reference to compensation.

IFC did not direct a systemic review to identify priority ecosystem services as required by PS6. In relation to tourism, this meant that impacts on cultural ecosystem services were not identified or addressed in a coherent manner in the draft Port ESIA.

3.7.1 Tourism Impacts – IFC Standards

Impacts on Livelihoods

As noted above under 4.5.1, the PS set out two main approaches to addressing livelihood impacts: where the impacts result from project-related land acquisition, impacts should be addressed through PS5; where impacts result from other project activities, they should be addressed under PS1. PS1 requires that an ESIA consider “all relevant E&S risks and impacts of the project.”⁸⁶

PS5 recognizes that restrictions on access to land or use of other resources including communal property and marine resources may result in economic displacement, i.e. loss of income sources or other means of livelihood.⁸⁷ The Guidance Note to PS5 states that effective resettlement planning entails conducting a detailed socio-economic census of displaced persons and an inventory of affected land and assets at the household, enterprise, and community level.⁸⁸ As discussed above (3.5.1), the LRP will compensate affected persons and/or communities and offer other assistance in a transparent, consistent, and equitable manner. Economically displaced persons whose livelihoods or income levels are adversely affected will be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living.⁸⁹

PS5 also provides for compensation of economically displaced persons who are without legally recognizable claims to land or assets they occupy or use.⁹⁰

Ecosystem services

PS6 aims to protect and conserve biodiversity and to promote the sustainable management of natural resources by integrating conservation needs and development priorities. One of the practices outlined in PS6 is the assessment of project impacts on biodiversity, taking into account “the differing values attached to biodiversity by specific stakeholders” and identifying impacts on “ecosystem services.”⁹¹ The concept of ecosystem services encompasses different types of benefits that people and businesses obtain from ecosystems. In relation to fisheries, for example, these include provisioning services, which are the products people obtain from ecosystems (such as food) and supporting services which are the natural processes that maintain the other services. PS6 also recognizes cultural services, which are the nonmaterial benefits that people obtain from ecosystems.⁹² They may include natural areas that are sacred sites and areas of importance for recreation and aesthetic enjoyment.⁹³ In relation to tourism, use of the beaches and the visual amenity of the coastline constitute ecosystem services.

PS6 requires that, where a project is likely to adversely impact ecosystem services, the client will conduct a systematic review to identify priority ecosystem services.⁹⁴ This includes those services on which project operations are most likely to have an impact and, therefore, which result in adverse impacts to affected communities. When affected communities are likely to be impacted, they should participate in the determination of priority ecosystem services in accordance with

⁸⁶ PS1, (2012), para. 7.

⁸⁷ PS5, (2012), para. 5.

⁸⁸ Guidance Note 5, 2012, GN 32.

⁸⁹ PS5, (2012), para. 28.

⁹⁰ PS5, (2012), para. 27.

⁹¹ PS6, (2012), para. 6.

⁹² PS6, (2012), para. 2.

⁹³ PS6, (2012), para. 2, FN 1.

⁹⁴ PS6, (2012), para. 24.

PS1's stakeholder engagement process.⁹⁵ Where the client has direct management control over the impacts on relevant ecosystem services, adverse impacts should be avoided. If impacts are unavoidable, PS6 sets out that the client will minimize them and implement mitigation measures that aim to maintain the value and functionality of priority services.⁹⁶ PS6 includes a cross-reference to the economic displacement provisions of PS5.⁹⁷

3.7.2 Tourism Impacts – IFC Actions

IFC E&S staff visited the project site in late 2009 and recognized that the proposed port location would likely impact resorts and hotels in the area. Early scoping work expressly acknowledged that port operation and construction would impact resorts through visual, lighting, and noise disturbance.⁹⁸ PS5 is also discussed in relation to land acquisition for associated facilities, but there is no specific mention of economic displacement in the project documents until September 2012.

IFC documentation of meetings with the client at this time clarified that the client's view of impacted stakeholders was strictly limited to physical displacement, for which they stated they had already provided compensation. In this context IFC staff agreed that the port ESIA carried out by the IFC consultant would review economic displacement and compensation as follows:

- **Assessment of economic impact:** Stakeholders that would be negatively impacted by the project but whose land would not be bought by the client would be identified using the definition of economic loss provided in PS1 & PS5. However, the extent of the loss would not be quantified in detail.
- **Impact mitigation:** The ESIA would present the principles for compensation embedded in the PS but would not provide details of the measures required.
- Disclosure was to be only local and the duration was still to be defined (potentially less than 1 month).
- The final report would be submitted to GoK and this would be the end of IFC's involvement.

IFC noted that it would review the draft ESIA reports when available to determine whether they were compliant with the IFC standards and TOR and planned to engage a social specialist to assist with the review.

As noted above, in September 2012 IFC met with complainants and other stakeholders in Kerala and heard concerns regarding the potential impact of the port on tourism-based livelihoods in the area. Following this meeting, the IFC consultant agreed to undertake a baseline analysis of the tourism-based activities in the project area. This consisted of a questionnaire sent to 31 resorts in September 2012, with assistance from the complainants. Nine resorts responded to the questionnaire.

Internal IFC documents show that the project team then commenced a deliberative process to determine the appropriate application of PS5 in relation to economic displacement arising from the Kerala Port. In relation to tourism, IFC had information to show that the 31 resorts in the project area employed staff ranging from 20-400 persons each, and that an estimated 4000

⁹⁵ PS6, (2012), para. 24.

⁹⁶ PS6, (2012), para. 25.

⁹⁷ PS6, (2012), para. 25, FN 19.

⁹⁸ ESIA Scoping Document, p. 29.

people were directly employed in the tourism sector. IFC also acknowledged that, as a result of the project, the resorts would lose access to public beaches and the aesthetic and serene environment that was an important part of the resorts' commercial value proposition. IFC documented the concerns of resort owners—that they may lose business or may need to completely shut down due to the loss of beach access, degradation of the aesthetic and ambient air/noise quality, and noise/dust/traffic during the very long construction of the port and associated facilities. IFC was also aware that the resort employees may lose employment.

Internal supervision documentation from early December 2012 stated that fisher people and tourism resorts located in the back water of the project were clearly economically impacted according to PS5. However, two weeks later, the project team met with IFC social specialists to discuss the application of PS5 to the project. On the basis of this meeting, the project team determined that resort owners and those with connected livelihoods were not subject to economic displacement under PS5 on the basis that the expected project-related impacts were “indirect.” By contrast to the situation for fisher people, IFC staff determined that the loss of access to a public beach “does not directly fall under the criteria of access to natural resources (PS5, para 5, bullet point 5).”

Tourism impacts in the draft Port ESIA

Consistent with the conclusion of the December meeting, the draft Port ESIA included an express statement that “indirect” impacts on resort owners and households having livelihoods linked to Ayurvedic resort businesses do not fall under IFC PS5. The ESIA also attempted to assess the position of each resort in relation to the Coastal Regulation Zone (CRZ): an Indian legal framework that classifies regions of the coast in accordance with their eco-sensitive nature and in relation to the High Tide Line and Low Tide Line.

The Port ESIA presented a summary of the information received through the resort questionnaire but acknowledged that the potential impacts on individual resorts/hotels were not studied in detail as part of the socio-economic survey. A preliminary analysis of the impacts was based on nine focus group discussions carried out in resorts. The ESIA noted that access to the pocket beaches of Nellikunnu, Mulloor, Pulinkudi, and Axhimala will be permanently lost once the reclamation of land commences as the beach front will be converted into Port area. Potential impacts on tourism livelihoods summarized in the ESIA included loss of business, loss of employment for resorts' employees, disturbance to serenity and aesthetics of the tourist places and resorts, and increase in different types of tourists. The ESIA did not recognize loss of beaches as an impact on tourism under PS5.

As a mitigation measure, the draft Port ESIA recommended that a detailed “Tourism Impact Assessment” study be carried out to assess the potential impacts on these resorts in accordance with PS1. The ESIA recommended preparing resorts for a shift in the nature of tourism activities, and notes that the need and scope of this activity should be determined as part of the Tourism Impact Assessment study. Unlike the analysis of fisheries impacts, which recommends cash compensation for certain groups of project affected fishermen, the ESIA included no discussion of compensation for impacts on tourism-based livelihoods. The ESIA did, however, include a direction that the Tourism Impact Assessment should evaluate the status of each resort under the CRZ notification requirements and specified that entitlements should be determined based on the legality of resorts.

Two other specific mitigation measures are suggested in the draft Port ESIA—the development of a green belt around the port to reduce acoustic impact and transporting quarry materials at a greater distance from the shoreline to reduce impacts on tourism in neighboring Kovalam and Adimalathura beaches.

3.7.3 Tourism Impacts – CAO Findings

In relation to PS1, CAO notes that IFC identified likely impacts on tourism activities early in the ESIA process. Despite this, detailed baseline data on tourism-related livelihoods were not collected and no assessment of project-induced impacts on tourism was carried out. This represented a significant gap in the IFC-sponsored ESIA and was not compliant with the PS1 requirement that an ESIA consider “all relevant E&S risks and impacts of the project.”⁹⁹

CAO finds that IFC was incorrect to conclude that loss of tourism-based income or livelihoods fell outside the scope of PS5. IFC characterized impacts on the local tourism sector as “indirect” and on this basis determined that PS 5 did not apply. This interpretation of PS5 is neither supported by the language of the standard nor by IFC’s own guidance material.

Loss of access to public beaches, and loss of the beaches themselves, is a direct consequence of the acquisition of land along the coast for the purposes of the project.¹⁰⁰ While noting IFC’s view that the right to access a public beach is neither a traditional or recognizable usage right, CAO finds that loss of access to public beaches and loss of the beaches amounts to a restriction on access to what were previously commonly-held resources and thus falls within the scope of PS5.¹⁰¹ As such, people with livelihoods dependent on access to beaches, such as resort owners and employees of resorts, should be considered “economically displaced” under PS5. Accordingly, CAO finds that it was necessary to incorporate tourism-based livelihoods in an LRP alongside fisheries-based livelihoods and with express reference to compensation where required under PS5.

CAO also notes IFC’s position that it gave advice consistent with the objectives of the PS by recommending that the client complete a Tourism Impact Assessment as part of the April 2013 draft Port ESIA. However, given that tourism-related impacts were noted in the 2010 E&S scoping study commissioned by IFC, CAO finds no reason why a full assessment of tourism-related impacts should not have been included in the ESIA.

In relation to ecosystem services, IFC did not direct a systemic review to identify priority ecosystem services in accordance with PS6 or with the consultation requirements of PS1. In relation to tourism, this meant that the amenity that the tourism sector derived from the aesthetic value of the project area was not identified or addressed in a coherent and timely manner in the draft Port ESIA.

⁹⁹ PS1, (2012), para. 7.

¹⁰⁰ Guidance Note 5, 2012, GN 20.

¹⁰¹ PS5, para. 5; Guidance Note 5, 2012, GN3, GN 18.

4 Conclusion

This compliance investigation has considered issues raised in three complaints filed with CAO by communities potentially affected by the construction of the Vizhinjam Port in Kerala, India. The complainants raised concern with the potential environmental and social impacts of the port and its associated infrastructure. Concerns include project-induced impacts on tourism and fisheries related livelihoods, as well as impacts on farmland due to construction of infrastructure associated with the port development.

IFC was involved in the Kerala Port project as part of an advisory services project. IFC's role was to support the development of a greenfield port through a public-private partnership. The scope of IFC's advice included preparation of an ESIA for the project.

In responding to the complaints CAO has considered whether IFC met internal requirements for approving and implementing the AS project. Key requirements included: (a) that IFC should not support projects that contravene IFC's PS; and (b) that IFC should provide advice consistent with the PS.

While acknowledging IFC's role in preparing a partial ESIA for the project that was in some respects consistent with the PS, CAO makes two broad non-compliance findings in relation to IFC's involvement in the project:

1. IFC took on the role of lead transaction advisor in relation to the Kerala Port project without reasonable assurance of the client's commitment to develop the project in accordance with the PS; and
2. The ESIA, as delivered by IFC, was not fully consistent with the PS, in particular in relation to land acquisition and project impacts on livelihoods.

Regarding the decision to take on the AS project, CAO notes that IFC identified a range of E&S risks associated with the construction of the Kerala Port. To mitigate these risks, IFC agreed to oversee the preparation of an ESIA and an EMP for the project in accordance with IFC's PS. This approach was consistent with the requirements of IFC's policies and procedures for AS projects at the time. At the same time, CAO finds that IFC staff were aware that the client intended to proceed with land acquisition in a way that was inconsistent with the requirements of PS5. At the time of approval, IFC did not advise the client to suspend its ongoing land acquisition activities until the ESIA and other required plans had been completed. In this context, CAO finds that IFC did not take adequate steps to address the potential for the Kerala Port project to contravene the IFC's PS as related to land acquisition. CAO finds that IFC's advice to the client was not consistent with the PS in this respect.

Regarding the adequacy of the IFC-supervised ESIA, CAO makes a number of findings. Firstly, CAO finds that IFC agreed to a narrowing of its E&S mandate over the period of the AS project. Thus, rather than overseeing the full ESIA and EMP for the project, as originally envisaged, IFC ultimately oversaw only one component of the project ESIA, that which focused on the marine-side port facilities. This change of scope meant that IFC did not have assurance that project impacts on land were being addressed in accordance with IFC's E&S requirements. Secondly, CAO finds that the IFC ESIA lacked certain essential components of an ESIA for a major infrastructure project at the relevant stage of development. In particular, CAO finds that the IFC ESIA lacked adequate socio-economic baseline information on tourism-based livelihoods, an assessment of project impacts on tourism-based livelihoods, and livelihood restoration plans for

project impacts on tourism and fisheries as required by PS1 and PS5. CAO also finds that the IFC ESIA did not go through a process of consultation and participation, or a process of disclosure as required by PS1.

CAO's TOR for this compliance investigation included analysis of immediate and underlying causes for any non-compliance found as well as analysis of whether IFC's policies, procedures, and practices as they were applied to selection and structuring of this AS project provided an adequate level of guidance and protection.

In considering these questions, CAO finds that IFC's E&S policy framework as applied to the Kerala Port Advisory Services Project was generally adequate and compatible with IFC's higher-level sustainability commitments. Following existing procedures, IFC staff reviewed the E&S risk associated with the project and recommended that an ESIA and EMP for the project consistent with the PS be prepared. During its negotiation with the client, IFC agreed to include the preparation of the ESIA and EMP within IFC's scope of services. Had these been prepared in accordance with the PS as originally envisaged, the non-compliance findings in this report would have been substantially avoided. CAO sees instances of non-compliance in this case arising primarily from: (a) a lack of structured assessment of the client's commitment to the PS as a framework for the development of the port; and (b) an underestimation by IFC of the complexity of producing a PS-compliant ESIA for the project.

Dealing with these issues in turn, CAO notes a lack of early discussions between IFC and the client regarding the implications of conducting the ESIA for the project in accordance with the PS. CAO also notes that the client was not required to commit to develop the project in accordance with the PS as a condition of IFC's involvement. As a result, IFC did not test the client's commitment to the PS prior to approval of the project. Without a clear commitment from the client to the PS, IFC also lacked leverage when issues regarding the application of the PS arose during project implementation, for example in relation to land acquisition and to the application of PS5 to tourism operators.

IFC also underestimated the complexity of preparing an ESIA and EMP for the project. While consultants were engaged to conduct the ESIA itself, IFC did not resource supervision of E&S aspects of the project sufficiently. As a result, IFC identified gaps in the ESIA late in the preparation process when opportunities to course correct or to complete necessary components of the work were limited. These included insufficient analysis of project impacts on tourism; underdeveloped livelihood restoration plans; and shortcomings in consultation and disclosure around the ESIA process.

In the course of the investigation, IFC indicated that it had strengthened a number of procedures in order to address the risks IFC identified from its experience in the Kerala Port project. IFC's timeline of these actions is set out in Annex 2. CAO notes, in particular, that initiatives introduced during the Kerala Port project have been enhanced and applied across IFC's C3P portfolio—for example, by providing E&S specialist support to all C3P projects and preparing an E&S memo at the early stage of each project. IFC also highlights that IFC currently requires advisory services clients apply the PS to the extent that they do not contradict applicable laws.

In accordance with its Operational Guidelines, CAO will monitor IFC's response to this investigation report. Although IFC is no longer directly engaged in the Kerala Port project, CAO will consider actions taken by IFC to address the investigation findings at a systemic level, and will produce a monitoring report no later than one year from the date of publication of this report.

Annex 1: Findings for IFC response

Preparation and scope of the Advisory Services Project

IFC's commitment to oversee the preparation of an environmental and social impact assessment (ESIA) and environmental management plan (EMP) for the project in accordance with IFC's Performance Standards was consistent with the requirements of IFC's policies and procedures for AS projects at the time.

IFC did not advise the client to suspend its land acquisition activities until the ESIA and other required plans had been completed, as required by IFC Performance Standard 5 (PS5). IFC did not take adequate steps to address the potential for the Vizhinjam port project to contravene the IFC Performance Standards as they relate to land acquisition. CAO finds that IFC's advice to the client was not consistent with the Performance Standards in this respect.

Division of mandate for the ESIA work

IFC did not ensure that component parts of the port were assessed in accordance with the Performance Standards. For this reason, IFC's approach to the preparation of the ESIA was not consistent with the PS1 requirement that environmental and social risks and impacts be identified in the context of the project's area of influence.

IFC did not have assurance that the ESIA and EMP for the port project were PS compliant.

Preparation of the Port ESIA – Consultant Supervision

IFC delivered an ESIA that was in some respects consistent with the Performance Standards. In particular, it set out useful environmental baseline data and socio-economic baseline data in relation to fisheries and identified key impacts in relation to fisheries-based livelihoods.

However, the Port ESIA which IFC delivered to the client lacked essential components of an ESIA as it did not:

- incorporate a detailed socio-economic baseline for tourism-based livelihoods; or
- incorporate framework-level resettlement action or livelihood restoration plans.

IFC did not oversee the preparation of an EMP as contemplated at the time of project approval.

The approach of limiting the scope of the IFC's inputs to one part of the ESIA gave rise to a situation where IFC was supporting the preparation of a project that was not in compliance with the Performance Standards.

Consultation and Disclosure

IFC recognized the importance of stakeholder engagement to the project and gave early advice to its client on consultation and disclosure that was consistent with the Performance Standards.

Consultation activities envisaged by IFC when it embarked on preparation of the ESIA were not completed during IFC's involvement in the project. IFC did not carry out public consultations in relation to the Port ESIA and did not support the public hearing convened by the Kerala State Pollution Control Board in June 2013.

As a result, the draft Port ESIA that IFC delivered to its client in April 2013 did not reflect a process of informed consultation and participation, or a process of disclosure as required by PS1.

Fisheries Impacts

During the scoping phase, and through primary data collection, IFC and its consultants worked consistently within the framework of PS1 to establish a socio-economic baseline to identify the social impacts of the port on fishing communities and to recognize the vulnerability of this population.

The draft Port ESIA recognizes that PS5 provisions on economic displacement are triggered by the project in relation to fisheries-based livelihoods.

However, the ESIA presents only high-level principles for livelihood restoration, together with guidelines for preparing a draft Livelihood Restoration Framework (LRF). Given the stage of development of the project at the time IFC conducted the ESIA and the significance of the expected impacts, CAO finds that the lack of detailed mitigation and livelihood restoration planning in relation to fisheries-related impacts was not consistent with the requirements of PS1 or PS5.

Tourism Impacts

IFC did not ensure that the ESIA considered risks and impacts on tourism based on “recent social baseline data at an appropriate level of detail” as required by PS1.

IFC incorrectly concluded that project impacts on tourism-related livelihoods fell outside the scope of PS5. IFC’s rationale for this decision is not supported by the language of PS5 or by IFC’s own guidance material. As a result, the ESIA did not include an adequate assessment of potential economic displacement of people with tourism dependent livelihoods.

Although IFC recommended that the client complete a Tourism Impact Assessment, CAO finds that this occurred too late in the ESIA process. CAO also finds that a direction included in the ESIA to assess entitlements on the basis of the “legality” of resorts gave rise to potential inconsistencies with PS5 requirements that provide for compensation of economically displaced persons who are without legally-recognizable claims to land.

In accordance with PS5, the likely impacts on tourism-based livelihoods required a Livelihood Restoration Plan with express reference to compensation.

IFC did not direct a systemic review to identify priority ecosystem services as required by PS6. In relation to tourism, this meant that impacts on cultural ecosystem services were not identified or addressed in a coherent manner in the draft Port ESIA.

Annex 2: Strengthened IFC Procedures and Implementation

Date	IFC Action
October 2010	<ul style="list-style-type: none"> • Dedicated E&S team put in place within CES to provide guidance on IFC's advisory services. C3P accounted for a significant share of the work of this team. • Reminder email from Director to C3P staff stressing forthcoming Sustainability Policy Framework, need for E&S to be consistent with PS, requirement to invite E&S team to CRMs and QAE meetings etc. • Starting circulation of the Monthly dashboard and continuing ever since without interruption (initially the dashboard only covered high risk E&S projects, since FY15 it covers all C3P projects).
FY 2012	Guidance notes, dedicated training for all C3P (and other advisory services staff), socialization of the new Sustainability Policy Framework and the Access to Information Policy which came into effect January 1, 2012.
July 2012	Note from Director to all C3P staff describing sector specialists among E&S advisory services team, links to scoping/other tools produced by E&S team, requirement to have E&S language in ASOP cleared by a member of the E&S team etc.
February 2012	Issuance of the tip-sheet "E&S Due Diligence in C3P projects. How far does it go?" explaining why IFC should not undertake an ESIA on behalf of clients.
March 2013	Note from Director to all C3P staff with updates about role of CES E&S team in project cycle (particular focus on high risk projects), as well as links to tip sheets clarifying definitions of associated facilities and importance of not undertaking ESIA's directly.
February 2014	Note from Director to all C3P staff stressing importance of giving advice which is consistent with PS, and the importance of documenting this at all stages. Including documenting a discussion with a potential client to assess their capacity and willingness to accept advice consistent with PS, before a mandate is signed. This communication also stressed the importance of a site visit by a member of the E&S team for high risk projects, and for a member of the E&S team to review E&S related clauses in legal documentation prepared for clients.
April 2014	In 2013 a senior communications/stakeholder engagement specialist was hired by C3P. In April 2014 guidance was issued by the Director to all C3P staff on processes for undertaking a stakeholder assessment before signing a mandate and undertaking stakeholder outreach on selected projects as part of the mandate work.
FY 2015	<ul style="list-style-type: none"> • Introduced a strengthened approach on E&S matters that includes, among other improvements, having CES specialists supporting all C3P projects (not only high risk), enlarging the pool of CES specialists working on C3P projects beyond the dedicated unit created in 2011, having CES Regional Managers to close oversee projects in their region, having CES specialists to visit high risk projects. • Started periodic portfolio reviews where E&S issues are also discussed. • Operationalization of the Transaction Structure Review (TSR) milestone to discuss the results of C3P Phase I work of a project before presentation to the client. The TSR has a section dedicated to discussion of E&S Matters • CES Specialists are requested to prepare for the TSR an E&S Risk Allocation Memo (ESRAM) that summarizes the results of the E&S due diligence,

	recommends next steps to address key risks /gaps in information, and presents E&S term-sheet for tender documents.
August 2014	Note from Acting Director to all C3P staff explaining the strengthened approach effective immediately. The approach includes CES specialists to support all projects, not only the high risk ones
December 2014	Note from Acting Director to C3P managers on the importance of managing E&S risks
February 2015	Note from Acting Director to all C3P staff summarizing the results of the portfolio review and again highlighting the importance of E&S matters
FY 2016	New FASA template with revised section on E&S matters and client's endeavor in applying IFC PS, plus clearer instruction on what to include in the Annex Services in relation to the E&S Due Diligence.
March 2016	Note from Senior Manager to all C3P staff re-stating the importance of E&S matters, involvement of CES specialists, and need to raise to management attention clients that are refusing to follow E&S recommendations
FY 2017	<ul style="list-style-type: none"> • Redefinition of the overall E&S risk level and alignment of the definition for High, Medium, and Low with the definition of Category A, B, and C. • Clarified E&S criteria for tiering and alignment of the E&S criterion for tier III with the one used in investment process.
January 2017	Note from Senior Manager to all C3P staff on the change in risk level definition

Annex 3: Acronyms

AS	Advisory Services
C3P	IFC's PPP Advisory Services business line
CAO	Office of the Compliance Advisor/Ombudsman
CEIA	Comprehensive EIA
CES	IFC's E&S department
CRZ	Coastal Regulation Zone
CSO	Civil Society Organizations
E&S	Environmental & Social
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Monitoring System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedure
GIIP	Good International Industry Practice
GoI	Government of India
GoK	Government of Kerala
IEG	IFC's Internal Evaluation Group
IFC	International Finance Corporation
LRF	Livelihood Restoration Framework
LRP	Livelihood Restoration Plan
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-governmental Organization
PPP	Public Private Partnership
PS	Performance Standards
RAP	Resettlement Action Plan
SIA	Social Impact Assessment
TOR	Terms of Reference
VISL	Vizhinjam International Seaport Limited
WBG	World Bank Group

Annex 4: Overview of the CAO Compliance Process

CAO's approach to compliance work is set out in its Operational Guidelines (March 2013).

When CAO receives an eligible complaint, the complaint first undergoes an assessment to determine how CAO should respond. If the CAO compliance function is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted. The CAO compliance function can also be triggered by the World Bank Group President, the CAO Vice President or senior management of IFC/MIGA.

CAO compliance investigations focus on IFC/MIGA, and how IFC/MIGA assured itself of project environmental and social (E&S) performance. The purpose of a CAO compliance investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve E&S performance.

In the context of a CAO compliance investigation, at issue is whether:

- The actual E&S outcomes of a project are consistent with or contrary to the desired effect of the IFC/MIGA policy provisions; or
- A failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes that are contrary to the desired effect of the policy provisions.

In many cases, in assessing the performance of the project and implementation of measures to meet relevant requirements, it is necessary to review the actions of the IFC client and verify outcomes in the field.

CAO has no authority with respect to judicial processes. CAO is neither a court of appeal nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries.

Upon finalizing a compliance investigation, IFC/MIGA is given 20 working days to prepare a public response. The compliance investigation report, together with any response from IFC/MIGA is then sent to the World Bank Group President for clearance, after which it is made public on the CAO website.

In cases where IFC/MIGA is found to be out of compliance, the CAO keeps the investigation open and monitors the situation until actions taken by IFC/MIGA assure the CAO that IFC/MIGA is addressing the non-compliance. The CAO will then close the compliance investigation.

Annex 5: CAO Investigation TOR

[...] CAO's compliance mandate is to undertake a compliance investigation of IFC, and how IFC assured itself of the environmental and social performance of its investments. The focus of this process is thus on IFC's appraisal and supervision of an investment, and whether or not IFC complied with its own policy provisions. CAO does not undertake a compliance investigation of IFC's client. [...]

4.1.1 Scope of the Compliance Investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its advice, and whether the outcomes of the advice are consistent with the intent of the relevant policy provisions.

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, 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 E&S performance in relation to the Vizhinjam project in relation to the issues raised in the complaints.

The compliance investigation will consider whether IFC's advice in relation to the Vizhinjam project was developed, implemented and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's outstanding questions in relation to the project include:

1. Whether IFC's advice in relation to E&S issues addressed or was otherwise consistent with the requirements of the Performance Standards, particularly regarding:
 - a. assessment of the E&S impacts of land-based infrastructure associated with the project;
 - b. application of Performance Standard 5 to assess and manage potential impacts of the project on tourism operators and fishing communities, specifically economic displacement; and
 - c. application of Performance Standards 1 and 6 as they apply to stakeholder consultation and project impacts on ecosystem services.
2. Whether IFC's policies, procedures, and practices as they were applied to selection and structuring of this AS project provided an adequate level of guidance and protection, in particular regarding:
 - a. when E&S risks, including client commitment and capacity to manage such risks, should preclude IFC from engaging as an advisor to a project; and
 - a. the scope of E&S responsibility that IFC should take on in relation to a high risk AS project.

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The scope of the investigation also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.