



Ombudsman Assessment Report

Complaint regarding the Rainforest Ecolodge Company, Sri Lanka

February 2010

**Office of the Compliance Advisor/Ombudsman
International Finance Corporation and
Multilateral Investment Guarantee Agency**

Introduction

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are responded to by the CAO's Ombudsman function.

This document is a preliminary record of the views heard by the CAO team, and suggestions for next steps among the parties. These suggestions are intended to stimulate further ideas and options for improving relations and outcomes on the ground.

The complaint

In August 2009, a local NGO - Save the Sinharaja Campaign – requested the assistance of the CAO on behalf of residents of Deniyaya Village in Sri Lanka. The letter raises concerns about the social and environmental impacts of the Rainforest Ecolodge Company (REC), a tourism development project near to the Sinharaja Forest Reserve.

During discussion with the CAO, the complainant raises a number of issues about how the project benefits local communities living in and around the area. The complaint also notes environmental concerns, including felling of trees within a 1.6 kilometer 'buffer zone' surrounding the forest and damming of a river tributary; both of which the complainant believes is not allowable and threatens the rich biodiversity of the Sinharaja Rainforest.

The complaint asks what impact assessments were undertaken by the project developers and whether they have appropriate environmental permits. He suggested that a CAO team travel to the area to speak with local people and see the situation for ourselves.

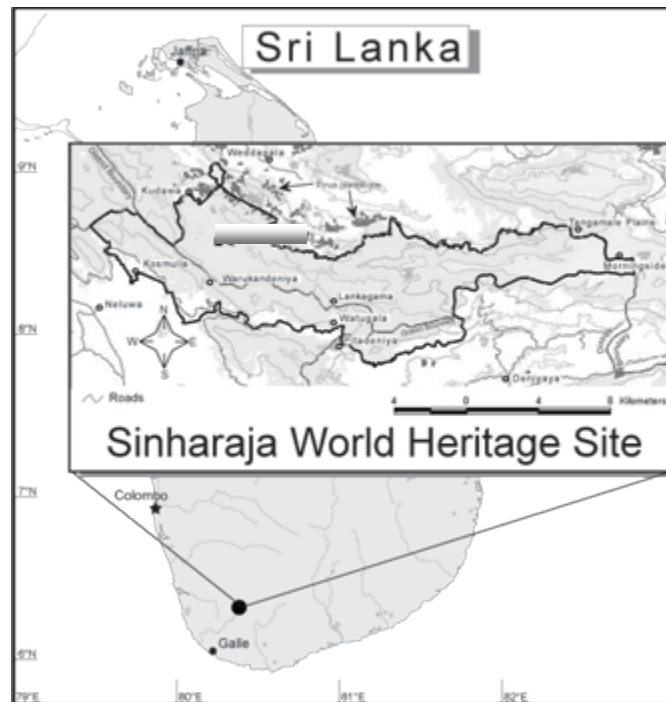
Based on the CAO's eligibility screen, the complaint was confirmed as eligible for assessment. The social and environmental issues raised fall under CAO's mandate; the project is supported by IFC – albeit under its Advisory Services as opposed to Investment operations; and Deniyaya is reasonably close to the project location.

The complainant requested that his name remain confidential and not be disclosed by the CAO during this process.

The project and location

Located close to the Sinharaja Rainforest in southern Sri Lanka, the Rainforest Ecolodge Company is a joint venture eco-tourism project set up by several private sector companies in the tourism sector¹. The project is intended to highlight the potential of Sri Lanka as a high-value ecotourism destination, helping to reposition the country towards sustainable, differentiated and premium markets.

Figure 1 Location of the Sinharaja Rainforest, Sri Lanka²



The project is currently under construction, with an expectation of completion in 2010. Project buildings, which will include a main structure and guest accommodation in chalets are located on land leased from the privately managed Enselwatte tea estate near to the boundary of the Sinharajah rainforest. This forest, a World Heritage Site and UNESCO International Man and Biosphere reserve is nationally significant as one of the last remaining intact rainforest areas in the country. As such it is a rich refuge for Sri Lanka's biodiversity – which includes many endemic species found only on the island.

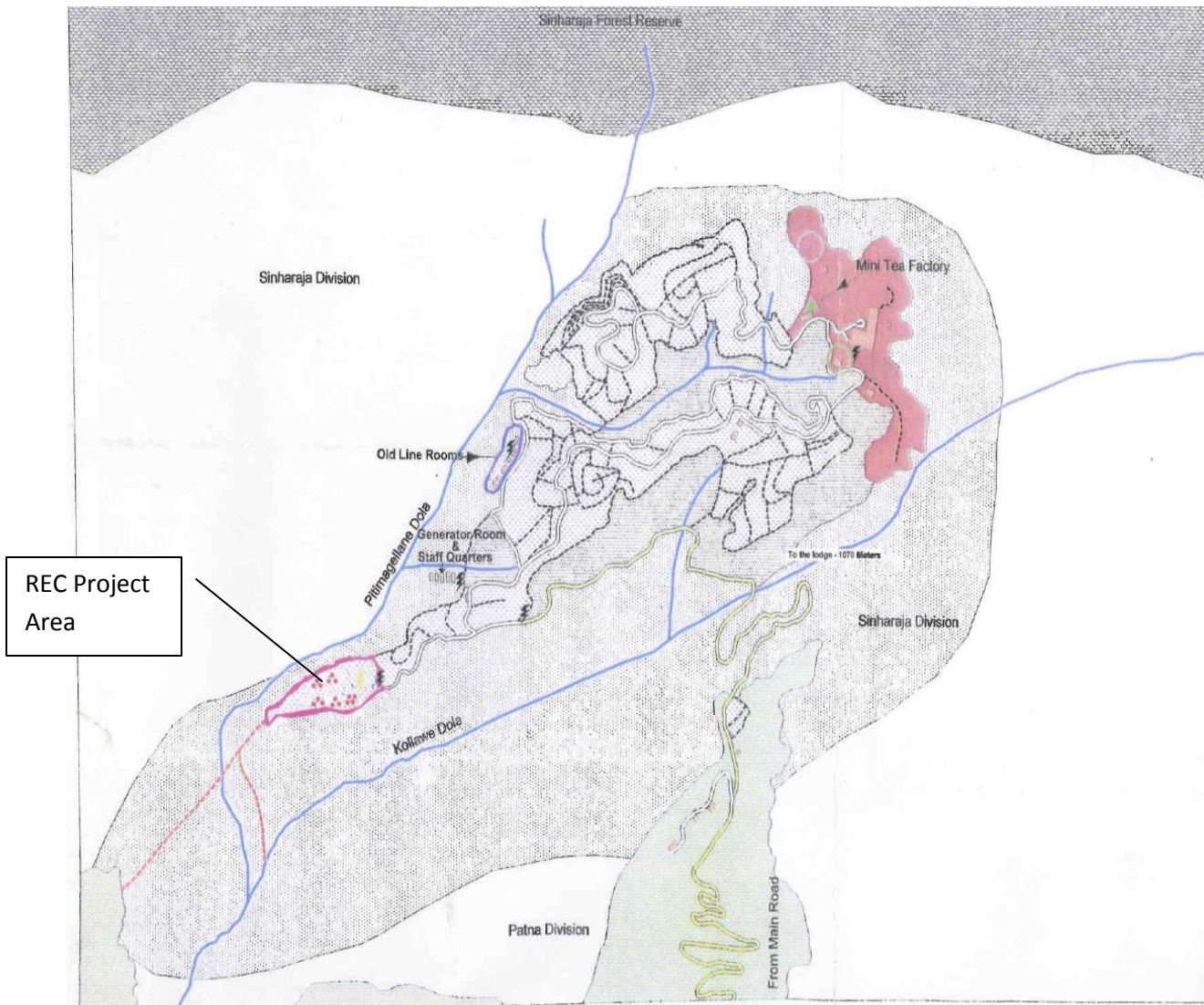
The closest immediate communities to the project are the families of tea workers employed by the Enselwatte Estate. The project considers these communities to be its neighbours due to their physical proximity. Project construction involved resettlement of a small number of tea workers from old and dilapidated 'lines' into new housing also on the tea estate. A small meeting hall, nursery and primary school, other common facilities and individual houses have been built. This construction is now complete.

¹ Investors are: Aitken Spence, John Keels, JetWing, MAS Holdings, CIC Group, Ceylon Tea Services Ltd (Dilmah), Serendib Leisure, Confifi Group, Herbal Holiday Resorts, Mount Lavinia Hotels.

² Source: <http://www.eoearth.org/image/Sinharajaplot.gif>

Deniyaya village is some distance from the REC site – about one hour by car along a steep and winding track that is used predominantly for accessing the tea plantations. Based on geography, the potential for impacts on the Deniyaya community by the project are not obvious. However, Deniyaya is also the location of the local government council – the Kotapola Pradeshiya Sabha – with whom the project must obtain certain approvals and clearances.

Figure 2: Project Map showing Tea Estate, the Sinharaja Forest Reserve and Project Area



From its early inception, REC obtained wide-ranging and substantial support from USAID to enhance the environmental and community development objectives of the project. REC established a prominent scientific advisory board comprising academics and forest department personnel³. This board has

³ Prof Sarath Kotagama, Univ of Colombo; Prof Nimal Gunathilleke, Univ of Peradeniya; Mrs Mallika Samaranayake & Mr Anura Sathurusinghe, Forest Dept

overseen the production of a number of field guides and Nature Interpreter Training documents that characterize the flora and fauna of the area.

The IFC, through its South Asia Enterprise Development Facility (SEDF), is providing technical advisory services to the project which initially included setting up of supply chain linkages with local small and medium sized suppliers. The IFC's support is now focused on assisting REC to obtain US Green Building Certification.

Assessment

In order to assess the complaint more fully, the CAO requested and carefully reviewed project documentation from IFC and REC. Based on discussion with project staff, REC and the complainant, the CAO team identified key stakeholders to assist with its assessment. The intention was to ensure a broad range of stakeholders so as to gather a diversity of perspectives on the issues raised in the complaint.

A field trip was arranged to visit Colombo, Deniyaya and the project location from October 26-30, 2009. The stakeholders interviewed are summarized in the table below.

Organisation	Name and contact
Complainant	Requested confidentiality, telephone and email correspondence
Deniyaya Kotapola Pradeshiya Sabha (Local Council)	Mr Dayananda (Chairman); Mr Ananda (PM); Ms Gunasekara (Secretary); Mr Maduwagoda (Technical Officer); Ms Hadapangoad (Environmental Officer)
Community Members	Meeting with 30-40 community members of the Enselwatte tea estate at the community village complex
Central Environmental Authority	Ms. Ramani Ellepola , Deputy Director General Ms Kanthi De Silva, Director- Env't, Mgt & Assessment Division
IUCN	Mr Shamen Vidanage, Program Co-ordinator
UNESCO	Mr R P Perera, Secretary General
USAID	Ms Rebecca Cohn, Mission Director Sri Lanka Ms Dilhara Goonewardene- ex- Program Director for USAID
REC	Mr Prema Cooray, Chairman of Rainforest Ecolodge Board of Directors Mr Hiran Cooray ,Chairman of Jetwing Hotels and a member of the Rainforest Ecolodge Board of Directors Ms Lakshmi Jeganathan, Project Director; additional field staff

Two translators were engaged to ensure ease of conversation with both Tamil and Sinhalese community members as necessary. Meetings were generally held privately between the CAO and stakeholders so that they felt free to express themselves. The exception was the tea estate meeting where REC staff were present. However, small group and one-to-one discussions were also held privately with some community members before and after this meeting to ensure that a reasonable range of views was expressed.

During the discussions with stakeholders, the CAO sought to understand better the basis for the concerns and issues raised in the complaint as well as probe whether the parties were willing to identify acceptable options to address these concerns.

Findings

- All stakeholders acknowledged that there have been some concerns about the relationship between the project and local community, including the Kotapola Pradeshiya Sabha. For example, the project construction was delayed and some changes were made to the design and location of chalets due to local environmental concerns. In addition, personnel changes on the part of the project appeared to have improved relations.
- With respect to specific environmental concerns made by the Claimant – including the request for environmental permits and other documentation – the Central Environment Authority (CEA) has confirmed that REC had obtained all necessary permits and clearances for construction based on its requirement for an Initial Impact Assessment. It noted that some requests for permits – for example for the research laboratory – had not been granted. Concerns relating to tree-felling as well as damming of local tributaries had not been substantiated by the CEA thus far, but the CEA confirmed that the project was monitored closely and provided evidence of this supervision. The CEA confirmed that, upon request, it was willing to disclose the Initial Impact Assessment as well as supporting permits. Independent environmental agencies consulted during this assessment endorsed the idea of disclosures from CEA and expressed confidence in its capacity to regulate private operations effectively in this case.
- According to locally produced maps, the distance from the lodge to the forest boundary is about 1km. However, since the boundaries of the forest are not properly demarcated, this figure can only be an estimate. The complaint raises some ambiguity about the status of a government initiative to extend a ‘buffer zone’ some 1.6km around the Sinharaja boundary which would prohibit tree-felling and some other activities within the private tea estate area. According to the CEA as well as other non-governmental agencies, there was no objection to the project within this zone so long as appropriate impact assessments and permits are granted, as appears to be the case. However, better access to publicly available documentation and clear boundary demarcations may help to parties to better understand this situation.
- As an interlinked issue, there is also some ambiguity about the status of forest fragments outside of the Sinharaja boundary and on the private tea estate. These forest fragments are present, for example, in the river valleys and areas that are too steep to cultivate tea. After initially being given permission to locate chalets in these fragments by CEA, REC has recognized that this issue became controversial. REC has agreed not to develop any properties in these areas and now has a strict policy of non-disturbance of these fragments. There may be a

potential opportunity for REC to promote forest expansion – creating a net increase of overall forest area – by encouraging forest regeneration within some of its leased tea plantation areas. The matter of demarcating the forest boundary and clarification of the status of the ‘buffer zone’ remains an area of ambiguity which could be addressed collectively by REC and the Forest Department with the support of UNESCO and IUCN.

- The Kotapola Pradeshiya Sabha members and officers confirmed that they remain concerned about and are monitoring closely the activities of the project. They indicated that in the last two months they had formally agreed to a final development plan with the project and that relations with the project had improved. However, they also recognize that they have a critical role to play in protecting the environment and the interests of local community members. In accordance with their mandate, they provided a schedule of regular site visits and supervision. They also indicated that they remain open to questions or concerns from any local person about the project and will follow up vigorously.
- There are opportunities to continue to improve communication and interaction between the project and local stakeholders. For example, the project has identified some potential employment opportunities, small business linkages and local sourcing of food, goods and services that will become necessary for the Lodge. In addition, REC has intentions for other community engagement activities that it could undertake. It may be helpful to both the project and community leaders to prepare a practical and clear Community Development Plan which identifies priority issues and actions which can form the basis of building a shared framework for interaction.
- REC believes that it shares a strong desire for environmental protection together with local community members. After all, its business model depends on protection of the rainforest which is attractive to visitors. Degradation of the forest is not in REC's interest. REC remains open to the comments and suggestions of community members. If helpful, REC indicated that it would welcome the Claimant or other representatives to visit the site to verify for themselves any concerns that they might have.

Suggestions for Next Steps

Based on its discussions with local stakeholders, the CAO believes that the following suggestions could assist in addressing the issues raised in the complaint submitted to our office in a way that is beneficial to community members, the environment and REC.

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1. Disclosure on the REC website of environmental permits, the Initial Impact Assessment and other documents pertaining to the project (with the clearance and approval of the CEA as appropriate)
 2. Disclosure on the REC website of the development plan agreed between the project and the Kotapola Pradeshiya Sabha (again with the prior approval and clearance of the Council)
 3. Development by REC, the Kotapola Pradeshiya Sabha and other local stakeholders (as appropriate) of a shared Community Development Plan that identifies practical actions to address shared priorities between the Lodge and communities.
 4. Dialogue between REC, the Forest Department and environmental protection agencies (including IUCN and UNESCO) to promote demarcation of the forest boundary in the project area and clarify the status of the forest fragments in the tea estate. This discussion should also consider options for forest regeneration in the REC leased area, if appropriate.
 5. Continued attention by the Kotapola Pradeshiya Sabha and CEA to monitoring and supervision of project commitments. In addition, CAO encourages both REC and the Kotapola Pradeshiya Sabha remain open to dialogue in addressing public questions and concerns.
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CAO understands that these suggestions are broadly acceptable to the parties and looks forwards to following up with them to confirm practical options for implementation and monitoring.

Additional Observations and Recommendations for IFC

This is the first Advisory Services project that has been reviewed by the CAO based on a complaint. As such, there are a number of observations that CAO believes may be helpful to promote greater accountability and effectiveness of development outcomes as a result of its experience on this complaint.

Observations

- CAO recognizes that Early Review, Approval and Supervision records encourage identification of Risks/Issues – including social and environmental concerns – as part of the routine project cycle process. However, as a relatively small stand-alone Advisory Services project initiated in 2006, there appears to have been no procedure in place for a formal appraisal of this project by a social/environmental Specialist from the perspective of adherence to IFC Safeguards or subsequently its Policies and Performance Standards.

- IFC's current Policy states that *"IFC provides advisory services that range from advice in connection with large-scale industry privatizations to grass-roots support for small enterprises. IFC funds some of these services directly, and in other cases leverages funds from donor-funded facilities. These donor-funded facilities have their own operating procedures, including how they manage social and environmental issues. When IFC is providing advice for large-scale investment projects, the Performance Standards are used as a reference in addition to national laws. IFC does not provide advice to support activities that are described in IFC's Exclusion List, and encourages recipients of IFC's advisory services to enhance opportunities to promote good social and environmental practices."*
- An appraisal by a relevant Specialist combined with guidance on supportive actions and appropriate disclosures (for example of the Initial Impact Assessment) would have been helpful in supporting the Sponsor to address some of questions raised in this case.
- CAO understands that IFC Advisory Services has already taken the initiative to revise its procedures for social and environmental requirements on IFC managed Advisory Services projects in order to improve identification, mitigation and supervision of E&S risks and that these new procedures are currently being applied. These documents are publicly available at <http://www.ifc.org/ifcext/sustainability.nsf/Content/ESRP>.

Recommendations

- CAO recommends that IFC use the opportunity of its review of the Performance Standards and procedures for their application to more effectively address social and environmental risks of projects (as opposed to the current emphasis only on magnitude) in order to ensure that there is an appropriate level of assurance for application of the E&S Policy and Performance Standards on Advisory Services projects.