

SEPTEMBER 2023

## Compliance Investigation Report

Regarding Community Complaint about IFC's  
Investment in Myanmar Awba Group Company,  
a Myanmar Agribusiness

## About CAO

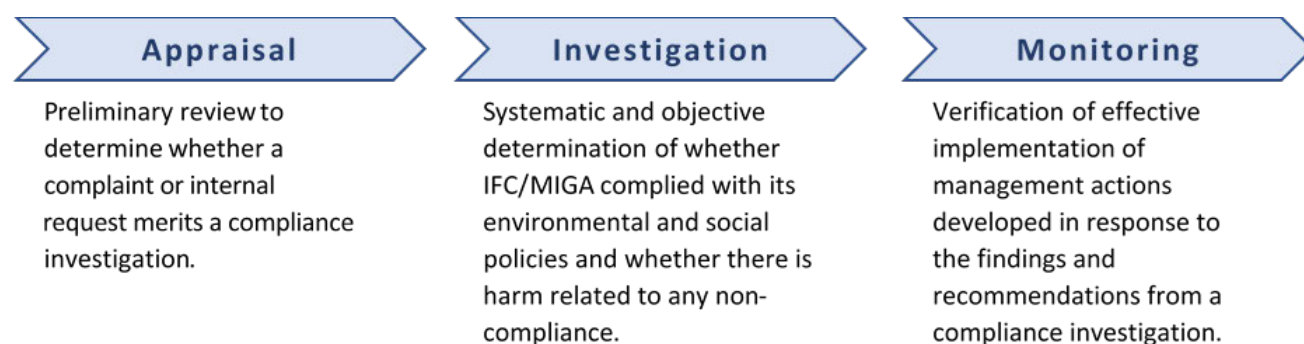
The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

## About the Compliance Function

CAO’s compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO’s compliance function follows a three-step approach:



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## Acronyms

CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
ECC	Environmental Compliance Certificate
EHS	Environmental, Health, and Safety
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
ESMP	Environmental and Social Management Plan
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FCS	Fragile and Conflict-Affected Situation
GN	Guidance Notes to IFC's Performance Standards on E&S Sustainability
HAIC	Hmawbi Agricultural Inputs Complex
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MONREC	Ministry of Natural Resources and Environmental Conservation
MPI	Myanmar Pesticide Industry
NGO	Non-Governmental Organization
PS	Performance Standards (IFC)
PS1	Assessment and Management of E&S Risks and Impacts
PS2	Labor and Working Conditions
PS3	Resource Efficiency and Pollution Prevention
PS4	Community Health, Safety, and Security
PS7	Indigenous Peoples
SII	Summary of Investment Information
WHO	World Health Organization

## Executive Summary

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*From 2016 through 2021, IFC invested in the Myanmar Awba Group Company Ltd. (“Awba”, “the client”), a leading agribusiness in Myanmar, one of the lowest income countries in Southeast Asia. IFC’s loan supported a significant expansion of Awba’s operations, including construction of a new agrochemical facility and additional fertilizer warehouses and distribution stations. IFC also provided Awba with working capital.*

*This CAO compliance investigation responds to a 2017 community complaint alleging project-related air and water contamination, associated community health impacts, and deficiencies in stakeholder engagement. CAO reviewed how IFC appraised, structured, and supervised its investment in Awba to evaluate whether impacts raised by the complainants were adequately considered and mitigated. CAO finds that IFC was non-compliant with its environmental and social policies in some aspects of its pre-investment review and client supervision.*

*Information gathering and the assessment of harm for this case was limited by CAO’s inability to conduct a site visit due to the political situation in Myanmar combined with COVID-19-related travel restrictions. CAO’s ongoing communication with the complainants and their in-country representatives was also limited by the heightened security risk they faced. A CAO compliance investigation is not a judicial or legal process. CAO follows a non-adversarial model, in which it obtains information from different sources. Complainants can, but are not required, to submit evidence or supporting documentation of their allegations. CAO’s compliance findings and conclusions are based on “sufficient, relevant” evidence as may be available.*

### IFC Investment

IFC’s investment in Awba, a leading domestic producer and distributor of herbicides, fungicides, insecticides, and fertilizers, was its first agribusiness investment in Myanmar since the World Bank Group re-engaged there after an absence of over two decades. Myanmar was then, and remains today, an IDA<sup>1</sup> country in a fragile and conflict-affected situation. In June 2016, IFC approved a loan for up to US\$10 million to expand Awba’s operations, which included an option to convert debt to equity. In December 2016, IFC disbursed the loan in a single tranche, without conditioning any specific environmental and social (E&S) requirements to the disbursement.

The loan supported construction of a new agrochemical plant, the Hmawbi Agricultural Inputs Complex (HAIC), which broke ground in December 2016 and began operating in August 2018. An existing facility, the Myanmar Pesticide Industry (MPI) formulation plant, located adjacent to the HAIC site, was operated as a joint venture between Awba’s managing director and a local partner. As part of the 2016 loan agreement, IFC required Awba’s managing director to transfer his shares in MPI to Awba, formally bringing the plant within Awba’s business scope. In January 2017, IFC conducted its first supervision visit to Awba’s facilities, including the MPI plant, after which IFC recommended that Awba decommission MPI due to its unsatisfactory environmental,

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<sup>1</sup> The World Bank’s International Development Association (IDA) provides support to the world’s lowest income countries, among which Myanmar is included.

health, and safety (EHS) working conditions. Awba's Board of Directors approved relinquishing its joint venture stake in the factory in June 2018. Production of agrochemicals at MPI was discontinued in December 2018 and Awba exited from MPI in June 2019.

In March 2021, Awba fully prepaid the loan to IFC, ending IFC's direct involvement with the project. IFC continues to have an active financial relationship with the Awba Group as a shareholder in Awba's microfinance business.<sup>2</sup>

## The Complaint

In October 2017, CAO received a complaint from a local resident on behalf of himself and other villagers living near the MPI and HAIC plants. In February 2018, a supplement to the complaint expanded the issues of concern and the reach of the complainants to [REDACTED] villages. The complainants raised concerns about the E&S impacts of the existing MPI plant and HAIC plant under construction without specifying which impacts were related to which plant. Their concerns included:

- Contamination of local water sources with associated health impacts;
- Air pollution and strong odors causing dizziness and nausea;
- Restrictions on road access;
- Lack of consultation and inadequate grievance procedures;
- Impacts on flora and fauna due to air and water pollution;
- Differential impacts on the livelihoods of local ethnic groups; and
- Unfair and unsafe labor practices (this issue is excluded from the compliance investigation).

After efforts to pursue a CAO-facilitated dispute resolution process broke down, the complaint was transferred to the CAO compliance function in June 2020. CAO completed the compliance appraisal in October 2020, concluding that a compliance investigation was warranted.

## Client Response

According to the CAO Assessment Report, Awba claimed that the E&S concerns raised in the complaint could only be related to the MPI factory, given that the new HAIC plant had not commenced operations by October 2017 or February 2018, when the complaint was filed. The IFC client also stated that it was unlikely the new HAIC plant was causing water pollution and that

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<sup>2</sup> IFC has a loan and equity investment in Maha Agriculture Public Company Ltd (project #38031), a microfinance institution in Myanmar, founded as a subsidiary of the Myanmar Awba Group Company Limited. It provides microloans to Myanmar's rural populations, supporting mostly agriculture, retail, and other microscale business activities in the country. IFC. 2016. SII (project #38031). Available at: <https://bit.ly/AwbaMicrofinance>.

it was not possible that strong odors were emanating from HAIC. Regarding stakeholder engagement, the client pointed to community information sessions on the company grievance mechanism and noted plans for monthly stakeholder meetings to discuss the project's Environmental and Social Impact Assessment (ESIA) and promote the grievance mechanism. Awba later engaged with complainants in a CAO-facilitated dispute resolution process, during which the company shared the ESIA and the Environmental Management Plan for the HAIC plant, as well as copies of licenses and permits.<sup>3</sup> In addition, the client highlighted the ESIA's conclusions that the HAIC plant would have no adverse impacts on local ecology and stated that it had a monitoring system in place.

Regarding road access restrictions, Awba indicated they built the fence 6.5ft away from the original land boundary to grant road access and that any more space should be provided by the landowners on the other side of the road. Awba did not address the issue of alleged impacts on local ethnic groups.

## **CAO Findings**

CAO finds that IFC's pre-investment due diligence and supervision of Awba's agribusiness was materially non-compliant with IFC's requirements under the Sustainability Framework in relation to the complaint issues raised by local residents. IFC due diligence and supervision fell short in the following areas:

### **Due diligence**

Contrary to IFC's Sustainability Policy requirements, CAO finds that IFC's pre-investment E&S due diligence (ESDD) of the potential investment was not "commensurate with the level of E&S risks and impacts arising from the company's operations." When the IFC Board approved the investment, IFC's limited E&S risk and impact assessment had not reviewed Awba's full range of operations. Specifically, the ESDD did not:

- Properly review the E&S risks and impacts of the range of Awba's relevant business activities, including the MPI plant, in its ESDD;
- Identify the past and present E&S impacts associated with the existing MPI agrochemical facility, and potential future impacts and risks associated with the proposed HAIC agrochemical manufacturing facility, including any adverse cumulative impacts in the area of influence; and
- Identify any communities that may be adversely impacted by the project, including potentially vulnerable populations or Indigenous Peoples. This failure came despite the 2018 supplemental ESIA identifying six villages in the HAIC plant's area of influence and

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<sup>3</sup> The complainants consider that the company did not share with the community all of the information they requested.

the [REDACTED] as among ethnic nationalities<sup>4</sup> present in nearby communities.

IFC postponed the identification of risks and impacts regarding MPI and HAIC to the project supervision stage, by including the preparation of an ESIA in the E&S Action Plan (ESAP) for the client. IFC took this approach despite identifying Awba's lack of E&S capacity as a key investment risk.

As a result, at the due diligence stage, IFC did not have sufficient information to accurately:

- Identify E&S risks, impacts, and mitigation measures with regard to the HAIC and MPI plants;
- Identify local stakeholders who might be affected by the construction and operation of the two plants;
- Determine, prior to Board approval, whether Awba could meet the IFC Performance Standards over a reasonable period of time; and
- Include the necessary E&S conditions in the loan agreement.

### **Supervision**

Contrary to the Sustainability Policy's requirements, CAO finds that, during project supervision, IFC:

- Did not ensure client compliance with Performance Standards 3 and 4 in relation to EHS performance at the HAIC and MPI plants and associated community health and safety concerns. Specifically, IFC conducted inadequate oversight related to air and water pollutants and assessment of residual impacts from the MPI plant before Awba's divestment. This undermined the effectiveness of preventive and control measures for community EHS risks regarding both plants.
- Did not ensure that its client conducted stakeholder engagement processes—including project information disclosure and an effective grievance mechanism—that was “commensurate with the project's risks and adverse impacts, and the project's phase of development” in accordance with Performance Standard 1.

### **Indigenous Peoples**

Contrary to the requirements of Performance Standards 1 and 7, IFC:

- Did not ensure that the client assessed the presence of vulnerable groups in the HAIC and MPI project area, and failed to identify or assess the ethnic groups that may be considered Indigenous Peoples under Performance Standard 7.

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<sup>4</sup> Leaders of non-Bamar ethnic groups prefer the term “ethnic nationalities” over “ethnic minorities” (2019. Re-examining Ethnic Identity in Myanmar, Center for Peace and Conflict Studies; see also: 2015. Coalition of Indigenous Peoples in Myanmar/Burma. Joint Submission to the UN Universal Periodic Review for the 23rd Session of the UPR Working Group of the Human Rights Council). As indicated in PS 7 (para. 4), there is no universally accepted definition of “Indigenous Peoples,” and Indigenous Peoples may be referred to in different countries by different terms.



## Access to information

Contrary to IFC's Access to Information Policy requirements, CAO finds that during the project cycle of this investment, IFC:

- Did not disclose the 2015 Environmental Impact Assessment or the 2018 supplemental ESIA for the HAIC plant; and
- Did not update the status of the ESAP implementation.

## Related Harm

The CAO Policy requires a compliance investigation report to include findings on harm related to non-compliance. The assessment of harm for this case was limited by the factors presented earlier.

IFC's E&S policies establish the responsibility of IFC and its clients to collect and document information on the project's E&S performance, which CAO is required to assess and consider in order to make determinations on related harm.<sup>5</sup> In assessing whether there is harm related to a non-compliance finding, CAO takes into account whether IFC non-compliance contributed to an absence of data or information to verify the complainants' allegations of harm. In such circumstances, CAO may find that there are indications of related harm or potential harm when it is reasonably likely that the alleged harm raised by complainants occurred or could happen in the future, given such non-compliance.

In this case, CAO's investigation finds that the data is incomplete in many instances to verify the allegations of harm with certainty. In most of these cases, IFC's shortcomings in due diligence and supervision of the project contributed to the lack of data needed to determine the related harm. Hence, CAO's determinations of harm take such non-compliances into account when making findings of harm (see Section 4).

With this in mind, CAO's findings in relation to the complainants' allegations of harm from Awba operations are as follows:

- Regarding water and air pollution and associated health impacts to community members, CAO is unable to establish the likelihood of harm related to non-compliances due to insufficiencies in baseline and monitoring data. IFC's failure to conduct an environmental analysis of the MPI plant and to bring its client into compliance with the PS in the EHS monitoring of the HAIC plant contributed to a significant lack of information. The possibility of harm cannot be discounted.
- Regarding exclusion from stakeholder engagement processes related to the HAIC plant, CAO concludes that such exclusion constitutes harm to complainants. CAO finds that IFC's shortcomings in client supervision regarding disclosure of E&S information and implementation of a stakeholder engagement plan likely contributed to the exclusion of affected communities from the limited stakeholder engagement activities that took place

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<sup>5</sup> CAO Policy, para. 114.

during the HAIC ESIA process, and from further stakeholder activities during HAIC's operational phase. This exclusion led to the affected communities' lack of knowledge of the ESIA and ESMPs, limiting their opportunities to provide feedback on the project and its potential impacts on their lives. This, in turn contributed to IFC's and the client's lack of knowledge of the affected communities' concerns and resulted in their concerns not being considered and addressed. Therefore, the lack of adequate stakeholder engagement and disclosure of E&S information had an adverse social impact on complainants.

- Regarding the alleged harm related to Awba's implementation of a grievance mechanism, CAO finds no indications of harm to complainants related to an IFC non-compliance. Project-specific information suggests that the client addressed and handled complaints under the grievance mechanism and that procedures were developed with IFC's support.
- Regarding the complainants' allegations of harm due to limited road access, CAO finds that there are indications of harm to complainants due to limitations in access or damage to roads around the Awba compound that connect to other villages, farmland, and a monastery, which are related to IFC non-compliances. It is difficult to determine the scope of harm caused to communities on this issue due to a lack of information in the ESIA about the roads and alternative access routes. IFC's shortcomings during project due diligence and supervision contributed to this incomplete evidence. However, the complainants' consistent firsthand accounts during the ESIA consultations in 2017 and 2018, in the grievance log in 2019, and throughout the CAO process, lead CAO to find indications of harm to complainants on this issue related to IFC's lack of adequate ESDD and supervision.
- Regarding differential impacts on the livelihoods of ethnic groups in the project area, CAO finds indications of potential harm to complainants related to an IFC non-compliance. IFC's shortcomings during project ESDD and supervision contributed to the lack of identification and assessment of differential impacts on such groups. IFC concluded there were no potentially affected vulnerable groups or Indigenous Peoples without having a supporting assessment for this conclusion. Such an assessment could potentially have triggered the application of PS7 to the project and led to additional protections.
- Regarding IFC's lack of disclosure of required E&S information, CAO considers that this non-compliance caused harm to complainants and contributed to the general lack of information that has disempowered communities regarding the E&S risks and impacts of the project. The lack of transparency regarding essential project E&S information prevented complainants from fully understanding the project's E&S risks and impacts and participating in the project's design and development. This hindered their ability to raise concerns at the design stage when they could have strengthened the development outcomes through better identification of E&S risks and impacts, and corresponding mitigation measures.

## CAO Recommendations to IFC

The CAO Policy<sup>6</sup> establishes that compliance investigations shall include project-level and systemic recommendations to: (a) remediate project-level non-compliances and related harm (project-level recommendations), and (b) prevent future non-compliances (systemic recommendations).

In this case, project-level recommendations are limited due to the client's prepayment to IFC in March 2021. Under the CAO Policy, in cases where an IFC investment has ended, "recommendations will take into account the implications of such an IFC/MIGA Exit."<sup>7</sup> For this reason, CAO's project-level recommendations regarding the Awba investment do not cover the comprehensive range of actions required to substantially address and remediate the non-compliances and related harms found in this case.

At the same time, CAO notes that IFC has an active financial relationship with the Awba Group as a shareholder in Awba's microfinance business. CAO acknowledges that the microfinance project is a different financial relationship than the investment in Awba's agribusiness. However, following best practices for responsible exit,<sup>8</sup> CAO believes that IFC should assess its influence over the Awba Group and other stakeholders in order to explore the potential for remedial project-level actions.

Taking these considerations into account, CAO recommends that IFC take the following actions at the project and institutional levels:

### Project-level recommendations

1. Conduct an assessment of IFC's possible influence with key stakeholders related to this case, including the Awba Group and the project's sponsor, who is also Awba's managing director.
2. Following this assessment, determine what actions IFC can take, or encourage the client to take, at the project level to address the non-compliances and related harm found in this case, particularly in regard to the lack of proper stakeholder engagement, disclosure of E&S information, limitations in road access to communities, and potential differential impacts on the livelihoods of ethnic groups in the project area.
3. Disclose the 2018 supplemental ESIA on IFC's disclosure website and update the ESAP's implementation status.

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<sup>6</sup> CAO Policy, para. 120; also para. 113.

<sup>7</sup> Ibid, para. 120.

<sup>8</sup> See, among other sources, CAO. 2023. Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond. Available at: <https://officecao.org/ResponsibleExit>; United Nations OHCHR, 2022, Remedy in Development Finance, Guidance and Practice. Available at: <https://bit.ly/OHCHR-Remedy>. United Nations OHCHR, 2023, Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting. Available at: <https://bit.ly/OHCHR-RemainOrExit>.

## Institutional-level recommendations

To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:

4. Strengthen internal controls within IFC Management to ensure that, prior to Board approval, the potential and known E&S risks and impacts of the investment(s) and their mitigation measures are analyzed and understood by IFC so as to determine that the investment activities will be able to meet relevant Performance Standards within a reasonable period of time. This will also ensure that IFC has the necessary leverage to ensure its client's conformance with relevant PS through loan covenants, ESAP, and other relevant means.
5. Develop guidance for IFC staff when assessing clients' E&S management capacity that:
  - a. Ensures IFC's E&S due diligence is better integrated with other risk assessments (such as financial and commercial risks assessments), carried out during pre-investment due diligence, and revisited during supervision as appropriate. While IFC's E&S risk assessment should be independent of project-related financial and commercial interests, it should be better integrated within the overall business risk assessment framework, as required by the Sustainability Policy.<sup>9</sup>
  - b. Emphasizes that client capacity and commitment to implement E&S commitments should be carefully scrutinized during pre-investment review and monitored closely during supervision, with risk assessments revisited as needed to adjust mitigation measures.
6. Incorporate lessons learned from this case into IFC's proposed principles on responsible exit. For example, IFC could:
  - a. Expand the scope of application of its proposed principles to circumstances where the client exits from projects or sub-projects included in the investment, and where the client prepays the loan;
  - b. Legally require that clients be obligated to exit responsibly in circumstances of prepayment and exit from projects or sub-projects included in the investment. This could include requiring clients to implement best practices, such as conducting an assessment to determine when and how an exit should take place vis-à-vis management of E&S risks, and developing exit plans, informed through stakeholder engagement, to address any outstanding E&S issues and identify any necessary remedial actions prior to exit.<sup>10</sup>
  - c. Actively monitor the implementation of client exit plans from projects and sub-projects associated with IFC financing, including by ensuring that clients are on

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<sup>9</sup> Sustainability Policy, para. 21.

<sup>10</sup> CAO. 2023. Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond, pp 29 to 33. Available at: <https://officecao.org/ResponsibleExit>; United Nations OHCHR, 2022, Remedy in Development Finance, Guidance and Practice, pp. 92, 95 to 108. Available at: <https://bit.ly/OHCHR-Remedy>. United Nations OHCHR, 2023, Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting, pp. 12-17. Available at: <https://bit.ly/OHCHR-RemainOrExit>.

track to meet agreed E&S commitments and address outstanding E&S issues prior to approval of prepayments.

## **Risks of Threats and Reprisals**

Given the current political situation in Myanmar, the complainants are concerned about security and potential threats and reprisals after this report is published. CAO reiterates its core principle that “people should not be harmed as a result of cooperating in a CAO process,”<sup>11</sup> including upon completion and publication of the compliance investigation report. As outlined in IFC’s statement on retaliation against civil society and project stakeholders, “IFC does not tolerate any action by an IFC client that amounts to retaliation—including threats, intimidation, harassment, or violence—against those who voice their opinion regarding the activities of IFC or [its] clients.”<sup>12</sup> CAO urges all parties and stakeholders in this case to be mindful of the security risks to complainants, and to prevent, within their own spheres of influence, potential threats and reprisals against them.

## **CAO Compliance Monitoring**

Following the CAO Policy transitional arrangements,<sup>13</sup> IFC will prepare for Board approval a Management Action Plan following consultation with the Awba Group<sup>14</sup> and the complainants. CAO will monitor the effective implementation of the Management Action Plan.

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<sup>11</sup> CAO. 2018. Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations. Available at: <https://officcao.org/CAOReprisalsApproach>

<sup>12</sup> IFC. 2018. IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders. Available at: <https://bit.ly/IFCReprisalsStatement>

<sup>13</sup> IFC/MIGA Independent Accountability Mechanism (CAO) Policy Transitional Arrangements, July 13, 2021. Available at: <https://officcao.org/Transition>

<sup>14</sup> While a former client in relation to this investment (IFC project #35880), the Awba Group is a current client in relation to IFC project #38031.

# 1. Background

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This section describes the country context of IFC’s investment in Awba, the terms and history of the investment, the complaint to CAO regarding Awba’s operations, and a timeline of key events.

## 1.1 Country Context and IFC Investment

IFC’s investment in Myanmar Awba Group Company Ltd. (“Awba,” “the client,” or “the company”) represented its first agribusiness investment in Myanmar since the World Bank Group (WBG) re-engaged in the country after an absence of over two decades. At the time, in 2016, Myanmar was among the lowest income countries in Southeast Asia, and it remains an IDA<sup>15</sup>-supported country in a fragile and conflict-affected situation (FCS).

Awba is Myanmar’s leading producer and distributor of agricultural inputs, including herbicides, fungicides, insecticides, and fertilizers. Its core business involves the import, manufacture, formulation, reformulation, blending, and distribution of agrochemicals. In 2016, Awba had five production facilities in two industrial zones outside Yangon where it both produced its own blends of fertilizers and chemicals, and repackaged third-party fertilizers and chemicals. Awba also owned eight warehouses, a river jetty on the Hlaing River, 47 sale depots, a fleet of small trucks, and a contracted river barge (see Figure 1 below). The company employed 1,000 agronomists to provide technical assistance to farmers on responsible use of agrochemicals and fertilizers.<sup>16</sup>

In addition, Awba’s majority owner and managing director held a 50-percent stake in a local formulation plant, the Myanmar Pesticide Industry (MPI). This facility blended a small volume of agrochemicals and held the only license for chemicals blending in Myanmar. Under IFC’s terms of investment, Awba’s majority owner was also the designated project sponsor,<sup>17</sup> responsible for the company’s activities as an IFC client partner.

IFC’s 2016 investment was a loan to support the expansion of Awba’s domestic operations.<sup>18</sup> In line with the WBG’s 2015–2017 Country Partnership Framework for Myanmar,<sup>19</sup> IFC’s strategy in Myanmar, and IFC’s Agribusiness Strategic Action Plan, the loan aimed to improve agricultural productivity. Through the investment, IFC sought to help create jobs across the sector, which employs about 70 percent of the country’s labor force.<sup>20</sup> In addition, IFC aimed to support a market leader in agribusiness by “help[ing] Awba pursue sustainable operations by adopting good

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<sup>15</sup> The World Bank’s International Development Association (IDA) provides support to the world’s lowest income countries, among which Myanmar is included.

<sup>16</sup> IFC. 2016. Environmental and Social Review Summary (ESRS), project number 35880. Available at: <https://bit.ly/Awba01-ESRS>

<sup>17</sup> In IFC investments, the Sponsor is the entity or individual responsible for the project’s client partner. In this case, the project Sponsor is also Awba’s majority owner, managing director, and founder.

<sup>18</sup> IFC. 2016. Summary of Investment Information (SII) and ESRS, project number 35880. Available at: <https://bit.ly/Awba01-SII>.

<sup>19</sup> The FY15–FY17 framework included plans for the WBG to provide support to help increase agricultural incomes and improve productivity, pp. 13, 23, 32, and 62. Available at: <https://bit.ly/3Cz6y17>.

<sup>20</sup> IFC. 2016. IFC Supports Myanmar Awba Group’s Sustainable Agricultural Expansion in Myanmar. Press release, September 6, 2016. Available at: <https://bit.ly/43E9zJG>.

corporate governance practices and implementing an enhanced environmental and social management system.”<sup>21</sup>

The specific use of proceeds from the IFC investment included: “the construction of additional fertilizer warehouse storage facilities and fertilizer distribution stations, the acquisition of a second chemical license for Myanmar Awba Group in order to construct a new agro-chemical formulation plant [the Hmawbi Agricultural Inputs Complex (HAIC)] in an industrial zone next to the existing...pesticide factory [MPI], equipment (bottling and packaging machinery), warehouse storage facilities, and working capital.”<sup>22</sup>

The new agrochemical HAIC plant was central to Awba’s expansion plans, as it would enable Awba to cease using the adjacent 30-year-old MPI plant, which formulated an estimated 5 percent of Awba’s chemicals. Built in 1986, the MPI plant had been operated since 2008 as a joint venture between Awba’s managing director and a local partner.<sup>23</sup> According to project documentation, IFC viewed allowing the MPI plant to remain a joint venture of the Awba managing director, despite the small size of its operations, was a potential commercial risk, given concerns related to issues of governance and financial transparency. As a condition for the loan’s disbursement, IFC therefore required the managing director to transfer his shares in MPI to Awba to prevent any risk of cash leakage. This also meant that MPI was formally brought under Awba’s business scope. The transfer took place before December 2016 when the loan was disbursed. According to project documentation, IFC’s understanding was that Awba would cease using the MPI facilities and divest from its stake in MPI once the new HAIC plant was constructed and operational.

In June 2016, the IFC Board of Directors approved a loan to Awba of up to US\$10 million, which included an option to convert debt to equity. IFC and Awba signed a convertible facility agreement (“financing agreement”) in September 2016. In December 2016, IFC disbursed the loan in a single tranche. The financing agreement required compliance with the ESAP and applicable PS requirements.<sup>xxvi</sup> IFC did not condition any E&S requirements to the loan disbursement.

Construction of the HAIC plant started in December 2016, and it began operations in August 2018. In January 2017, after IFC’s first supervision site visit to Awba’s facilities, IFC recommended that the client undertake an EHS audit of the MPI plant. By February 2018, IFC changed its recommendation to emphasize that Awba needed to decommission MPI due to its unsatisfactory EHS working conditions. Awba’s Board of Directors approved relinquishing its stake in the factory in June 2018.<sup>24</sup> Production of Awba agrochemicals at MPI was discontinued in December 2018 and Awba completed its exit from MPI in June 2019 (see Section 3.2 below for more details).

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<sup>21</sup> Ibid.

<sup>22</sup> IFC. 2016. ESRS.

<sup>23</sup> The plant was operated by the government until 2007.

<sup>24</sup> CAO. 2018. Assessment Report: First Complaint regarding IFC’s Investment in Myanmar Awba Group Company Ltd. Available at: <https://officecao.org/Awba01Assessment>.



Awba fully prepaid the loan to IFC in March 2021, ending IFC's involvement with the agribusiness project. However, IFC maintains an ongoing active financial relationship with the Awba Group as a shareholder in its microfinance business.

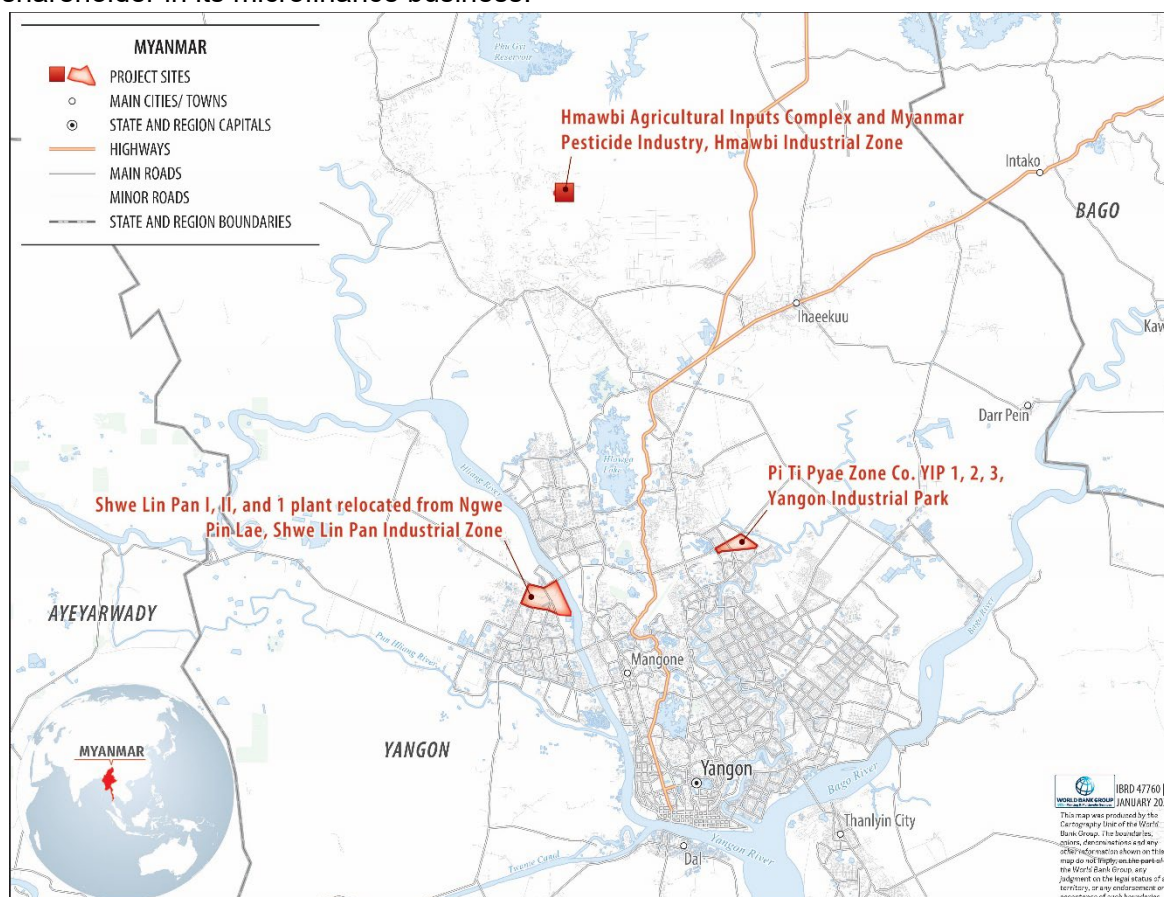


Figure 1. Map showing the locations of the Awba Group production facilities. Awba also owns eight warehouses, a river jetty on Hlaing River, 47 sale depots, a fleet of small trucks, and a contracted river barge (not shown on this map).

## 1.2 Complaint, CAO Assessment, and Dispute Resolution

On October 4, 2017, CAO received a complaint about the HAIC plant under construction and the operating MPI plant. The complaint was submitted by a local individual on behalf of himself and other villagers living near the two plants.<sup>25</sup> Six civil society organizations supported the complainants throughout the CAO process.

In February 2018, the complainants submitted a supplement to the complaint, which expanded the issues of concern and the reach of the complainants.<sup>26</sup> This stated that complainants resided in [REDACTED] villages<sup>27</sup> from [REDACTED] village tracts, [REDACTED].

<sup>25</sup> Letter of Complaint to CAO (October 2017). Available at: <https://officecao.org/MyanmarAwba>

<sup>26</sup> Addendum to the Complaint to CAO (February 2018). Available at: <https://officecao.org/MyanmarAwba>

<sup>27</sup> The orthography of the village names differs and may be written as [REDACTED] among other spellings.



The villages include [REDACTED] <sup>28</sup> Other villages are included in materials presented by the complainants, such as [REDACTED].

During the CAO compliance process, in July and August 2020, the complainants submitted three reports that provided additional descriptions of the issues of concern.

The complainants raised the following concerns about the environmental and social (E&S) impacts of the existing MPI plant and the HAIC plant under construction.<sup>29</sup>

- 1) **Contamination of local water sources with associated health impacts.** Complainants reported murky water in both tube wells and streams. Some community members reported vomiting, itchiness, and redness of face, heart palpitations, and high blood pressure after drinking tube well water. Some have observed oil on the surface of well water and others report an unpleasant smell from the local streams and skin rashes when they swim. Community members, who rely on local water sources for household consumption as well as for agriculture and livestock, claim the water quality dropped around 2018. Some have resorted to purchasing bottled water, which is a financial burden. Complainants allege that water quality samples from the local Sabei Gyi stream, collected and tested in collaboration with an NGO, contained arsenic.
- 2) **Air pollution and strong odors causing dizziness and nausea.** Community members complained of a strong, repulsive odor, described by some as a smell of chemicals being burned, which they claimed came from the Awba facilities during 2018 and 2019. They also stated that container trucks transporting materials to the HAIC facility emitted foul odors that caused nausea, dizziness, breathlessness, and headaches. In addition, they expressed concern about dust pollution from the numerous trucks that pass by their villages going to and from the Awba site.
- 3) **Restrictions on road access.** The complainants claimed that Awba restricted access by fencing off half the road that led to their facilities. This prevented tractors and other agricultural vehicles from passing through, affecting the flow of agricultural products between villages.
- 4) **Lack of consultation and inadequate grievance procedures.** Complainants asserted that the consultation process for the environmental and social impact assessment (ESIA) of the HAIC plant excluded [REDACTED] affected communities—[REDACTED]. They added that the consultation session was limited in scope and time, with the company providing information related to the new plant, but not allowing participants to ask questions or express concerns. During a separate consultation meeting about HAIC’s grievance mechanism, some complainants claim they were threatened and physically assaulted by supporters of the new plant. During CAO’s investigation, complainants were unclear whether the settlements Awba

<sup>28</sup> CAO. 2018. Assessment Report: First Complaint regarding IFC’s Investment in Myanmar Awba Group Company Ltd.

<sup>29</sup> The descriptions of the complaint issues are compiled from the complaint and complaint addendum, CAO Assessment Report, CAO Dispute Resolution Conclusion Report, and materials submitted by the complainants during the appraisal process.

made with community members through the grievance mechanism were amicable to the parties. Complainants also reported several incidents from 2019 and 2020 to CAO, including chemical spills on the road from trucks, a boiler pipe explosion at MPI, and the death of a cow electrocuted by a fallen electric cable extending from the HAIC plant. They stated that the company did not handle these incidents appropriately.

- 5) **Impacts on flora and fauna due to air and water pollution.** The complaint states that community members observed a decrease in local animal species such as fish, bees, birds, butterflies, and crickets. Complainants also asserted that trees such as citrus, gumkino, cashew, and mango no longer grow in their communities.
- 6) **Differential impacts on the livelihoods of local ethnic groups.** The complainants state that the [REDACTED], who have different traditions and ways of life from other [REDACTED] ethnic peoples, used to farm citrus trees but can no longer do so due to alleged impacts from the MPI plant.
- 7) **Unfair and unsafe labor practices.** This issue is excluded from CAO’s compliance appraisal and investigation on the basis that no contractor workers or current/former workers of MPI or HAIC were signatory to the complaint.

The parties initially agreed to a CAO-facilitated dispute resolution process but then failed to agree on how it would progress. Thus, the complaint was transferred to the CAO compliance function for appraisal in June 2020.<sup>30</sup> The compliance appraisal was completed in October 2020, concluding that a compliance investigation was warranted.

### 1.3 Client Response

According to the CAO Assessment Report, Awba stated that the E&S concerns raised in the complaint could only be related to the MPI factory, on the basis that operations at the new HAIC plant had not commenced by October 2017 or February 2018, when the complaints were lodged.

The IFC client stated that they implemented some of the Environmental and Social Impact Assessment (ESIA) recommendations, including a drainage system for discharge water to prevent contamination of local streams. They argued it was highly unlikely that HAIC would produce substances that will impact the environment, including water contamination. Awba also stated that the odor could not possibly be related to the HAIC plant because of state-of-the-art air purifying systems installed at the new factory. While the client did not address the concerns about consultations during the ESIA process, it stated that a company grievance mechanism was rolled out in July 2017 for which it had conducted information sessions in seven villages. The client also noted plans for monthly stakeholder meetings to discuss the ESIA report and promote the grievance mechanism.

Regarding the complainant’s allegations of restricted road access, the client explained that there was no access road between the local monastery and neighboring villages, but that it had built its facility fence in accordance with registered map of the Ministry of Land & Housing Development

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<sup>30</sup> CAO. 2020. Dispute Resolution Conclusion Report – Myanmar Awba Group Company Ltd.-01/Myanmar, available at: <https://officecao.org/Awba01ConclusionReport>

map, and 6.5ft away from the original land boundary to provide road access. They argued that the landowners on the other side of the road are required to contribute equally 6.5ft from their land to create a 13ft road. In terms of impacts to local ecology, Awba referred to the ESIA report's conclusions that the new HAIC plant would have no adverse impacts on the ecology and stated that it had a monitoring system in place. The client did not address the issue of alleged impacts on local ethnic groups.

During the dispute resolution process conducted between May 2018 and January 2020,<sup>31</sup> Awba provided the ESIA and Environmental Management Plan for the HAIC plant, as well as copies of licenses and permits.<sup>32</sup> Awba noted that they could not share with the complainants copies of contracts with the Myanmar government and IFC due to the confidential and commercially sensitive nature of the information.

## 1.4 Timeline of Key Events

The timeline below shows the relevant events spanning Awba's agrochemicals operations, the IFC investment, and the complaint.

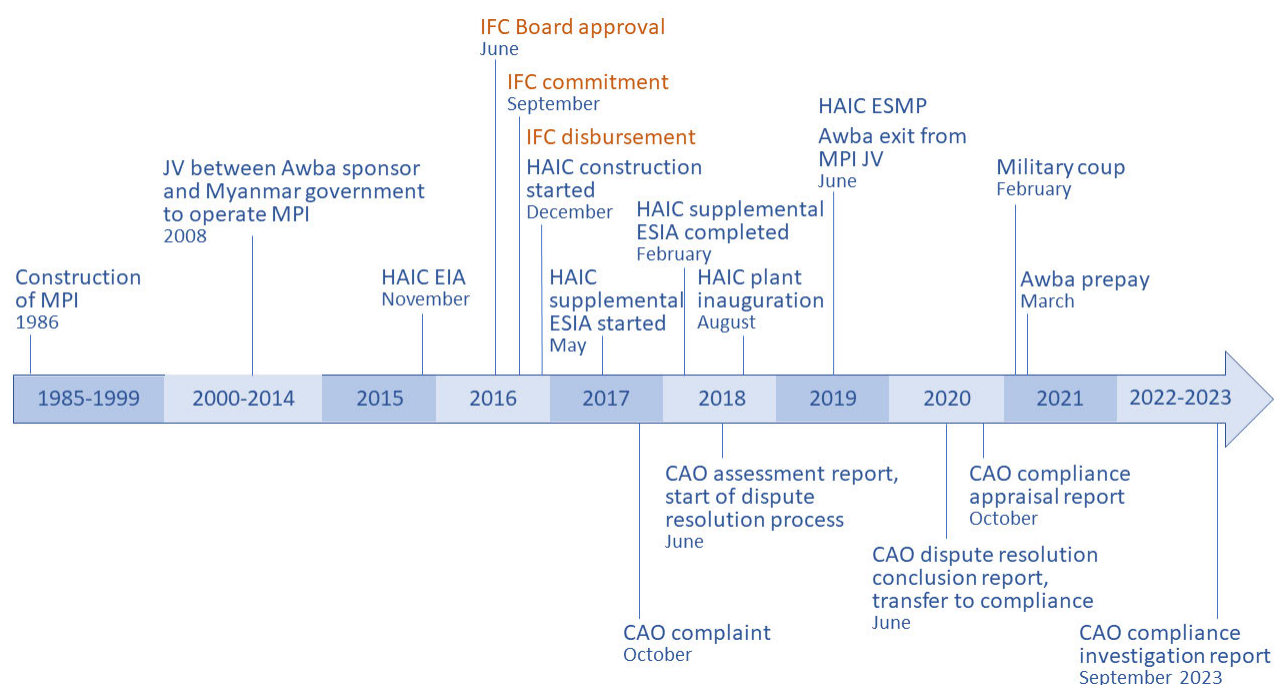


Figure 2. Timeline of relevant events related to Awba's operations, the IFC investment, and the complaint.

<sup>31</sup> Ibid.

<sup>32</sup> The complainants consider that the company did not share with the community all of the information they requested.

## 2. Compliance Investigation Framework

This section provides the process and context for CAO's compliance investigation of IFC's investment in Awba. It describes the investigation's scope and methodology followed by a summary of IFC policies and procedures applicable to this case and therefore relevant to CAO's analysis.

### 2.1 Scope of Investigation

The investigation was initiated under CAO's 2013 Operational Guidelines.<sup>33</sup> In accordance with transitional arrangements<sup>34</sup> for the 2021 IFC/MIGA Independent Accountability Mechanism (CAO) Policy,<sup>35</sup> it was completed under the CAO Policy, which defines a compliance investigation as follows:

*A compliance investigation determines whether IFC/MIGA has complied with its E&S Policies and whether there is Harm related to any IFC/MIGA non-compliance, following a systematic and objective process of obtaining and evaluating evidence. In determining whether IFC/MIGA has complied with its E&S Policies, CAO will include, where appropriate, an assessment of whether IFC/MIGA has deviated in a material way from relevant directives and procedures.<sup>36</sup>*

This compliance investigation considers whether IFC reviewed and supervised its investment in Awba in accordance with applicable IFC policies, procedures, and standards.<sup>37</sup> The terms of reference<sup>38</sup> set out the following questions for the investigation regarding IFC's application of its Sustainability Framework, particularly in relation to the MPI and HAIC plants:

- Whether IFC's pre-investment E&S review of the client was commensurate with the level of E&S risk and impacts from its operations, particularly the MPI joint venture;
- How IFC assessed and mitigated historical pollution from the MPI joint venture against IFC Performance Standard 3 (Resource Efficiency and Pollution Prevention) requirements;
- Whether IFC adequately assessed and retained documentation to justify its determination that Performance Standard 7 (Indigenous Peoples) was not applicable to this investment and/or that Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) requirements on vulnerable groups were properly applied given ethnic nationalities in the project area;

<sup>33</sup> CAO. 2013. Operational Guidelines. Available at: <https://officecao.org/OpGuidelines>

<sup>34</sup> Transitional Arrangements for CAO Cases. Available at: <https://officecao.org/Transition>

<sup>35</sup> World Bank Group. 2021. IFC/MIGA Independent Accountability Mechanism (CAO) Policy (CAO Policy). Available at: <https://officecao.org/policy>

<sup>36</sup> CAO Policy, para. 112.

<sup>37</sup> CAO. 2020. Compliance Appraisal: Summary of Results. Available at: <https://officecao.org/Awba01Appraisal>

<sup>38</sup> CAO. 2020. Terms of Reference for Compliance Investigation of IFC. Available at: <https://officecao.org/Awba01InvestigationTOR>

- Whether IFC disclosed relevant E&S project information, specifically the initial 2015 Environmental Impact Assessment (EIA) for the HAIC plant following Access to Information Policy requirements;
- How IFC assured itself of the client’s compliance with PS1 requirements for disclosure, consultation, and grievance handling;
- How IFC assured itself of the environmental, health, and safety (EHS) performance of the client’s MPI and HAIC operations, including air emissions and water contamination as well as impacts on community health against PS3 and PS4 (Community Health, Safety, and Security) requirements, EHS Guidelines, and Myanmar law requirements; and
- How IFC assessed and mitigated residual impacts when the client exited the MPI joint venture in 2018, given the requirements of PS1.

## 2.2 Investigation Methodology

In conducting this investigation, CAO staff worked with two external experts:

- An environmental specialist with more than 35 years of experience in applying E&S safeguards in project development and due diligence in a wide range of sectors globally.
- An environmental and social specialist with 16 years of experience conducting E&S due diligence and monitoring, as well as developing ESIA and ESMPs, including stakeholder engagement plans and grievance mechanisms, in South and Southeast Asia.

This investigation report was prepared on the basis of:

- A review of IFC’s project documentation and other project-related materials;
- Interviews with IFC project staff and consultants, and Awba [REDACTED]; and
- A review of materials submitted by complainants.

A field visit was not possible due to travel restrictions related to the COVID-19 pandemic and the military coup launched in Myanmar on February 1, 2021.

The complainants and the civil society organization (CSO) representatives based in Myanmar who supported them face ongoing grave security risks by engaging in the CAO process. As a result of the evolving political situation, CAO was only able to receive information directly from the complainants during the compliance appraisal process. After the appraisal, despite exploring alternative means of communicating with project-affected villagers, CAO was only able to engage directly with the complainants’ representatives and to do so in a very limited manner due to communications constraints and risk of reprisals. Engagement during factual review and comment was only with the CSO representatives who themselves have not been able to communicate with the complainants due to security concerns since the military coup in February 2021. As a result, the investigation report draft was only reviewed by the CSO representatives.

A CAO compliance investigation is not a judicial or legal process.<sup>39</sup> CAO follows a non-adversarial model, in which it “systematically and objectively considers facts, circumstances, information, and evidence *as may be available* [authors’ emphasis] to it from documents, interviews, statements, reports, correspondence, and other sources as CAO determines relevant.”<sup>40</sup> CAO’s compliance findings and conclusions are based on “sufficient, relevant” evidence as may be available.<sup>41</sup> Also, as a non-adversarial process, CAO obtains information from different sources and complainants are not required to submit evidence or supporting documentation of their allegations. While complainants may choose to submit evidence,<sup>42</sup> under the CAO Policy this is not a requirement either to file a complaint or for CAO to reach its findings of non-compliance and related harm.

IFC’s E&S policies establish the responsibility of IFC and its clients to collect or document information on the project’s E&S performance.<sup>43</sup> The CAO Policy requires that “in making findings regarding Harm and whether any Harm related to IFC/MIGA non-compliance with its E&S Policies, CAO will assess IFC/MIGA’s review and supervision of its E&S Requirements at the Project or Sub-Project level, and consider Project- or Sub-Project-level environmental and social performance.”<sup>44</sup> In assessing whether there is harm related to a non-compliance finding, CAO will take into account whether IFC non-compliance contributed to an absence of data or information needed to verify the complainants’ allegations of harm. In such circumstances, CAO may find that there are “indications of related harm,” when it is reasonably likely that the alleged harm raised by complainants occurred or could happen in the future.

## 2.3 Applicable IFC Policies and Procedures

IFC made its investment in Awba in the context of its 2012 Policy on Environmental and Social Sustainability (“Sustainability Policy”),<sup>45</sup> Performance Standards (PS),<sup>46</sup> and Access to Information Policy (AIP),<sup>47</sup> jointly referred to as the Sustainability Framework.

### 2.3.1 Sustainability Policy

The Sustainability Policy outlines IFC’s commitment to “do no harm” to people and the environment through its investment activities.<sup>48</sup> IFC is committed to ensuring that the costs of economic development do not fall disproportionately on the poor or vulnerable and that the environment is not degraded in the process.<sup>49</sup> Through its due diligence, monitoring, and

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<sup>39</sup> CAO Policy, para. 9.

<sup>40</sup> Ibid., paras. 115 and 117.

<sup>41</sup> Ibid., para. 117.

<sup>42</sup> Ibid., paras. 32 and 34(d).

<sup>43</sup> See, for example, Sustainability Policy, paras. 28 and 45, PS1, paras. 7, 14, 23, 24, 30, and 34.

<sup>44</sup> CAO Policy, para. 114.

<sup>45</sup> IFC. 2012. Policy on Environmental and Social Sustainability. Available at: <https://bit.ly/IFCSustainabilityPolicy>

<sup>46</sup> IFC. 2012. Performance Standards. Available at: <https://bit.ly/IFCPS2012>

<sup>47</sup> IFC. 2012. Access to Information Policy. Available at: <https://bit.ly/IFCAIP2012>

<sup>48</sup> IFC. 2012. Sustainability Policy, para. 9.

<sup>49</sup> Ibid.



supervision efforts, IFC seeks to ensure that the business activities it finances are implemented in accordance with PS requirements.<sup>50</sup>

IFC only finances “investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time, and persistent delays can lead to loss of financial support from IFC.”<sup>51</sup> The outcome of IFC’s environmental and social (E&S) due diligence (ESDD) of a proposed business activity is an important factor in the approval process, as it determines the E&S conditions of IFC financing.<sup>52</sup> Central to these conditions is a mitigation hierarchy to anticipate and prevent or minimize adverse impacts, “and where residual impacts remain, compensate/offset for the risks and impacts, as appropriate.”<sup>53</sup> As part of its due diligence, IFC categorizes projects according to their level of E&S risks and impacts; the resulting category determines IFC’s disclosure requirements under its Access to Information Policy.<sup>54</sup>

For direct investments, the E&S due diligence must be “commensurate with the nature, scale, and stage of the business activity, and with the level of E&S risks and impacts.”<sup>55</sup> According to the Sustainability Policy, “[w]here there are significant environmental or social impacts associated with the business activity, including past or present adverse impacts caused by others, IFC [should work] with its client to determine possible remediation measures.”<sup>56</sup> In cases where E&S risks and impacts are identified, IFC and the client agree an E&S Action Plan (ESAP) with the client committing to take corrective risk mitigation measures in accordance with the PS.<sup>57</sup> The ESAP typically contains actions to be completed after investment milestones such as Board approval, commitment, or first disbursement. However, IFC’s E&S Review Procedures (ESRP) also state that clients may be required to complete E&S actions before those milestones are reached, as needed.<sup>58</sup> Such actions may be documented elsewhere, for example in a covenant in the loan agreement.

According to the ESRP, when IFC financing involves working capital or equity—as in the Awba case—IFC’s due diligence “will take into account the full range of operations undertaken by the entity in which IFC plans to invest.”<sup>59</sup> IFC’s investment in Awba involved a mix of known and unidentified assets as it was a general corporate loan for the expansion of Awba’s business, but also had the specific objective of financing a new agrochemical plant. When the use of proceeds from IFC’s investment involves such an asset mix, the due diligence review should involve the

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<sup>50</sup> Ibid., para. 7.

<sup>51</sup> Ibid., para. 22.

<sup>52</sup> Ibid., para. 7.

<sup>53</sup> Ibid., para. 6. See also, PS1, para. 14.

<sup>54</sup> Per the Sustainability Policy (para. 40), Category A projects are those with “Business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.” Category B projects are those with “Business activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures” (Ibid.). Category C projects are those with “Business activities with minimal or no adverse environmental or social risks and/or impacts” (Ibid.).

<sup>55</sup> Ibid., para. 26.

<sup>56</sup> Ibid.

<sup>57</sup> To ensure the business activity meets the Performance Standards, IFC makes these supplemental actions (Environmental and Social Action Plan) necessary conditions of IFC’s investment (Ibid., para. 28).

<sup>58</sup> ESRP 3.2.5.

<sup>59</sup> ESRP 3.2.1.

investigation of the “the capacity, maturity, and reliability of the client’s E&S corporate management system to effectively manage E&S performance,” including the “E&S performance of a representative set of past and prospective identified projects as a measure of management system effectiveness.”<sup>60</sup> When the use of proceeds includes the construction or expansion of specific facilities, as was the case with the proposed new agrochemical plant, HAIC, then IFC's requirements regarding E&S risk management apply to the business activities financed from funds provided by IFC.

### 2.3.2 Access to Information Policy

The Access to Information Policy (AIP) stipulates that IFC make information relevant to the investment, including on environmental and social issues, publicly available.<sup>61</sup> For direct investments categorized as A or B, the AIP requires IFC to disclose an Environmental and Social Review Summary. This should include: the investment’s main E&S risks and impacts; key planned mitigation measures, which may be outlined in an ESAP; and electronic copies or web links to any relevant E&S Impact Assessment (ESIA) documents prepared by or for the client.<sup>62</sup> The AIP also includes disclosure requirements post-Board approval of an investment, including the ESAP’s implementation status<sup>63</sup> and any ESIA reviewed by IFC, as they become available.<sup>64</sup>

### 2.3.3 Relevant Performance Standards

During the lifetime of an investment, IFC supervises the client to ensure compliance with the Performance Standards (PS) and other specific E&S requirements agreed with the client, including the ESAP.<sup>65</sup> PS relevant to this investigation are:

- Performance Standard 1 (PS1): Assessment and Management of Environmental and Social Risks and Impacts. Relevant requirements include identifying and evaluating project E&S risks and impacts as well as stakeholder engagement, establishment of an effective grievance mechanism, and disclosure of project information to communities.
- Performance Standard 3 (PS3): Resource Efficiency and Pollution Prevention. Relevant requirements cover avoiding or minimizing pollution, avoiding use of pesticides classified by the WHO as highly or extremely hazardous, and mitigating historical sources of pollution.
- Performance Standard 4 (PS4): Community Health, Safety, and Security. Relevant requirements mandate an assessment of risks and impacts to the health and safety of affected communities from project activities, establishment of related preventive and

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<sup>60</sup> Ibid. See also, ESRP 3.2.2. “Where corporate finance of unidentified future projects is involved, the LESS should request and review information surrounding the client’s corporate management system including [...] Procedures for identifying and assessing the environmental and social risks and impacts of each project to be developed, acquired, or operated”.

<sup>61</sup> IFC. 2012. Access to Information Policy, para. 29.

<sup>62</sup> Ibid., para. 31(a).

<sup>63</sup> Ibid., para. 41(b).

<sup>64</sup> Ibid., para. 41(c).

<sup>65</sup> Sustainability Policy, para. 45.



control measures, and consideration of differentiated exposure of vulnerable groups to project impacts.

- Performance Standard 7 (PS7): Indigenous Peoples. Relevant requirements cover ensuring that Indigenous Peoples are not adversely impacted.

### 3. Analysis and Findings

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Under the policies summarized above, IFC's ESDD and supervision activities should have identified and assessed the E&S risks and impacts of Awba's operations and—following the mitigation hierarchy—implemented appropriate avoidance, minimization, or compensation measures. This section examines IFC's actions throughout the investment's lifetime in relation to the complainants' allegations regarding impacts and harm associated with the HAIC and MPI plants.

#### 3.1 IFC Pre-Investment Review

##### 3.1.1 Summary of IFC Actions

IFC's E&S due diligence, carried out between January 2015 and February 2016, consisted of meetings with the Awba leadership team, three site visits (in January and July 2015, and January 2016) to the company's headquarters and facilities, including select fertilizer and agrochemical factories and warehouses, and a review of technical documents.<sup>66</sup> However, neither the existing agrochemical facility, MPI, nor the site for the planned new agrochemical facility, HAIC, were included in the site visits. IFC learned of the MPI plant in January 2015 but did not visit the plant at this time due to its small size and informal commercial relationship with Awba.

Although the prospective client had commissioned an environmental impact assessment (EIA) in 2015 for the planned HAIC plant in accordance with national law,<sup>67</sup> as noted in the ESRS, IFC did not review this EIA.<sup>68</sup> As a result, IFC did not review Awba's stakeholder engagement processes for the new agrochemicals plant (consultation, disclosure of E&S information to communities, and a grievance mechanism). Nor did IFC disclose the 2015 EIA on its webpage as required by the Access to Information Policy (AIP). Regarding the MPI plant, while its incinerator and storage warehouse are referenced in the project's Environmental and Social Review Summary (ESRS)<sup>69</sup> as a source of air emissions and potential chemical spills, IFC did not consider the plant's other potential E&S risks and impacts, including possible legacy air pollution and soil and groundwater contamination, during ESDD.

Following this limited E&S due diligence, IFC classified its investment in Awba as Category B, due to "limited adverse environmental and social impacts which are expected to be site-specific and none [are] expected to be significant."<sup>70</sup>

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<sup>66</sup> IFC. 2016. ESRS.

<sup>67</sup> Ibid. This EIA was apparently carried out under the 2012 Environmental Conservation Law of Myanmar.

<sup>68</sup> According to the supervision documentation, IFC reviewed an English translation of the executive summary of the 2015 EIA for the first time during its first supervision visit in January 2017. IFC was shown the EIA study in January 2016 (the last ESDD site visit) but could not review it because it was only available in Burmese. IFC was only able to review the full EIA once it was translated sometime after the January 2017 visit (see Section 3.2 regarding project supervision for further details).

<sup>69</sup> The only record that exists of the ESDD of this project is the project's Environmental and Social Review Summary (ESRS), which is the document IFC produces to publicly disclose the results of its ESDD.

<sup>70</sup> IFC. 2016. ESRS.

IFC identified the company's E&S management systems and technical capacity as the key project E&S risks,<sup>71</sup> and determined that the requirements in PS1, PS3, and PS4 were applicable to the investment. IFC determined that PS7 was not applicable because "there is no presence of Indigenous Peoples or known cultural artifacts within the company's operational footprint."<sup>72</sup> In addition, IFC concluded that "there are no communities that may be adversely impacted by Awba'[s] manufacturing and warehouse operations" because the existing operations and planned HAIC plant were located in industrial zones.<sup>73</sup>

The legal agreement between IFC and Awba required the client to comply with an Environmental and Social Action Plan (ESAP) and applicable Performance Standards requirements. Given the identified key project E&S risks, the ESAP focused on: establishing and implementing EHS and labor management policies, plans, and procedures; project key performance indicators; employee training; environmental and occupational health and safety (OHS) monitoring and reporting; and a group-wide grievance mechanism for communities and workers.<sup>74</sup> Additionally, the ESAP required Awba to develop an EHS risk assessment process commensurate with the HAIC plant's E&S risks and impacts. IFC also planned to provide E&S technical support to the company through its Client Enhanced Support program, to address Awba's limited E&S capacity and effectively meet the ESAP requirements. This technical support did not materialize during ESDD or project supervision. The expected timeline for a majority of the ESAP items was four months from the signing of the financing agreement, with a few items due for completion in two to three months.

While the ESAP was legally binding as part of the financing agreement, IFC did not include any E&S commitments as prior conditions for disbursement of funds to Awba. According to IFC's E&S Review Procedures (ESRP), an ESAP should contain only actions that require completion *after* Board approval, commitment, or first disbursement,<sup>75</sup> while E&S actions that require completion *before* such milestones should be included a covenant in the loan agreement.<sup>76</sup> By not requiring Awba to address any of its E&S gaps as a condition of disbursement, IFC lost most of its leverage to ensure the client complied with its E&S commitments after making the first and only disbursement of the full loan. IFC justified the absence of such E&S conditions based on the Awba managing director's commitment to EHS issues throughout the pre-investment review process, including the recruitment of five EHS staff during that time.

However, IFC did include two conditions prior to disbursement related to the MPI plant. First, Awba's managing director was required to transfer his entire shareholding in MPI to Awba, so that Awba would hold a 50-percent shareholding in MPI. Second, Awba, MPI, and the joint venture party were required to formalize their contractual arrangement to use MPI's formulation services and assets.

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> See the full ESAP here: <https://bit.ly/Awba01-ESRS>.

<sup>75</sup> ESRP 3.2.4.

<sup>76</sup> ESRP 3.2.5.

Both the Environmental and Social Review Summary (ESRS) and ESAP were made public in February 2016 on IFC's project disclosure website, a little over three months before project approval.<sup>205</sup> IFC did not disclose the 2015 EIA for the HAIC plant, which it had not seen or reviewed at that point, nor any other E&S documentation for the project.



Figure 3. Map showing the locations of the agrochemical plants Hmawbi Agricultural Inputs Complex (HAIC) and Myanmar Pesticide Industry (MPI), located within what is termed an “Industrial Zone/Park” in the 2018 supplemental ESIA, [REDACTED]

### 3.1.2 Compliance Analysis of IFC's Pre-Investment Review

In this section, CAO analyzes IFC's pre-investment due diligence of Awba's agribusiness operations, and presents its finding that IFC's actions were non-compliant with its Sustainability Framework.

#### 3.1.2.1 Summary of E&S due diligence analysis

Under the Sustainability Policy, IFC must conduct an ESDD “commensurate with the nature, scale, and stage of the business activity, and with the level of environmental and social risks and



impacts.”<sup>77</sup> ESDD includes the following components: (i) reviewing all available information and documentation related to the E&S risks and impacts of the business activity; (ii) analyzing the business activity's E&S performance in relation to the requirements of the Performance Standards and provisions of the World Bank Group Environmental, Health and Safety Guidelines; and (iii) identifying any gaps to meet IFC's E&S requirements, which forms the basis of the ESAP.<sup>78</sup> Under the Sustainability Policy, IFC commits only to finance investment activities that are expected to meet the Performance Standards within a reasonable period of time.<sup>79</sup>

**IFC's ESDD of Awba was in breach of the Sustainability Policy as it was not commensurate with the level of E&S risks and impacts arising from the company's operations, particularly relating to the planned HAIC plant and the existing MPI plant.** The planned investment involved a new agrochemical plant (HAIC) and the absorption of an existing agrochemical plant (MPI) with potential legacy pollution issues that produced a highly hazardous chemical—both located in a growing industrial area near to local communities. Further, IFC explicitly identified Awba's E&S capacity as a key investment risk. CAO concludes that this combination of risks and potential impacts merited a higher level of ESDD, specifically a site-specific assessment of risks and impacts for the HAIC and MPI plants.

**IFC's E&S due diligence was not consistent with the Sustainability Policy's requirement only to finance “investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”** This investment was approved by the IFC Board without IFC reviewing an existing EIA for the proposed HAIC agrochemical production plant. Thus, neither the E&S risks and impacts of this plant nor the appropriate mitigation measures were properly identified and assessed prior to approval. As a result of this omission, IFC was unable to establish whether the HAIC plant would meet PS requirements within a reasonable period of time.

Similarly, IFC undertook only a partial assessment of the E&S risks of its participation in the MPI plant, an operation that IFC required be brought into Awba's business scope. As a result, IFC was not aware of the existing and cumulative impacts and risks of its investment in Awba before Board approval, and embarked on the investment with an incomplete understanding of the E&S risks and impacts of both plants and whether these operations would be able to meet PS requirements.

Further, instead of requiring and reviewing these E&S assessments during due diligence, IFC postponed the identification of risks and impacts to the project supervision stage through the ESAP actions required of the client.<sup>80</sup> As a result of this decision, IFC did not condition the

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<sup>77</sup> Sustainability Policy, para. 26.

<sup>78</sup> Ibid., para. 28.

<sup>79</sup> Ibid., para. 22.

<sup>80</sup> The ESAP for this investment included as its second item the following: “Awba is in the process of establishing an EHS risk assessment process for proposed IFC's financed agro-chemical formulation plant and fertilizer warehouses, commensurate with the level of its environmental and social risks and impacts, in order to ensure alignment and

disbursement of the loan amount on the completion of the agreed actions in the ESAP. Consequently, IFC lost most of its leverage to ensure the client complied with the ESAP after the disbursement of the full amount of the loan.<sup>81</sup> IFC made this decision to postpone specific risk and impact identification despite determining Awba's lack of E&S capacity as the main risk to taking on the investment.

In failing to obtain sufficient information to accurately identify E&S risks and impacts and mitigation measures of the proposed business activity as required,<sup>82</sup> IFC did not:

- Properly assess the range of Awba's relevant business activities by not including all aspects of the MPI plant in its ESDD;
- Identify the past and present E&S impacts associated with the existing MPI agrochemical facility, and potential risks and impacts associated with the proposed HAIC agrochemical manufacturing facility, including any adverse cumulative impacts in the area of influence;
- Identify any communities that may be adversely impacted by the project, including potentially vulnerable populations or Indigenous Peoples, contrary to the later identification of six villages in the area of influence of the HAIC plant and the [REDACTED] among the ethnic nationalities<sup>83</sup> in nearby communities, through the 2018 supplemental ESIA;<sup>84</sup> and
- Include the conditions necessary to manage E&S risks and impacts in the loan agreement.<sup>85</sup>

These shortcomings undermined IFC's ability to fully achieve the Sustainability Policy requirement to work with clients on an ESAP that addresses significant E&S impacts associated with the

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coherence with proposed QEHS policies, especially as they relate to potential (i) environmental impacts: raw materials characterization and risk assessment, energy and water consumption, wastewater quantity/quality, air emissions, solid and hazardous waste management, usage of chemicals and hazardous materials, noise, and emergency preparedness, and ii) OHS impacts: fire and explosion hazards, physical hazards (e.g. cuts, falls, rotating/moving equipment, vibration, electrical hazards, work zone noise level, workplace's ambient air quality, temperature and humidity, ergonomic issues (e.g. lifting, repetitive work, work posture injuries), eye hazards, working at heights, industrial vehicle driving)."

<sup>81</sup> The ESRP (3.2.4) notes that "only actions requiring completion after Board approval, commitment, or first disbursement should be included in the ESAP."

<sup>82</sup> Sustainability Policy, paras. 20, 23, 26, 28, and 29.

<sup>83</sup> Leaders of non-Bamar ethnic groups prefer the term "ethnic nationalities" over "ethnic minorities." 2019. Re-examining Ethnic Identity in Myanmar, Center for Peace and Conflict Studies. See also: 2015. Coalition of Indigenous Peoples in Myanmar/Burma. Joint Submission to the UN Universal Periodic Review for the 23rd Session of the UPR Working Group of the Human Rights Council. As indicated in paragraph 4 of Performance Standard 7: "There is no universally accepted definition of 'Indigenous Peoples.' Indigenous Peoples may be referred to in different countries by such terms as 'Indigenous ethnic minorities,' 'aboriginals,' 'hill tribes,' 'minority nationalities,' 'scheduled tribes,' 'first nations,' or 'tribal groups.'"

<sup>84</sup> Sustainability Policy, para. 30.

<sup>85</sup> Ibid., para. 24.

business activity.<sup>86</sup> Without a review of the existing 2015 EIA (which IFC later deemed inadequate) and without an environmental audit of existing operations including the MPI plant, IFC was not in a position to work with Awba on the mitigation or remediation efforts required, and establish their feasibility and cost. The ESAP therefore did not fully take into account the risks and impacts of the two plants.

### 3.1.2.2 *Incomplete scope of E&S pre-investment review*

Under the Sustainability Policy, E&S due diligence is critical to determining the scope of E&S conditions for IFC financing of a given business activity.<sup>87</sup>

IFC's proposed investment in Awba was a corporate finance loan that included provision of working capital. As a result, ESDD should have reviewed "the full range of operations undertaken by the entity in which IFC plans to invest, including any significant operations undertaken by its subsidiaries and companies for which it has management control."<sup>88</sup>

CAO finds that, by omitting the MPI plant from ESDD, IFC did not review Awba's full range of operations prior to investment approval.<sup>89</sup> IFC informed CAO that it learned of the MPI plant during a first site visit in January 2015, but was unable to visit the MPI plant during subsequent ESDD visits in July 2015 and January 2016. As a result, IFC did not conduct a full E&S audit of the MPI plant,<sup>90</sup> nor did it assess the plant's potential contribution to historical pollution, in accordance with PS3.<sup>91</sup> However, IFC's project Environmental and Social Review Summary (ESRS) did include a risk analysis and associated mitigation measures for the incinerator and storage warehouse on the MPI site, identifying the facility as a source of air emissions and potential chemical spills.<sup>92</sup>

During ESDD, IFC also determined that Awba facilities including MPI handled chemical products such as carbofuran that were classified as Class Ib (highly hazardous) by the World Health

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<sup>86</sup> According to the Sustainability Policy, "[w]here there are significant environmental or social impacts associated with the business activity, including past or present adverse impacts caused by others, IFC [should work] with its client to determine possible remediation measures" (para. 26). In cases where E&S risks and impacts are identified, IFC and the client agree an E&S Action Plan (ESAP) with the client committing to take corrective risk mitigation measures in accordance with the PS (Ibid., para. 28). The ESAP can be revised as needed to address emerging risks (Ibid., para. 45; ESRP 6.2.6). However, in this case, IFC made no revisions to the ESAP during the investment.

<sup>87</sup> Sustainability Policy, para. 7.

<sup>88</sup> ESRP 3.2.1.

<sup>89</sup> The scope of the business reviewed during ESDD is unclear, as the ESRS does not provide a full inventory of the company's existing facilities, nor does it include an assessment of the included facilities' areas of influence.

<sup>90</sup> PS1, GN30 notes that E&S audits "can be appropriate in the case of projects that involve existing assets, as well as property and asset acquisitions." Audits should be used to identify and quantify E&S risks and impacts, including liability, and to evaluate the effectiveness of the management system in place and compliance with the Performance Standards and local regulations. The audit should document the main environmental and social aspects associated with the asset, including air emissions, wastewater effluents, hazardous waste generated, historical pollution and contaminated sites, among others. It should assess mitigation measures and identify additional corrective actions required to ensure compliance. Audits should be aimed at establishing the baseline for the implementation of corrective actions and development of an effective ESMS for the project to be financed.

<sup>91</sup> PS3 requires an assessment of, and if applicable, mitigation measures for historical pollution including water contamination: "[w]here historical pollution such as land or ground water contamination exists, the client will seek to determine whether it is responsible for mitigation measures. If it is determined that the client is legally responsible, then these liabilities will be resolved in accordance with national law, or where this is silent, with Good International Industry Practice (GIIP)" (para. 10).

<sup>92</sup> IFC. 2016. ESRS.

Organization (WHO). CAO notes that Class Ib products are prohibited under PS3. The ESAP agreed with Awba, required the company to provide a strategy to phase out the production of carbofuran. As noted in the ESRS, IFC understood that carbofuran would be phased out within two to three years, by early 2018 to 2019.

Despite the known presence of highly hazardous chemicals at the MPI plant, the project ESAP did not explicitly include measures to assess its E&S risks and impacts or to conduct an EHS audit for potential legacy pollution and contamination. As a result, no mitigation measures were put in place to address such potential risks and impacts aside from those associated with the incinerator.<sup>93</sup> During CAO’s investigation, IFC indicated that it considered the MPI plant’s E&S risks and potential impacts to be minimal given its small volume of production of about 5 percent of Awba’s output. However, without a comprehensive E&S audit and risk assessment, there is insufficient basis on which to make such a determination.

### 3.1.2.3 *Absence of review of environmental impact assessment of HAIC*

The proceeds of IFC’s investment were earmarked for the expansion of Awba’s core business, including the construction and operation of the HAIC agrochemical formulation plant. According to the Sustainability Policy, in cases of corporate finance “with defined use of proceeds and a clearly defined environmental and social footprint, IFC’s requirements regarding environmental and social risk management will apply to the business activities financed from funds provided by IFC.”<sup>94</sup> In such cases, E&S due diligence of such use of proceeds “should proceed as it is done for traditional project finance.”<sup>95</sup> Therefore, in addition to conducting an E&S assessment of Awba’s existing assets, IFC should have reviewed the environmental impact assessment (EIA) conducted by Awba in 2015 for the proposed HAIC plant. By not doing so during this phase, IFC failed to identify—and take measures to address—any potential E&S risks and impacts from the proposed HAIC plant prior to investment,<sup>96</sup> or establish whether or not it met national law requirements.<sup>97</sup> Instead, IFC reviewed the 2015 EIA *after* its legal commitment to the project and only assessed HAIC’s E&S risk and impacts after disbursing funding. (See project supervision section for more details).

During ESDD, IFC was aware that the existing MPI and new HAIC plants would be located next to each other in an industrial area where other agrochemical plants were scheduled for construction.<sup>98</sup> To meet the PS1 and PS3 requirements, IFC should have ensured during E&S due diligence that the client identify and assess the potential cumulative impacts of its business

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<sup>93</sup> PS3, para. 10.

<sup>94</sup> Sustainability Policy, para. 29.

<sup>95</sup> ESRP 3.2.1. See also Sustainability Policy, para. 29.

<sup>96</sup> At the pre-investment stage, project-related information available regarding HAIC consisted of the 2015 EIA and technical feasibility studies conducted since 2015 (Supplemental ESIA 2018, p. 1).

<sup>97</sup> “In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national law, including those laws implementing host country obligations under international law” (Performance Standards, Overview, para. 5).

<sup>98</sup> Soon after the signing of the loan agreement, IFC conducted its first supervision visit in January 2017. IFC visited the location of the HAIC and MPI plants for the first time and noted the potential cumulative impacts, from both HAIC and MPI and other agrochemical plants which were scheduled to be built. IFC also learned that no stakeholder engagement had been conducted for the new agrochemical industrial area.



activity.<sup>99</sup> In particular, pre-investment review should have assessed the incremental impacts of the construction and operation of the HAIC plant in addition to other existing, planned, or reasonably defined activities in the industrial zone and surrounding areas, taking into account any historical pollution from the MPI plant. The table of contents for the 2015 EIA included an entry on cumulative impacts. However, since IFC did not review the document during ESDD, it could not have determined the nature and scale of any incremental impacts and risks in the area of influence.<sup>100</sup>

Further, under PS1, the risks and impacts identification process should also “take into account the findings and conclusions of related and applicable plans, studies, or assessments prepared by relevant government authorities or other parties that are directly related to the project and its area of influence.”<sup>101</sup> During due diligence, IFC reviewed the land lease agreement for the HAIC plant site and determined it was valid.<sup>102</sup> However, IFC did not review site selection for the proposed plant or for the “industrial zone” where it would be constructed.<sup>103</sup> In fact, IFC was not aware at this stage that Myanmar’s government had not conducted relevant E&S assessments, such as an ESIA and/or a strategic environmental assessment, for the proposed industrial park. It was not until January 2017, during its first supervision visit,<sup>104</sup> that IFC learned of this gap as well as the likely absence of informed consultation with communities regarding land use planning

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<sup>99</sup> “Where the project involves specifically identified physical elements, aspects, and facilities that are likely to generate impacts, environmental and social risks and impacts will be identified in the context of the project’s area of influence. This area of influence encompasses, as appropriate: [...] Cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted” (PS1, para. 8).

<sup>100</sup> PS3, paras. 10–11. The 2015 EIA table of contents, which was included with the translated version of the executive summary shared with IFC during its first supervision site visit in 2017, lists a cumulative impacts assessment as a chapter. However, the executive summary itself is silent on the issue and does not refer to a cumulative impacts assessment. There is no documentation of IFC’s review of the full EIA. In its 2017 review of the executive summary of the 2015 EIA for the HAIC facility, during the supervision stage of the project, IFC identified the lack of a cumulative impact assessment as a weakness of the summary. The 2018 ESIA included considerations regarding a cumulative impact assessment due to the presence of other facilities in the industrial park where HAIC would be constructed. The 2018 ESIA concluded that a quantitative cumulative impact assessment of the HAIC and the other facilities in the industrial park was not possible due to lack of data and information regarding the additional facilities, but that a qualitative approach resulted in a determination that “If the operations of the surrounding facilities remain the same as when the baseline surveys were undertaken in June to July 2017, it is expected that the cumulative impact of the HAIC Project and the [the other facilities in the industrial park] will also be no larger than moderate significance.” Project documents mention that there was an “asbestos cement plant” about 500 meters north of the industrial park, an “old tile factory,” a new tile factory closer to HAIC, and another agrochemical formulation plant under development about 1 kilometer from HAIC. Neither the 2015 EIA nor the 2018 ESIA include consideration of the potential incremental impact from these “existing, planned or reasonably defined developments” in the surrounding area, as required by PS1.

<sup>101</sup> PS1, para. 11. These plans, studies, or assessments may include master economic development plans, country or regional plans, feasibility studies, alternatives analyses, and cumulative, regional, sectoral, or strategic environmental assessments where relevant (PS1, para. 11). The risks and impacts identification will also consider the outcome of the engagement process with affected communities as appropriate (Ibid.).

<sup>102</sup> IFC. 2016. ESRS.

<sup>103</sup> There is diverging information about the characterization of the project area. IFC and Awba refer to the project area as an industrial area/zone/park, while the complainants describe the area as consisting of agricultural fields. Historical satellite imagery from the time of IFC field appraisals (January 2015–January 2016) (and indeed earlier through at least 2006) show that the area immediately outside the boundary of the industrial area/zone/park, as shown in the 2018 supplemental ESIA, contains cultivated fields, trees (possibly tree crops such as aguar trees and sandalwood), and structures. While it is not known if the structures are residential, the complainants presented evidence that at least one household lives adjacent to the HAIC plant.

<sup>104</sup> The absence of any E&S assessment for the “industrial park” is also documented in the 2018 supplemental ESIA (p. 1).

for the site. Even then, IFC did not require its client to conduct an E&S assessment of the “industrial zone” or to develop any mitigation measures, either as part of the supplemental ESIA or otherwise.



Figure 4: Satellite photo of what is termed an “Industrial Zone/Park” in the 2018 supplemental ESIA, where the HAIC and MPI plant are located (Source: HAIC Project ESMP Construction and Operation Phases, ESMP Report, June 2019, p. 33.)

#### 3.1.2.4 Conclusions regarding IFC's compliance with its E&S due diligence obligations

Contrary to Sustainability Policy requirements,<sup>105</sup> **CAO finds that IFC's ESDD of the potential investment was not commensurate with the level of E&S risks and impacts arising from the company's operations or the planned investment.** During the pre-investment phase, IFC did not systematically assess the E&S risks and impacts of Awba's existing or planned business activities. Consequently, the project was approved even though:

- IFC had not reviewed the EIA for the HAIC plant to determine its adequacy and to fully understand its E&S impacts and risks, including associated cumulative impacts in the industrial zone and surrounding area;
- The full set of E&S risks of the MPI plant were unknown; and

<sup>105</sup> IFC. Sustainability Policy, para. 26.

- Mitigation measures necessary to ensure that both MPI and HAIC plants could meet the relevant PS were not identified, nor were associated E&S actions included as conditions of disbursement.

**CAO therefore also finds that IFC’s E&S due diligence was not consistent with the Sustainability Policy’s requirement that IFC only finances “investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”**<sup>106</sup> Without an E&S analysis of the risks and impacts of the HAIC and MPI plants, IFC was not able to determine whether the investment activities in Awba would be able to meet requirements of the Performance Standards.

Instead, IFC noted that the HAIC plant it was financing would be included in the client’s EHS risk assessment process after project approval, along with any other client operation such as MPI. This meant that IFC would review the new agrochemical plant’s E&S impacts and risks during the project’s supervision phase when it was already under construction, making mitigating actions more difficult.<sup>107</sup> This postponed assessment was included as an action item in the project’s E&S Action Plan (ESAP), to be completed by Awba after IFC disbursement. IFC took this approach despite identifying the client’s lack of E&S organizational structure and capacity as a key risk for the investment. To address this shortcoming, the ESRS stated “it is deemed important that the ‘timely and effective’ development and implementation of QEHS (quality, environmental, health, and safety) policies, procedures and management programs be placed under the leadership of a Corporate QEHS Director supported by a QEHS team” and included this stipulation as part of the ESAP.<sup>108</sup> However, IFC did not condition the disbursement on Awba’s completion of these actions in order to ensure their “timely and effective” implementation.

The complainants’ allegations in this case center around E&S risks and impacts from agrochemical plants and associated health impacts. Since IFC did not review the E&S risks regarding HAIC and MPI during its ESDD, it also did not review whether Awba conducted any stakeholder engagement regarding the new plant and whether Awba complied with relevant PS requirements in doing so. Had IFC ensured that there had been appropriate stakeholder engagement and information disclosure, the complainants’ concerns regarding adequate E&S impact analysis and potential differential impacts on local ethnic groups would likely have been brought to IFC’s attention.

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<sup>106</sup> Ibid, para. 22.

<sup>107</sup> The ESAP for this investment included as its second item the following: “Awba is in the process of establishing an EHS risk assessment process for proposed IFC’s financed agro-chemical formulation plant and fertilizer warehouses, commensurate with the level of its environmental and social risks and impacts, in order to ensure alignment and coherence with proposed QEHS policies, especially as they relate to potential (i) environmental impacts: raw materials characterization and risk assessment, energy and water consumption, wastewater quantity/quality, air emissions, solid and hazardous waste management, usage of chemicals and hazardous materials, noise, and emergency preparedness, and ii) OHS impacts: fire and explosion hazards, physical hazards (e.g. cuts, falls, rotating/moving equipment, vibration, electrical hazards, work zone noise level, workplace’s ambient air quality, temperature and humidity, ergonomic issues (e.g. lifting, repetitive work, work posture injuries), eye hazards, working at heights, industrial vehicle driving).”

<sup>108</sup> IFC. 2016. ESRS, section on PS1.

By not ensuring a proper identification of risks and impacts during the pre-investment stage “to anticipate and avoid [...] or [...]to minimize”,<sup>109</sup> IFC’s approach to this project was not preventative but reactive. IFC’s subsequent supervision attempted to secure from the client E&S actions that should have been required before Board approval, or as a condition of disbursement.

CAO notes that the lack of adequate E&S due diligence, including the absence of an ESIA for the HAIC plant with appropriate E&S baseline data, makes it almost impossible to assess with certainty the potential harm to communities resulting from this IFC investment. CAO considers that IFC’s shortcomings during ESDD could have contributed to harm to complainants (see section 3.2) since the project went forward without adequate E&S mitigation measures in place. Some of these measures were not developed until 2019, after the HAIC plant was already in operation and Awba had exited MPI. Therefore, limitations in IFC’s due diligence contributed to the delay in implementing E&S mitigation measures to address the types of harm alleged by complainants. Additionally, the inadequate assessment of stakeholder engagement processes, including consultation and information disclosure, during ESDD could reasonably have led to missed opportunities to hear from communities about potential risks and impacts, and develop actions to address them.

## 3.2 IFC Project Supervision

IFC supervision commenced when IFC and Awba signed the financing agreement in September 2016. IFC completed its loan disbursement in one tranche in December 2016.

IFC carried out six site supervision visits before the client requested and completed prepayment in March 2021. The first two visits took place in January 2017 and February 2018 with the remainder conducted every four to six months until November 2019. Due to travel restrictions related to COVID-19, IFC conducted no supervision visits in 2020 or in 2021 prior to prepayment in March.

This section presents IFC’s supervisory activities, a compliance analysis, and an assessment of harm organized thematically by complainant allegations regarding environmental pollution, associated health impacts, and shortcomings in stakeholder engagement.

### 3.2.1 Environmental Pollution and Associated Health Impacts

#### 3.2.1.1 *Summary of allegations*

The complainants allege that the quality of the local water supply from wells and streams, which they use for household consumption and their livelihoods, has deteriorated since 2018, and that strong odors emanate from the Awba plants. They blame this combination of water contamination and air pollution for a range of negative health impacts. These include vomiting, itchiness, and redness of face, heart palpitations, and high blood pressure after drinking tube well water, as well

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<sup>109</sup> Sustainability Policy, para. 6; PS1, objectives.

as rashes when swimming in local streams. The complainants also allege that the chemical odors caused nausea, dizziness, breathlessness, and headaches.

Beyond human health, the complainants state that air and water contamination from the Awba plants has led to a decline in local animal species and that fruit trees no longer grow in their communities.

### *3.2.1.2 Summary of IFC supervision*

As noted in Section 3.1, IFC did not include E&S requirements as conditions of disbursement. Construction at the HAIC site started in December 2016, around the time of disbursement and before IFC reviewed Awba's 2015 EIA of the proposed plant, which IFC later concluded did not meet the Performance Standards.

IFC did agree an Environmental and Social Action Plan (ESAP) with the client, and Awba committed in the legal agreement governing the investment to comply with the Performance Standards. However, IFC's E&S supervision efforts were disadvantaged from the outset by lack of leverage, and had limited effect. IFC assessed the client's overall E&S performance as partly unsatisfactory throughout the course of its supervision.

IFC's supervision efforts largely focused on monitoring and supporting Awba in three areas:

- Carrying out the risk and impact assessment for the MPI and HAIC plants
- Setting up an effective environmental and social management system, including procedures, policies, and management plans
- Monitoring the E&S performance of the MPI and HAIC facilities, with a particular focus on EHS monitoring data.

IFC site supervision visits documented progress in some recommended actions outlined in the ESAP in 2019, related to the hiring of a dedicated E&S team and implementation of the community grievance mechanism for the HAIC plant, while noting limited or very slow progress in implementing the remaining actions, such as those related to the development of the ESMPs. As there was a CAO dispute resolution process underway between March 2018 and June 2020,<sup>110</sup> IFC conveyed to the client the importance of these actions given complainants' concerns about community health impacts from the MPI and HAIC plants.

### *Carrying out E&S risk and impact assessment and mitigation for MPI and HAIC*

In February 2017, IFC reviewed the executive summary of the 2015 EIA for the proposed HAIC plant and a health impact assessment, both of which Awba had disclosed on its website. IFC reviewed only the EIA summary as it was the only section available in English.<sup>111</sup> After concluding

<sup>110</sup> CAO. 2020. Dispute Resolution Conclusion Report – Myanmar Awba Group Company Ltd.-01/Myanmar.

<sup>111</sup> There is no documentation of IFC's review of the full EIA, either during ESDD or supervision of the project.



that the EIA had deficiencies,<sup>112</sup> IFC mandated a supplemental environmental and social impact assessment (ESIA) for the HAIC plant to address gaps in meeting IFC Performance Standards and other relevant international requirements. IFC also determined that the health impact assessment published by Awba was not related to the HAIC plant and recommended a stack dispersion model for the HAIC waste incinerator to determine whether such an assessment was warranted.<sup>113</sup>

In addition, IFC:

- Noted that the cumulative impacts of the HAIC and MPI plants should be assessed due to planned additional agrochemical plants in the industrial area.
- Recommended that the client apply the World Bank Group (WBG) EHS Guidelines in its manual of procedures for HAIC construction.
- Recommended that the client review its accommodation policy and procedures for worker housing to meet PS2 requirements.
- Recommended that the client include an EHS clause in contracts with contractors and service providers.

By the time the supplemental ESIA was underway, the HAIC plant had already been under construction for six months.

An E&S consultant recommended by IFC carried out the supplemental ESIA starting with a scoping study, which was completed in mid-2017 with IFC providing comments in July. IFC then provided comments on a first draft in October 2017 and January 2018, highlighting the need to address cumulative impacts and key issues raised by communities during the scoping consultation. In addition, IFC stressed the need to confirm baseline data on air quality, noise, soil, and surface and groundwater quality as well as to document the establishment of an industrial zone containing the Awba facilities. The supplemental ESIA was completed in February 2018 and multiple rounds of comments from the Environment Conservation Department (ECD) of the Ministry of Natural Resources and Environment Conservation (MONREC) followed. A final version was submitted to MONREC for approval in December 2018 and completed in June 2019 along with the HAIC plant's Environmental and Social Management Plans (ESMPs). At that point, construction of the IFC-financed agrochemical plant was complete, and operations had begun.

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<sup>112</sup> IFC observed that that the executive summary contained inadequate information. IFC noted that the EIA executive summary lacked an ESMP, mitigation measures for the construction and operational phases, technical specifications of the wastewater treatment plant and incinerator and associated EHS parameters for monitoring and reporting, emergency preparedness plan, stakeholder engagement plan, community grievance mechanism, potential community impacts, and budgetary allocations. While IFC does not comment on the assessment of potential impacts listed in the executive summary, CAO observes that the executive summary states that an assessment of social impacts is the responsibility of the government and relevant authorities. The MPI plant is only mentioned as a reference point in relation to the proposed HAIC site. While the EIA table of contents, included as part of the executive summary, lists cumulative impact assessment as a chapter, the executive summary is silent on the issue. IFC also noted that the health impact assessment was not related to the HAIC plant.

<sup>113</sup> The 2018 supplemental ESIA included the results of dispersion modelling for the stack emissions from the HAIC incinerator. It concluded the potential impacts on air quality to be negligible.

### *Setting up an effective Environmental and Social Management System*

During the first four months of supervision and prior to its first site supervision mission in January 2017, IFC concentrated on strengthening Awba’s E&S management systems and capacity. Client weakness in these areas was the key project E&S risk that IFC identified during due diligence. In response, IFC support focused on implementing E&S measures to close the gaps with Performance Standards requirements within a reasonable period of time. These wide-ranging measures, agreed with Awba through the ESAP,<sup>114</sup> included establishing and implementing corporate EHS policies, plans, procedures, and training, as well as a community grievance mechanism and EHS risk assessment process. Under the terms of the ESAP, the majority of these measures were due to be completed within four months of the financing agreement, and the rest within two to three months after that. However, during IFC’s first supervision visit, made shortly after disbursement, IFC observed a decline in the client’s level of E&S commitment along with a decrease in technical and financial capacity.

During this period, IFC reviewed draft documents of policies and procedures required by the ESAP, including environmental, occupational health, and safety policies as well as grievance redress management procedures. IFC informed the client that the quality of the draft documents did not meet the requirements of the IFC PS and WBG EHS Guidelines and in late 2017, at IFC’s recommendation, Awba hired an EHS director.

As was the case with the supplemental ESIA, E&S management plans (ESMPs) and EHS monitoring were not in place when the HAIC plant began operations. At IFC’s recommendation, the E&S consultant who conducted the supplemental ESIA was retained to develop and implement the project ESMPs. IFC worked with Awba to finalize these plans and develop additional plans for EHS monitoring and hazardous waste management, including identification of service providers.<sup>115</sup> Development of the ESMPs was completed ten months after operations started at HAIC, in June 2019, a time gap that created the risk that any EHS issues during the plant’s early operation would not be appropriately addressed.

Subsequent supervision missions by IFC concluded that progress on completing implementation of the agreed ESAP measures continued to be a challenge and was still hindered by the client’s lack of E&S capacity and limited financial commitment to EHS issues.

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<sup>114</sup> The ESAP measures to be implemented, related to the issues raised in this case, among others, included: (i) the establishment and implementation of corporate EHS and labor management policies, plans and procedures, performance key project indicators (KPIs), and trainings; (ii) The appointment of a dedicated corporate QEHS director who would then build and lead the development of the QEHS system, including the recruitment of support personnel; (iii) The development and implementation of environmental and occupational health and safety (OHS) monitoring and reporting, and the establishment of grievance mechanisms for communities and workers; (iv) Setting up a group-level community grievance mechanism in order to comply with local and national regulations that require agreement from surrounding neighborhoods when establishing sale depots in commercial or residential areas; and (v) The development of an EHS risk assessment process commensurate with the level of its E&S risks and impacts of the HAIC plant. See the full ESAP here: <https://bit.ly/Awba01-ESRS>.

<sup>115</sup> The ESMP includes an environmental monitoring plan and audit (EMPA) to ensure that the plant complies with the Myanmar National Environmental Quality (emissions) Guidelines (2015), World Bank Group (WBG) Environmental Health and Safety (EHS) General Guidelines (2007), and WBG EHS Guidelines for Pesticide Manufacturing, Formulation, and Packaging (2007).

IFC also discussed with Awba the resources needed for and the estimated cost of implementing the EHS monitoring plan. In December 2018, IFC noted the need to receive written commitment from its client on a budget to conduct EHS monitoring since no such budget had been assigned. This written commitment is not evidenced in later project documents.

In March 2018, IFC discussed with Awba the scope of work for IFC technical assistance in three areas: development and implementation of the human resources management system, EHS management system, and EHS reporting. This offer of technical assistance, proposed by IFC during E&S due diligence, was revisited at this time during supervision. However, despite preparation measures, including identifying consultants recommended by IFC, this support from IFC did not materialize. In late 2018, Awba contracted a firm to help implement an integrated EHS management system.

IFC's supervision efforts were also focused on improving Awba's stakeholder engagement. By mid-2017, Awba hired a consultant to develop a stakeholder engagement plan and community grievance mechanism for the HAIC plant.<sup>116</sup> This consultant completed a stakeholder mapping exercise and designed and piloted a grievance mechanism. At IFC's recommendation, in early 2018, the client extended the consultancy to provide further support in implementing the grievance mechanism.

By 2019, IFC indicated a positive outlook for Awba, documenting its establishment of EHS management systems across its facilities. IFC also commended Awba management's commitment to align its operations and E&S management with good international industry practice (GIIP) and IFC's E&S requirements.<sup>117</sup> However, during 2020 and up until prepayment in March 2021, IFC's supervision was limited due to pandemic-related travel restrictions. Without supervision visits, IFC's supervision activities were focused on requesting EHS monitoring data from Awba. No further actions were registered during this time.

### *Monitoring E&S performance*

During this same time period, IFC also worked to ensure that both the MPI and HAIC plants would perform in accordance with IFC's pollution prevention standards (PS3) and standards related to community health and safety (PS4).

#### MPI Agrochemical Plant

According to project documentation, IFC's first visit to the MPI plant revealed serious deficiencies in its operation. These included lack of characterization and monitoring of air parameters for an

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<sup>116</sup> While initially the scope of this consultancy was to include both a Stakeholder Engagement Plan (SEP) and a Grievance Mechanism (GM), the consultant's proposal focused only on the GM and does not mention the SEP. Interviews with the project's E&S consultants during this investigation revealed that it was not clear who had the responsibility for development of the SEP.

<sup>117</sup> However, IFC noted important actions that remained pending, such as environmental monitoring and evidence of exit from MPI, including appropriate disposal of the carbofuran inventory. Despite some progress made by the client, IFC reported that the E&S performance for the client during 2019 was partly unsatisfactory. Since the beginning of project supervision in early 2017 and throughout the rest of the project cycle, IFC assessed the client's overall E&S performance as partly unsatisfactory.



incinerator decommissioned due to operational issues and community concerns over air pollution. With the knowledge that the MPI joint venture would be in place for five more years, IFC concluded that the MPI plant should operate under the same EHS requirements as Awba's other facilities. Consequently, in January 2017, IFC recommended that Awba undertake an urgent EHS audit of the MPI plant and include the results in the supplementary ESIA for the HAIC plant. By February 2018, IFC recommended instead that the client decommission the MPI plant altogether, due to its poor EHS working conditions.

Both IFC and its client indicated to CAO that the complainants' concerns about community health impacts and surface water contamination related to the MPI plant. They stated this belief on the grounds that the HAIC plant was not yet in operation at the time the complainants raised their concerns. In October 2019, IFC asked Awba to conduct an assessment of legacy pollution at the MPI plant as a pre-condition for upgrading its E&S performance rating.<sup>118</sup> Awba agreed in principle to do so, but stated that sampling at the MPI site was not possible since Awba's exit from MPI was completed in June 2019. In lieu of an assessment at the MPI plant, IFC and Awba agreed to excavate four shallow wells on the HAIC facility premises, including one close to the MPI boundary, to monitor groundwater for any pesticide residues. Awba's subsequent monitoring reports for treated wastewater discharged into HAIC's storage pond showed no pesticide residues. CAO has not seen evidence that IFC reviewed these monitoring reports.

During supervision, IFC also expressed concern to Awba about phasing out the production and trade of carbofuran, an agrochemical categorized as highly hazardous by WHO and prohibited under PS3, which, as noted in the ESDD section, was a requirement in the ESAP.<sup>119</sup> As of February 2018, Awba had not yet provided a strategy to phase out carbofuran which should have been presented by December 31, 2016 according to the timeline agreed in the ESAP. Two years into the investment, —in June 2018, IFC urged Awba to phase out carbofuran as a "highest priority." By October 2018, the company had stopped production of this agrochemical. A separate concern was how to dispose of Awba's remaining onsite inventory of carbofuran in a safe and environmentally appropriate manner. According to project documentation, the company planned to sell these stocks as there was no viable alternative for its disposal. It is not clear whether and how these stockpiles were removed from the project site or whether IFC ensured that its client did not "store, use or trade" carbofuran prior to divesting from MPI, or prior to Awba's prepayment to IFC in March 2021.<sup>120</sup>

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<sup>118</sup> IFC at this time recognized that by excluding the MPI facility from IFC's scope of due diligence and not requiring its client to conduct an assessment of legacy pollution as a condition precedent, IFC was not in compliance with its obligations under the Sustainability Policy (para. 7) to seek to ensure that Awba's operations were implemented in accordance with PS3.

<sup>119</sup> PS3 requires the client to "not purchase, store, use, manufacture, or trade in products that fall in WHO Recommended Classification of Pesticides by Hazard Class Ia (extremely hazardous); or Ib (highly hazardous)" (para. 17). The 2009 WHO Recommended Classification of Pesticides by Hazard classifies carbofuran as Ib (highly hazardous). Guidelines available at: <https://bit.ly/3JcRE4o>.

<sup>120</sup> No records have been shared with CAO regarding the final inventory of carbofuran held by Awba, its eventual disposal after MPI stopped production in October 2018, or whether Awba sold off the remaining carbofuran when it divested from MPI. Following the December 2018 visit, the project team requested from IFC management, among other things, guidance on how to manage the delayed phase-out of carbofuran. However, in 2019 IFC's supervision noted that this action remained pending, and there is no evidence in project documents of any further action taken. There does not seem to have been any follow up from IFC on this action.

### HAIC Agrochemical Plant

In December 2018, following two site supervision visits, IFC urged Awba to implement an EHS monitoring plan at the newly operational HAIC plant, covering ambient air quality, air emissions, discharges from the wastewater treatment plant, and groundwater quality. IFC observed that effluents from the wastewater treatment plant were only monitored for basic parameters and not for residual pesticides. With respect to water discharges, in June 2018, IFC reported that the wastewater treatment plant was tested and determined to be in compliance with WBG EHS Guidelines. During a May 2019 site visit, IFC also recommended that the client stop operating the HAIC incinerator for at least a year as it was not operating effectively and expand its waste management contract to include waste generated at the new plant.

In 2019, IFC received some environmental monitoring results from Awba related to ambient air quality, ambient noise, surface and ground water, air emissions from the incinerator, and wastewater discharges. A November 2019 certificate of residue analysis from the Ministry of Agriculture showed that pesticide residue was “not detected” in a water sample taken from HAIC. It is not clear from the certificate or any project documents where this sample was taken at the HAIC site. To CAO’s knowledge, and on the basis of the information shared by IFC and the client, there is no record of an IFC analysis or review of the EHS monitoring data that IFC requested from the client.<sup>121</sup>

After Awba’s divestment from MPI in June 2019, IFC highlighted the need to develop a communication strategy to address community concerns relating to environmental impacts of both the MPI and HAIC plants. IFC noted that transparent disclosure of HAIC’s environmental monitoring data would be an important component. In response to this recommendation, Awba started disclosing environmental monitoring data on wastewater discharges on the HAIC Facebook page.<sup>122</sup>

In June 2020, Awba indicated to IFC that nine wells were under monitoring, of which four were located close to the wastewater lagoon. Awba collected samples and sent them for analysis in July. IFC received these lab reports in October 2020. However, there is no documentation of IFC’s comments on these reports, nor does CAO have any evidence that IFC reviewed them and provided feedback to the client. Between May 2019 and March 2021, when the client prepaid the loan and IFC exited the investment, the client disclosed 15 months of water quality monitoring data on its Facebook page.<sup>123</sup>

#### *3.2.1.3 Compliance analysis*

**CAO finds that IFC did not ensure compliance with PS3 and PS4 in relation to the client’s EHS performance at the HAIC and MPI plants and associated community health and safety**

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<sup>121</sup> There are some references in supervision project documents to findings by IFC, such as that the incinerator was not working properly, that should have resulted from an analysis or review of the EHS data, but there is no record of the analysis or the data that was the basis for these findings.

<sup>122</sup> Awba HAIC Facebook page. Available at: <https://www.facebook.com/HmawbiAgriculturalInputComplex/>

<sup>123</sup> Awba continues to publish monitoring data on the HAIC Facebook page, showing monthly averages from January 2021 through April 2023. Data for May 2023 shows data for the whole month.

**concerns during project supervision.** Specifically, IFC conducted inadequate oversight related to air and water pollutants and assessment of residual impacts from the MPI plant before Awba's divestment. This, in turn, undermined the effectiveness of preventative and control measures for community EHS risks from both HAIC and MPI plants.

*Inadequate oversight of air and water pollution*

**CAO finds that IFC did not ensure that the client's EHS performance at the MPI and HAIC plants avoided, minimized, or controlled the release of pollutants to air and water, as required by PS3.<sup>124</sup>**

IFC's supervision efforts, while significant, did not fulfill its obligation to ensure that the two plants performed in accordance with Performance Standard 3 (Resource Efficiency and Pollution Prevention). PS3 stipulates that the client should "avoid the release of pollutants or, when avoidance is not feasible, minimize and/or control the intensity and mass flow of their release."<sup>125</sup> This requirement refers to "pollutants to air, water, and land due to routine, non-routine, and accidental circumstances with the potential for local, regional, and transboundary impacts."<sup>126</sup> In addition, PS3 requires the client to "not purchase, store, use, manufacture, or trade in products that fall in WHO Recommended Classification of Pesticides by Hazard Class Ia (extremely hazardous); or Ib (highly hazardous)."<sup>127</sup> CAO identified several areas where shortcomings in supervision contributed to IFC being unable to ensure the project's compliance with PS3.

a) Inappropriate sequencing of impact assessment and management systems with construction and operation of the HAIC plant.

A full identification and assessment of the new plant's impacts and risks, including cumulative environmental impacts and risks, and corresponding mitigation measures, was not completed until February 2018. Yet construction had been underway since 2016 and was completed in August 2018. This meant that the client was not able to consider or make any design or siting adjustments to address the specific E&S risks associated with operating the agrochemical production facility. It also meant that construction risks and mitigation measures were not fully identified in time for effective implementation.

In addition, E&S Management Plans (ESMPs) and an environmental monitoring plan for the HAIC plant were not finalized, with IFC's support, until at least ten months after the HAIC plant began operations. The ESAP established a three-month timeframe after IFC and Awba signed the loan agreement to put in place the necessary E&S Management System (ESMS). This deadline was set for December 2016, but IFC supervision documentation shows that the client's consultant did

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<sup>124</sup> PS3, para. 10.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> PS3, para. 17.

not complete the ESMPs, including an environmental monitoring plan and hazardous waste management plan, until June 2019.

Effective implementation of the ESMPs would have also required mobilization of expertise, an effective ESMS, and training. However, IFC identified the client's E&S capacity as a key risk during E&S due diligence and during supervision identified the same challenge as a constant constraint in meeting the requirements of the Performance Standards and WBG EHS Guidelines. IFC supervision documentation noted limitations in Awba's EHS staffing and budget, as well as capacity limitations at in-country laboratories for appropriate analyses of the environmental parameters defined in the ESMPs.

IFC's documented concerns about the capacity of the client and third parties (such as laboratories), and regarding the client's commitment to finance and implement the ESMS and ESMPs, are well documented. In response, IFC should have placed more attention on client capacity building and financial commitment to implement the ESMS and ESMPs, which were vital to the successful E&S performance of the investment. The delays caused by these limitations meant that the HAIC plant operated for at least ten months, and likely longer, without the ESMPs in place.

#### b) Insufficient review of environmental monitoring: MPI

Project documentation shows that the IFC client did not conduct an EHS audit, as required under PS1<sup>128</sup> and PS3,<sup>129</sup> during the time Awba held a 50-percent shareholding in the MPI plant from December 2016 to June 2019. This meant that levels of pollution and sources of contaminants at the site, including air emissions, effluents, seepage, and dust from storage and other facilities, were not identified, assessed, and addressed. While IFC was aware of and took action on contaminants from the MPI incinerator, other sources of contaminants were left unidentified and unmanaged. The test wells on the HAIC site, close to the property boundary with MPI, were not a sufficient measure to determine the extent of soil contamination and water pollution from the MPI plant. While IFC recommended that the plant be decommissioned in 2017, precisely due to its poor EHS working conditions, there is no information to support whether Awba and its joint venture partners put this into effect. The last information shared with CAO in this respect indicates that Awba divested from its stake in June 2019 by selling its shares to a new owner.

#### c) Insufficient review of environmental monitoring: HAIC

PS3 requires that clients avoid the release of pollutants to air, water, and land or, when avoidance is not feasible, to minimize and manage their release.<sup>130</sup> The WBG EHS Guidelines identify air emissions, wastewater, hazardous materials, wastes, and energy and water consumption as sources of environmental issues associated with pesticide manufacturing, formulation, and

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<sup>128</sup> PS1, para. 7.

<sup>129</sup> PS3, para. 4.

<sup>130</sup> PS3, para. 10.

packaging that should be managed.<sup>131</sup> The Guidelines establish performance indicators, included in the ESMPs for this project, regarding air emission and effluent levels. They also require environmental monitoring programs based on direct or indirect indicators of emissions, effluents, and resource use applicable to the particular project, conducted with sufficient frequency to provide representative data for the parameter being monitored, and by trained individuals following monitoring and record-keeping procedures.<sup>132</sup>

According to the Guidelines, “monitoring data should be analyzed and reviewed at regular intervals and compared with the operating standards so that any necessary corrective actions can be taken.”<sup>133</sup> The General EHS Guidelines provide additional guidance on applicable sampling and analytical methods for emissions and effluents. These require that an air quality monitoring program and a wastewater and water quality monitoring program include parameters “indicative of the pollutants of concern,” of the type and frequency that considers the discharge characteristics from the process over time, and are supervised and analyzed by trained individuals.<sup>134</sup> The IFC Sustainability Policy requires IFC to monitor and review a client’s implementation performance as part of its supervision obligations, against the E&S conditions for the investment and the client’s commitments.<sup>135</sup> Part of the client’s commitments in the ESAP for this investment was to implement the EHS policies, plans, and procedures it developed for the management of its operations, such as the ESMPs completed in June 2019.

The ESMPs for the HAIC plant, completed by Awba’s E&S consultant, included specific EHS parameters for the frequency and duration of monitoring, maximum permissible limits, and monitoring locations for air, noise, and wastewater based on project-specific sources of impact. They also specified performance indicators to measure the effectiveness of the mitigation measures proposed, and the corrective actions to be taken if monitoring revealed that emission thresholds were exceeded.<sup>136</sup>

However, despite this comprehensive framework, project records and interviews with IFC project team members indicate that HAIC environmental monitoring data, and analysis of the results against World Bank Group EHS standards as defined in the ESMPs, was limited.

First, there is no monitoring data available for 2018, including during the plant’s first five months of operation. Although Awba included the required budget for environmental monitoring in the supplementary ESIA completed in February 2018, IFC noted that the client had yet to allocate the funds as of December 2018. Second, much of the monitoring data shared by Awba did not report

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<sup>131</sup> WBG EHS Guidelines for Pesticide Manufacturing, Formulation, and Packaging, p. 2.

<sup>132</sup> *Ibid.*, p. 12.

<sup>133</sup> *Ibid.*

<sup>134</sup> The industry-specific WBG EHS Guidelines for Pesticide Manufacturing, Formulation, and Packaging refer to the WBG General EHS Guidelines regarding air emissions and air quality, pp. 10–11, and on wastewater and ambient water quality, pp. 30–31.

<sup>135</sup> Sustainability Policy, para. 45.

<sup>136</sup> ESMP, section 11 indicating air, water and noise as sources of impacts, and establishing requirements for monitoring of wastewater, point source air and noise emissions, fence line monitoring for ambient air, and workplace air quality monitoring, with its parameters, guideline limits and frequency.

on the parameters or with the frequency established in the ESMPs, preventing adequate monitoring and analysis of both point and non-point source pollution, contaminant emissions, and discharges from the plant. For example, while the ESMP required the monitoring of 12 parameters for wastewater, the data collected by the client and shared with IFC for the period between January and April 2019 reported on only five of those parameters.<sup>137</sup> Monitoring was also conducted with insufficient frequency (pH, for example, needed to be measured daily and is missing many data points, while other parameters requiring weekly measurement were tested or reported on once or twice a month). Awba provided some missing parameters through laboratory reports, but there is no evidence that those tests were done consistently and with the frequency required by the ESMP. Awba's wastewater monitoring data published on its Facebook page also reports only on the same five parameters.

In total, the EHS data collected and made available to IFC regarding this project were:

- ESIA data from June–July 2017 on surface water, groundwater, soil, air, and noise, which was to be used as the environmental monitoring baseline.
- Independent laboratory data analysis conducted from December 2018–January 2019 on surface water, groundwater, soil, air, and noise.
- Laboratory certificates for some air emissions, stack emissions data from the HAIC incinerator, and wastewater discharge from April 2019.
- Wastewater monitoring data from January–April 2019.<sup>138</sup>
- Wastewater monitoring data, published by Awba on its HAIC Facebook page from May, July, and November–December 2019, January–March and May–December 2020 and January 2021.
- Some waste manifests (including waste manifests for sludge cake) from May 2019.
- General waste disposal records.

This EHS monitoring data is limited in two ways. First, it does not encompass all the water, air, soil, and noise parameters that the client was required to gather and report on, in line with the agreed ESMPs. Second, it does not systematically report on the parameters for which there is data, such as wastewater, according to the same requirements.<sup>139</sup> This could have led to gaps in monitoring for “pollutants of concern” from the project facilities, contrary to the requirements in the EHS guidelines. There is no evidence that IFC required the client to provide more consistent data.

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<sup>137</sup> The data reports on the following five parameters: pH, BOD, COD, TSS, and Oil and Grease.

<sup>138</sup> Regarding wastewater monitoring, the documentation includes data on the five parameters mentioned above from January to April 2019, plus separate oil and grease data from February and April 2019, and laboratory analysis of additional parameters from April 2019.

<sup>139</sup> There does not seem to be any record of air quality and noise monitoring after the independent laboratory analysis from December 2018–January 2019, except from laboratory certificates for air and stack emissions from April 2019.



While IFC did request monitoring data from the client, there is no evidence that it examined said data or provided feedback to the client to ensure that such monitoring data was consistent with ESMP requirements, or to observe any trends over time and verify the lack of exceedances over the permissible limits.

d) Failure to ensure proper removal of carbofuran

IFC made strong efforts to ensure that the client met its ESAP requirement to phase out carbofuran, a chemical prohibited under PS3 and classified as “highly hazardous” by WHO. Awba stopped production of carbofuran by October 2018 and informed IFC that the remaining stockpile needed to be sold because there was no viable alternative for its disposal. It remains unclear whether IFC ensured that the client completed the safe removal of the hazardous stockpile as required by the ESAP, prior to Awba's divestment from MPI in June 2019 and its prepayment to IFC in March 2021. No records have been shared with CAO regarding the removal of the final inventory of carbofuran held by Awba. CAO is also unaware of any follow up from IFC on this action.<sup>140</sup>

e) General considerations regarding compliance with PS3

The delay in E&S risk assessments for this investment and slow implementation of the relevant mitigation and EHS monitoring measures meant that when the ESMPs were completed in June 2019, more than four years after due diligence began on this project, IFC was still focused on E&S risk assessment and establishing the mitigation measures through the ESIA and ESMPs. This focus on assessments that should have been carried out during ESDD diverted attention from the client's EHS monitoring data, which IFC should have closely supervised for compliance with its E&S policies.

Consequently, CAO concludes that IFC did not adequately ensure that the client's EHS performance at the MPI and HAIC plants avoided, minimized, or controlled the release of pollutants to air and water, as required by PS3.

*Inadequate oversight of client assessment of community health and safety risks and impacts*

**While IFC ensured that the client assessed the HAIC plant's risks and impacts to the health and safety of affected communities in the 2018 supplemental ESIA, CAO finds that IFC did not ensure that the client established preventive and control measures, as required by PS4.<sup>141</sup>**

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<sup>140</sup> Following the December 2018 visit, the project team requested from IFC management, among other things, guidance on how to manage the delayed phase-out of the “highly hazardous” agrochemical carbofuran, which was one of the ESAP items. However, after this IFC's supervision noted in 2019 that this action remained pending, and no further action seems to have been taken. Awba requested to prepay in early 2020.

<sup>141</sup> PS4, paras. 5, 7–9.

Performance Standard 4 (Community Health, Safety, and Security) requires IFC clients to conduct an assessment of the risks and impacts to the health and safety of affected communities from project activities and establish preventive and control measures consistent with GIIP, such as the WBG Environmental, Health, and Safety (EHS) Guidelines.<sup>142</sup> In this case, relevant potential impacts include freshwater contamination, community exposure to pesticides, water-borne illnesses that could result from project activities, traffic accidents, and emergency situations.<sup>143</sup> PS4 also requires the client to consider community participation in monitoring activities, where appropriate.<sup>144</sup>

As described above, during due diligence of its prospective client IFC determined that “there are no communities that may be adversely impacted by Awba’s [...] operations.” However, the supplemental ESIA for the HAIC plant conducted two years later included a risk and impact assessment on community health and safety. The impact assessment judged that without any mitigation measures potential impacts to the six villages affected by HAIC’s construction and operation would be of major significance.<sup>145</sup> Such impacts could include surface water quality and air quality (only for construction), noise (only for operation), road safety (during construction and operation), and unplanned events (during construction and operation). However, the ESIA determined that “[w]ith proper implementation of the recommended mitigation measures,” the impact significance would be reduced to minor to moderate.

As discussed in the section above, Awba had neither an E&S Management System (ESMS) nor E&S Management Plans (ESMPs) in place prior to the new agrochemical plant’s construction and operation. Once these were in place, the client’s EHS monitoring was inadequate as it did not meet the requirements established in the ESMPs. Under these circumstances, CAO finds that IFC did not ensure that the client established and implemented “preventive and control measures” per PS4 requirements. As a result, IFC could not ensure that the potential impacts to communities identified in the ESIA were appropriately mitigated.

Additionally, sometime before January 2017, the client agreed, in principle, to establish a community EHS monitoring committee to evaluate health and safety impacts, in accordance with PS4 community engagement requirements. After its first supervision visit, IFC remarked the need to define terms of reference and a work plan for this committee. However, this committee did not

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<sup>142</sup> PS4, para. 5. Additionally, the WBG EHS Guidelines for Pesticide Manufacturing, Formulation, and Packaging (2007) require that plant design and operations include safeguards to minimize and control hazards to the community through, among other things, assessing the effects of potential leaks and hazardous material transports on the surrounding areas, proper selection of the site selection, identification of prevention and mitigation measures to avoid or minimize the community hazards; and development of an emergency management plan, prepared with the participation of local authorities and potentially affected communities”.

<sup>143</sup> PS4, paras. 6–12. PS4 GN Annex B defines water-borne illnesses as illnesses caused by consuming water contaminated by human, animal, or chemical wastes and are prevalent in areas lacking access to adequate sanitation facilities. Such illnesses may include viral hepatitis, typhoid, cholera, dysentery, and other diseases that cause diarrhea.

<sup>144</sup> According to PS4 GN4, PS4 requirements on community engagement are met through implementation of the community engagement process in PS1, paras. 22–25, and an informed consultation and participation process is required for projects with potential significant adverse impacts on affected communities.

<sup>145</sup> For each impact type, impact significance is evaluated, which is based on impact magnitude (extent, duration, scale, and frequency) and sensitivity (including vulnerability and importance) (pp. 6–12, 2018 supplemental ESIA).

materialize and there is no information in project documents as to why, or whether IFC followed up with the client on this agreement after February 2017.

Regarding community health impacts from the MPI plant, IFC's lack of an EHS audit, discussed in the section above, meant that there was also no impact assessment on community health.

*Lack of client assessment of residual impacts from MPI plant after divestment*

**CAO finds that IFC did not require its client to assess and mitigate residual impacts when the client exited the joint venture ownership of the MPI plant, contrary to Sustainability Policy requirements and PS1.**

The Sustainability Policy and the Performance Standards apply to a project's entire life cycle including decommissioning, closure, or post-closure, where applicable.<sup>146</sup> They include requirements to assess, avoid, and minimize impacts "and where residual impacts remain, compensate/offset for risks and impacts to workers, Affected Communities, and the environment."<sup>147</sup>

According to project documentation and interviews with IFC project staff, IFC recommended in both 2017 and 2019 that the client conduct an EHS audit of the MPI plant, which was not carried out. However, IFC did not require its client to conduct an EHS audit of the MPI plant prior to Awba's divestment from the joint venture to identify any concerns and site remediation needs. IFC recognized this omission in late 2019, after the divestment process and transfer to the new owner had been completed. Although IFC had prepared technical proposals for an environmental assessment to address legacy pollution at MPI, lack of access to the facility under new ownership meant the assessment did not proceed.

As an alternative, IFC and Awba agreed to monitor groundwater samples in four shallow wells located on the HAIC plant premises. One well was located close to the MPI boundary and another near HAIC's wastewater treatment plant. IFC received test results in October 2020, but CAO has not seen any documentation related to these results or IFC's response. CAO notes that, by this time, IFC had received notice from Awba of its intent to prepay the loan.

*3.2.1.4 Consideration of harm*

**While complainants' firsthand accounts provide some indication of pollution and consequent health issues,<sup>148</sup> CAO is unable to establish the likelihood of harm related to non-compliances due to insufficiencies in baseline and monitoring data. IFC's failure to conduct an environmental analysis of the MPI plant and to bring its client into compliance**

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<sup>146</sup> Sustainability Policy, para. 6; PS1, para. 4.

<sup>147</sup> PS1, Objectives

<sup>148</sup> In August 2020, complainants provided testimonies from four families living nearby the HAIC and MPI facilities that reported experiencing health issues and impacts to their trees and gardens, which they attributed to contamination of their water sources from the HAIC plant.

**with the PS in the EHS monitoring of the HAIC plant contributed to a significant lack of information. The possibility of harm cannot be discounted.**

Regarding water contamination, there is the potential for linkage between the plant and the communities' water sources if residual agrochemicals from a spillage during blending or packing finds its way into a water course as a result of washing down packing areas or cleaning up spills. However, wash water from the HAIC plant should drain into the site's drainage system and treatment tank. However, due to insufficiencies in baseline and monitoring data, the possibility of harm cannot be discounted at the same time that CAO is unable to establish the likelihood of harm related to non-compliances. IFC's failure to conduct an environmental analysis of the MPI plant and to bring its client into compliance with the PS in the EHS monitoring of the HAIC plant contributed to a significant lack of information.

Similarly, CAO cannot verify harm in relation to community allegations of odor and dust due to a lack of baseline and periodic monitoring data. As noted earlier, there is no environmental baseline or monitoring data for the MPI plant and no baseline data for the HAIC plant before construction began. During a scoping visit for the supplemental ESIA in May 2017, the E&S consultant noted potential sources of fugitive dust from the project site due to land clearing, construction, and transportation. No mitigation measures were in place. While fugitive dust was therefore a potential source of adverse impacts to nearby communities, it is likely the impacts were short-term and localized because they related to the plant's construction not operation.

When addressing complaints about odor, the same limitations in available data apply. The supplementary ESIA scoping study noted community concern about alleged odor from the plant operations or storage at the planned HAIC site. Between March and May 2018, similar complaints were raised and logged in the grievance mechanism. In response, Awba acknowledged that the odor likely came from the HAIC incinerator's cooling system during machinery testing. On another occasion, the company suggested the smell may have originated from a fire at a Yangon landfill, an incident reported in the local press. In May 2019, Awba ceased regular operation of the HAIC incinerator at IFC's request and, in line with the project ESMP, the client should now only operate the incinerator as a backup. While the possibility of past harm cannot be discounted, the incinerator's closure for everyday operations should reduce the potential for future harm.

The supplemental ESIA for the HAIC plant included a baseline study of flora and fauna. However, the ESIA scoping determined that impacts on terrestrial and aquatic biodiversity would not be included in the assessment for either the construction and operational phases. For construction, this impact was scoped out because the HAIC plant was to be developed in a "brownfield industrial zone," and therefore "terrestrial and aquatic biodiversity are expected to be of negligible value with no potentially significant impacts from the development."<sup>149</sup> Similarly, for the operational phase, the impact was scoped out because the HAIC plant would be in "an industrial zone and...surrounded by other industrial development," thus "terrestrial and aquatic biodiversity are

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<sup>149</sup> 2018 Supplemental ESIA, p. 6-1.

expected to be of negligible value with no potentially significant impacts from the [HAIC plant].”<sup>150</sup> IFC did not conduct an environmental assessment of the MPI plant during due diligence and did not require one during supervision.

The complainants claim that fish, crickets, butterflies, and bees have decreased or gone locally extinct since 2001, during the period the MPI plant was in operation. However, CAO is unable to verify these allegations given the limitations of this investigation and the lack of data gathered by the project in this regard. While the complainants' and community accounts are an important element when determining harm, CAO lacks sufficient information to determine whether there is harm or indications of harm related to IFC's non-compliances on this issue.

### 3.2.2 Stakeholder Engagement

#### 3.2.2.1 Summary of allegations

The complainants claim that the consultation process related to the ESIA for the HAIC plant excluded [REDACTED] affected communities—[REDACTED]. They also claim that Awba conducted information sessions rather than consultations because the company provided information about the plant without allowing participants to ask questions or express concerns. The complainants also argue that Awba's grievance mechanism was ineffective. Some claim that they were threatened and physically assaulted by supporters of the new plant during a consultation meeting for the grievance mechanism. In addition, they allege that several grievance incidents in 2019 and 2020 were not handled appropriately by the company, including chemical road spills from Awba trucks, a boiler pipe explosion at MPI, and the death of a cow electrocuted by a fallen electric cable extending from the HAIC plant. Finally, they state that a fence had restricted access to a road that prevented farm vehicles from passing, which impacted the movement of agricultural products in the area.

#### 3.2.2.2 Summary of IFC actions

IFC did not require Awba to develop a stakeholder engagement plan (SEP) after its E&S due diligence and determined that there were no affected communities due to the locations of the proposed HAIC plant, and Awba's other Awba manufacturing plants and warehouses in industrial zones. Later, during IFC's first site supervision visit in January 2017, IFC recommended that its client develop a SEP to address community concerns about environmental, public health, and security issues raised in late 2016 by community members from [REDACTED].<sup>151</sup> In addition, IFC recommended development of a community grievance mechanism specifically for the HAIC plant (a general grievance mechanism for the Awba Group was already included as an ESAP item). At the same time, IFC requested the terms of reference and work plan for a community EHS monitoring committee for the HAIC plant which, in principle, had been agreed to by the company.<sup>152</sup>

<sup>150</sup> Ibid.

<sup>151</sup> [REDACTED]

<sup>152</sup> CAO has not seen evidence of this agreement, as it is not part of the ESAP.

During the January 2017 supervision site visit, IFC reviewed draft E&S documents required from Awba by the ESAP, including environmental and OHS policies as well as grievance redress management procedures. IFC informed its client that the quality of the draft documents required further revisions in order to meet the requirements of the IFC PS and WBG EHS Guidelines.

By mid-2017, Awba had hired a consultant to develop a community grievance mechanism for the HAIC plant. The consultant completed a stakeholder mapping exercise and designed and piloted a grievance mechanism. At IFC's recommendation, in early 2018, the client extended the consultancy to provide further support in implementing the mechanism. During this time, IFC provided support for, and closely supervised, the consultant's work. When the consultancy ended around mid-2018, IFC advised Awba to make final improvements to ensure the mechanism's sustainability and effectiveness, including strengthening internal decision making and responsiveness by providing appropriate budgetary and staffing resources.

Quarterly reports on the grievance mechanism from January 2018 through June 2019, and the full grievance log that Awba shared with CAO in May 2022, indicate that the company continued to implement the grievance mechanism through March 2021, when Awba prepaid. Community members lodged 65 grievances during this time. IFC supervision records do not document any assessment of the grievance mechanism's adequacy during these three years.

Additionally, the project's ESAP required the development of a community grievance mechanism for the broader Awba Group. CAO does not have information as to whether the grievance mechanism developed for the HAIC plant was subsequently adapted for use by Awba's other operations, as envisaged at the time the consultant was hired.

Through its consultants, Awba identified affected communities and engaged with them through consultations during the supplementary ESIA process and during development of the grievance mechanism in 2017 and 2018. Awba retained the consultant that conducted the ESIA to develop the project E&S Management Plans (ESMPs), which were completed in June 2019. These plans included a stakeholder engagement plan<sup>153</sup> which laid out four communication channels: the community grievance mechanism, a workers' grievance mechanism, village development advisory committee meetings, and notice boards in project-affected villages. The SEP states that Awba would organize monthly meetings in Burmese to share progress on ESMP implementation and ESAP actions. In addition, Awba committed to "[r]eport [...] the results of the stack air emissions from incinerator, noise and water quality monitoring" available from the previous month, and any "measures implemented during the previous month to mitigate any adverse impacts to the environment (e.g., noise, dust pollution, odour, traffic and road safety, etc.) in the HAIC Project area of influence."<sup>154</sup> The SEP notes that this information would be delivered by Awba volunteers and through the village development advisory committees. In addition, village notice boards would post "main environmental mitigation measures implemented" with a summary also posted on Awba's website.

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<sup>153</sup> This is referred to as the stakeholders engagement management plan (SEMP) in the ESMPs.

<sup>154</sup> 2019 ESMP, p. 10.



CAO found no supervision documentation related to these monthly meetings or the dissemination of information through the village notice boards. Aside from the grievance mechanism, IFC’s supervision documentation does not record the SEP’s implementation or reference the monthly meetings in which environmental monitoring results and environmental mitigation measures were due to be shared with villagers. CAO also found no documentation associated with the four key performance indicators related to the meetings and notice boards.

IFC’s project records do note three disclosure activities. These include two “ESIA stakeholder events,” one held in Yangon with NGOs and another with village development advisory committees in February 2018, and an ESIA disclosure during a grievance mechanism workshop in September 2018 held in [REDACTED] village. The supplemental ESIA notes that ongoing consultations would take place along with information disclosure in two additional villages. CAO does not have information on whether these consultations were completed and found no further information on the content of these meetings or any additional ESIA disclosure activities. This absence of records is inconsistent with the grievance mechanism reports, which stated that such disclosure activities would be held continuously in affected villages.

Awba shared the supplemental ESIA and the Environmental Management Plan with complainants during the CAO dispute resolution process.<sup>155</sup> Sometime after 2020, Awba published the two documents, which are mostly in English, on its website, as required by PS1.<sup>156</sup> Awba’s website notes that the ESIA has been submitted to the Myanmar Investment Commission and the Ministry of Natural Resources and Environmental Conservation (MONREC).<sup>157</sup>

As noted previously, Awba disclosed wastewater environmental monitoring data from July 2019 to February 2021 on its Facebook page.

### 3.2.2.3 Compliance analysis

**CAO finds that IFC did not ensure that its client conducted stakeholder engagement processes—including project information disclosure and an effective grievance mechanism—that were “commensurate with the project’s risks and adverse impacts, and the project’s phase of development” in accordance with PS1.**<sup>158</sup> This oversight stemmed from IFC’s insufficient E&S due diligence, which concluded that there were no project-affected communities. As a result, IFC did not require a stakeholder engagement plan from its client before making the investment, as required by PS1.<sup>159</sup> During due diligence, IFC did require Awba to establish a group-wide grievance mechanism as agreed in the ESAP. Once supervision began, the concerns raised by community members about the two agrochemicals plants led IFC to

<sup>155</sup> CAO. 2020. Dispute Resolution Conclusion Report – Myanmar Awba Group Company Ltd.-01/Myanmar.

<sup>156</sup> See, Awba company website, available here: <https://bit.ly/AwbaWebsite>

<sup>157</sup> Project documentation notes that the Myanmar Investment Commission (MIC) had granted special permission to operate despite the pending Environmental Compliance Certificate (ECC), which is a formal stamp of approval.

<sup>158</sup> PS1, para. 25.

<sup>159</sup> According to PS1, where a project is likely to generate adverse E&S impacts to affected communities, the client will identify the affected communities and “develop and implement a Stakeholder Engagement Plan that is scaled to the project risks and impacts and development stage and be tailored to the characteristics and interests of the Affected Communities” (paras. 26–27).

require Awba to take urgent corrective measures. These focused on developing a stakeholder engagement plan and community grievance mechanism for the HAIC plant.

IFC subsequently worked with Awba to establish this grievance mechanism for the HAIC plant, but did not supervise the mechanism’s implementation across Awba’s facilities, as the ESAP agreed with the client required.

*Inadequate client disclosure of project information*

**CAO finds that, while the client conducted a stakeholder engagement process through consultants related to the supplemental E&S Impact Assessment (ESIA) and project grievance mechanism, IFC did not ensure that the client disclosed all relevant project information as required by PS1.<sup>160</sup>**

PS1 requires disclosure of relevant project information which includes any risks to and potential impacts on affected communities and relevant mitigation measures.<sup>161</sup> Disclosure may include relevant documents such as the ESIA and ESMPs.<sup>162</sup> PS1 also requires periodic reporting to affected communities regarding the implementation progress of action plans on “issues that involve ongoing risk to or impacts on Affected Communities and on issues that the consultation process or grievance mechanism have identified as a concern to those Communities.”<sup>163</sup>

IFC supervision documentation records limited disclosure activities, particularly in relation to the ESIA and the ESMPs. As the ESIA notes, Awba disclosed the results of the ESIA to Yangon-based NGOs and local village development advisory committees during two events in February 2018. Another ESIA disclosure activity took place in one village as part of a grievance mechanism workshop in September 2018. In addition, the client’s grievance mechanism reports note that ESIA disclosure activities would be held continuously in the affected villages. However, CAO found no further information on the content of these meetings or any additional ESIA or ESMP disclosure activities. While acknowledging that Awba disclosed some project information, CAO finds that IFC did not ensure that all relevant project information, including the ESIA and ESMPs, was disclosed to all affected communities, as required by PS1.

Positively, Awba shared the supplemental ESIA and the Environmental Management Plan with the complainants during the CAO dispute resolution process,<sup>164</sup> and published the two documents on its website,<sup>165</sup> as required by PS1. However, access to local communities is limited because the two documents are not fully translated – the ESIA is largely in English with some sections translated to Burmese and the ESMP is only in English. The former IFC client has also disclosed some wastewater monitoring data on its Facebook page but without any explanatory information to help communities understand the data and how they relate to the company’s mitigation

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<sup>160</sup> PS1, para. 29.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid., para. 29, FN26.

<sup>163</sup> Ibid., para. 36.

<sup>164</sup> CAO. 2020. Dispute Resolution Conclusion Report – Myanmar Awba Group Company Ltd.-01/Myanmar.

<sup>165</sup> See, Awba company website, available here: <https://bit.ly/AwbaWebsite>

measures or environmental management plans. This falls short of the PS1 requirement to provide periodic reporting to affected communities on ongoing risk or impacts.

*Inadequate implementation of grievance mechanism*

**CAO finds that IFC ensured that the client establish a grievance mechanism for the HAIC plant<sup>166</sup> but did not supervise its implementation across Awba's facilities as agreed in the project E&S Action Plan.**

PS1 requires IFC clients to establish a grievance mechanism for affected communities “to receive and facilitate resolution of Affected Communities’ concerns and grievances about the client’s environmental and social performance.”<sup>167</sup> The client should seek prompt resolution of concerns through an understandable and transparent consultative process that is culturally appropriate and readily accessible.

IFC closely supervised Awba in developing and later implementing a community grievance mechanism for the HAIC plant. In addition, IFC provided feedback on areas of improvement for Awba to ensure that the mechanism was sustained and effective. The subsequent grievance log shows that the mechanism continued to function through at least March 2021, almost three years after the consultant handed its management over to Awba in mid-2018.

However, CAO has not seen evidence that IFC ensured that this HAIC-specific grievance mechanism was adapted and implemented for Awba's other operations, as required in the ESAP agreed with the client.

*Inadequate stakeholder engagement*

**IFC ensured that Awba conducted some consultations with affected communities during the ESIA process and development of a community grievance mechanism. However, CAO finds that IFC did not ensure that its client implemented a stakeholder engagement plan and carried out stakeholder engagement commensurate with the project's risks and impacts, and with the project's phase of development, in accordance with PS1.<sup>168</sup>**

PS1 requires the client to “develop and implement a Stakeholder Engagement Plan that is scaled to the project risks and impacts and development stage, and be tailored to the characteristics and interests of the Affected Communities.”<sup>169</sup> IFC required Awba to carry out consultations with affected communities as part of both the ESIA process and the development of the community grievance mechanism. This requirement was in response to IFC's discovery during early supervision of the investment that the client's 2015 EIA process included limited participation by affected communities.

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<sup>166</sup> Ibid., para. 35.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid., para. 25.

<sup>169</sup> Ibid., para. 27.

Awba retained the ESIA consultant to develop the ESMPs, completed in June 2019, which included a stakeholder engagement plan (SEP). However, there is no documentation that IFC ensured that the client implemented this plan in terms of sharing full environmental monitoring results and any environmental mitigation measures implemented, despite the fact that operations were underway at the HAIC plant.

#### 3.2.2.4 *Consideration of harm*

##### *Exclusion from stakeholder engagement processes*

**Exclusion from stakeholder engagements constitutes harm to complainants. CAO finds that IFC's shortcomings in client supervision regarding disclosure and implementation of a stakeholder engagement plan likely contributed to the exclusion of affected communities from the limited stakeholder engagement activities during HAIC's operational phase. The lack of adequate stakeholder engagement and disclosure of E&S information had an adverse social impact on complainants.**

Awba conducted limited disclosure activities related to the results of the supplemental ESIA and the ESMPs. IFC did not ensure that the client disclosed relevant project information, including the ESIA and ESMPs, to all affected communities and in their language, as required by PS1. The exclusion of affected communities from the limited stakeholder engagement activities led to their lack of knowledge of the ESIA and ESMPs. This exclusion limited their opportunities to provide feedback on the project and its potential impacts on their lives. This, in turn contributed to IFC's and the client's lack of knowledge of the affected communities' concerns and resulted in their concerns not being considered and addressed.

Disclosure of information and consultation with project-affected people are foundational aspects of a properly managed project, without which E&S risks and impacts cannot be adequately identified, prevented, and minimized.<sup>170</sup> The delays and timing of disclosures (after the HAIC plant was underway), and their limited character, did not meet the requirements of Performance Standard 1 or allow complainants to fully understand the project's E&S risks and impacts, express their views, and otherwise participate in the project's development.

For example, Awba published the ESIA, mostly in English and with only some parts translated to Burmese, and the English ESMP on its website, limiting the ability of local communities to understand their content. Awba also published wastewater monitoring data on its Facebook page without explanation to help communities understand what this data means, how it relates to HAIC plant mitigation measures and environmental management plans, and how they might be affected by the plant's operations. In addition, CAO has seen no evidence that a stakeholder engagement plan was implemented during HAIC's operational phase. CAO therefore concludes that there has been harm to complainants related to IFC's non-compliance on information disclosure and stakeholder engagement.

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<sup>170</sup> PS1, para. 25.

*Inappropriate grievance handling and unresolved grievances related to limited road access*

**CAO finds that IFC complied with its supervisory requirement to ensure the client establish a grievance mechanism for the HAIC plant. Awba developed procedures with IFC’s support and grievances brought to the client were addressed under the mechanism. Therefore, CAO finds no indications of harm to complainants related to an IFC non-compliance.**

IFC supervised its client in developing and implementing a community grievance mechanism for the HAIC plant. The grievance log does not document the incidents alleged by complainants to have occurred in 2019 and 2020 before IFC’s exit. These incidents relate to chemical spills on the road from trucks, a boiler pipe explosion at MPI, and the death of a cow electrocuted by a fallen electric cable extending from the HAIC plant. While complainants have criticized the company’s handling of these incidents, it is unclear whether they were reported through the grievance mechanism or other avenues. Complainants’ accounts of grievance handling are an important factor in determining harm. However, CAO is unable to verify or refute such allegations with the information available at this time, given project documentation that suggest the project had a properly functioning internal grievance mechanism. Additionally, since CAO does not find IFC non-compliance on this issue, there are no indications of harm to complainants related to an IFC non-compliance.

**CAO finds that IFC’s shortcomings in project due diligence and supervision contributed to incomplete evidence regarding the allegation of blocked road access. However, complainants’ firsthand accounts, together with some project information available, leads CAO to find that there are indications of harm to complainants related to IFC non-compliances.**

The issue of blocked road access was raised during ESIA community consultations in June–August 2017. Residents claimed that the road width connecting the villages of Bo Daw Na Gone and Nyaung Gone was halved due to Awba’s placement of a fence.<sup>171</sup> In June 2019, the community grievance log documented a complaint related to the narrowness of a road between Wa Net Chaung and Ye Ta Shay. However, it is unclear whether Awba was implicated in the narrowing of the road. A third complaint, also raised during ESIA consultations, noted that a non-paved village road, which was also used as the access road to the HAIC plant, had been damaged by Awba trucks.

The ESIA report contains contradictory information on how to respond to these grievances. On the one hand, the E&S consultant recommends that Awba restore the damaged road to its original condition.<sup>172</sup> On the other hand, a summary table that lists the concerns raised during consultations, notes that issues related to the road in question fall under the responsibility of the local authorities. A similar response is provided to the complaint documented in the grievance log. In addition, the ESIA report states that the Awba fence narrowing the road was included in the land lease agreement between the IFC client and the Ministry of Agriculture. Complainants say they lack knowledge of this land lease and their requests for access to a copy or further details

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<sup>171</sup> 2018 Supplemental ESIA, Table 1.3.

<sup>172</sup> 2018 Supplemental ESIA, Table A.

have been denied by the company. The grievance log does not indicate whether any corrective actions were taken and there are indications that project vehicles caused some damage to the road used by villagers.

Complaints about road access have been consistent throughout the life of the project and remained an issue during the CAO process. It is difficult to determine the scope of harm caused to communities due to a lack of information in the ESIA regarding how material the roads were to community life and whether there were alternative access routes to the area.

IFC's lack of adequate due diligence and supervision potentially contributed to the unresolved status of this issue, with the client simply indicating that local authorities were responsible for its resolution. Since adequate due diligence and supervision could have potentially identified this persistent issue and required the client to address it, CAO concludes that there are indications of harm to complainants due to limitations in access or damage to roads around the Awba compound that connect to other villages, farmland, and a monastery which are related to IFC non-compliance with its due diligence and supervision obligations.

### **3.3 Differential Impacts on Indigenous Peoples**

#### **3.3.1 Summary of Allegations**

The complainants claim that the project has had differential impacts on the livelihoods of local indigenous ethnic nationalities.<sup>173</sup> They state that the [REDACTED], who have different traditions and ways of life from other [REDACTED] ethnic groups, used to farm citrus trees but can no longer do so due to alleged impacts from the MPI plant.

#### **3.3.2 Summary of IFC Actions**

During pre-investment E&S due diligence, IFC determined that “there are no communities that may be adversely impacted by Awba[s] manufacturing and warehouse operations,” because of the location of these company facilities in industrial zones.<sup>174</sup> Additionally, the ESDD determined that PS7 (Indigenous Peoples) was not applicable because “there is no presence of Indigenous Peoples or known cultural artifacts within the company’s operational footprint.”<sup>175</sup> However, as previously described, IFC’s determination was not based on an E&S assessment of the MPI and HAIC plants’ area of influence.

During supervision, IFC required its client to conduct the 2018 supplemental ESIA for the HAIC plant, which identified the [REDACTED] among ethnic groups in the nearby

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<sup>173</sup> As noted above, leaders of non-Bamar ethnic groups prefer the term “ethnic nationalities” over “ethnic minorities.”

<sup>174</sup> IFC. 2016. ESRS.

<sup>175</sup> Ibid.



communities.<sup>176</sup> However, neither Awba nor the E&S consultant who carried out the ESIA conducted a vulnerability assessment or assessed the applicability of PS7 to these ethnic groups, and IFC did not require such an assessment from its client.

### 3.3.3 Compliance Analysis

**CAO finds that, during due diligence, IFC failed to require its client to assess the presence of any groups that “may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status,” as required by PS1.<sup>177</sup> During both ESDD and supervision, IFC failed to identify or assess the ethnic groups in the HAIC and MPI project area that may be considered Indigenous Peoples under PS7.<sup>178</sup>**

Without an E&S risk and impact assessment of Awba's existing and planned operations, including a social baseline, there is no basis for IFC's conclusion during ESDD that there were no potentially affected communities nor any vulnerable or Indigenous Peoples in the project area of influence.<sup>179</sup> Further, a project's area of influence is not limited to “its operational footprint” as IFC's ESDD determination seems to imply, but includes areas affected by direct, indirect, and cumulative impacts as well as from associated facilities.<sup>180</sup> Project documents provide no evidence of any screening assessment regarding the vulnerability of groups within nearby communities or the presence of Indigenous Peoples, contrary to the requirements of both PS1 and PS7.<sup>181</sup>

During supervision, IFC became aware of the presence of several potentially vulnerable ethnic groups in the project area. CAO's investigation found that these ethnic nationalities possess some

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<sup>176</sup> 2018 Supplemental, 2018, pp. 6-4, 6-14, 6-17, These references to the presence of the [REDACTED] ethnic groups remained in the final version of the supplemental ESIA of June 2019 (after the last round of comments from the national authority), pp. 5-54, 5-61, 5-65. The [REDACTED] are ethnic groups within Myanmar which are distinct cultural groups, with distinct languages or dialects, distinct customary cultural, economic, social institutions and a collective attachment, and sometimes control, over geographically distinct areas. Information on Myanmar Ethnic Groups available at: <https://bit.ly/3X8mcKl>, and for information regarding their potential identification as Indigenous Peoples, see the International Work Group for Indigenous Affairs (IWGIA) at <https://bit.ly/43FqLOL>.

<sup>177</sup> PS1, para. 12.

<sup>178</sup> PS7, para. 8.

<sup>179</sup> As documented in the ESRS, IFC determined “there are no communities that may be adversely impacted by Awba's manufacturing and warehouse operations” and “[t]here is no presence of Indigenous Peoples within the company's operational footprint.”

<sup>180</sup> The environmental and social risks and impacts of a project should be identified in the context of the project's area of influence, which encompasses, as appropriate: (i) the area likely to be affected by the project and the client's activities and facilities, unplanned but predictable developments caused by the project or indirect project impacts on biodiversity or on ecosystem services upon which Affected Communities' livelihoods are dependent, (ii) associated facilities, which while not funded as part of the project would not have been constructed or expanded if the project did not exist and without which the project would not be viable, and (iii) cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted. PS1, paras. 8 and 12.

<sup>181</sup> PS1, para. 12, and PS7, para. 8.

of the characteristics of Indigenous Peoples as defined in PS7.<sup>182</sup> According to public information, they have distinct languages or dialects; distinct customary cultural, economic, and social institutions; and a collective attachment to, and sometimes control over, geographically distinct areas.<sup>183</sup> The identification of these potential ethnic groups in the project area should have led IFC to ensure that Awba “assess[ed] potential impacts, including differentiated impacts” on these groups or assessed the applicability of PS7 requirement.<sup>184</sup> Contrary to the requirements of PS1 and PS7, IFC did not require such an assessment from its client and neither Awba nor its ESIA consultant conducted any assessment to determine vulnerability or PS7 applicability.

### 3.3.3.1 *Consideration of harm*

**IFC's shortcomings in relation to the identification and assessment of ethnic groups in the HAIC and MPI project area contributed to the lack of data to verify differential impacts on such groups.** IFC concluded during pre-investment ESDD that there were no potentially affected vulnerable groups or Indigenous Peoples in the project area of influence, without having an assessment that would support this conclusion. Further, when the 2018 supplemental ESIA identified ethnic groups including the [REDACTED] in villages near the HAIC plant, and thus also near the existing MPI plant, IFC did not require additional assessments from its client regarding the potential presence of Indigenous Peoples and/or vulnerable ethnic groups.

CAO concludes that IFC's non-actions breached PS1 and PS7 requirements and resulted in indications of harm to complainants and the ethnic groups living near the HAIC and MPI plants. Had IFC required an assessment of potentially vulnerable or Indigenous Peoples, under the Sustainability Policy and PS1, additional protections and measures under PS7 might have been applicable and mandatory for aspects of the project that affected the villagers' land use and cultural practices. Given the limitations of this investigation, IFC's lack of proper ESDD and supervision, and the project's lack of data regarding social, economic, and cultural characteristics of the affected communities, CAO has limited information to examine the scope and nature of the potential differential impacts on ethnic groups in the project area. Nevertheless, taking into account the verified presence of such ethnic groups, CAO concludes that there are indications of potential harm to complainants related to IFC non-compliance.

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<sup>182</sup> PS7, para. 5. Under PS7, “the term “Indigenous Peoples” is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees: □ Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; □ Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.”

<sup>183</sup> The [REDACTED] are ethnic groups within Myanmar which are distinct cultural groups, with distinct languages or dialects, distinct customary cultural, economic, social institutions and a collective attachment, and sometimes control, over geographically distinct areas. Information on Myanmar ethnic groups available at: <https://bit.ly/3X8mcKI>, and for information regarding their potential identification as Indigenous Peoples, see the International Work Group for Indigenous Affairs (IWGIA) at <https://bit.ly/43FqLOL>.

<sup>184</sup> PS1, GN48 and PS7, para. 8.

### 3.4 IFC Responsibility for Information Disclosure

#### 3.4.1 Summary of Allegations

The complainants allege that IFC has failed to disclose required and updated project information, hindering their ability to understand the risks and impacts of the Awba agrochemical plants, and the mitigation measures taken by the company. Some communities were consulted during the 2018 supplemental ESIA, and thus had access to the ESIA report. However, complainants point out that Awba and IFC have failed to make publicly available the 2015 EIA, the 2018 supplemental ESIA, and the project E&S Management Plans (ESMPs). They also state that IFC has not updated the ESAP since its first disclosure before the project's approval in 2016.

#### 3.4.2 Summary of IFC Actions

IFC disclosed the Environmental and Social Review Summary (ESRS) and the Environmental and Social Action Plan (ESAP) for the investment on its project disclosure website in February 2016, shortly before IFC Board approval.<sup>185</sup> Subsequently, IFC did not disclose the 2015 EIA for the HAIC plant, which it reviewed in early 2017, the 2018 supplemental ESIA, nor any other E&S documentation for the project. During the project's lifetime, IFC also did not update the project ESAP's implementation status on its website.

#### 3.4.3 Compliance Analysis

**CAO finds that IFC did not disclose the 2015 EIA or the 2018 supplemental ESIA for the HAIC plant and did not update the status of ESAP implementation, contrary to the requirements of IFC's Access to Information Policy.**

According to the Access to Information Policy (AIP), IFC is required to make E&S information relevant to the investment, such as the E&S Review Summary (ESRS), E&S Action Plan (ESAP), and ESIA, publicly available.<sup>186</sup> After Board approval, IFC is also required to disclose the ESAP's implementation status<sup>187</sup> and any ESIA reviewed by IFC, as they become available.<sup>188</sup>

For the Awba investment, IFC disclosed the ESRS and ESAP on its project disclosure website in February 2016, a little over three months before Board approval.<sup>189</sup> IFC did not disclose any other existing E&S documentation for the project, including the 2015 EIA that Awba conducted for the HAIC plant, which IFC was aware had been conducted but had not yet seen.

The AIP also required IFC to disclose ESIA documents prepared by or on behalf of the client for category B direct investment projects such as Awba.<sup>190</sup> This requirement applies to both pre-Board approval disclosure and post-Board disclosure. As stated above, IFC did not disclose the

<sup>185</sup> Awba IFC project disclosure page. Available at: <https://bit.ly/Awba01-ESRS>

<sup>186</sup> IFC. 2012. Access to Information Policy (AIP), paras. 29 and 31(a).

<sup>187</sup> Ibid., para. 41(b).

<sup>188</sup> Ibid., paras. 41(b) and 41(c).

<sup>189</sup> Awba IFC project disclosure page.

<sup>190</sup> AIP, para. 31(a)(vi).

2015 EIA for the HAIC plant in pre-approval disclosures because at the time it did not have access to the document. However, IFC was required under the AIP to disclose the EIA after receiving and reviewing the document between January and April 2017.<sup>191</sup> Instead, IFC told CAO that it decided not to disclose Awba’s 2015 EIA due to its inadequacy against IFC Performance Standards.<sup>192</sup> In addition, IFC failed to disclose the potential gaps in the EIA to meet its Performance Standards. In the project’s E&S Review Summary, IFC simply stated that “as per the new regulation under the Myanmar Environmental Law enacted in 2012, [the] latest Hmawbi’s agro-chemical plant [HAIC] underwent [an] environmental [impact] assessment in 2015.”<sup>193</sup>

To date, IFC has not updated the implementation status of the project ESAP, contrary to the AIP requirement, or disclosed the 2018 supplemental ESIA for the HAIC plant it required from the client. IFC explained that the ESIA delay is due to pending approval by Myanmar’s Ministry of Natural Resources and Environmental Conservation (MONREC) for an Environmental Compliance Certificate (ECC).<sup>194</sup> However, the AIP states that, for category A and B investments, IFC will make available “[a]ny ESIA reviewed by IFC, as they become available,”<sup>195</sup> and does not exempt IFC from its disclosure obligations due to pending governmental approvals.<sup>196</sup> If any changes to the ESIA result from the national approval process, IFC has the option to update its public disclosures.

### 3.4.3.1 *Consideration of harm*

**CAO finds that IFC’s lack of compliance with its disclosure obligations has caused harm to complainants and contributed to the general lack of information that has disempowered communities regarding the E&S risks and impacts of the project.** Since the beginning of this CAO case, the complainants have described their confusion regarding the scope, limits, risks, impacts, and measures related to IFC’s investment in Awba and the HAIC agrochemicals plant on their doorstep. The AIP’s purpose is to provide affected communities with “accurate and timely” information in order “to understand better, and to engage in, informed discussion about IFC’s business activities, the development outcomes and other impacts of its activities, and its overall

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<sup>191</sup> Ibid., para. 41(c).

<sup>192</sup> IFC noted that the 2015 EIA executive summary was of poor quality, did not reference an ESMP, mitigation measures for the construction and operational phases, technical specifications of the wastewater treatment plant and incinerator and associated EHS parameters for monitoring and reporting, emergency preparedness plan, stakeholder engagement plan, community grievance mechanism, potential community impacts, and budgetary allocations (see more details in the section on the project supervision during January 2017).

<sup>193</sup> ESRS, section on PS1.

<sup>194</sup> Environmental Compliance Certificate (ECC) is defined in the 2015 EIA Procedures as “a document having legal effect, through which the Ministry approves an IEE [Initial Environmental Examination] Report, an EIA Report, or an EMP” (Government of the Republic of the Union of Myanmar, Ministry of Environmental Conservation and Forestry, Notification No. 616/2015, Environmental Impact Assessment Procedure, Chapter 1, para. 2(u)).

<sup>195</sup> AIP, para. 41(c).

<sup>196</sup> The AIP does allow for “delayed disclosure” of certain information “that it would otherwise make publicly available because of market conditions, legal or other regulatory requirements such as timing requirements relating to securities offerings, equity investments in publicly listed companies, purchases of shares in a private placement or a financial restructuring. This prerogative may be exercised by the director responsible for the project, with respect to such information.” However, CAO has no information that indicates there is any regulatory obstacle for IFC to disclose the ESIA prior to government approval so that this exemption applies, nor has CAO been informed that the responsible director for this project applied such exemption.

contribution to development”.<sup>197</sup> At the same time, the obligations set out in the AIP seek to promote “transparency and accountability” with the understanding that this approach “promotes engagement with stakeholders, which, in turn, improves the design and implementation of projects and policies, and strengthens development outcomes.”<sup>198</sup> CAO determines that the lack of transparency regarding essential E&S information for this project has caused and contributed to actual harm to complainants. It has prevented them from fully understanding the project’s E&S risks and impacts and participating in project design and development. This hindered their ability to raise concerns at the design stage when they could have strengthened the development outcomes through better identification of E&S risks and impacts, and corresponding mitigation measures. CAO concludes that there has been harm to complainants related to IFC’s non-compliance with its Access to Information Policy.

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<sup>197</sup> AIP, paras. 6 and 8.

<sup>198</sup> *Ibid.*, para. 3.

## 4. Summary of Findings

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Based on the evidence presented in section 3, CAO finds IFC's pre-investment review and supervision of Awba's agribusiness in Myanmar to be materially non-compliant with its responsibilities under the Sustainability Framework.

In relation to the complaint brought to CAO by local residents, IFC's review and oversight of Awba's operations fell short in the areas summarized below. This section also summarizes CAO's findings regarding the complainants' allegations of harm as a result of IFC's non-compliances and discusses underlying causes for these non-compliances. The recommendations that follow seek to address the issues raised by this investment at both project and institutional level.

### 4.1 IFC Non-compliance Findings

#### Due Diligence

- IFC's pre-investment E&S review (ESDD) of Awba's agrochemical operations contravened its Sustainability Policy.<sup>199</sup> The ESDD was not commensurate with the level of E&S risks and impacts arising from the company's operations or the planned investment. In particular, the investment involved a new agrochemical plant (HAIC) and the absorption of an existing agrochemical plant (MPI) with potential legacy pollution issues and the known production of a highly hazardous chemical, both located in a growing industrial area close to communities. In addition, IFC identified early on that the client's E&S capacity represented a key investment risk. CAO concludes that this combination of risks and potential impacts merited a higher level of ESDD than was conducted for this investment, specifically a site-specific assessment of risks and impacts for the HAIC and MPI plants.

During this phase, IFC also did not comply with two other aspects of its Sustainability Policy:

- IFC should only finance "investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time."<sup>200</sup> IFC's investment in Awba was approved by the IFC Board without IFC having reviewed an EIA for the proposed HAIC agrochemical production plant or conducted a complete assessment of the E&S risks of the MPI plant. Without this full E&S risk and impact analysis, IFC was not able to determine whether Awba's activities, and specifically the MPI and HAIC plants, would be able to meet PS requirements.
- Regarding remediation, "[w]here there are significant environmental or social impacts associated with the business activity, including past or present adverse impacts caused by others, IFC [should work] with its client to determine possible remediation measures."<sup>201</sup> Without reviewing the existing 2015 EIA and in the absence of an environmental audit of

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<sup>199</sup> Sustainability Policy, para. 26.

<sup>200</sup> Ibid., para. 22.

<sup>201</sup> Ibid., paras. 26 and 28.



existing operations including the MPI plant, IFC was not in a position during ESDD to work with the client to establish the kinds of remediation efforts required and their feasibility and cost. As a result, the project’s E&S Action Plan did not fully reflect or take into account the risks and impacts of the two plants.

Shortcomings in IFC’s ESDD include:<sup>202</sup>

- Incomplete scope of E&S pre-investment review;<sup>203</sup> and
- Absence of review of environmental impact assessment of HAIC.<sup>204</sup>

## Supervision

- IFC did not ensure compliance with PS3 and PS4 in relation to the client’s EHS performance at the HAIC and MPI plants and associated community health and safety concerns during project supervision. Specifically, IFC conducted inadequate oversight related to air and water pollutants, and assessment of residual impacts from the MPI plant before Awba’s divestment in March 2021. This failure undermined the effectiveness of preventive and control measures for community EHS risks stemming from the HAIC and MPI plants.
- IFC did not ensure that the client’s EHS performance at the MPI and HAIC plants avoided, minimized, or controlled the release of pollutants to air and water, as required by PS3.<sup>205</sup> The following shortcomings in supervision contributed to IFC being unable to ensure Awba’s compliance in this area:
  - Inappropriate sequencing of impact assessment and management systems with construction and operation of the HAIC plant;
  - Insufficient review of environmental monitoring at the MPI and HAIC plants; and
  - Failure to ensure proper removal of carbofuran.
- Through the 2018 supplemental ESIA, IFC did ensure that the client assessed risks and impacts from the HAIC plant to the health and safety of project-affected communities. However, IFC did not ensure that the client subsequently established preventive and control measures, in accordance with PS4 requirements.<sup>206</sup>
- IFC did not require its client to assess and mitigate residual impacts when the client exited joint venture ownership of the MPI plant, contrary to the Sustainability Policy and PS1.
- IFC did not ensure that its client conducted stakeholder engagement processes—including project information disclosure and an effective grievance mechanism—that were “commensurate with the project’s risks and adverse impacts, and the project’s phase of development” in accordance with PS1.<sup>207</sup>

<sup>202</sup> Ibid., paras. 20, 23, 26, 28 and 29.

<sup>203</sup> Ibid., para. 7.

<sup>204</sup> Ibid., para. 29.

<sup>205</sup> PS3, para. 10.

<sup>206</sup> PS4, paras. 5, 7–9.

<sup>207</sup> PS1, para. 25.

- *Disclosure of project information:* The client, through its consultants, conducted a stakeholder engagement process associated with the 2018 supplemental ESIA and the grievance mechanism but IFC did not ensure that the client disclosed relevant project information in accordance with PS1.<sup>208</sup>
- *Grievance mechanism:* IFC ensured that the client establish a grievance mechanism for the HAIC plant in compliance with PS1,<sup>209</sup> but did not supervise its implementation across Awba's facilities as agreed in the project ESAP.
- *Stakeholder engagement:* IFC ensured that its client conduct consultations with affected communities as part of the ESIA process and develop a community grievance mechanism. However, IFC did not ensure that its client implement a stakeholder engagement plan and carry out stakeholder engagement commensurate with the project's risks, impacts, and phase of development, in accordance with PS1.

### Differential impacts on Indigenous Peoples

- IFC did not ensure that the client assess the presence of vulnerable groups in the HAIC and MPI project area that “may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status,” as required by PS1.<sup>210</sup> IFC also failed to identify, or conduct any assessment of, ethnic groups in the HAIC and MPI project area that may be considered Indigenous Peoples under PS7.<sup>211</sup>

### Access to Information

- IFC did not disclose the 2015 EIA or the 2018 supplemental ESIA for the HAIC plant or update the status of the ESAP implementation, contrary to the requirements of IFC's Access to Information Policy.

## 4.2 Related Harm

A CAO compliance investigation includes findings of any harm related to IFC non-compliance. Harm is defined as “[a]ny material adverse environmental and social effect on people or the environment resulting directly or indirectly from a Project or Sub-Project. Harm may be actual or reasonably likely to occur in the future.”<sup>212</sup>

The assessment of harm for this case was limited by factors presented in Section 2.

In assessing whether there is harm related to a non-compliance finding, CAO takes into account whether such non-compliance contributed to an absence of data or information to verify the complainants' allegations of harm. In such circumstances, CAO may find there are indications of

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<sup>208</sup> Ibid., para. 29.

<sup>209</sup> Ibid., para. 35.

<sup>210</sup> Ibid., para. 12.

<sup>211</sup> PS7, para. 8.

<sup>212</sup> CAO Policy, glossary.

related harm or potential harm when it is reasonably likely that the alleged harm occurred or could happen in the future, given such non-compliance<sup>213</sup>.

The complainants' allegations of harm within the scope of this investigation relate to the following:

- Water and air pollution and alleged impacts on human health, flora, and fauna;
- Exclusion from consultation processes and unresolved grievances, including limited road access; and
- Differential impacts on the livelihoods of ethnic groups in the project area.

CAO finds that, in many instances in this case, the data is incomplete to verify the allegations of harm with certainty. In most cases, IFC's shortcomings in due diligence and supervision of the project contributed to this lack of data. Hence CAO's determinations of harm in this case take such non-compliances into account and include findings of no harm, related harm, and indications of related harm.

- **Pollution:** Regarding the complainants' allegations of harm related to water and air pollution and associated health impacts, CAO is unable to establish the likelihood of harm related to non-compliances due to the significant gaps in environmental baseline and monitoring data related to air emissions and water discharges. IFC's failure to conduct an environmental analysis of the MPI plant and to bring its client into compliance with the PS in the EHS monitoring of the HAIC plant contributed to this significant lack of information. The possibility of harm cannot be discounted.
- **Stakeholder engagement:** Regarding the complainants' allegations of harm related to exclusion from HAIC-related stakeholder engagement processes, CAO finds that this exclusion constitutes harm to complainants. IFC's shortcomings in client supervision regarding disclosure of E&S information and implementation of a stakeholder engagement plan likely contributed to the exclusion of affected communities from the limited stakeholder engagement activities that took place during the HAIC ESIA process, and from further stakeholder activities during HAIC's operational phase. This exclusion led to the affected communities' lack of knowledge of the ESIA and ESMPs, limiting their opportunities to provide feedback on the project and its potential impacts on their lives. This, in turn contributed to IFC's and the client's lack of knowledge of the affected communities' concerns and resulted in their concerns not being considered and addressed. Therefore, the lack of adequate stakeholder engagement and disclosure of E&S information had an adverse social impact on complainants.
- **Grievance mechanism:** Regarding allegations of harm linked to Awba's implementation of the grievance mechanism, CAO finds that there are no indications of harm to complainants related to an IFC non-compliance. Project documentation suggests that

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<sup>213</sup> IFC's E&S policies establish the responsibility of IFC and its clients to collect or document information on the project's E&S performance, which CAO is required to assess and consider in order to make its determinations on harm (CAO Policy, para. 114).

grievances brought to the client were addressed and handled under the grievance mechanism, and that procedures were developed with IFC's support.

- **Road access:** Regarding the complainants' allegations of harm due to limited road access, CAO finds that there are indications of harm to complainants due to limitations in access or damage to roads around the Awba compound that connect to other villages, farmland, and a monastery, which are related to IFC non-compliances. It is difficult to determine the scope of harm caused to communities on this issue due to a lack of information in the ESIA about the road and alternative access routes. IFC's shortcomings in project due diligence and supervision contributed to this incomplete evidence. However, the complainants' consistent firsthand accounts during the ESIA consultations in 2017 and 2018, in the grievance log in 2019, and throughout the CAO process, lead CAO to find indications of harm to complainants on this issue related to IFC's lack of adequate ESDD and supervision.
- **Differential impacts:** Regarding the complainants' allegations of harm related to differential impacts on the livelihoods of ethnic groups, CAO concludes that there are indications of potential harm to complainants related to an IFC non-compliance. IFC's shortcomings during ESDD and supervision contributed to the lack of identification and assessment of differential impacts on ethnic groups in the HAIC and MPI project area. IFC concluded that there were no potentially affected vulnerable groups or Indigenous Peoples without conducting an assessment to support this conclusion. Such an assessment could potentially have triggered the application of PS7 to the project and led to additional protections.
- **Lack of transparency:** Regarding the complainants' allegations of harm related to a lack of required information disclosure, CAO considers that IFC's lack of compliance with its disclosure obligations of essential E&S information caused harm to complainants and contributed to the general lack of information that has disempowered communities regarding the E&S risks and impacts of the project. The lack of transparency regarding essential E&S information prevented complainants from fully understanding the project's E&S risks and impacts and participating in the project's design and development. This hindered their ability to raise concerns at the design stage when they could have strengthened the development outcomes through better identification of E&S risks and impacts, and corresponding mitigation measures.

### 4.3 Underlying Causes

There are several underlying and common factors that contributed to the non-compliances in IFC's due diligence of its investment in Awba and the supervision of its client. The discussion below examines these underlying causes to the non-compliances identified in this investigation.

#### 4.3.1 E&S Due Diligence

IFC's environmental and social due diligence was substantially compromised by the failure to review the ESIA of the client's proposed agrochemical plant, HAIC, and analyze the E&S impacts and risks of the existing agrochemical plant, MPI. It is not clear what led IFC to depart from the

relevant requirements under its Sustainability Policy.<sup>214</sup> However, not complying with these requirements weakened IFC’s ability to effectively supervise its client.

It was clear that IFC understood the nature of the client’s activities before Board approval. At the time, IFC identified a *commercial* risk with the MPI plant and defined associated mitigation measures. Specifically, IFC considered the informal nature of the structure and relationship between the MPI plant and Awba (MPI was a joint venture of the Awba managing director that provided products to Awba), to be a commercial risk due to concerns over governance risks and financial transparency. As a mitigation measure, IFC required the complete transfer of the sponsor’s shares in MPI to Awba, thereby legally establishing MPI as an Awba subsidiary. This measure was included as a condition of disbursement.

However, while IFC was informed of and took action to address commercial risks of MPI that were associated with its investment, IFC did not consider or take action to address the E&S risk of MPI. In particular, IFC did not consider the possible legacy pollution concerns associated with storage and handling of hazardous waste, including contaminated soils, and operational pollution concerns associated with the incinerator and other point sources from the plant. As described above, IFC had some pre-investment knowledge of environmental risks from the MPI incinerator and of the highly hazardous agrochemical handled at the plant. However, IFC did not request an environmental audit to fully understand those risks and impacts and the options for managing them. Had the project undergone the consultation measures required by the Sustainability Framework, IFC would have heard the community’s concerns and could have acted to ensure that MPI-related pollution issues were appropriately assessed and the necessary actions identified.

Similarly, regarding HAIC, the commercial aspects of the new formulation plant were carefully examined during IFC’s project preparation, and IFC recognized that a new plant would increase Awba’s in-house formulation capacity and therefore its efficiency and profitability. However, during that same pre-investment period, IFC did not review the 2015 EIA for the HAIC plant to identify and assess its E&S risks and impacts.

Without the appropriate level of E&S due diligence, IFC was not able to identify the mitigation measures needed or establish the financial and other resource implications of implementing them. Given the client’s lack of E&S capacity, IFC needed to fully understand these needs and establish the client’s capacity and commitment to execute required actions over a reasonable period of time. Instead, as a result of inadequate due diligence, the project E&S Action Plan did not fully reflect the needed measures and timeframes to effectively manage the E&S risks. This also led to IFC not including E&S actions as conditions of disbursement.

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<sup>214</sup> Sustainability Policy, paras. 26–28.

#### 4.3.2 E&S Supervision

IFC's failure to review the 2015 EIA for the HAIC plant or request the client to undertake an E&S audit of the MPI plant fundamentally compromised its ability to effectively supervise the client's management of E&S risks and impacts in several ways.

First, the ESAP did not fully reflect the extent or depth of measures needed to address and manage the existing and potential environmental risks and impacts. The ESAP developed and agreed by IFC and Awba was largely focused on strengthening the capacity of IFC's client. Because it was not informed by an E&S audit of MPI or an adequate EIA of HAIC, it did not include measures to address the contamination concerns arising from the MPI plant or the potential direct and cumulative impacts of the HAIC plant. Implementation of the ESAP proved challenging given Awba's limited E&S capacity and commitment. Even more challenging was requesting Awba to take actions that were not specified in the ESAP and therefore not initially agreed to by the client.

In addition, IFC's supervision was hampered throughout the investment by a lack of leverage over the client. This situation arose because IFC did not link specific E&S actions to points of leverage, such as conditions to be met prior to disbursement. By deciding not to condition loan disbursements on any E&S commitments, IFC gave up its strongest lever to influence the client's behavior. As a result, IFC struggled to get the client to effectively implement ESAP actions after disbursement, which took place three months after Board approval in September 2016. From then until the client prepaid the loan in March 2021, little progress was made on addressing the key environmental risks and impacts from either the MPI site or the new HAIC plant.

Lastly, IFC allowed the client to exit different components of the investment without first requiring Awba to address outstanding E&S issues. Awba divested from MPI without carrying out the EHS audit requested by IFC. The client then prepaid the full remaining loan to IFC without having completed or made significant progress on its ESAP commitments, a requirement of the legal agreement. In general, IFC did not ensure that outstanding E&S issues were addressed before either of the two exits happened in this case.



## 5. Recommendations

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The CAO Policy provides that:

*Where CAO finds non-compliance and related Harm, CAO makes recommendations for IFC/MIGA to consider when developing a Management Action Plan (MAP). Recommendations may relate to the remediation of Project- [...] level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.*<sup>215</sup>

Following this provision, CAO makes the recommendations outlined below to: (a) remediate project-level non-compliances and related harm (project-level recommendations), and (b) prevent IFC future non-compliances (systemic recommendations).

CAO emphasizes that its project-level recommendations are limited due to the client's prepayment to IFC in March 2021. Under the CAO Policy (para. 120), in cases where IFC has exited from its investment, "recommendations will take into account the implications of such an IFC/MIGA Exit."<sup>216</sup> For this reason, CAO's project-level recommendations do not cover the comprehensive range of actions that would be required to substantially address and remediate the non-compliances and related harms found in this case.

At the same time, CAO notes that IFC has a currently active financial relationship with the Awba Group as a shareholder in its microfinance business.<sup>217</sup> CAO acknowledges that the microfinance project is a different financial relationship than the investment in Awba's agribusiness. However, following best practices for responsible exit,<sup>218</sup> IFC should assess its influence over the Awba Group or other key stakeholders (such as the sponsor or local authorities) with a view to maximize the possibilities of remediating harm to which IFC contributed.<sup>219</sup> Once IFC assesses its possible influence over key stakeholders in this case, there may be additional project-level actions that IFC could take to remediate all non-compliances and related harm.

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<sup>215</sup> CAO Policy, para. 113. Similarly, paragraph 120 of the CAO Policy establishes that a compliance investigation report will make "[r]ecommendations for IFC/MIGA to consider in the development of a MAP relating to the remediation of Project- or Sub-Project-level non-compliance and related Harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances."

<sup>216</sup> CAO Policy, para. 120(c).

<sup>217</sup> IFC has a loan and equity investment in Maha Agriculture Public Company Ltd (projects #38031) which is a microfinance institution in Myanmar, founded as a subsidiary of the Myanmar Awba Group Company Limited, that provides microloans to Myanmar's rural populations, supporting mostly agriculture, retail and other microscale business activities in the country. IFC. 2016. SII (project #38031). Available at: <https://bit.ly/AwbaMicrofinance>.

<sup>218</sup> See, among other sources, CAO. 2023. Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond. Available at: <https://officecao.org/ResponsibleExit>; United Nations OHCHR, 2022, Remedy in Development Finance, Guidance and Practice. Available at: <https://bit.ly/OHCHR-Remedy>. United Nations OHCHR, 2023, Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting. Available at: <https://bit.ly/OHCHR-RemainOrExit>.

<sup>219</sup> CAO. 2023. Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond. Available at: <https://officecao.org/ResponsibleExit>.

Taking these considerations into account, CAO recommends that IFC take the following actions at the project and institutional levels:

### **Project-Level Recommendations**

1. Conduct an assessment of IFC's possible influence with key stakeholders related to this case, including the Awba Group and the project's sponsor, who is also Awba's managing director.
2. Following this assessment, determine what actions IFC could take, or encourage the client to take, at the project level to address the non-compliances and related harm found in this case, particularly with regard to the lack of proper stakeholder engagement, disclosure of E&S information, limitations in road access to communities, and potential differential impacts on the livelihoods of ethnic groups in the project area.
3. Disclose the 2018 E&S impact assessment (ESIA) on IFC's disclosure website and update the ESAP's implementation status.

### **Institutional-Level Recommendations**

To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:

4. Strengthen internal controls within IFC Management to ensure that, prior to Board approval, the potential and known E&S risks and impacts of the investment(s) and their mitigation measures are analyzed and understood by IFC so as to determine that the investment activities will be able to meet relevant Performance Standards within a reasonable period of time. This will also ensure that IFC has the necessary leverage to ensure its client's conformance with relevant PS through loan covenants, ESAP, and other relevant means.
5. Develop guidance for IFC staff when assessing clients' E&S management capacity that:
  - a. Ensures IFC's E&S due diligence is better integrated with other risk assessments (such as financial and commercial risks assessments), carried out by IFC during pre-investment due diligence, and revisited during supervision as appropriate. While IFC's E&S risk assessment should be independent of project-related financial and commercial interests, it should be better integrated within the overall business risk assessment framework, as required by the Sustainability Policy (para. 21).
  - b. Emphasizes that client capacity and commitment to implement E&S commitments should be carefully scrutinized during pre-investment review and monitored closely during supervision, with risk assessments revisited as needed to adjust mitigation measures.
6. Incorporate lessons learned from this case into IFC's proposed principles on responsible exit. For example, IFC could:

- a. Expand the scope of application of its proposed principles to circumstances where the client exits from projects or sub-projects included in the investment, and where the client prepays the loan;<sup>220</sup>
- b. Legally require that clients be obligated to exit responsibly in circumstances of prepayment and exit from projects or sub-projects included in the investment. This could include requiring clients to implement best practices, such as conducting an assessment to determine when and how an exit should take place vis-à-vis management of E&S risks, and developing exit plans, informed through stakeholder engagement, to address any outstanding E&S issues and identify any necessary remedial actions prior to exit.<sup>221</sup>
- c. Actively monitor the implementation of client exit plans from projects and sub-projects associated with IFC financing, including by ensuring that clients are on track to meet agreed E&S commitments and address outstanding E&S issues prior to approval of prepayments.

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<sup>220</sup> The current responsible exit framework being piloted by IFC limits its scope to “active exit[s] from all projects in which (i) there is an associated open CAO case past eligibility and/or (ii) the project’s environmental and social performance is unsatisfactory. An active exit is one in which IFC proactively decides to exit from an investment or agrees to amend the terms of the transaction documents to enable the client to exit in circumstances where such exit, at that time, would not have otherwise occurred without action by IFC. IFC could take action due to financial considerations, E&S considerations (e.g., non-compliance with E&S requirements), reputational considerations, or otherwise. The majority of equity sales, as well as debt accelerations or situations in which IFC has the right to consent to loan prepayment, are active exits. IFC would also apply the principles in projects not meeting either of these criteria, with such additional projects to be identified on an ad hoc basis by project teams or management.”

<sup>221</sup> CAO. 2023. Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond, pp 29 to 33. Available at: <https://officecao.org/ResponsibleExit>; United Nations OHCHR, 2022, Remedy in Development Finance, Guidance and Practice, pp. 92, 95 to 108. Available at: <https://bit.ly/OHCHR-Remedy>. United Nations OHCHR, 2023, Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting, pp. 12-17. Available at: <https://bit.ly/OHCHR-RemainOrExit>.

## 6. Conclusion

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This CAO compliance investigation has documented areas in which IFC positively engaged Awba to provide support to comply with the client’s E&S commitments. However, IFC shortcomings in due diligence and supervision, combined with limited leverage to compel client compliance with E&S commitments, created a challenging project situation. As a result, IFC could not ensure that “the costs of economic development do not fall disproportionately on the poor or vulnerable and that the environment is not degraded in the process,” contrary to its commitment enshrined in the Sustainability Policy.

Taking into account IFC’s exit from the Awba agrochemicals investment, this report includes recommendations to IFC on how to address CAO’s non-compliance findings and related harm through project-level corrective actions that may provide some redress for adversely affected local villages. The report also highlights challenges in IFC’s E&S risk assessment process, particularly in FCS countries and where clients have limited E&S capacity. CAO therefore also makes recommendations in relation to IFC’s institutional guidance and its emerging framework on responsible exit and remedy.

Given the current political situation in Myanmar and complainants’ ongoing concerns related to security and potential threats and reprisals after this report is published, CAO reiterates its core principle that “people should not be harmed as a result of cooperating in a CAO process,”<sup>222</sup> including upon completion and publication of the compliance investigation report. As outlined in IFC’s statement on retaliation against civil society and project stakeholders, “IFC does not tolerate any action by an IFC client that amounts to retaliation—including threats, intimidation, harassment, or violence—against those who voice their opinion regarding the activities of IFC or [its] clients.”<sup>223</sup> CAO urges all parties and stakeholders in this case to be mindful of the security risks to complainants and to prevent, within their own spheres of influence, potential threats and reprisals against them.

Following the CAO Policy transitional arrangements,<sup>224</sup> IFC will prepare, for Board approval a Management Action Plan following consultation with the Awba Group<sup>225</sup> and the complainants.<sup>226</sup> CAO will monitor the effective implementation of the Management Action Plan.<sup>227</sup>

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<sup>222</sup> CAO. 2018. Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations. Available at: <https://officecao.org/CAOReprisalsApproach>

<sup>223</sup> IFC. 2018. IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders. Available at: <https://bit.ly/IFCReprisalsStatement>

<sup>224</sup> IFC/MIGA Independent Accountability Mechanism (CAO) Policy Transitional Arrangements, July 13, 2021. Available at: <https://officecao.org/Transition>

<sup>225</sup> While a former client in relation to this investment (IFC project #35880), the Awba Group is a current client regarding IFC project #38031.

<sup>226</sup> CAO Policy, para. 134.

<sup>227</sup> Ibid., para. 140.

## Annex A. Overview of the CAO Investigation Process

*“The purpose of the CAO compliance function is to carry out reviews of IFC/MIGA’s compliance with E&S [Environmental and Social] Policies, assess related Harm, and recommend remedial actions where appropriate.”*<sup>228</sup> The compliance function does not evaluate the adequacy or suitability of E&S Policies, nor does it make findings in relation to the compliance of a project, sub-project, client, or sub-client with the IFC Performance Standards.<sup>229</sup> However, in carrying out its role, the CAO compliance function will assess IFC/MIGA’s review and supervision of its E&S requirements at the project- or sub-project level, and consider project- or sub-project level E&S performance.<sup>230</sup>

Notably, CAO has no authority with respect to judicial processes. It is not a court of appeal, a legal enforcement mechanism, or a substitute for international court systems or court systems in host countries.

In line with the transitional arrangements agreed as part of the CAO Policy process in 2021,<sup>231</sup> this compliance investigation report was prepared following the CAO Policy. All prior work, including the compliance appraisal, was prepared following CAO’s 2013 Operational Guidelines.

### Investigation

A CAO compliance investigation focuses on IFC/MIGA and how it assured itself of a project’s E&S performance. The objective of a compliance investigation is to determine:

- (1) whether IFC/MIGA has complied with its E&S Policies; and
- (2) whether there is harm or potential harm related to any IFC/MIGA non-compliance.<sup>232</sup>

In assessing IFC/MIGA’s E&S performance, it is often necessary for CAO to review the actions of IFC/MIGA’s client and to verify E&S outcomes in the field.

### Scope and Methodological Approach<sup>233</sup>

The scope of a compliance investigation is determined in the Investigation Terms of Reference (TOR), published together with CAO’s appraisal report. A compliance investigation is based on information available to CAO from documents, interviews, statements, reports, correspondence, CAO observations of activities and conditions, and other sources that CAO deems relevant. CAO’s investigation report will include the investigation findings with respect to compliance, non-compliance, and any related harm. The report will also include context, evidence, and reasoning to support CAO’s findings and conclusions regarding the underlying causes of any non-compliance identified.<sup>234</sup>

<sup>228</sup> CAO Policy, para. 76.

<sup>229</sup> Ibid., para 77.

<sup>230</sup> Ibid.

<sup>231</sup> Transitional Arrangements for CAO Cases. Available on CAO’s website: <https://officecao.org/Transition>.

<sup>232</sup> CAO Policy, para. 112.

<sup>233</sup> Ibid., paras. 115, 117, and 118.

<sup>234</sup> Ibid., para. 120(b).

Sufficient, relevant evidence is required to afford a reasonable basis for CAO's compliance findings and conclusions.<sup>235</sup> CAO will not make findings and conclusions with the benefit of hindsight.<sup>236</sup> Rather, CAO will assess whether there is evidence that IFC/MIGA applied relevant E&S requirements considering the sources of information available at the time the decisions were made.<sup>237</sup> Furthermore, while CAO may seek clarifications during the investigation, it will not accept an expansion away from the scope identified in the TOR. Should additional issues or concerns emerge during an investigation, these may be subject to a separate appraisal at the discretion of the CAO Director General.

In relation to any findings of IFC/MIGA non-compliance and related harm, CAO will make recommendations for IFC/MIGA to consider in the development of a Management Action Plan (MAP) relating to the remediation of project or sub-project -level non-compliance and related harm, and/or steps needed to prevent future non-compliance, as relevant in the circumstances.<sup>238</sup> Recommendations will take into account the implications of any IFC/MIGA exit.<sup>239</sup>

### **Investigation Report Finalization**

Upon receiving comments on the draft investigation report from IFC/MIGA and the complainants, CAO will finalize its investigation report. Once the final investigation report is officially submitted to IFC/MIGA Management and circulated to the Board, CAO's website will notify the public of the investigation's completion.<sup>240</sup>

Upon CAO's official submission of the compliance investigation report to IFC/MIGA, IFC/MIGA Management has 50 business days to submit a management report to the Board for consideration. The management report must include a MAP for Board approval. A MAP outlines actions that IFC/MIGA proposes in response to CAO's investigation findings. IFC/MIGA must consult with complainants and the client during its MAP preparation process.<sup>241</sup>

At the same time that IFC/MIGA presents the MAP for Board approval, CAO will submit comments on the proposed MAP to the Board. Upon the Board's approval of the MAP, the compliance investigation report, management report, and MAP will be published on CAO's website.<sup>242</sup>

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<sup>235</sup> Ibid., para. 117.

<sup>236</sup> Ibid., para. 116.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid., para. 120(c).

<sup>239</sup> Ibid.

<sup>240</sup> Ibid., para. 128.

<sup>241</sup> Ibid., paras. 130–131, and 134.

<sup>242</sup> Ibid., paras. 135 and 138.



## Annex B: CAO Non-Compliance Findings, Related Harm, and Recommendations

In accordance with the CAO Policy, in response to this compliance investigation, IFC management is required to prepare a Management Report.<sup>243</sup> For the purposes of addressing CAO findings of non-compliance and related harm, if any, the Management Report will include, for Board approval, a Management Action Plan (MAP) comprising time-bound remedial actions proposed by Management.<sup>244</sup> Alternatively, the Management Report should include a reasoned response to CAO's findings or recommendations regarding non-compliance or related Harm that IFC is unable to address in the MAP.<sup>245</sup> If the Board approves a MAP, CAO's monitoring will verify effective implementation of the actions set out in the MAP.<sup>246</sup> CAO compliance monitoring will not consider non-compliance findings for which there is no corresponding corrective action in the MAP.<sup>247</sup>

In Table B.1, the first column presents CAO compliance findings and assessment of related harm. The second column will be completed by CAO during its compliance monitoring of this case on the basis of IFC's Board-approved Management Action Plan.

In Table B.2, in accordance with the CAO Policy,<sup>248</sup> in order to address CAO's findings of non-compliance and related harm, CAO makes the following recommendations for IFC to consider when developing its Management Action Plan. These recommendations relate to remediation of project-level non-compliance and related Harm, as well as steps needed to prevent future non-compliance.

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<sup>243</sup> CAO Policy, para 130.

<sup>244</sup> Ibid., para. 131.

<sup>245</sup> Ibid., para. 132.

<sup>246</sup> Ibid., para. 140.

<sup>247</sup> Ibid., para. 141.

<sup>248</sup> Ibid., para. 113.

**Table B.1. CAO Findings of Non-Compliance and Related Harm and Corresponding IFC Remedial Actions or Justification for Not Pursuing Remedial Actions**

CAO finds IFC’s pre-investment review and supervision of Awba’s agribusiness in Myanmar to be materially non-compliant with its responsibilities under the Sustainability Framework.

In relation to the complaint brought to CAO by local residents, IFC’s review and oversight of Awba’s operations fell short in the areas summarized below. The table below summarizes CAO’s findings regarding IFC’s compliance with its E&S policies and the complainants’ allegations of harm as a result of IFC’s non-compliances.

CAO Findings of Non-Compliance and Related Harm	IFC Remedial Action(s) or IFC Justification for Not Pursuing Remedial Measures
<b>IFC Due Diligence – General</b>	
<p>IFC’s pre-investment E&amp;S review (ESDD) of Awba’s agrochemical operations contravened its Sustainability Policy.<sup>249</sup> The ESDD was not commensurate with the level of E&amp;S risks and impacts arising from the company’s operations or the planned investment. In particular, the investment involved a new agrochemical plant (HAIC) and the absorption of an existing agrochemical plant (MPI) with potential legacy pollution issues and the known production of a highly hazardous chemical, both located in a growing industrial area close to communities. In addition, IFC identified early on that the client’s E&amp;S capacity represented a key investment risk. CAO concludes that this combination of risks and potential impacts merited a higher level of ESDD than was conducted for this investment, specifically a site-specific assessment of risks and impacts for the HAIC and MPI plants.</p> <p>During this phase, IFC also did not comply with two other aspects of its Sustainability Policy:</p> <ul style="list-style-type: none"> <li>• IFC should only finance “investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time.”<sup>250</sup> IFC’s investment in Awba was approved by the IFC Board without IFC having reviewed an EIA for the proposed HAIC agrochemical production plant or conducted a complete assessment of the E&amp;S risks of the MPI plant. Without this full E&amp;S risk and impact</li> </ul>	

<sup>249</sup> Sustainability Policy, para. 26.

<sup>250</sup> Ibid., para. 22.

analysis, IFC was not able to determine whether Awba’s activities, and specifically the MPI and HAIC plants, would be able to meet PS requirements.

- Regarding remediation, “[w]here there are significant environmental or social impacts associated with the business activity, including past or present adverse impacts caused by others, IFC [should work] with its client to determine possible remediation measures.”<sup>251</sup> Without reviewing the existing 2015 EIA and in the absence of an environmental audit of existing operations including the MPI plant, IFC was not in a position during ESDD to work with the client to establish the kinds of remediation efforts required and their feasibility and cost. As a result, the project’s E&S Action Plan did not fully reflect or take into account the risks and impacts of the two plants.

Shortcomings in IFC’s ESDD include:<sup>252</sup>

- Incomplete scope of E&S pre-investment review;<sup>253</sup> and
- Absence of review of environmental impact assessment of HAIC.<sup>254</sup>

### IFC Supervision – General

IFC did not ensure compliance with PS3 and PS4 in relation to the client’s EHS performance at the HAIC and MPI plants and associated community health and safety concerns during project supervision. Specifically, IFC conducted inadequate oversight related to air and water pollutants, and assessment of residual impacts from the MPI plant before Awba’s divestment in March 2021. This failure undermined the effectiveness of preventive and control measures for community EHS risks stemming from the HAIC and MPI plants.

### Complaint Issue 1. Environmental Pollution and Associated Health Impacts

IFC did not ensure that the client’s EHS performance at the MPI and HAIC plants avoided, minimized, or controlled the release of pollutants to air and water, as required by PS3.<sup>255</sup> The following shortcomings in supervision contributed to IFC being unable to ensure Awba’s compliance in this area:

<sup>251</sup> Ibid., paras. 26 and 28.

<sup>252</sup> Ibid., paras. 20, 23, 26, 28 and 29.

<sup>253</sup> Ibid., para. 7.

<sup>254</sup> Ibid., para. 29.

<sup>255</sup> PS3, para. 10.

<ul style="list-style-type: none"> <li>• Inappropriate sequencing of impact assessment and management systems with construction and operation of the HAIC plant;</li> <li>• Insufficient review of environmental monitoring at the MPI and HAIC plants; and</li> <li>• Failure to ensure proper removal of carbofuran.</li> </ul> <p>Through the 2018 supplemental ESIA, IFC did ensure that the client assessed risks and impacts from the HAIC plant to the health and safety of project-affected communities. However, IFC did not ensure that the client subsequently established preventive and control measures, in accordance with PS4 requirements.<sup>256</sup></p> <p>IFC did not require its client to assess and mitigate residual impacts when the client exited joint venture ownership of the MPI plant, contrary to the Sustainability Policy and PS1.</p> <p>Regarding the complainants’ allegations of harm related to water and air pollution and associated health impacts, CAO is unable to establish the likelihood of harm related to non-compliances due to insufficiencies in baseline and monitoring data. IFC’s failure to conduct an environmental analysis of the MPI plant and to bring its client into compliance with the PS in the EHS monitoring of the HAIC plant contributed to this significant lack of information. The possibility of harm cannot be discounted.</p>	
<p style="text-align: center;"><b>Complaint Issue 2. Stakeholder Engagement and Disclosure of Information</b></p>	
<p>IFC did not ensure that its client conducted stakeholder engagement processes—including project information disclosure and an effective grievance mechanism—that were “commensurate with the project’s risks and adverse impacts, and the project’s phase of development” in accordance with PS1.<sup>257</sup></p> <ul style="list-style-type: none"> <li>• <i>Disclosure of project information:</i> The client, through its consultants, conducted a stakeholder engagement process associated with the 2018 supplemental ESIA and the grievance mechanism but IFC did not ensure that the client disclosed relevant project information in accordance with PS1.<sup>258</sup></li> <li>• <i>Grievance mechanism:</i> IFC ensured that the client establish a grievance mechanism for the HAIC plant in compliance with PS1,<sup>259</sup> but did not supervise its implementation across Awba’s facilities as agreed in the project ESAP.</li> </ul>	

<sup>256</sup> PS4, paras. 5, 7–9.

<sup>257</sup> PS1, para. 25.

<sup>258</sup> *Ibid.*, para. 29.

<sup>259</sup> *Ibid.*, para. 35.

- *Stakeholder engagement:* IFC ensured that its client conduct consultations with affected communities as part of the ESIA process and develop a community grievance mechanism. However, IFC did not ensure that its client implement a stakeholder engagement plan and carry out stakeholder engagement commensurate with the project's risks, impacts, and phase of development, in accordance with PS1.

Regarding complainants' allegations of harm, CAO finds that:

- The exclusion from stakeholder engagement processes related to the HAIC plant constitutes harm to complainants. IFC's shortcomings in client supervision regarding disclosure of E&S information and implementation of a stakeholder engagement plan likely contributed to the exclusion of affected communities from the limited stakeholder engagement activities that took place during the HAIC ESIA process, and from further stakeholder activities during HAIC's operational phase. This exclusion led to the affected communities' lack of knowledge of the ESIA and ESMPs, limiting their opportunities to provide feedback on the project and its potential impacts on their lives. This, in turn contributed to IFC's and the client's lack of knowledge of the affected communities' concerns and resulted in their concerns not being considered and addressed. Therefore, the lack of adequate stakeholder engagement and disclosure of E&S information had an adverse social impact on complainants.
- There are no indications of harm to complainants related to an IFC non-compliance regarding Awba's implementation of the grievance mechanism. Project documentation suggests that grievances brought to the client were addressed and handled under the grievance mechanism, and that procedures were developed with IFC's support.
- There are indications of harm to complainants related to IFC non-compliances regarding the complainants' allegations of harm due to limitations in access or damage to roads around the Awba compound that connect to other villages, farmland, and a monastery. It is difficult to determine the scope of harm caused to communities on this issue due to a lack of information in the ESIA about the road and alternative access routes. IFC's shortcomings in project due diligence and supervision contributed to this incomplete evidence. However, the complainants' consistent firsthand accounts during the ESIA consultations in 2017 and 2018, in the grievance log in 2019, and throughout the CAO process, lead CAO to find indications of harm to complainants on this issue related to IFC's lack of adequate ESDD and supervision.

### Complaint Issue 3. Differential Impacts on Indigenous Peoples

IFC did not ensure that the client assess the presence of vulnerable groups in the HAIC and MPI project area that “may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status,” as required by PS1.<sup>260</sup> IFC also failed to identify, or conduct any assessment of, ethnic groups in the HAIC and MPI project area that may be considered Indigenous Peoples under PS7.<sup>261</sup>

Regarding the complainants' allegations of harm related to differential impacts on the livelihoods of ethnic groups, CAO concludes that there are indications of potential harm to complainants related to an IFC non-compliance. IFC's shortcomings during ESDD and supervision contributed to the lack of identification and assessment of differential impacts on ethnic groups in the HAIC and MPI project area. IFC concluded that there were no potentially affected vulnerable or Indigenous Peoples without conducting an assessment to support this conclusion. Such an assessment could potentially have triggered the application of PS7 to the project and led to additional protections and measures.

### Complaint Issue 4. Information Disclosure by IFC

IFC did not disclose the 2015 EIA or the 2018 supplemental ESIA for the HAIC plant or update the status of the ESAP implementation, contrary to the requirements of IFC's Access to Information Policy.

Regarding the complainants' allegations of harm related to a lack of required information disclosure, CAO considers that IFC's lack of compliance with its disclosure obligations of essential E&S information caused harm to complainants and contributed to the general lack of information that has disempowered communities regarding the E&S risks and impacts of the project. The lack of transparency regarding essential E&S information prevented complainants from fully understanding the project's E&S risks and impacts and participating in the project's design and development. This hindered their ability to raise concerns at the design stage when they could have strengthened the development outcomes through better identification of E&S risks and impacts, and corresponding mitigation measures.

<sup>260</sup> PS1, para. 12.

<sup>261</sup> PS7, para. 8.



**Table B.2. CAO Project-Level and Systemic Recommendations**

Project-Level Recommendations	
IFC Due Diligence and Supervision and Complaint Issues 2 (Stakeholder Engagement) and 3 (Differential Impacts on Indigenous Peoples)	
1.	Conduct an assessment of IFC's possible influence with key stakeholders related to this case, including the Awba Group and the project's sponsor, who is also Awba's managing director.
2.	Following this assessment, determine what actions IFC can take, or encourage the client to take, at the project level to address the non-compliances and related harm found in this case, particularly in regard to the lack of proper stakeholder engagement, disclosure of E&S information, limitations in road access to communities, and potential differential impacts on the livelihoods of ethnic groups in the project area.
Complaint Issue 4 (Information Disclosure by IFC)	
3.	Disclose the 2018 supplemental ESIA on IFC's disclosure website and update the ESAP's implementation status.
Systemic-Level Recommendations	
To address the underlying causes of the non-compliance findings in this investigation, CAO recommends that IFC:	
4.	Strengthen internal controls within IFC Management to ensure that, prior to Board approval, the potential and known E&S risks and impacts of the investment(s) and their mitigation measures are analyzed and understood by IFC so as to determine that the investment activities will be able to meet relevant Performance Standards within a reasonable period of time. This will also ensure that IFC has the necessary leverage to ensure its client's conformance with relevant PS through loan covenants, ESAP, and other relevant means.
5.	Develop guidance for IFC staff when assessing clients' E&S management capacity that:
a.	Ensures IFC's E&S due diligence is better integrated with other risk assessments (such as financial and commercial risks assessments), carried out during pre-investment due diligence, and revisited during supervision as appropriate. While IFC's E&S risk assessment should be independent of project-related financial and commercial interests, it should be better integrated within the overall business risk assessment framework, as required by the Sustainability Policy. <sup>262</sup>

<sup>262</sup> Sustainability Policy, para. 21.

- b. Emphasizes that client capacity and commitment to implement E&S commitments should be carefully scrutinized during pre-investment review and monitored closely during supervision, with risk assessments revisited as needed to adjust mitigation measures.
6. Incorporate lessons learned from this case into IFC's proposed principles on responsible exit. For example, IFC could:
- a. Expand the scope of application of its proposed principles to circumstances where the client exits from projects or sub-projects included in the investment, and where the client prepays the loan;
  - b. Legally require that clients be obligated to exit responsibly in circumstances of prepayment and exit from projects or sub-projects included in the investment. This could include requiring clients to implement best practices, such as conducting an assessment to determine when and how an exit should take place vis-à-vis management of E&S risks, and developing exit plans, informed through stakeholder engagement, to address any outstanding E&S issues and identify any necessary remedial actions prior to exit.
  - c. Actively monitor the implementation of client exit plans from projects and sub-projects associated with IFC financing, including by ensuring that clients are on track to meet agreed E&S commitments and address outstanding E&S issues prior to approval of prepayments.