



**September 30, 2020**  
*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

*IFC Investment in Salala Rubber Corporation (SRC)  
IFC Project #26510  
Liberia*

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Salala Rubber Corporation (SRC, the Company, IFC's client) is a large producer and processor of rubber, situated in the Liberia rubber production belt. It produces semi-processed rubber for use in the manufacture of tires. The Company operates a 4,577-hectare rubber plantation. In 2008, IFC committed to a US\$10 million loan to SRC to support its working capital needs, plantation and factory rehabilitation and expansion ("the project"). Specifically, IFC's loan supported the Company to (i) plant new rubber trees on the existing concession; (ii) renovate plant and equipment; (iii) rebuild administrative and social infrastructure including worker housing; and, (iv) meet additional working capital needs. In March 2020, the Company completed its final IFC loan repayment.

In May 2019, a complaint was lodged with CAO by 54 people from 22 communities from the Margibi and Bong Counties in Liberia (the "Complainants"). The Complainants are supported by four non-governmental organizations: Green Advocates International, Alliance for Rural Democracy, Natural Resource Women Platform, and the Yeagbamah National Congress for Human Rights.

The complaint raises concerns about land grabbing and forced eviction, lack of Free Prior and Informed Consent of the indigenous peoples, destruction of ancestral graves and sacred sites, economic displacement and loss of livelihood, water pollution, poor employment conditions and labor rights violations, limited access to schools and health facilities, sex and gender-based violence (SGBV), reprisals, threats and intimidation, non-compliance with national and international law, as well as with IFC's Performance Standards and lack of freedom of association.

In June 2019, CAO determined the complaint eligible and commenced the CAO Assessment phase. As there was no agreement between the Complainants and the Company to pursue a CAO facilitated dispute resolution process, the complaint was transferred to CAO's compliance function for a compliance appraisal.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general

assessment of whether a compliance investigation is the appropriate response in the circumstances.

The Complainants raised a range of E&S impacts in relation to the Company's operations. Based on a review of IFC and publicly available documentation, many of these allegations of impact were current during the period of IFC's financing of the Company. While IFC's documentation indicates many of these issues were identified, it is not clear whether they were effectively addressed or resolved in accordance with IFC's standards during the course of IFC's investment. As a result, and considering the serious nature of the impacts alleged, CAO concludes that there are substantial concerns regarding the E&S outcomes of IFC's investment in the Company.

CAO has also identified questions pertaining to IFC's application of its E&S standards as relate to the issues raised by the complainants. In particular, CAO has questions as to: (a) whether IFC's pre-investment E&S Review of the Company was commensurate to risk and established a realistic expectation that the Company would meet IFC's E&S requirements within a reasonable period of time, and (b) whether IFC responded adequately to project level E&S concerns as they were raised during the period of IFC's finance in the context of IFC's E&S requirements. In particular, it is unclear whether IFC adequately assured itself that the Company met the following requirements of its Performance Standards (PS): (a) to establish and maintain a Social and Environmental Management System appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks and impacts; (PS1, para. 3); (b) to provide reasonable working conditions and terms of employment that at a minimum comply with national law (PS2, para. 8); (c) to apply pollution prevention and control technologies and practices consistent with good international industry practice (PS3, para 3); (d) to assess and mitigate impacts associated with the engagement of security personnel (PS4, para. 13); (e) to assess and mitigate impacts of physical and economic displacement (PS5, para. 14-21); and, (f) to retain qualified and experienced experts to assess and assist the client in managing impacts to cultural heritage (PS8, para. 4). Further, it is not clear that IFC adequately assessed and retained sufficient documentation to justify its determination that PS7 (Indigenous Peoples) was not applicable to this investment.

CAO concludes that these questions merit a compliance investigation. The scope of the investigation will be further defined in terms of reference developed in accordance with the CAO Operational Guidelines.

## **About CAO**

*CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
AMR	Annual Monitoring Report
ARD	Alliance for Rural Democracy
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
CBA	Collective Bargaining Agreement
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
ESAP	Environmental and Social Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FPIC	Free, Prior and Informed Consultation
FSC	Forest Stewardship Council
GAI	Green Advocates International
IFC	International Finance Corporation
LNP	Liberian National Police
MIGA	Multilateral Investment Guarantee Agency
NRWP	Natural Resource Women Platform
PS	Performance Standards (IFC)
SGBV	Sex and Gender-Based Violence
SPI	Summary of Proposed Investment
SRC	Salala Rubber Corporation
SSV	Site Supervision Visit
WRC	Weala Rubber Company
YNCHR	Yeagbamah National Congress for Human Rights

## **I. Overview of the Compliance Appraisal Process**

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

CAO reviews relevant documentation and engages with the IFC/MIGA team working on the specific project and, as necessary, other stakeholders in evaluating these criteria. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC/MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of the appraisal results is made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## **II. Background**

### **Investment**

Salala Rubber Corporation (SRC, the Company, IFC's client) is a large producer and processor of rubber, situated in the Liberia rubber production belt. It produces semi-processed rubber for use in the manufacture of tires. In 1959, the Government granted the Company's predecessor a concession of 40,500 hectares, with rights to develop a rubber plantation on 8,500 hectares, of

which 4,577 hectares have been developed.<sup>1</sup> In 1962, Weala Rubber Company (WRC) opened a rubber processing factory. During the Liberian Civil Wars (1989-1997, 1999-2003), the factory and the plantation were significantly damaged and were used as rebel bases. In 2007, SRC and WRC merged, with the new business retaining the name SRC.<sup>2</sup>

In 2008, IFC committed to a US\$10 million loan to SRC to support its working capital needs, plantation and factory rehabilitation and expansion (“the project”). Specifically, IFC’s loan supported the Company to (i) plant new rubber trees on the existing concession; (ii) renovate plant and equipment; (iii) rebuild administrative and social infrastructure including worker housing; and, (iv) meet additional working capital needs.<sup>3</sup>

Prior to IFC’s investment, 90% of SRC was owned by Agrifinal (Belgium agribusiness investment company) and 10% by Intercultures (a subsidiary of Socfin Group, a Luxembourg holding company with agricultural, real estate and banking activities). SRC operations were managed by an Intercultures subsidiary.<sup>4</sup> In 2009, Intercultures increased its equity in SRC, acquiring a majority ownership stake. In March 2020, the Company completed its final IFC loan repayment.

### **Complaint and CAO Assessment**

In May 2019, a complaint was lodged with CAO by 54 people from 22 communities from the Margibi and Bong Counties in Liberia (the “Complainants”). The Complainants are members of the communities of Gleagba, Bloomu, Old Dokai, New Dokai, Bondolon, Massaquoi, Martin Village, Dedee-ta 2, Kuwah-ta, Jorkporlorsue, Gorbos, Kolledarolon, Monkey-tail, Ansa-ta, Lango, Garjay, Dedee-ta 1, Kolongalai, Sayue-ta, Tarte-ta, Varmue, and Pennoh. The Complainants are supported by four non-governmental organizations: Green Advocates International (GAI), Alliance for Rural Democracy (ARD), Natural Resource Women Platform (NRWP), and the Yeagbamah National Congress for Human Rights (YNCHR) (collectively hereafter referred to as the “Complainant Representatives”).

The complaint raises concerns about land grabbing and forced eviction, lack of Free Prior and Informed Consent of the indigenous peoples, destruction of ancestral graves and sacred sites, economic displacement and loss of livelihood, water pollution, poor employment conditions and labor rights violations, limited access to schools and health facilities, sex and gender-based violence (SGBV), reprisals, threats and intimidation, non-compliance with national and international law, as well as with IFC’s Performance Standards (PS) and lack of freedom of association.<sup>5</sup>

In June 2019, CAO determined the complaint eligible and commenced the CAO Assessment phase. During the Assessment phase, a CAO team met with the Complainants and the Company to better understand the issues raised and to determine whether the parties agreed to engage on a CAO facilitated dispute resolution process. While the Complainants indicated their willingness to engage in such process, the Company did not wish to pursue this option.<sup>6</sup>

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<sup>1</sup> Concession Agreement (1959) Agreement between The Republic of Liberia and predecessors of Salala Rubber Corporation. Available at <https://bit.ly/3ifpFSc>. Socfin Group (2018), Salala Rubber Corporation, available at <https://bit.ly/2YpE9Hx>.

<sup>2</sup> Socfin Group (2018), Salala Rubber Corporation, available at <https://bit.ly/2YpE9Hx>.

<sup>3</sup> IFC (2008) Summary of Proposed Investment (SPI), project number 26510. Available at <https://bit.ly/2CxMNf5>.

<sup>4</sup> IFC (2008) SPI.

<sup>5</sup> Complaint to CAO in relation to IFC’s investment in SRC (April 15, 2019). Available at <https://bit.ly/2ZpB0aU>.

<sup>6</sup> CAO Assessment Report, March 2020. Available at <https://bit.ly/2FjW8IK>.

In March 2020, CAO released its Assessment Report summarizing the views of the Complainants and the Company, and the complaint was transferred to CAO's compliance function.

### **CAO Compliance Appraisal Methodology**

The scope of this appraisal is limited to the issues raised in the complaint and CAO Assessment Report. CAO's compliance mandate is focused on IFC's environmental and social (E&S) performance. The CAO compliance appraisal was conducted by CAO staff. In reaching conclusions in this appraisal, CAO staff reviewed IFC's project documentation and discussed this complaint with IFC staff, the Complainant Representatives and members of the affected community.

During this appraisal, CAO received a letter signed by community members in the locality of the Company's operations. The letter noted that crop compensation was a key issue for these community members, and that they wished to resolve this issue via direct discussions with the Company. The letter noted that the signatories did not support the Complainant Representatives in pursuing a complaint to CAO. Having received this letter, CAO held direct phone calls with project affected people identified by the Complainant Representatives. These people asserted that they are impacted by issues raised in the complaint and confirmed that Complainant Representatives represent them. CAO understands that there can be different views among community members on how to address E&S concerns. Based on the above, CAO concludes that there are potentially affected people in the project area who wish to be affiliated with the complaint, and others who do not.

### **III. Analysis**

This section summarizes i) concerns raised by the Complainants and the Company's response; ii) IFC's E&S policies and procedures as they apply to its investment in the Company; iii) IFC's pre-investment review of the Company; and, iv) IFC's supervision of the Company.

#### **Complainant Concerns and Company Response<sup>7</sup>**

##### *Land Grabs and Forced Eviction and Lack of Free Prior and Informed Consent of the Indigenous peoples*

The Complainants assert to be indigenous people, who have historically inhabited the area where SRC holds a concession. Some community members also claim to hold deeds and tribal certificates for the concession area. The complaint states that the project was implemented without communities' Free Prior and Informed Consent and that communities have been subject to land grabs and forced eviction by the Company. They allege that during the expansion of the plantation between 2008-2014, the Company bulldozed some of their towns, destroyed their crops and deprived them of land to farm.

SRC claims that in 1959 the Government of Liberia granted it a concession over an area of 40,500 hectares, which includes a development area of 8,500 hectares where the Company would be allowed to plant rubber. SRC claims that both the concession and development area, were established according to the legal procedures and requirements that were in force at the time. Moreover, the Company claims that the deeds and tribal certificates for land within the development area are ineffectual, considering that the deeds are dated after the concession had

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<sup>7</sup> This section summarizes the complaint to CAO and the CAO Assessment Report. Available at <https://bit.ly/2FjW8IK>.

been granted and the tribal certificates were issued by clan chiefs who did not have the authority to transfer the land title. SRC states that no evictions, physical displacement or destruction of homes took place. According to the Company, the towns that were allegedly bulldozed in 2010 did not exist at the time of the expansion. The Company asserts that IFC did not recognize the people affected by the 2008 expansion as indigenous, thus, IFC concluded that IFC PS7 did not apply.

#### *Destruction of Ancestral Graves and Sacred Sites*

The Complainants allege that, as a result of the plantation expansion, the Company caused the destruction of graves and sacred sites. The Complainants consider that funding and support for rituals provided by the Company was insufficient remedy and consider that negotiations occurred with individuals who did not represent the communities' views.

SRC stated that cultural heritage sites within the development area were mapped, protected and planted around during plantation expansion. The Company claims that support provided to directly impacted communities such as Glegbar and Koleh for cleansing rituals and shrine relocation involved the participation and consent of the Tribal Authorities.

#### *Economic Displacement and Loss of Livelihood*

The Complainants assert that the Company removed their crops with no prior warning and without appropriate compensation. According to the Complainants, the crop compensation process was flawed, as there was no community participation, crop counting was inaccurate and compensation rates were lower than promised. Moreover, communities assert they were coerced to accept payment through threats, intimidation and misrepresentation. The Complainants also state that the Company did not leave any farmland for communities, who are now subject to food insecurity and economic difficulties.

On the other hand, SRC claims that no evictions, physical resettlement, and destruction of homes took place as a result of the Company's operations. The Company asserts that it provided compensation to impacted farmers for their crops and that the Company did not receive any genuine complaint about non-payment. SRC states that the crop counting process involved farmers themselves and, in several cases, representatives from the Ministry of Agriculture. Further, the Company asserts that crop compensation payments were in line with rates that had been agreed upon between the Ministry of Agriculture, community leaders and the Company. According to SRC, communities located within the development area such as Ansa-ta, Koleh-ta and Gorbort-ta were allocated "green belts" for cultivation and expansion.

#### *Water Pollution*

According to the Complainants, SRC has polluted water sources with chemicals used to spray plantation trees. In some villages, they allege that the physical characteristics of water have deteriorated and, as a result, there is no safe drinking-water. As a result, they assert that community members have presented with rashes and red eyes, and that there have been instances of fish kills. They highlighted additional concerns including the loss of the creek, and the lack of functioning boreholes and water pumps, constructed by the Company.

SRC outlined its approach to pesticide usage. The Company noted that it only uses pesticides in the first few years after a rubber tree is planted. The Company noted that pesticide sprayers had been instructed not to apply pesticides within five meters of any riverine. The Company

acknowledged that in the past some sprayers had cleaned themselves in the river until the Company built a set of showers. The Company denied allegations that the sprayers washed their spraying equipment in the streams. SRC stated that water quality is tested across the plantation and no issue had been found. The Company reported that the Liberian Environmental Protection Agency (EPA) and IFC have reviewed its pesticide policies and operations and have concluded that the quantity of active ingredient applied per acre is negligible. According to SRC, its effective environmental management is also evidenced by its ISO 14001 qualification. SRC also states that it has supported community access to water through the construction of 33 boreholes between 2013-2019.

#### *Poor Employment Conditions and Labor Rights Violations*

The Complainants expressed dissatisfaction that very few community members affected by the Company's expansion are employed in permanent positions in the Company. They allege that many community members are employed temporarily through contractors, sometimes for a day. The Complainants assert that contract workers receive low salaries and salary payment is dependent on the fulfillment of unrealistic production quotas and is often delayed or incomplete. Moreover, they assert that contractor workers are often coerced to pay to secure their jobs. Also, according to the complaint, contract workers who handle hazardous chemicals are not provided with personal protective equipment and the Company does not take any responsibility for workplace injuries.

SRC stated that there is a Collective Bargaining Agreement (CBA) in place that lists all employment terms and conditions, including wages, tasks, and benefits. According to the Company, wages are in line with the 2015 Decent Work Act and tappers are also entitled to quality and production bonuses. The Company stated that tools and protective equipment are issued free of charge and that contractors follow SRC's Code of Ethics and Employment Policies.

#### *Limited access to Schools and Health Facilities*

According to the Complainants, SRC's school policy discriminates against children of non-employees, who are charged higher fees than employees' children. The Complainants consider that these fees are prohibitive. They note that as a result of the plantation expansion, farmers no longer have access to farmland and thus to the possibility to secure an income. Moreover, the Complainants claim that SRC's health facility provides limited access to non-employees and overcharges for the services.

SRC stated that priority for school enrollment is given to employees, however, members of the public have access to the school with annual fees similar to those of government schools in the area. The Company also stated that medical facilities, which include a health center, outpost, and ambulance, are available free of charge to all employees and their dependents, and accessible to all community members.

#### *Sexual and Gender-Based Violence*

The Complainants allege that women have been sexually harassed by SRC's contractors, who have required sexual favors from women in exchange for hiring them. They claim that SRC contractors have touched them inappropriately and have requested sex during work, and have withheld their pay or dismissed them when they have refused such requests. According to the Complainants, security guards have also harassed women when they use the outdoor toilets at night and have threatened to kill women who refused to have sex with them.

The Company stated that no cases of sexual and gender-based violence (SGBV) have been brought to their attention and mentioned that community members (including both male and female) have denied any SGBV incidents. Moreover, the Company stated that it established a Gender Committee in 2017 and put in place all relevant policies.

#### *Reprisals, Threats, and Intimidation*

According to the Complainants, SRC has used its security guards and the Liberian National Police (LNP) to threaten local communities. The complaint mentions an incident in October 2013, where SRC security guards and the LNP entered Dokai town with a search and demolition order, where homes were destroyed, property was arbitrarily confiscated, and a child died. Moreover, according to the Complainants, in 2018 there were protests against the Company regarding the death of a worker. The community members were angered by this death and blamed his death on the Company. The Complainants noted that, when they organized protests, several community members were arrested for allegedly damaging Company property. The Complainants argue that anyone who advocates for community rights faces serious threats and reprisals, including arrest, torture, and dismissal from work. Also, the Complainants assert that they have had to endure curfews that restrict their free movement.

SRC reported that its security guards have standing instructions to monitor visitors entering and exiting the plantation for health, safety and security reasons. They do not have the power to arrest and are only instructed to check for the unauthorized movements of SRC assets on the plantation. The Company stated that it has full confidence in the police and judicial system and, refuted claims about arbitrary arrests addressing the specific cases of protesters, who were arrested and charged with “disorderly conduct and terrorist threats” for putting fire on the plantation.

#### *Lack of Freedom of Organization*

The Complainants allege that in September 2019 a taskforce led by SRC engaged with communities to discourage them from supporting the complaint filed to CAO. SRC also reportedly offered the Complainants and their relatives’ incentives such as scholarships and jobs if they agreed to engage with SRC without Green Advocates’ intervention.

SRC stated that Green Advocates’ claim to represent 22 communities is not proven. SRC asserts that it has worked with the 81 villages surrounding the plantation through a Citizens’ Representative Committee, where each village has representation.

#### **IFC Policy Framework and Performance Standard Requirements**

IFC’s investment in the Company was made in the context of the 2006 Sustainability Framework, which includes the 2006 Policy on Social and Environmental Sustainability (“the Sustainability Policy”) and the Performance Standards (PS). As revised from time to time, the Environmental and Social Review Procedures (ESRP) provide guidance to IFC staff in implementing the Sustainability Framework.

Through the Sustainability Policy, IFC commits to carry out investments with a “do no harm” approach, which entails that “negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately” (Sustainability Policy, para. 8).

The Sustainability Policy notes that, as part of its overall due diligence, IFC will conduct an E&S Review of proposed projects, which will be an important factor in its decision to invest and will determine the scope of the E&S conditions for financing (para. 5). The E&S Review will consider the nature and scale of the project and will be commensurate with the level of E&S risks and impacts (para. 13). In the E&S Review, IFC considers the client's assessment of E&S risks and impacts and requires additional assessments from the client or by external experts where the initial assessments do not meet the requirements of Performance Standard 1 (para. 15). IFC's E&S Review also considers the client's commitment and capacity to manage the expected impacts and the role of third parties in the project's compliance with the Performance Standards (para. 15). Where there are significant historical E&S impacts associated with the project, including those caused by others, IFC works with its client to determine possible remediation measures (para.13). Taken together, IFC commits to not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time (para. 17).

IFC's role throughout the life of its investment includes monitoring the client's E&S performance and assisting the client in developing measures to manage E&S impacts and identify improvement opportunities (para. 11). IFC requires clients to provide it with an Annual Monitoring Report (AMR) and IFC conducts site supervision visits (SSV). IFC reviews client performance based on the E&S Action Plan and PS requirements. If a client fails to comply with its E&S conditions, IFC works with the client to bring it back into compliance to the extent feasible or exercise remedies when the client fails to comply with its E&S commitments (para. 26).

The eight Performance Standards define IFC clients' responsibilities for managing their E&S risks and impacts.<sup>8</sup> PS1 requires IFC clients to implement an E&S Management System (ESMS) to assess all relevant E&S risks and impacts of the project, including the issues identified in PS2-8, and identify those who will be affected by such risks and impacts. The ESMS also incorporates (i) a management program (policies, procedures and practices); (ii) organizational capacity; (iii) training; (iv) community engagement; (v) monitoring; and (vi) reporting (PS1, para. 3-4,14 and 17). For effective community engagement, PS1 requires disclosure of project-related information and consultation with local communities on matters that directly affect them (PS1, para. 19).

PS2 requires clients to provide reasonable working conditions and terms of employment (PS2, para. 8). PS3-8 are applied based on the client's assessment of expected E&S risks and impacts and IFC's E&S Review. As relevant to this case, the PS include requirements for clients to: apply pollution prevention and control technologies and practices (PS3, para. 3); assess and mitigate impacts associated with the engagement of security personnel (PS4, para. 13); assess and mitigate impacts of physical displacement to varying degree depending on individuals' land title/claims, and economic displacement (PS5, para. 14-21); avoid adverse impacts of projects on Indigenous Peoples and ensure information disclosure, consultation and their informed participation (PS7, para.9)<sup>9</sup>; and retain qualified and experienced experts to assess and assist the client in managing impacts to cultural heritage (PS8, para. 4).

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<sup>8</sup> PS 1: Social and Environmental Assessment and Management System (PS1); PS 2: Labor and Working Conditions (PS2); PS3: Pollution Prevention and Abatement (PS3); PS4: Community Health, Safety and Security (PS4); PS5: Land Acquisition and Involuntary Resettlement (PS5); PS 6: Biodiversity Conservation and Sustainable Natural Resource Management (PS6); PS7: Indigenous Peoples (PS7); and, PS8: Cultural Heritage.

<sup>9</sup> IFC's PS7 (2006) requires that a company acquire land from indigenous people through a process that provides for Free Prior and Informed Consultation. In 2012, IFC updated PS7 (2012) in such cases to provide for Free Prior and Informed Consent. As IFC's investment in the Company was made in the context of the 2006 requirements, the applicable standard for this compliance appraisal is Free Prior and Informed Consultation.

## **IFC's Pre-Investment Due Diligence**

A key question for CAO is whether IFC's pre-investment E&S Review was commensurate to risk and, as relevant, identified adequate mitigation measures to ensure the Company would meet the PS requirements over a reasonable period of time.

Between 2007 and 2008, IFC conducted an E&S due diligence of the project. IFC's E&S Review Summary (ESRS), disclosed in February 2008, states that IFC made a visual inspection of the plantation and rubber processing factory, and reviewed technical, environmental and social information submitted by the Company. IFC staff met with Company management in Liberia and Belgium, local community representatives and union representatives. IFC's ESRS notes that the Company had appointed a government recommended consultant to prepare an E&S Impact Assessment (ESIA) of its operations and the proposed plantation expansion. This document was subsequently provided to IFC in August 2008, after IFC completed its E&S due diligence and IFC legal commitment to the investment. In September 2008, IFC disclosed the ESIA.<sup>10</sup>

IFC's ESRS recorded that the major E&S issues associated with the project were: worker housing and sanitation; grievance mechanism for host communities; site drainage and wastewater treatment at the rubber processing factory; integrated pest management in the plantation; and, the protection of the remaining older forest stands along major river courses within the plantation.<sup>11</sup> IFC considered that the identified issues would be limited to Company property and could be addressed by known technology, practices or procedures, and thus determined the E&S risk category of the project as Category B.<sup>12</sup> IFC determined that PS7: Indigenous Peoples was not applicable as "the original populations in the area of the project are part of the now dominant society and culture of Liberia".<sup>13</sup>

IFC agreed an E&S Action Plan (ESAP) with 24 measures addressing PS1-6 and PS8. The Company was required to implement the majority of ESAP items following IFC commitment and first disbursement.<sup>14</sup>

CAO's preliminary review of IFC's E&S Review documentation for this project raised several questions. IFC's investment was made five years after the formal end of the second Liberian civil conflict<sup>15</sup> and in an environment where large concession plantations raised concerns regarding land rights.<sup>16</sup> IFC's appraisal documentation notes land use and land acquisition issues associated with the Company's operations, both contemporary and historical. In response to these issues, IFC agreed with the Company to "Develop and disseminate a documented compensation framework" and "Establish and maintain [a] land acquisition database for the Salala Plantation, incorporating available data from past compensation."<sup>17</sup> In relation to PS4 IFC notes that the client uses a mix of internal security personnel and unarmed government police for protection. IFC agreed with the company to "develop [a] documented security policy." However, based on a review of available documentation,<sup>18</sup> CAO has questions as to whether these issues

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<sup>10</sup> IFC Environmental and Social Review Summary (ESRS) for project 26510 – Salala Rubber Corporation, Liberia. February 29, 2008. Available at: <https://bit.ly/3huJLa6>

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> IFC – SRC ESAP, disclosed at IFC ESRS for project 26510. Available at: <https://bit.ly/3huJLa6>

<sup>15</sup> The Accra Peace Agreement, the final peace agreement in the Second Liberian War, was signed on August 18, 2003 – United Nations Mission in Liberia (UNMIL), Background. Available at: <https://bit.ly/2GBVI6j>.

<sup>16</sup> Wily, Liz Alden. *So Who Owns the Forest? An investigation into forest ownership and customary land rights in Liberia.* Sustainable Development Institute/FERN. November 2007. Available at: <https://bit.ly/3k6OAb1>.

<sup>17</sup> IFC – SRC ESAP. Available at: <https://bit.ly/3huJLa6>

<sup>18</sup> IFC ESRS for project 26510. Available at: <https://bit.ly/3huJLa6>

were reviewed by IFC in a manner that was commensurate with the level of E&S risks and impacts as required by the Sustainability Policy (para. 13).

In particular, considering the Company's plans for expansion, the complex conflict, and land use and land tenure arrangements in the area of its operations, CAO has questions as to whether IFC's E&S due diligence adequately considered potential impacts of the Company's operations on communities, including: (a) historic land claims and grievances, (b) the application of PS5 to ongoing informal and customary land use, and (c) risks and impacts related to civil conflict on the Company's operations, and its approach to security. CAO has questions as to whether IFC adequately assessed and retained sufficient documentation to justify its determination that PS7 was not applicable to this investment. It is unclear whether IFC correctly categorized the E&S risk of this investment, adequately assessed client capacity at the local level and agreed an appropriate ESAP with sufficient conditions to ensure that the Company would meet the PS over a reasonable period of time.

### **IFC Supervision**

During supervision, IFC monitors the Company's performance to assure itself (i) that E&S conditions of disbursement are met; and (ii) that the Company's ESAP implementation, Company prepared AMRs, and site visits provide sufficient evidence of compliance with IFC's PS. IFC also responds to any inquiries and complaints or requests for information.<sup>19</sup>

IFC processed its first disbursement to the Company on October 10, 2008. As per the ESAP, nine action items were required to be implemented prior to this disbursement, with a further four actions shortly after disbursement.<sup>20</sup> Relevant to the issues raised in the complaint, these included actions required to meet the requirements of PS1-6 and 8. Upon review of IFC's documentation, it is unclear to CAO whether IFC adequately assured itself that the Company had implemented the required ESAP items prior to this disbursement.

Between 2009 and 2020, IFC conducted multiple visits to the Company to assess its ESAP implementation and general performance in accordance with IFC's Performance Standards. Site Supervision Visits (SSV) were conducted regularly between 2009-2013, and in 2019. Although these visits noted progress in implementing some aspects of the ESAP, on a number of occasions, IFC raised concerns regarding the adequacy of the Company's (a) E&S capacity; (b) social impact assessments; (c) livelihood restoration and community development plan; (d) stakeholder engagement plan; and, (e) security policy and management plan. Some of these issues were persistently raised by IFC with the Company up and until IFC's loan was repaid in March 2020. Upon review of IFC's documentation, it is unclear whether IFC adequately escalated ongoing performance concerns so as to ensure remedial action consistent with the requirements of the PS.

During the period of IFC's investment, the Complainant Representatives publicly raised concerns regarding the Company's operations. In 2013, Green Advocates released a report entitled "Livelihood Challenges at SRC". The report documents community complaints about the Company's operations, including the lack of information and consultation prior to plantation expansion, displacement and demolition of towns, impacts on livelihoods due to loss of access to land and the destruction of crops, inadequate compensation, water shortages and desecration of

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<sup>19</sup> IFC ESRP 6.1.1 (2007).

<sup>20</sup> IFC ESRS for project 26510. Available at: <https://bit.ly/3huJLa6>

sacred sites.<sup>21</sup> In February 2019, some of the Complainants Representatives published a report alleging human rights violations as a result of the Company's operations.<sup>22</sup> Allegations include the deprivation of local communities of the use of their customary land, insufficient consultation related to company's operations, water contamination, and insufficient compensation to restore community's livelihoods, particularly regarding access to land, food security and access to education. The report also alleges instances of threats and arbitrary arrests against human rights defenders, and sexual harassment and sexual violence against women in the plantation by security guards and contractor heads.

Upon review of IFC's supervision documentation, CAO notes that IFC identified some of the issues raised in the complaint to CAO. It is not clear, however, whether IFC took sufficient action to work with the Company to effectively address identified issues as required under the PS or whether IFC exercised appropriate remedies when PS requirements were considered to not have been met (Sustainability Policy, para. 26). Further, as there appears to be a period of limited IFC supervision of the Company (2014-2018), it is unclear whether IFC adequately monitored the company's E&S performance throughout the life of IFC's investment (Sustainability Policy, para. 11).

#### **IV. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The Complainants raised a range of E&S impacts in relation to the Company's operations. Based on a review of IFC and publicly available documentation, many of these allegations of impact were current during IFC's financing of the Company. While IFC's documentation indicates many of these issues were identified, it is not clear whether they were effectively addressed or resolved during the course of IFC's investment. As a result, and considering the serious nature of the impacts alleged, CAO concludes that there are substantial concerns regarding the E&S outcomes of IFC's investment in the Company.

CAO has also identified questions pertaining to IFC's application of its E&S standards as relate to the issues raised by the complainants. In particular, CAO has questions as to: (a) whether IFC's pre-investment E&S Review of the Company was commensurate to risk and established a realistic expectation that the Company would meet IFC's E&S requirements within a reasonable period of time, and (b) whether IFC responded adequately to project level E&S concerns as they were raised during the period of IFC's finance in the context of IFC's E&S requirements.

It is unclear whether IFC adequately assured itself that the Company met the following requirements of the PS requirements: (a) to establish and maintain a Social and Environmental Management System appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks and impacts; (PS1, para. 3); (b) to provide reasonable

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<sup>21</sup> Green Advocates (April 2013) *Livelihood Challenges at Salala Rubber Corporation (SRC)*.

<sup>22</sup> Bread for All, "Struggle for Life and Land – Socfin's Rubber Plantations in Liberia and the Responsibility of Swiss Companies". Available: <https://bit.ly/3k3rHFz>.

working conditions and terms of employment that at a minimum comply with national law (PS2, para. 8); (c) to apply pollution prevention and control technologies and practices consistent with good international industry practice (PS3, para 3); (d) to assess and mitigate impacts associated with the engagement of security personnel (PS4, para. 13); (e) to assess and mitigate impacts of physical and economic displacement (PS5, para. 14-21); and, (f) to retain qualified and experienced experts to assess and assist the client in managing impacts to cultural heritage (PS8, para. 4). Further, it is not clear that IFC adequately assessed and retained sufficient documentation to justify its determination that PS7 (Indigenous Peoples) was not applicable to this investment.

CAO concludes that these questions merit a compliance investigation. The scope of the investigation will be further defined in terms of reference developed in accordance with the CAO Operational Guidelines.