



CAO COMPLIANCE

CAO Investigation of IFC

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**CAO Investigation of IFC Environmental and Social Performance in relation to:
Amalgamated Plantations Private Limited (APPL), India**

Office of the Compliance Advisor Ombudsman (CAO)
for the
International Finance Corporation (IFC) and
Multilateral Investment Guarantee Agency (MIGA)
Members of the World Bank Group

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Executive Summary

Background

This report provides the findings of CAO's compliance investigation into IFC's investment in Amalgamated Plantations Private Limited (APPL) ("the client"), the second largest producer and supplier of tea in India.

India is the second largest producer of tea in the world. The tea sector is India's largest private employer with production concentrated primarily in the northeastern states of Assam and West Bengal and to a lesser extent in the southern states of Tamil Nadu and Kerala.

Most of the tea workers in northeastern India are descendants of tribal communities from other Indian states who were brought to the tea estates as bonded or forced labor during India's colonial period. They have retained a distinct sociocultural identity, including languages and customs which are different from those of the local populations in Assam and West Bengal. Jobs on the tea plantations are traditionally passed from one generation to the next. Having limited access to education or economic opportunity outside the tea plantations, tea workers are highly dependent on their employers.

IFC's client employs over 30,000 permanent workers across its 21 tea estates in Assam and 4 tea estates in West Bengal (see map in Appendix 1). Under Indian law, the client is required to provide permanent workers and their dependents with accommodation, potable water, sanitation facilities, medical care and basic education. Counting employees and their dependents, the client is responsible for providing these services to over 155,000 people.

As acknowledged by IFC, poverty across Assam and other tea plantation areas is deeply entrenched. This was particularly the case in the early 2000s when the tea industry was facing a challenging business environment due to low productivity and high fixed costs. As a result, during this time, approximately 120 tea estates closed and over 60,000 jobs were lost in the Indian tea industry.

It was in this context in 2006 that IFC chose to partner with APPL to support a sustainable business model. IFC's investment involved the demerging of the tea production business from Tata Global Beverages (TGB) into a new company, APPL, in which workers would be offered the opportunity to acquire equity through an employee share purchase plan (ESPP, or "share program"). IFC committed to acquire an equity stake in APPL and to act as an honest neutral broker to support a fair transaction for workers and TGB. IFC expected the development impact from the project to include increased sustainability of the client's tea operations, preservation of over 30,000 jobs and leadership in initiating change in the industry. The share program was designed to improve productivity and give workers the opportunity to share in the profits of the company.

IFC approved a 20 percent equity investment for up to US\$7.8 million in October 2006 and made its first disbursement for the project in April 2009. In order to facilitate worker participation in the share program, the client provided interest-free loans and guaranteed a minimum dividend return of 6 percent for workers for the first four years. As a result, workers who participated in the share program received preference shares in 2010. These were converted to ordinary shares in February 2014.

Triggers for CAO involvement

In 2011, the International Union of Food Workers (IUF) made a complaint to IFC outlining concerns from unions representing workers on an APPL tea estate. The complaint related to an incident (“Incident One”) which took place in August 2009, when a pregnant tea worker at the client’s Nowera Nuddy estate in West Bengal collapsed, allegedly after making a request for maternity leave. This incident led to a labor dispute which resulted in two lockouts lasting a total of three months. In a separate public report, IUF detailed another incident (“Incident Two”) which occurred in May 2010 at the client’s Powai estate in Assam. In this case, a worker collapsed and died, allegedly due to exposure to pesticides. The event led to protests and a clash with police which resulted in two protesters being killed and 16 others injured. Subsequently, in 2012 the CAO Vice President triggered a compliance appraisal in relation to IFC’s investment in APPL. A compliance appraisal report was released in January 2013, which concluded that IFC’s investment in APPL warranted a compliance investigation.

In February 2013, CAO received a complaint from three nongovernmental organizations (NGOs) on behalf of workers on three of APPL’s plantations in Assam: Hattigor, Majuli and Nahorani. The complaint raised concerns about living and working conditions on the client’s tea estates, specifically citing long working hours, inadequate compensation, restrictions on freedom of association, poor hygiene and health concerns, poor living conditions, and inadequate protection for workers using pesticides. The complaint also raised concerns about lack of consultation in relation to the share program as well as IFC’s decision not to apply its Indigenous Peoples policies to the tribal minorities who work on the tea estates. CAO completed an appraisal of the complaint in February 2014 and determined that the issues raised merited further inquiry. At this point, CAO decided to combine the complaint-triggered compliance process with the earlier CAO VP-triggered compliance process.

Summary of Discussion and Findings

Pre-investment E&S review

IFC’s investment in APPL was a challenging one, but one with potential for significant development impact. The potential for development impact emerged from partnering with a client whose business directly supported the livelihoods of over 155,000 people, comprising of 30,000 low-income workers and their families, in poor, remote, and in some instances, conflict-prone areas of India. This same context, however, gave rise to a series of E&S challenges.

Given the vulnerable status of workers and the client’s responsibility for a range of their basic needs, CAO finds that IFC’s pre-investment E&S review was not “appropriate to the nature and scale of the project” or “commensurate with the level of social and environmental risks and impacts,” as required by the Sustainability Policy (2006, para.13).

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

Instead of conducting the required review based on a client E&S assessment in accordance with Performance Standard 1, CAO finds that IFC’s review relied significantly on the client’s good

reputation and its commitment to participate in external certification schemes. Critically, an analysis of whether these external standards and their approach to certification provided reasonable assurance of compliance with the range of IFC E&S requirements was, and remains, absent.

Given the range of E&S issues associated with the project, the sector and the region, CAO finds that IFC incorrectly concluded that the investment had a limited number of specific environmental and social impacts that could be readily addressed through standard mitigation measures (the requirement for a Category B project).

Shortcomings in IFC's E&S review, combined with an underassessment of risk, led to the development of an E&S Action Plan that was insufficiently detailed and did not address key risk areas. As a result, IFC did not have a basis to conclude that this project could meet IFC's E&S requirements including the Performance Standards. This is the threshold requirement for an IFC investment. It also meant that IFC missed opportunities to advise its client on mitigation measures that could have enhanced the development impact of the investment.

IFC's general supervision of the investment

IFC's investment in APPL has been under supervision since April 2009. Over this period, IFC reviewed its client's annual E&S reporting and conducted site supervision visits to a number of the client's tea estates. Through the process of supervision, IFC has engaged with the client in relation to a range of issues raised in the complaint. Nevertheless, CAO finds that IFC's supervision of the investment did not meet the requirements of the Sustainability Policy or relevant internal procedures. In particular, CAO finds that IFC did not "develop and retain the information needed to assess its client's compliance with the Performance Standards" as required. As a result, E&S compliance issues raised by the complainants remain unaddressed.

Weaknesses in IFC's E&S supervision were particularly acute during the period from disbursement in 2009 until after receipt of the CAO complaint in 2013. During this period, two serious incidents occurred at the client's sites. IFC did not assure itself that the client conducted an adequate root cause analysis in relation to each incident. Meeting this requirement was important to ensure that the client developed a good understanding of why the incidents happened and how to prevent future similar events.

Supervision improved in 2013 after IFC developed a gap analysis of its client's E&S management program (ESMP). As a result, IFC supported the development of a corrective Action Plan, which is significantly more detailed than the Action Plan agreed to at the time IFC committed to the investment in 2009. However, the corrective Action Plan developed by IFC was not time bound nor was it adequately resourced to support the achievement of compliance with IFC's E&S requirements.

More specific measures were taken by the client at the request of TGB, commencing in 2014. The first of these was an assessment of APPL operations, a summary of which was released in November 2014. This assessment was accompanied by a time-bound action plan which set out how APPL would address a range of issues related to living and working conditions on its plantations.

While noting progress in relation to some of the issues raised by the complainants, IFC's most recent supervision documentation indicates that the client still lacks a systematic, company-wide approach to tracking compliance gaps and monitoring the status of requirements to address audit findings.

Underlying the above, CAO identifies a number of key weaknesses in IFC's supervision. These include an overreliance on regulatory oversight and external certification programs as providing assurance of compliance with IFC E&S requirements. As a result, CAO finds that IFC paid insufficient attention to the development of the client's E&S management systems.

CAO's investigation report also deals with the specific concerns raised by the complainants, as summarized below and discussed in detail in the body of the report.

Living conditions for workers on the client's tea estates

Concerns regarding living conditions and compliance with the national legal requirements on the provision of housing, sanitation and basic services on the client's tea plantations were a core aspect of the complaint.

While IFC's pre-investment due diligence documentation noted that the client provided housing and other services to workers, there is no evidence that IFC considered the client's compliance with national legal requirements. A review of baseline data on the quality or standard of facilities provided is similarly absent.

In a context where issues regarding the adequacy of living conditions on tea plantations in northeast India were well known, CAO finds that IFC did not assure itself that its client was discharging its obligation to provide housing and other services in a manner that met the requirements of Performance Standards 2 or those of Indian law.

During supervision, IFC has not responded systematically to issues regarding housing and living conditions as raised by the complainants. Prior to 2013, IFC noted the view that the client was in compliance with relevant requirements. In mid-2013, following the complaint to CAO, IFC acknowledged gaps in compliance and noted that the client needed to improve workers' living conditions. An action plan agreed between TGB and the client in 2014 addresses these issues. However, considering the scale of improvements required, the client's capitalization and progress reported to date, CAO notes that timely delivery of the commitments in the Action Plan may not be possible. In this context, CAO finds that IFC has not been successful in working with the client to bring it back into compliance as required.

Compensation practices

The complainants raise a range of concerns regarding the client's compensation practices. These include allegations that wages are below the minimum wage and that workers are impoverished and malnourished because the wages are so low.

IFC affirms that jobs are "the principal way out of poverty". A job contributes to development by boosting living standards, raising productivity and fostering social cohesion. At the same time, IFC recognizes that "jobs that do not meet environmental and social standards might have a lower development or transformational impact or even a negative impact." While defining and creating good jobs is usually reflected by wage employment metrics, IFC recognizes that other factors such as occupational health and safety (OHS) policies, worker-management relations, opportunities for career advancement and flexibility regarding doctors and sick leave should also be considered. Accordingly, as stated in Performance Standard 2, IFC defines a good job as "a job that guarantees workers' fundamental rights while paying them a decent and fair wage."

While CAO finds that IFC took appropriate action in commissioning external legal advice in response to allegations that the client compensates workers at a level below the minimum wage,

concerns remain. In particular, CAO notes that the advice obtained by IFC was not current at the time that it was delivered and as such that it requires revisiting.

Further, CAO notes that the findings in relation to the prevalence of malnutrition among workers in reports commissioned by TGB and the client in 2014 raise concerns regarding the general well-being of the client's workforce. In this context, CAO finds that IFC has not assured itself that the wages paid by the client are consistent with IFC's commitment to support jobs which offer a "way out of poverty" or "protect and promote the health" of workers in accordance with Performance Standard 2.

Issues related to freedom of association and handling of grievances

Union issues are known to be contentious in the tea industry in Assam. Assam Chah Mazdoor Sangha (ACMS), a trade union, is the primary representative organization for tea workers in Assam. They have sole recognition on all but one of the client's tea estates in Assam. Their dominance has been a source of grievance for other groups that seek to represent tea workers in Assam. Some of these groups, including IUF and the complainants allege that ACMS, the employers and the state government collude to stifle workers' rights to associate and bargain collectively.

Prior to investment, IFC noted that the client was in the process of obtaining external certification of its labor practices, which covered freedom of association and collective bargaining issues. Neither the potential for worker grievances nor the client's approach to grievance handling was discussed in the pre-investment due diligence. CAO does not consider this to represent a substantive review of the issues.

During project supervision, the complainants, international unions and a social audit commissioned by the client have raised ongoing concerns regarding freedom of association and collective bargaining on the client's tea estates. IFC's supervision documentation has also noted issues concerning a perceived lack of right to form unions among plantation workers. However, IFC's supervision of the project does not provide assurance of compliance with the relevant requirements of Performance Standard 2.

The complainants also raise more general concerns regarding the client's approach to grievance handling. They claim that complaints lodged with client Welfare Officers are routinely ignored and that this leads to the escalation of grievances into protests. They also claim that workers are reluctant to raise issues because they fear retaliation from management.

Just resolution of grievances is an important issue on the plantations, particularly given the range of responsibilities which the client has, not only for labor-related issues, but for the provision of basic facilities and services. IFC has received information annually on the number of grievances raised at the tea estate level. However, a review of this documentation notes significant gaps in reporting, with many tea estates not reporting. From 2013 onwards, IFC has consistently identified a need for the company to improve its approach to grievance handling. This observation, however, has not been converted into either an agreed time-bound Action Plan or the type of hands-on advice that the client would need to meet IFC requirements. As a result, as of February 2016, IFC was of the view that the client did not have in place a grievance mechanism compliant with the Performance Standards.

Risks related to the employment of children on the client's tea estates

Child labor is known to be prevalent in India's agricultural sector, including on tea plantations. In relation to the client, the allegation is not that the client is directly employing children in breach of

IFC requirements, but rather that the client benefits from the work of children who assist adult family members to meet production targets. This phenomenon is documented independently of the complainants.

IFC's pre-investment due diligence for the project did not address the issue of child labor other than to note that the client was in the process of obtaining certification which had, among its objectives, verification that child labor is not used. CAO finds that IFC's pre-investment review of the risk of child labor on its client's plantations was inadequate.

Once the issue of child labor was raised by way of the February 2013 complaint to CAO, IFC had a duty to assure itself that its client was in fact in compliance with the child labor requirements of Performance Standard 2. IFC's approach to this issue has been to rely on external certifications achieved by the client, which include restrictions on the use of child labor. However, CAO finds no evidence that IFC has conducted a review of either the requirements of these standards compared with IFC's requirements, or the robustness of their certification processes. Given these circumstances, CAO finds that IFC did not have sufficient basis to rely on external certification as evidence of compliance with IFC requirements.

Risks related to the client's use of pesticides

The use of pesticides is a hazardous activity which requires appropriate management systems, training and the use of Personal Protective Equipment (PPE) by workers. The complaints and Incident Two raise concerns with the client's use of pesticides, as well as the provision and use of PPE.

IFC's treatment of this issue has been inadequate from the outset. During its pre-investment E&S review, IFC did not adequately consider the client's reported use of World Health Organization (WHO) Class II pesticides, which have restricted usage under IFC requirements. IFC's review considered only whether the client provided workers with PPE, and not whether it had in place a system to ensure that PPE was properly used. A review of the client's approach to pesticide handling, use and storage was absent.

Shortcomings in IFC's approach to the application of its requirements regarding pesticide use have persisted into supervision. IFC did not document a review of a condition of disbursement requirement that the client provide IFC with revised procedures and training material for the handling, storing and application of chemicals until 18 months post-disbursement. Further, though the client consistently reported the use of extremely hazardous (WHO Class 1a), highly hazardous (WHO Class 1b) and moderately hazardous (WHO Class II) pesticides, IFC did not document a concern in relation to the client's use of pesticides until December 2013. While recent IFC supervision has noted improvements in the client's use of pesticides and provision of PPE, as of February 2016 IFC's view was that the client had not met Performance Standard 2 requirements to have an OHS Management Program that is: (a) appropriate for the risks posed by its operations; and (b) adequately protective of its workforce. Further, CAO notes that the client's reported use of moderately hazardous pesticides remains high.

In this context, CAO finds that IFC has not adequately supervised risks related to pesticide use by the client. Further, IFC did not provide timely guidance to the client on how to address compliance issues related to pesticide use. It is of significant concern that, to date, IFC does not have assurance that specific noncompliance issues related to the client's use of pesticides have been addressed. The lack of a time-bound and resourced Action Plan agreed between IFC and the client in relation to these issues is of ongoing concern.

Risks related to the client's approach to security

The propensity for violent conflict on and around Assam's tea plantations is well known. In response to concerns regarding security on the plantations, the government of Assam established the Assam Tea Plantation Security Force (ATPSF) in 1993. The ATPSF is a government security force deployed on tea estates; however, funded by the India Tea Association (an employers' association).

IFC's pre-investment E&S review is silent as to the client's approach to security. Given the above context, CAO finds that IFC's review of the client's approach to security was inadequate.

During supervision, incidents at the client's tea estates at Nowera Nuddy, Powai and Borhat involved the intervention of security forces to varying degrees. CAO notes, however, that IFC's supervision documentation does not record any substantive engagement in relation to the client's approach to security, either prior to the aforementioned incidents or thereafter. In this context, CAO finds that IFC did not assure itself that the client's approach to security met the requirements of Performance Standard 4.

Allegations of economic displacement as a result of the project

The complaint to CAO raises concerns that independent agricultural activities practiced by some workers have been adversely impacted by the client's diversification into fisheries. While the project envisaged the development of fisheries on some estates, IFC did not consider whether this development would displace existing economic activities undertaken by workers. While the client has advised IFC that it has provided workers impacted by the development of the fishery projects with alternative land or permanent employment, IFC has not assured itself that these measures meet the requirements of Performance Standard 5. In particular, CAO refers to requirements to avoid economic displacement, and if avoidance is not possible, to provide compensation and other assistance to assist displaced people to improve or at least restore their livelihoods.

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

The complainants maintain that the workers are Indigenous Peoples as defined in IFC Performance Standard 7.

The basis for this argument is that while the tea workers, or Adivasi as they are also known, are not originally from Assam, they have maintained their own language, have a distinct cultural identity which is different from other groups, and self-identify as members of an ethnic group that is legally recognized as a Scheduled Tribe in neighboring West Bengal.

IFC did not consider whether Adivasi workers on the client's tea estates should be considered Indigenous People for the purposes of IFC's requirements. Given the characteristics of the Adivasi tea workers of northeast India, CAO finds that expert analysis in relation to the application of Performance Standard 7 would be required.

Consultation and disclosure in relation to the share program

Buying shares in a company involves risk. Informed investment requires a level of understanding financial issues that is beyond common knowledge. Committing to a loan to finance an investment with repayments deducted from salary adds complexity to the overall transaction.

The complainants allege that workers were not properly informed about the share program or the loans provided to finance participation in the program. They allege that some workers were

threatened and punished (e.g., through nonpayment for work) when they decided not to participate in the share program.

While IFC's pre-investment due diligence concluded that there had been extensive consultations on the share program with employees and others in the local community, CAO finds that IFC did not assure itself that these consultations were "conducted on the basis of timely, relevant, understandable and accessible information" (Performance Standard 1) as required.

Further, CAO finds that IFC did not consider the potential adverse impacts of participation in the project on workers. While the value of workers' shares has increased since 2009 and the workers have received an annual dividend, CAO finds that it would have been relevant for IFC to have considered the potential impacts on workers if the share price were to decrease. It would also have been relevant for IFC to assess the ability of workers to afford the reduction in cash income required to repay the loan.

At the time of IFC's first disbursement in April 2009, IFC was aware that worker interest in participating in the share program was below expectation. This was despite an IFC-sponsored training program for workers on saving and investment which was conducted at all of the client's tea estates in Assam. Nine months after IFC's disbursement, IFC was informed that worker participation in the share program had risen significantly. CAO finds that IFC did not take action to assure itself whether the increase in worker participation in the share program was due to effective consultation and outreach (as argued by the client) or to pressure applied by client management (as argued by the complainants).

In January 2014, IFC agreed to participate in an equity rights issue. The purpose of the rights issue was to allow IFC and another investor to make investments which were originally scheduled for 2009. As employee shares were held as preference shares until they converted in February 2014, employees were not provided an opportunity to purchase additional shares as part of this rights issue. IFC proposed its participation in the rights issue on the basis that: (a) it would significantly reduce the dilution of IFC's shareholding following the employee subscription to the company; (b) it was not prejudicial to the interests of the employees; (c) the client had strong management; and (d) the rights issue price was at a significant discount, compared to valuations of the company at the time.

The effect of this transaction, CAO notes, was to dilute the worker's ownership stake in the company and reduce the value of the shares that they held. In this context, CAO finds that IFC did not consider the adverse impacts of the 2014 Rights Issue on the workers' share value and ownership. Further, CAO finds no evidence to suggest that IFC required its client to consult with affected workers in accordance with the requirements of Performance Standard 1 on the potential adverse impacts of this transaction.

Consultation and disclosure requirements in general

IFC Performance Standard 1 requires the disclosure of client E&S documents. Where project-affected communities may be subject to risks or adverse impacts, the client is required to engage in "effective consultation," which requires "prior disclosure of relevant and adequate information including draft documents and plans" (Performance Standard 1). The client's E&S Action Plan and periodic reports on implementation should also be disclosed.

While a number of E&S assessments and E&S Action Plan have been prepared for this investment, IFC has not assured itself that these assessments have been disclosed and/or disclosed in a manner that is accessible to a workforce with low levels of literacy and that does

not speak English. IFC has similarly not assured itself that key E&S assessment processes and Action Plans were prepared following effective consultation with workers. Effective consultation with workers and their representatives will be essential to the resolution of the issues identified in this report.

Conclusion

CAO has made a number of noncompliance findings in relation to IFC's handling of this investment. These cover IFC's pre-investment E&S review as well as its supervision of the project.

Both during the pre-investment phase and during supervision, CAO finds that IFC underestimated the E&S challenges associated with the project. Addressing these in accordance with IFC requirements will require the dedication of resources and relevant sectoral expertise beyond that which IFC has made available to the client to date.

Of importance to future investments, CAO notes that IFC's procedures provide limited guidance to staff on how and to what extent it is appropriate to rely on external certification programs in supervision of IFC's E&S requirements. CAO also notes that IFC's procedures provide limited guidance to staff on how to respond to allegations that a project is not in compliance with its E&S requirements, and thus either to document compliance or identify corrective actions needed to bring a client back into compliance.

In light of the noncompliance findings contained in this report, CAO will keep this investigation open for monitoring, and will issue a monitoring report no later than a year after publication of this investigation. CAO will monitor the situation until actions taken by IFC assure CAO that IFC is addressing its noncompliance findings.

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 the private sector lending and insurance members of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (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 IFC and MIGA.

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

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

Acronyms

| | |
|--------|------------------------------------------------------------------------------------------------------------------|
| ACMS | Assam Chah Mazdoor Sangha (trade union) |
| AMR | Annual Monitoring Report |
| APPL | Amalgamated Plantations Private Limited |
| ATPSF | Assam Tea Plantation Security Force |
| BTOR | Back to Office Report |
| CAO | Office of the Compliance Advisor Ombudsman |
| CCCPS | Cumulative Compulsory Convertible Preference Shares |
| COD | conditions of disbursement |
| E&S | environmental and social |
| EHS | Environmental, Health, and Safety |
| ESAP | Environmental and Social Action Plan |
| ESMP | Environmental and Social Management Program |
| ESMS | Environmental and Social Management System |
| ESPP | employee share purchase plan |
| ESRR | Environmental and Social Risk Rating |
| ESRS | Environmental and Social Review Summary |
| ESRP | Environmental and Social Review Procedure |
| ETP | Ethical Tea Partnership |
| IFC | International Finance Corporation |
| IRM | Investment Review Meeting |
| IUF | International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations |
| MIGA | Multilateral Investment Guarantee Agency |
| NGO | nongovernmental organization |
| OHS | occupational health and safety |
| PLA | Plantation Labour Act (India, 1951) |
| PPE | personal protective equipment |
| PS | IFC Performance Standards |
| PS1 | IFC Performance Standard 1: Social and Environmental Assessment |
| PS2 | IFC Performance Standard 2: Labor and Working Conditions. |
| PS3 | IFC Performance Standard 3: Pollution Prevention and Abatement |
| PS4 | IFC Performance Standard 4: Community Health, Safety and Security |
| PS5 | IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement |
| PS7 | IFC Performance Standard 7: Indigenous Peoples |
| SHA | Shareholders Agreement |
| SSV | IFC Site Supervision Visit |
| TGB | Tata Global Beverages |
| TISS | Tata Institute of Social Sciences |
| TOR | Terms of Reference |
| UNICEF | United Nations Children's Fund |
| WHO | World Health Organization |

1. Overview of the CAO Compliance Process

CAO's approach to its environmental and social (E&S) compliance function is set out in its Operational Guidelines (March 2013).

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

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

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

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

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

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

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

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

2. Background

2.1 Background on the Tea Sector in Northeast India

India is the second largest producer of tea in the world.¹ Assam and West Bengal in northeast India and Tamil Nadu and Kerala in southern India are the four major producing states. Assam produces about half of India's tea.²

The tea industry in Assam was established in 1839 with the founding of the Assam Tea Company.³ British and other European firms initially controlled a significant proportion of tea production. Following India's independence in 1949, these companies reduced their ownership in the tea production sector, leading to increased ownership by Indian companies.

India's tea sector is a labor intensive industry. As the industry expanded in Assam in the 19th and early 20th century and sufficient local labor was not available, workers and their families were brought as bonded or forced labor⁴ to Assam's tea plantations from other Indian states—primarily Jharkhand, Orissa and Chhattisgarh.⁵

At present in Assam, nearly 1 million workers and their families are directly dependent on the tea industry for their livelihood. Most of the workers in the tea industry in Assam are descendants of tribal communities from other Indian states and have retained a distinct tribal sociocultural identity.⁶ In general, they identify themselves as Adivasi and speak Sadri as their mother tongue. In areas of Assam where Adivasi are in the majority, few Adivasi speak Assamese, the official language of Assam.⁷

Typically, tea workers live on tea plantations in "labor lines." The labor lines are separated both by geographical distance and the existence of fences from urban settlements and surrounding rural society. As a result, tea workers are isolated from neighboring communities. They have been described as "outsiders" by local Assamese.⁸

Labor conditions for the tea industry are governed by India's Plantations Labour Act (PLA 1951).⁹ Under the PLA, tea plantation employers are responsible for providing permanent workers with certain welfare measures. Depending on the number of employees, employers are required to provide health facilities, adequate potable water and latrines, educational facilities, and a canteen and recreational facilities. The PLA also requires employers to provide and maintain a house for every worker and their family residing on the plantation.¹⁰ Wages are agreed on the basis of

¹ FAO 2015.

² Mishra, Upadhyay, and Sarma 2012. See also India Tea Board statistics, <http://goo.gl/WGZVVr> (accessed January 31, 2016).

³ Mishra, Upadhyay, and Sarma 2012.

⁴ Behal (2006).

⁵ Government of Assam, Tea Industries. See <http://goo.gl/w8corS> (accessed October 23, 2014); Fernandes 2003;

Mishra, Upadhyay, and Sarma 2014, 95.

⁶ UNICEF 2012.

⁷ Fernandes 2003.

⁸ Fernandes 2003, 3.

Mishra, Upadhyay, and Sarma 2012.

⁹ The Indian Plantations Labour Act was enacted in Assam through the Assam Plantation Labour Rules (1956). Recognizing differing levels of living and working conditions on tea estates when the Act was passed, employers were required to meet the requirements of the PLA within a set time frame.

¹⁰ Plantation Labour Act (1951), available at <http://goo.gl/3HxCfV> (accessed November 16, 2015); see also Bharali 2004.

collective bargaining between employers and employees organizations with the state government retaining authority to legally notify agreements.

There are a number of barriers which impact worker mobility in the tea sector in northeast India. The legacy of family unit migration to the tea plantations has resulted in a tendency for families to hold and maintain employment on a tea plantation across generations. Additional barriers to tea worker mobility include geographic and social isolation, limited opportunities for alternative skill formation and a system whereby employers provide a variety of services to workers.¹¹

2.2 Background on the Investment

In the late 1990s and 2000s, there was a downturn in the India tea sector. This occurred due to a fall in domestic prices and consumption and increased international competition.¹² During this period, an estimated 70 tea estates in Assam, 30 tea estates in West Bengal, and 20 tea estates in Kerala closed; 60,000 jobs were lost.¹³ In the early to mid-2000s, major companies withdrew from tea production to concentrate on packaging and marketing activities. In 2005 and 2006, Hindustan Unilever, then the largest tea producer in India, sold its tea estates. Tata Global Beverages (TGB), another major producer, divested the majority of its equity in its tea estates in Kerala in 2005 through an employee-owned plantation model.¹⁴

In late 2005, TGB approached IFC to seek IFC's support to implement a similar employee-owned plantation model in its 24 tea estates in Assam and West Bengal.¹⁵ The project consisted of the establishment of a new company, Amalgamated Plantations Private Limited (APPL) ("the client"). The management and tea workers (collectively, "employees") would be offered the opportunity to purchase shares in the new company. Unlike the TGB divestment strategy in Kerala in 2005, employees of the tea estates in Assam and West Bengal were not expected to have the financial resources to acquire a majority of the new company. As a result, TGB developed the Employee Share Purchase Plan (ESPP, or "share program") and invited other investors, including IFC, to participate in the plan. See section 4.3.7 for further details on the structure of the share program.

In October 2006, IFC approved an investment of Rs300 million (US\$ 7.8 million) for 19.9 percent equity in APPL. TGB retained a 49.6 percent shareholding in APPL, with the balance of shares being held by management, workers and other investors.

The rationale for IFC's participation in this project included: (a) support for an innovative business model that had the potential to lead to fundamental change in an industry that faced large fixed costs, low productivity and burdensome regulations; (b) opportunity to act as an honest neutral broker to ensure a fair transaction for both employees and existing shareholders; and (c) opportunity to assist the client in mobilizing additional capital. IFC also noted that the expected development impact of the project included: (a) increased sustainability of the client's tea operations; (b) preservation of over 30,000 jobs; and (c) providing leadership in initiating change in the industry.¹⁶

¹¹ Mishra, Upadhyay, and Sarma 2012.

¹² Dutt 2007; ILO 2005.

¹³ Das 2009.

¹⁴ Das 2009; Deepika 2008.

¹⁵ At the time of IFC's appraisal, the client had 24 tea estates. However, in 2011 the client decided to separate one tea estate into two separate estates. Accordingly, as of 2011 the client has 25 tea estates. For further details see <http://goo.gl/npJP6w> (accessed August 5, 2016)

¹⁶ IFC 2006a.

Following IFC's approval of the project, TGB's tea estates in Assam and West Bengal were incorporated into the new company, APPL. IFC made its investment in APPL in April 2009. The total area of the APPL plantations at the time of investment was approximately 24,000 hectares, with about 20,000 hectares in Assam and 4,000 hectares in West Bengal (see Appendix A for a map of the client's tea estates). APPL has over 30,000 employees on its tea plantations—a figure that has remained relatively constant since IFC's investment. Of these, approximately 1,300 are in management or clerical staff positions. Approximately 80 percent of the total workforce is in field operations, and 80 percent of these workers, in turn, are women, engaged primarily in plucking tea leaves.¹⁷

While the client has over 30,000 employees, the total population living on its tea estates is over 155,000. These individuals are accommodated in less than 20,000 houses.¹⁸

2.3 CAO Vice President–Triggered Compliance Process

CAO's compliance process in relation to IFC's investment in APPL was triggered by the CAO Vice President in 2012.

The CAO Vice President triggered the compliance process following a complaint to IFC from the International Union of Food Workers (IUF), outlining allegations made by local unions representing workers on APPL plantations.¹⁹

The concerns related to two specific incidents:

Incident One took place on August 9, 2009, when a pregnant tea plantation worker at APPL's Nowera Nuddy estate in West Bengal collapsed, allegedly after making a request for maternity leave at the client's health clinic. This incident led to a labor dispute, which in turn resulted in a lockout, initially for two weeks, and following a further breakdown in negotiations, for a subsequent period of three months, starting mid-September 2009.

Incident Two related to a 25-year old worker, Gopal Tanti, at the Powai estate in Assam who collapsed and died at work on May 28, 2010, allegedly due to exposure to pesticides. This event led to a protest the same evening and a clash with police. As a result, two protesters were shot dead and up to 16 others were injured.

In January 2013, CAO issued a compliance appraisal, which concluded that IFC's E&S performance with regard to this investment merited further inquiry.²⁰

¹⁷ "Employees" refers to the aggregate of client's management, staff and workers. For the purpose of this report, the term "staff" will refer to the client's management and staff, and the term "worker" refers to people employed in the direct production of tea.

¹⁸ Noted by IFC to CAO. IFC further noted to CAO that the company frequently employs more than one family member from each family.

¹⁹ PS2 complaint to IFC dated January 24, 2011 submitted to IFC by IUF.

²⁰ CAO Appraisal Report of IFC's investment in APPL, January 2013. Available at <http://goo.gl/A1WUDK> (accessed July 22, 2016).

2.4 The Complaint

In February 2013, CAO received a complaint from three nongovernmental organizations (NGOs) on behalf of workers on three of APPL's plantations in Assam: Hattigor, Majuli and Nahorani.²¹ The allegations raised in the February 2013 complaint (and elaborated in additional communications from the complainants in February 2014 and September 2015) can be summarized as follows:

- a. Pressure on workers to participate in the share program, often without proper consultation or sharing of information about the risks of the scheme.
- b. Inadequate performance by IFC to assess its client's compliance with IFC Performance Standard 2 and alleged lack of compliance with applicable national legislation. Specifically, the complaint raises concerns about daily wage rates, lack of information on pay and working conditions in the local language and freedom of association.
- c. Lack of compliance with applicable national legislation with respect to living conditions on the tea plantation, specifically India's Plantation Labour Act (1951).
- d. Failure to provide adequate personal protective equipment for workers handling and using chemicals.
- e. Failure to ensure the operation of a workers' grievance mechanism.
- f. Failure to ensure consultation with Indigenous People.
- g. Inadequate appraisal and supervision of E&S aspects of the project by IFC.

CAO's Assessment Report in relation to the complaint was published in November 2013. The Assessment Report notes that a dispute resolution process assisted by CAO was not feasible in this instance. As a result, the complaint was referred to the CAO compliance function for appraisal. CAO issued a compliance appraisal in relation to the complaint in February 2014 and determined that the issues raised by the complaint also merited investigation.²² At this point, CAO decided to combine the complaint-triggered compliance process with the earlier CAO VP-triggered compliance process.

²¹ The three NGOs that assisted workers in the complaint are the Diocesan Board of Social Services (DBSS); People's Action for Development (PAD); and Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA).

²² CAO Assessment Report (November 2013) and CAO Compliance Appraisal Report (February 2014) of IFC's investment in APPL are available at <http://goo.gl/A1WUDK> (accessed July 22, 2016).

2.5 Project Timeline

| Date | Milestones, Events and Documents |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2006 | |
| April | IFC completes early review of the project. |
| May | IFC conducts E&S site appraisal, including meeting management in Guwahati and at two tea estates. |
| June | IFC management approves project (Investment Review Meeting). |
| Sept. 14 | Project disclosed on IFC web site. |
| Oct. 19 | IFC Board approves project through streamlined procedure. |
| 2007 | |
| March | Worker protest over participation in the new company (APPL) leads to a lockout at the company's Borjan tea estate and clashes with police. Eight workers injured. Lockout ended after 11 days. |
| June | IFC Memorandum to management; IFC commitment delayed due to delay in transferring assets to IFC's client. |
| Aug | IFC sign a non-binding Shareholders Agreement with the client as a sign of good faith to proceed with the investment at a later date. |
| Sept. | Worker protests over labor and working conditions at the company's tea estate in Dam Dim lead to a lockout. |
| 2008 | |
| March-May | IFC supports an advisory project to strengthen worker participation in the share program. 54 training sessions provided to workers on "Savings and Investments" at tea estates in Assam. |
| July | Draft legal agreements prepared: E&S requirements include IFC Performance Standards (2006). |
| 2009 | |
| April 17 | IFC Commitment. |
| April 27 | IFC makes First Disbursement to acquire equity in APPL. |
| June | Client submits Annual Monitoring Report (AMR) 2008/2009. |
| Aug. | Incident One: Nowera Nuddy. Triggers worker protest. Client management initiate two-week lockout. |
| Sept.–Dec. | Following further labor disputes at Nowera Nuddy, client management initiates another lockout. Tea estate reopens three months later. |
| Nov. | IUF initiates campaign in support of Nowera Nuddy workers after the August incident. |
| 2010 | |
| Jan. | IFC completes review of Annual Monitoring Report (AMR) 2008/2009. Project given an Environmental and Social Risk Rating (ESRR) of 2: Satisfactory. |
| March | IFC considers second/final disbursement. Disbursement is not processed. |
| May | Incident Two: Powai. Triggers protest and a clash with police. As a result, two protesters were shot dead and up to 16 others were injured. |
| June | Client submits AMR for 2009/2010. |
| Sept. | IFC conducts supervision mission to five of the client's tea estates following allegations of human rights abuses. IFC staff prepare memo to IFC management with respect to the allegations. |
| Oct. | IUF releases a report alleging human rights violations at the Powai tea estate. |
| Nov. | IFC complete AMR Review and Site Supervision Visit (SSV) report. Project provided ESRR 3: Partly Unsatisfactory. |
| 2011 | |
| Jan. | IUF submits complaint to IFC related to Incident One: Nowera Nuddy. |
| April | IFC responds to IUF complaint. |
| May | Client management and Nowera Nuddy workers reach settlement. |
| June | Client submits AMR for 2010/2011. |
| July | At IFC's initiative, third-party OHS audits of 8 client tea estates are conducted. |

| Date | Milestones, Events and Documents |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dec. | Following a labor dispute at its Borhat tea estate, client management initiates a lockout of the tea estate. Lockout lifted after 34 days. |
| 2012 | |
| May | CAO Vice President initiates compliance appraisal of IFC's investment in APPL. |
| June | IFC completes SSV report. Project provided ESRR of 3: Partly Unsatisfactory. |
| Aug. | IFC completes AMR Review for 2010/2011. Project given an ESRR of 2: Satisfactory. |
| Aug. | Client submits AMR for April 2011/March 2012. |
| 2013 | |
| Jan. | CAO compliance appraisal completed. CAO decides to conduct a compliance investigation of IFC's investment in APPL. |
| Feb. | CAO receives and finds eligible a complaint from workers at three of the client's tea estates. |
| July | IFC completes AMR Review and SSV report. Project given an ESRR of 3: Partly Unsatisfactory. |
| Nov. | Complaint transferred to CAO compliance function. |
| Dec. | IFC completes SSV report. Project provided ESRR of 3: Partly Unsatisfactory. IFC document an Action Plan agreed with the client in October 2013 without timelines for implementation or resources. |
| 2014 | |
| Jan. | IFC participates in Rights Issue. |
| Jan. | Columbia Law School reports alleging human rights impacts on the client's workers. |
| Feb. | Client submits AMR for 2012/2013. |
| Mar. | The Guardian (UK) releases documentary alleging human rights impacts on the client's workers. |
| June | IFC completes AMR Review and SSV report. Project given an ESRR of 3: Partly Unsatisfactory. |
| Nov. | The Solidaridad Report, an audit of the client's approach to living and working conditions, commissioned by Tata Global Beverages (TGB), is published. TGB agrees to a time-bound Action Plan with the client. |
| Late 2014 | IFC is provided with the Tata Institute of Social Sciences social audit of APPL's tea estates. |
| 2015 | |
| Mar. | IFC completes Site Supervision Report. Project given an ESRR of 3: Partly Unsatisfactory. |
| | Client submits AMR for 2014/2015. |
| Dec. | Client provides an update on its website on implementation of TGB-agreed Action Plan. |
| 2016 | |
| Feb | IFC completes AMR Review and SSV report. Project provided ESRR of 3: Partly Unsatisfactory. |

3. Investigation Framework

3.1 Scope of a Compliance Investigation

The focus of this compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of an IFC project at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013). The working definition of compliance investigations adopted by the CAO compliance function is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.²³

As set out in the Terms of Reference (TOR) for this investigation, this compliance investigation considers whether:

- a. IFC exercised due diligence in its review and supervision of the environmental and social risks attached to the project
- b. IFC policies and procedures provide adequate guidance to staff on how to respond effectively to complaints regarding clients' E&S performance; and
- c. IFC policies, procedures and staffing structures as applied to this project provided a robust framework for the advancement of the objectives of the Performance Standards in its client.²⁴

3.2 Methodology

This investigation was conducted by CAO in accordance with its Operational Guidelines (2013), with inputs from an external expert with knowledge of labor issues in the tea sector in India. From February 2014 to April 2016, the investigation team reviewed a range of relevant documentation. A CAO team travelled to India in May 2014 and August 2015. During these visits, the team conducted interviews with IFC management and staff who had direct knowledge of the project. The team also visited the client's tea estates at Hattigor, Majuli and Nahorani, and met with the client's management, the complainants and other stakeholders.

In considering the adequacy of IFC's E&S performance in relation to this project, CAO has been conscious not to expect performance at a level that requires the benefit of hindsight; rather the question in relation to each requirement is whether IFC staff exercised reasonable professional judgment and care in the application of relevant policies and procedures based on sources of information available at the time.

As CAO's compliance mandate is focused on IFC's E&S performance, it should be emphasized that this report does not make findings in relation to APPL, adverse or otherwise.

²³ CAO Operational Guidelines, 2013, para. 4.3.

²⁴ CAO Terms of Reference for compliance investigation of IFC, February 2014. See <http://goo.gl/EL4nzi> (accessed March 22, 2016).

3.3 Applicable Standards

As set out in its Operational Guidelines (2013), CAO oversees investigations of IFC's environmental and social performance, by ensuring compliance with IFC policies, Performance Standards, guidelines, procedures and requirements whose violation might lead to adverse environmental and/or social outcomes (para 4.3).

CAO's compliance appraisal noted a lack of clarity as to whether IFC's handling of this investment should be considered with regard to IFC's pre-2006 safeguard policies or the 2006 Performance Standards (2006).

CAO notes IFC's position that it complied with its E&S requirements in reviewing this project against its pre-2006 safeguards rather than the 2006 Performance Standards.

According to the IFC website, the 2006 Performance Standards apply to "investments that go through IFC's initial credit review process from April 30, 2006." However, the IFC Board Decision approving the Performance Standards (2006) includes a decision that they be effective as of April 30, 2006 without further qualification.

IFC's investment in APPL passed through IFC's initial credit review process on April 26, 2006.

In May 2006, IFC E&S staff carried out a field appraisal for the project. Documentation from the field appraisal noted that the project was reviewed under the pre-2006 safeguard policies. However, IFC's analysis of the investment is against the then-new 2006 Performance Standards. No analysis against the older safeguard requirements is presented.

In June 2006, the project was presented to management noting that it was assessed under IFC's "new" safeguard policies.

IFC's project Environmental and Social Review Summary (ESRS) as disclosed in September 2006 notes that the project was assessed under IFC's E&S safeguard policies. However, the discussion of E&S issues and mitigation measures from the ESRS makes no reference to safeguards policy requirements. Rather it replicates the analysis against the Performance Standards from the field appraisal.

IFC's October 2006 presentation of the project to its Board of Directors is silent as to which E&S standards were applied.

In August 2007, IFC and the client entered into a Shareholders Agreement, though this agreement never became effective, and as a result, did not create any obligations on the parties. While the 2007 Shareholders Agreement includes a commitment that the client would operate in accordance with IFC's safeguard policies, reporting was required in relation to specific 2006 Performance Standards requirements.

In April 2009, IFC and the client entered into a package of agreements including an Amended and Restated Shareholders Agreement and a Subscription Agreement. These agreements became effective when IFC subscribed to shares in the company the same month. The April 2009 agreements reference both safeguards and the Performance Standards requirements, though the client's ongoing E&S obligations are framed in terms of the Performance Standards. Further, the 2009 agreements include reference to the client having prepared a July 2006 social and environmental assessment in accordance with the Performance Standards.

Considering the above, CAO reaches the following conclusions in relation to IFC's application of E&S standards to the project.

Firstly, there is no evidence of an IFC E&S review of the project against the requirements of the pre-2006 safeguards framework. As a result, acceptance of IFC's position that the project was reviewed against the requirements of the pre-2006 framework leads to a finding of noncompliance.

Accordingly, and considering the following: (a) that there is a documented IFC E&S review of the project against the requirements of the 2006 Performance Standards; and (b) the fact that the project was committed and disbursed against the Performance Standards, CAO has analyzed IFC's performance against the requirements of the 2006 Performance Standards framework.

4. Analysis and Findings

This report is structured around the following questions, which address the concerns raised by the complainants and the issues in the investigation TOR:

- 4.1 Whether IFC exercised due diligence in its E&S review of the project
- 4.2 Whether IFC exercised due diligence in its E&S supervision of the project
- 4.3 Whether IFC gave adequate consideration to the application of its E&S requirements in relation to the specific concerns raised by the complainants and the incidents that triggered CAO's initial compliance appraisal, including:
 - a. Living conditions for workers on the client's tea estates;
 - b. Compensation practices;
 - c. Issues related to freedom of association and handling of grievances;
 - d. Risks related to the employment of children on the client's tea estates;
 - e. Risks related to the client's use of pesticides;
 - f. Risks related to the client's approach to security;
 - g. Allegations of economic displacement as a result of the project;
 - h. Application of Performance Standard 7 (Indigenous Peoples) to the project;
 - i. Consultation and disclosure requirements in relation to the share program; and
 - j. Consultation and disclosure requirements more generally.

Each section below outlines the relevant concern raised in the CAO VP compliance process or in the complaint, identifies applicable IFC policies and standards, discusses project performance and reaches findings on compliance.

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

This section addresses IFC's E&S due diligence up to the point at which IFC committed to invest in the project. It considers the adequacy of IFC's appraisal and structuring of its investment in APPL against the general requirements of IFC's Sustainability Policy and Performance Standards (2006).

The pre-investment phase can be separated into two phases: (a) IFC's appraisal and approval of the project (which took place from April to October 2006); and (b) IFC's commitment to the investment (which took place two and half years later in April 2009). The sections below (4.1.1, 4.1.2, and 4.2) refers to the general aspects of IFC's pre-investment due diligence and supervision. The more specific issues raised by the complainants and the incidents that triggered CAO's initial appraisal are dealt with in section 4.3 below.

Summary of Findings

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

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

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

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

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

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

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

4.1.1 Pre-approval E&S review

This section considers the adequacy of IFC's E&S due diligence prior to approval of the project. This includes IFC's identification of and response to the project's E&S risks and impacts.

Requirements

Central to its pre-investment due diligence, IFC performs an E&S review of a potential project that is "appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts."²⁵

IFC "bases its review on the client's Social and Environmental Assessment."²⁶ The E&S Assessment should consider "in an integrated manner...all relevant social and environmental risks and impacts of the project, including the issues identified in Performance Standards 2 through 8, and those who will be affected by such risks and impacts."²⁷ The E&S Assessment should also take into account "applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law..."²⁸ See Appendix B for a summary of relevant policies, standards, guidelines, and procedures.

The E&S Assessment process is required to be based on "current information, including an accurate project description, and appropriate social and environmental baseline data."²⁹ It should be "adequate" (in the context of project E&S risks) as well as "accurate and objective."³⁰ "When the project involves existing business activities, social and/or environmental audits may need to be performed to determine any areas of concern."³¹ As part of the Assessment, the client is required to "identify individuals and groups that may be differentially or disproportionately affected

²⁵ Sustainability Policy (2006), para. 13.

²⁶ Sustainability Policy (2006), para 15.

²⁷ PS 1 (2006), para. 4.

²⁸ PS 1 (2006), para. 4.

²⁹ PS 1 (2006), para. 4.

³⁰ PS 1 (2006), para. 7.

³¹ PS 1 (2006), para. 8.

by the project because of their disadvantaged or vulnerable status...[and] propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them.”³² IFC also considers the commitment and capacity of the client, including its E&S Management System (ESMS), and the role of third parties in assessing the project’s potential to comply with the Performance Standards.³³ For corporate investments, such as this investment, IFC staff are guided to review the E&S performance of a representative set of past projects and assess how they have been handled by the client’s ESMS, and the system’s adequacy to meet the requirements of the Performance Standards.³⁴

Consultation with affected communities should “begin early in the Social and Environmental Assessment process...focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these...be undertaken in a manner that is inclusive and culturally appropriate,” and tailored to the language preferences of the affected communities.³⁵

In cases where the available E&S Assessment does not meet the requirements of Performance Standard 1, IFC requires “the client to undertake additional Assessment or, where appropriate, commission Assessment by external experts.”³⁶

Relevantly, this may include a Labor Assessment in “countries, sectors, or firms where there have been issues with one or more of the requirements of PS2.”³⁷

“Specific mitigation measures and actions necessary for the project...to meet the requirements of Performance Standards 1 through 8” are identified in an E&S Action Plan (ESAP). These measures and actions “reflect the outcomes of consultation” with affected communities on the E&S risks and adverse impacts and the proposed measures and actions to address these issues.³⁸

In cases where there are “significant historical social or environmental impacts associated with the project, including those caused by others,” IFC is also committed to working with the client “to determine possible remediation measures.”³⁹

Establishing the threshold for investment, IFC commits not to finance new business activity if it “cannot be expected to meet the Performance Standards over a reasonable period of time.”⁴⁰

IFC Actions

In disclosing this project, IFC noted that IFC sought to support “an innovative business model in an industry facing a challenging situation.” The project was expected to lead to: i) increased sustainability of the tea estates operations; ii) preservation of over 30,000 jobs and the creation

³² PS 1 (2006), para. 12.

³³ Sustainability Policy (2006), para 15.

³⁴ IFC E&S Review Procedures (April 30, 2006), 3.2.8. Available at <http://goo.gl/AzJYGx> (accessed July 22, 2016)

³⁵ PS1 (2006), para. 21.

³⁶ Sustainability Policy (2006), para. 15.

³⁷ IFC PS2 Guidance Notes, G4. IFC provides further guidance that “clients should engage with workers and representatives of workers’ organizations” in the preparation of a Labor Assessment.

³⁸ PS1 (2006), para. 16.

³⁹ Sustainability Policy (2006), para. 13.

⁴⁰ Sustainability Policy (2006), para 17.

of additional jobs in the alternative crop sector; iii) increased business for small holders that supply green leaf to the client; and iv) providing leadership in initiating change in the industry.⁴¹

IFC disclosed an Environmental and Social Review Summary (ESRS) for the project on September 11, 2006.⁴² IFC's disclosure was similar in detail and content as the version included in an internal report that documented IFC's E&S appraisal, as prepared by E&S staff responsible for the project. In disclosing the project, IFC noted that "the Company will make copies of the ESRS available, in English, Hindi and Assamese, at publicly accessible locations in and around the tea estates."⁴³

The ESRS notes that this is a category B project "because a limited number of specific environmental and social impacts may result which can be avoided or mitigated by adhering to generally recognized performance standards, guidelines or design criteria."⁴⁴

A range of E&S and health and safety issues are discussed in the ESRS. Relevant issues include:

- Handling and management of agrochemicals.
- Hygiene, fire and life safety, and emergency response at processing facilities.
- Labor management practices, including child labor, in the company and its supply chain.
- Workplace and community health and safety.

The ESRS notes that IFC E&S staff assessed the client's "technical, environmental, employment terms and social information," met with the client's management in Guwahati, India, and visited three tea estates. The length of the E&S appraisal mission was two days, including meetings with client management in Guwahati and the visits to the estates. While the ESRS provides a list of the client's managers IFC interviewed during its appraisal mission, there is no record of IFC staff meeting with employees, union representatives or any other stakeholders.

The ESRS provides limited information in relation to the client's E&S management system, noting that the "Tata Group is recognized internationally as a leader in progressive environmental, social responsibility and occupational health and safety initiatives, all of which are well established within [the client]."⁴⁵ The ESRS further notes that the client was in the process of obtaining SA 8000⁴⁶ and Ethical Tea Partnership⁴⁷ (ETP) "certification" for its tea estates.⁴⁸

⁴¹ IFC (2006a).

⁴² IFC (2006b).

⁴³ IFC (2006b).

⁴⁴ IFC (2006b).

⁴⁵ IFC (2006b).

⁴⁶ Social Accountability (SA) 8000 is voluntary certification standard for acceptable practices in the workplace. It is an audit standard that is based on the UN Declaration of Human Rights, conventions of the International Labour Organization, international human rights norms, and national labor law. See <http://goo.gl/3aAUYj> (accessed January 19, 2015).

⁴⁷ As noted in IFC's disclosure, Ethical Tea Partnership is a United Kingdom-based organization that works with producers with the aim of ensuring responsible tea production and ethical trading of tea. For details, see <http://goo.gl/uNMnp> (accessed January 19, 2015).

⁴⁸ IFC refers to the client as being in the process of "obtaining certification" of all its estates by ETP. However, CAO notes that while ETP has a monitoring process, it does not certify plantations. See <http://goo.gl/StcY6U> (accessed May 10, 2016).

IFC’s disclosure included an ESAP (see Table 4.1), which its client would be required to implement as a condition of IFC’s investment. Other than the material in the ESRS and the ESAP, IFC did not disclose any other client E&S assessment documentation.⁴⁹

Table 4.1 Client ESAP as Disclosed by IFC⁵⁰

| Action | Deadline |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Provide IFC with copies of all government permits and No Objection Certificates required to establish and operate the proposed project | Prior to first disbursement |
| Confirm in writing that new procedures and employee training for handling, storing, and applying chemicals have been implemented, and submit copies of new procedures and training materials | Prior to first disbursement |
| Provide list of persons trained, and schedule for future training for new hires, etc. | Within three months of first disbursement |
| Identify additional options for reducing water consumption, improving energy efficiency and utilizing cleaner energy sources throughout the estates | Within three months of first disbursement |
| Commence annual audit of its hazardous waste generation and disposal procedures and volumes | Within three months of first disbursement |

Discussion and Findings

IFC’s investment in APPL was a challenging one, but one with potential for significant development impact. The development impact emerged from the opportunity of piloting a new ownership model with a client whose business directly supported over 155,000 people, comprising of 30,000 low-income workers and their families, in poor, remote—and in some instances, conflict-prone—areas of India. This same context, however, gave rise to a series of E&S risks. The client’s business was geographically disbursed, covering 24 tea estates in two states. The client was responsible not only for working conditions on its estates but also for providing housing, education, health care, water, sanitation and basic rations to workers and their families. Further, the workers were particularly vulnerable due to their status as ethnic minorities whose forbearers were brought to the estates as bonded or forced labor. As noted in Section 2, workers have low levels of education, limited opportunities for alternative skill formation and a tendency to transfer a permanent job through the family across multiple generations which has resulted in workers being highly dependent on their employers and having limited avenues for economic mobility. At the same time, low productivity and large fixed costs were acknowledged by IFC as threatening the labor-intensive estate-based model of tea production in northeast India.

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

Rather, CAO finds that IFC’s E&S review lacked coverage and depth in relation to key issues. Having spent less than two days on the client’s estates, and having reviewed no preexisting assessment, audit, or baseline data, it was not possible for IFC staff to understand the range of E&S risks associated with its client’s business.

⁴⁹ Relevant to the issues considered in this report, client E&S documentation reviewed by IFC but not disclosed publicly included: (a) a three-page Environmental and Social Management Framework; (b) a one-page summary of the ETP process; (c) a one-page summary of the SA 8000 process; (d) a one-page document entitled “Monitoring of Pesticide Residue (MRL) in Packed Teas;” and (e) a one-page table entitled “Utilization of Fuel and Inorganic Chemicals and Fertilizers in 2005–6.”

⁵⁰ IFC (2006b).

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

Given known regulatory compliance issues in relation to the tea sector, an accurate, adequate and objective assessment of the client's performance (as required by PS1) would have required review of a pre-investment labor assessment or audit covering living and working conditions on the client's plantations.

Instead of conducting the required review based on a client E&S Assessment in accordance with PS1, CAO finds that IFC's appraisal relied significantly on the Tata Group's good reputation and the client's commitment to obtain SA8000 and Ethical Tea Partnership (ETP) certification for its plantations. An analysis of whether the client's intention to meet SA8000 and ETP standards provided reasonable assurance of compliance with the range of relevant Performance Standards requirements was absent.

Considering the following: (a) the range of social risks that the project presented (including conflict, labor, security, occupational safety and health, and community health and safety, and potentially, risks related to Indigenous Peoples); (b) the scarcity of available baseline information on these risks; (c) the contextual challenges associated with the sector and region; and (d) the lack of objective analysis of the client's E&S management capacity to implement IFC's requirements across its tea estates, CAO finds that IFC incorrectly concluded that the investment had a limited number of specific E&S impacts that could be readily addressed through standard mitigation measures (the requirement for a Category B project).

Shortcomings in IFC's E&S review, combined with an underassessment of risk, led to the development of an ESAP that was insufficiently detailed and did not address key risk areas. As a result, IFC did not have a basis to conclude that this project could meet the requirements of the Performance Standards. This is the threshold requirement for an IFC investment.

4.1.2 Approval to Commitment

This section considers IFC's handling of E&S risks associated with the project during the period between Board approval of the project (November 2006), and the date when IFC signed the investment agreement, thus legally committing to the project (April 2009).

Requirements

Before committing to a project, IFC investment staff are required to seek management approval.⁵¹ Where there are material changes to the investment following Board approval, IFC investment staff consult with the relevant credit officer to determine the impact of the changes on the creditworthiness of the project and seek their clearance before requesting management approval for commitment. Director-level approval of commitment is generally sufficient; however, if a period of over one year has passed since Board approval, approval at the level of IFC Vice President is required. Consultation with E&S staff is not required at this point.

Neither IFC's Sustainability Policy nor its ESRP provide guidance to E&S staff on actions to be taken to ensure that their knowledge of client E&S issues remains up to date between the time of

⁵¹ IFC Operational Procedures (April 2009), XII.2.

appraisal of and commitment to a project. IFC's E&S monitoring role commences only upon disbursement. Similarly, a client's reporting obligations to IFC commence upon first disbursement of the investment.⁵²

IFC Actions

In requesting senior management approval for IFC to commit to the project in April 2009, IFC staff noted that there had been no material adverse changes to the project since Board approval. This statement related to the client's financial performance, which the team had been following closely. As a result, it was determined that a reappraisal of the project was not required. IFC's request for approval to commit did not contain any updates on E&S issues.

Discussion and Findings

There is clear potential for E&S risks associated with a business to change over time. This is true in the period between IFC approval and commitment to an investment. While the period is generally short, in the case of IFC's investment in APPL, two and a half years elapsed.

A review of IFC's documentation during this period does not reveal any monitoring of the client by IFC or any reporting by the client to IFC on E&S issues. As a result, at commitment, IFC did not have a basis to conclude that the E&S information that it gathered at appraisal was current.

A review of publicly available information reveals a number of potentially significant incidents in the period between approval and commitment. Specifically, these are the following:

- In March 2007, the client locked out workers at its Borjan tea estate in Assam. As reported in the media, this incident led to the wounding of eight tea plantation workers, including a 10-year-old boy, when police opened fire. The protests are reported as being directly related to the share program that IFC was supporting.⁵³
- In September 2007, the client locked out workers at its Dim Dam tea estate, following a protest over working conditions.⁵⁴
- Between October 2006 and April 2009, a review of Indian Tea Association records reveals a further 30 reports of incidents of varying severity involving the client.
- More generally in relation to the tea sector in Assam, in November 2007, one person was killed and 260 injured in protests. The protests related to demands for recognition as Scheduled Tribes under Indian law by Adivasi populations from tea plantations.^{55,56}

⁵² IFC Sustainability Policy (2006), para. 26.

⁵³ Reuters (March 20 2007), "Indian tea workers wounded in Tata Tea protests." See <http://goo.gl/BNnYPv> (accessed March 23, 2015— subscription required). This incident was also discussed in TGB's Annual Report, Tata Tea Annual Report 2006/2007. For further details, see <http://goo.gl/KScbYL> (accessed February 4, 2015).

⁵⁴ The Hindu Business Line (September 6, 2007), "Dam Dim Tea Estate management forced to declare lock-out." See <http://goo.gl/46glSu> (accessed March 23, 2015).

⁵⁵ The Hindu (November 27, 2007), "Sporadic violence mars Assam bandh." See <http://goo.gl/XU8QZJ> (accessed March 23, 2015).

⁵⁶ The term "Scheduled Tribe" was introduced in the Constitution of India. Communities that are designated Scheduled Tribes are afforded special provisions for educational and economic interests. The essential characteristics of a Scheduled Tribe consist of: (a) "indications of primitive traits;" (b) "distinctive culture;" (c) "shyness of contact with the community at large;" (d) "geographical isolation;" and (e) "backwardness." The President of India declares which communities in a state are to be considered a Scheduled Tribe. For further details, see Indian Ministry of Tribal Affairs, <http://goo.gl/qwLAIE> (accessed March 22, 2016).

CAO also notes that when the project was approved, IFC expected the client to attain SA 8000 and ETP certification for all estates by the end of 2007. IFC did not obtain an update on the status of the client's progress against this goal prior to committing to the project. In fact, the client did not obtain SA8000 certification until 2011.⁵⁷

IFC did not ensure that the information it presented at approval was still current at the point of commitment. CAO notes that IFC's policies and procedures make no provision for staff to seek updated E&S information between appraisal and commitment. This compounds CAO's concerns regarding the robustness of IFC's pre-investment E&S review. Of relevance beyond the APPL investment, CAO notes that IFC's E&S procedures have a gap between appraisal and commitment, during which time IFC's responsibility for remaining abreast of developments in the E&S risk profile of its client is unclear. The existence of such a gap is problematic, particularly if the time between appraisal and commitment is lengthy, or if there are important developments in the E&S risk profile of the client during this time.

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

This section addresses IFC's supervision of the project from the time of disbursement to the time of writing of the current report.

The supervision phase can be broken into two stages: IFC's initial disbursement to the client (which took place in April 2009); and IFC's general supervision of the investment from that point on. These aspects of project supervision are dealt with in general terms below. The more specific issues raised by the complainants and the incidents that triggered CAO's initial appraisal are dealt with in section 4.3.

Summary of Findings

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

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

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

4.2.1 First disbursement

This section considers whether IFC's first disbursement to the client was cleared on the basis of information demonstrating that the E&S conditions of disbursement (COD) were met.

⁵⁷ The SA8000 Certification list is available at <http://goo.gl/7zqFlf> (accessed February 16, 2016). CAO notes that ETP is not a certification program. As a result ETP certification could not be obtained.

Requirements

After IFC commits to an investment, the relevant IFC E&S specialist is required to obtain sufficient information to determine the status of any E&S COD. Based on this review, the E&S specialist informs IFC investment staff if any of the COD have not been meet.⁵⁸

IFC's investment agreement with its client incorporated standard E&S conditions for all disbursements. These included a requirement that the client be in compliance with all applicable environmental, health, and fire and life safety legislation and standards of the country, as well as IFC's Performance Standards. The specific COD included in the disclosed ESAP (see section 4.2.1) were not included as COD in the investment agreement.

IFC Actions

IFC received a request for disbursement on April 20, 2009. In making the request, the client certified that it had met the general E&S COD as set out in the investment agreement. IFC management cleared the disbursement three days later, noting that the E&S COD were fulfilled.

Discussion and Findings

Two compliance issues arise in terms of IFC's processing of the April 2009 disbursement. First, COD agreed with the client and disclosed publicly in the ESAP were not included as CODs in the investment agreement. Given later events, those of particular relevance included requirements in relation to handling and storage of chemicals. Second, IFC E&S staff were not involved in the clearance of the E&S COD, contrary to the requirements of the ESRP. An underlying concern noted in previous CAO compliance cases, exists where IFC E&S staff, in contrast to legal, insurance, and credit specialists, are not included in the process for electronic approval off the disbursement. As observed in this case, this enables a situation whereby funds are disbursed without clearance of E&S COD.

4.2.2 General supervision

This section covers IFC's supervision of the investment from first disbursement to the time of writing of the current report.. It considers whether IFC obtained sufficient information to assess the status of the project's compliance with the Performance Standards and other E&S requirements agreed at commitment. It also considers whether IFC took action to ensure that the root causes of serious incidents reported in relation to the client's business were analyzed and addressed.

Requirements

IFC is required to monitor the client's E&S performance throughout the life of an investment. While the language used to describe IFC's supervision obligations has evolved since 2009, the essence of the requirements remains the same. Project supervision is conducted on the basis of site visits and annual monitoring reports (AMR) submitted by the client. IFC is required to develop and retain information needed to assess the status of the client's compliance with the Performance Standards and other project-related E&S requirements. If serious incidents occur, including fatalities, IFC should request that the client investigate root causes of the incidents, and identify actions to be implemented to prevent recurrence. If a client fails to comply with its E&S commitments, IFC's works with the client to bring it back into compliance. If material compliance

⁵⁸ IFC ESRP (v3, 2009), para. 6.2.2.

gaps are identified, supplemental corrective actions should be agreed. If the client fails to reestablish compliance, IFC exercises remedies as appropriate.⁵⁹

IFC supervision requirements are linked to client requirements to establish a Management Program that is commensurate to the project risks and impacts.⁶⁰ As defined by PS1, the client's Management Program should ensure that sufficient human and financial resources are provided to "achieve effective and continuous social and environmental performance."⁶¹ The Management Program should allow monitoring of client compliance against IFC and applicable legal requirements and include measurable indicators of performance that are the subject of "systematic data collection and analysis."⁶² Where mitigation measures and actions are identified as necessary for the project to comply with E&S requirements, the client should develop time-bound Action Plans. The Management Program should also support ongoing consultation and disclosure with project-affected communities.⁶³

In the case of serious incidents or fatalities linked to a project, the client is required to inform IFC within three days of the incident and the ESRPs provide that IFC will "follow up with the client to ensure that the root cause of the incident is being investigated and appropriate corrective action is taken to prevent recurrence."⁶⁴

Key Developments during Supervision

Incident One: Nowera Nuddy Estate (August 2009)

On August 11, 2009, IFC received notification from its client regarding a labor disruption at its Nowera Nuddy estate. The notification stated that on August 9, 2009, a pregnant woman had collapsed in the tea estate. The client asserted that while the tea worker was pregnant, she was not at a late stage of pregnancy, and was working at her own will. In response, the client advised IFC that a group of workers, and potentially some individuals from outside the tea estate, had attacked the tea estate doctor and allegedly detained the doctor for a number of hours until law enforcement agencies intervened. Following this incident, the client notified IFC that it had initiated a lockout of the estate, with workers receiving part of their food rations, but no pay.

IFC was informed by the client that, Nowera Nuddy reopened on August 28, 2009, following a series of meetings between the client, two unions and local government, after the client's principal conditions—loss of pay to all workers during the lockout period and disciplinary action against offenders with a promise of good behavior going forward—were met. On September 14, 2009, however, IFC received notification from its client that it had initiated a second lockout after workers, who had been suspended since the first lockout, insisted on coming to work. The client's position was that workers would not receive any benefits, pay or rations during the period of suspension. In November 2009, IFC was informed by its client that prior to the second lockout, an unrecognized trade union had organized a petition signed by over 600 (of 900) workers at the estate refuting the conditions upon which the tea estate had reopened on August 28.

⁵⁹ IFC Sustainability Policy (2006), ESRP 5 (Managing Eventualities in Investment Projects) and ESRP 6 (Direct Investments: Supervision).

⁶⁰ PS1 (2006), para. 14.

⁶¹ PS1 (2006), para. 17.

⁶² PS1 (2006), paras. 14 & 25.

⁶³ PS1 (2006), paras. 16, 19–23 and 26.

⁶⁴ IFC ESRP5 (v4, 2009).

In November 2009, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) launched an international campaign in support of the workers at Nowera Nuddy.⁶⁵ Work resumed at Nowera Nuddy on December 12, 2009, three months after the second lockout was initiated.

IFC review of client Annual Monitoring Report 2008/2009 (January 2010)

IFC received the client's 2008/2009 AMR in June 2009. IFC completed its review of the AMR in January 2010, six months after the expected due date for the review.⁶⁶ In its review, IFC noted that the client had not provided information on the status of its ESAP implementation and thus IFC decided that it was not in a position to determine compliance with at-approval requirements. IFC requested that its client provide further information on labor and working conditions, ESAP implementation and its progress on achieving ISO 22000⁶⁷ and SA 8000 certification. Neither IFC's AMR Review nor other contemporaneous IFC supervision documentation discuss the incident or the subsequent lockout at Nowera Nuddy. At this time, IFC assigned the project an E&S Risk Rating (ESRR) of 2: Satisfactory.⁶⁸

Incident Two: Powai Estate (May 2010)

On May 30, 2010, the client advised IFC of the death of a worker (Gopal Tanti) at its Powai tea estate in Assam two days previously. As reported by workers, Tanti had collapsed and died suddenly in the course of his work as a pesticide sprayer, a task for which he was allegedly not provided with protective equipment.⁶⁹ This event led to a protest the same evening and a clash with police. As a result, two protesters were shot dead and up to 18 others were injured. IFC was informed by the client that the two protestors who were killed were not employees.

As subsequently reported to IFC, the postmortem of Gopal Tanti was inconclusive in terms of the cause of the worker's death, though possibly indicated drowning. While a lockout was not declared, workers did not report to work the following day. In an update received on June 5, 2010, the client advised IFC that Powai workers resumed normal duties on June 2, 2010, having remained absent from May 29 to June 1.

In its internal supervision documentation, IFC noted that the incident at Powai was indicative of sensitive working conditions on the tea estates.

U.S. Government query (August 2010)

In August 2010, IFC responded to an inquiry from United States government officials regarding potential human rights abuses against workers on the client's plantations. As a result, IFC noted that the issue was escalated to IFC and client senior management.⁷⁰

⁶⁵ For further details, see IUF's website, <http://goo.gl/kfl3z9> (accessed January 26, 2015).

⁶⁶ APPL's fiscal year is from April 1 to March 31. The client is required to submit an AMR to IFC within three months of the end of its fiscal year (by June 30).

⁶⁷ International Organization for Standards (ISO) 22000 sets out requirements for food safety management systems. For further details, see <http://goo.gl/Z8uAy1> (accessed January 27, 2015).

⁶⁸ Upon reviewing a client's AMR or completion of a site supervision visit, IFC assigns the project an ESRR on a four-point scale: 1 (Excellent), 2 (Satisfactory), 3 (Partly Unsatisfactory), and 4 (Unsatisfactory). According to IFC's definitions, an ESRR of 2 is assigned to a client that is in "material compliance with IFC's SEMS [Social and Environmental Management System] requirements" or is on schedule in the implementation of an Action Plan as agreed (IFC ESRD database).

⁶⁹ IUF (October 2010) In Cold Blood: Death by Poison, Death by Bullets. See <http://goo.gl/BQLe9J> (accessed May 9, 2016).

⁷⁰ IFC (no date), *Information on IFC's Work with APPL to Improve Working and Living Conditions*, and other statements.

IFC supervision visit (September 2010)

IFC staff conducted a site supervision visit (SSV) to five tea estates and met with the client's management in September 2010. In addition to regular E&S supervision, the purpose of the visit was to investigate allegations of human rights abuses that had been raised by IUF and subsequently by United States government officials.

In reporting to management, IFC staff who went on the field visit concluded that the client's tea estates were well managed, the client was complying with all relevant IFC Performance Standards and applicable local requirements, and there was no evidence of human rights abuse. In addition, they reported that a combination of oversight from local authorities and active labor unions ensured that it was not possible for any tea estate—especially a high-profile operator like a Tata Group company—to deny labor rights or benefits to their workers or to use force against them.

The IFC Back to Office Report (BTOR) from the supervision visit discusses Incident One (which took place at Nowera Nuddy estate in August 2009) based on information provided by the client's management and without having conducted a visit to that estate due to security concerns. The incident is described as an isolated case of labor unrest that was blown out of proportion because of a power struggle between competing labor unions. With the exception of Nowera Nuddy, the client's other estates were described as having experienced smooth operations. Overall, IFC found the client to be in compliance with relevant IFC requirements. While IFC staff visited Powai estate, the BTOR does not discuss the May 2010 incident which took place at Powai (see above) or any follow-up actions in response to it.

In this context, CAO notes IUF's allegation that IFC's site visit was "poorly executed," with workers not given advance notice and being interviewed only in the presence of client management, who acted as interpreters for IFC.⁷¹

Following the site visit, IFC discussed the possibility of facilitating a review of the client's approach to worker health and safety, as well as a review of the share program.

IUF report on the Powai incident (October 2010)

On October 1, 2010, IUF released a report regarding the Powai incident, alleging the existence of human rights violations at the estate. Additionally, the report alleges that, by agreement with the local government and employers, the Assam Cha Mazdoor Sangha (ACMS) is the only recognized trade union on the tea plantations, and that "this situation effectively denies the tea workers in Assam freedom of association."⁷²

IFC review of client Annual Monitoring Report 2009/2010 (November 2010)

In November 2010, IFC completed a combined 2009/2010 AMR Review and BTOR in relation to its September 2010 site supervision visit. IFC's review noted similar findings as contained in IFC's staff report to management (September 2010), which is annexed to the BTOR.

IFC reported that the client received ISO 22000 certification for four tea estates and was working towards SA 8000 certification for all estates. IFC identified chemical exposure for pesticide

⁷¹ ITUC 2011.

⁷² For further details, see <http://goo.gl/a4Qelj> (accessed January 27, 2015). The IUF report is available at <http://goo.gl/3xVPvI> (accessed January 27, 2015).

workers, labor issues and reputational risks as key E&S issues to be examined during future supervision activities. IFC assigned the investment an ESRR of 3 (Partly Unsatisfactory).

IUF complaint to IFC (January 2011)

On January 24, 2011, IUF submitted a complaint to IFC regarding the Nowera Nuddy incident alleging a number of violations by the client of PS2 requirements and applicable national law. Further, the complaint raises concerns about the adequacy of the client's mechanism for handling grievances from workers.

In response to IUF on April 5, 2011, IFC provided an account of the Nowera Nuddy incident and noted that from its supervision activity, IFC did not find any evidence of violation of applicable labor regulations or PS2 requirements. Further, IFC noted that grievance mechanisms existed at each plantation and that labor unions played a significant role in bringing forward workers' grievances.

At the same time, IFC's internal supervision documentation noted that worker-management relations at Nowera Nuddy were tense and that a go-slow protest was in progress. IFC noted its client's assertions that this disruption was due to the influence of a new labor union.

IUF settlement with APPL Management (May 2011)

After a series of meetings with APPL management, APPL reported to IFC in May 2011 that it had come to an agreement with the IUF to resolve outstanding labor grievances at Nowera Nuddy following the August 2009 incident.⁷³

IFC's quarterly report to management on the project noted the Nowera Nuddy agreement and further noted that issues around the Powai incident remained unresolved.

Third-party OHS audit (July 2011)

In July 2011, IFC received a third-party occupational health and safety (OHS) audit of the client's tea plantations and tea processing factories at eight estates. The audit was commissioned and financed by IFC. The audit reviewed the client's performance against the requirements of PS1 (management system); PS2 (OHS requirements); PS4 (community health and safety, and security personnel requirements, as well as IFC Environmental, Health, and Safety (EHS) Guidelines as they related to OHS; Indian legal requirements as related to OHS; and international good practices for OHS.

The audit noted that the client was in general compliance with the requirements of state factory rules and statutory OHS requirements for nursery, plucking, transportation and receipt of leaves in the factory.

However, the audit also made a number of critical findings regarding the client's OHS performance, namely, that the client: (a) needed to implement a system for identification, evaluation and mitigation of hazards; (b) lacked structured OHS induction training for new recruits; (c) needed to improve use of personal protective equipment (PPE) by employees engaged in spraying hazardous chemicals and those employed in plucking leaves; and (d) lacked a policy for recruitment of security personnel in line with the requirements of PS4. Further, on the tea estates visited, the audit found that formal awareness of OHS management systems was lacking. While

⁷³ For further details, see <http://goo.gl/Sfzq1> (accessed January 27, 2015).

the audit noted that a system existed for reporting incidents, it found that the client had no system in place to ensure that the root causes of incidents were identified.

The audit also noted that all estates had an attached hospital managed by a registered medical practitioner and an adequate number of certified and trained paramedical staff.⁷⁴ A separate review of six estate hospitals, commissioned by the client and presented to its Board at this time, however, presented a highly critical assessment of a number of the hospitals, noting unacceptable standards of sanitation and health care delivery.⁷⁵

While the audit outlined recommendations and areas for improvement, no Action Plan was agreed between IFC and the client as a consequence. Subsequently, however, the client decided to commission OHS audits for the eight additional tea estates.

IFC meeting with the client's management (November 2011)

IFC met with the client's management in November 2011 to discuss labor issues and outcomes of the OHS audits. At this point, the client informed IFC that it had decided to commission OHS audits at eight additional tea estates and requested IFC's assistance in training client's management on OHS and E&S issues.

Incident Three: Borhat Estate (December 2011)

On December 28, 2011, a 55-year-old tea worker was brought dead to the tea estate medical facility, having been discharged earlier from a referral hospital. This event led to protests the same evening and a clash between a group of tea workers, management and the police. As reported by the client to IFC, management left the tea estate under police escort after their homes and facilities were attacked. Management initiated a lockout of the tea estate on December 29, 2011. In reporting the incident to IFC, the client noted that the incident occurred due to a lack of leadership among workers on the tea estate. Further, the client noted that the ACMS trade union had no presence on the tea estate and that another organization had a strong presence. Client management lifted the lockout on February 3, 2012, after meetings with worker representatives.⁷⁶

IFC's internal supervision documentation noted the Borhat incident, indicating that IFC discussed the issue with the client. IFC further notes that these types of incidents are possible in a labor-intensive industry, particularly in a politically restive region. In order to prevent recurrence, IFC staff noted the client's approach, which included (a) initiating legal and disciplinary action against the instigators of violence, and (b) increasing interaction and communication with labor unions.

IFC summary report on recent supervision activity (June 2012)

In June 2012, IFC prepared a Supervision Report summarizing the labor issues and outcomes of the OHS audit. The report noted that IFC E&S management proposed to raise concerns related to this project with IFC regional management. IFC assigned the investment an ESRR of 3 (Partly Unsatisfactory) and noted IFC's E&S engagement with the client on ongoing labor issues. It further noted that external stakeholders' attention raised significant E&S and reputational risk.

⁷⁴ IFC-commissioned Third Party Audit, July 2011.

⁷⁵ Review of six tea estate hospitals commissioned by APPL Board, July 2011.

⁷⁶ *The Telegraph* (India) (February 3, 2012), "Tea estate lockout lifted after 34 days."

IFC review of client Annual Monitoring Report 2010/2011 (August 2012)

In August 2012, IFC completed its review of its client's AMR for 2010/2011, which was received by IFC on time in June 2011. IFC's review noted recent supervision activity and provided a favorable summary of the client's performance, while noting a number of information gaps in its AMR. IFC's review noted the client's assertion of compliance with all applicable local regulatory requirements and the PS, and upgraded the investment to ESRR 2 (Satisfactory).

IFC input to CAO compliance-triggered appraisal (September 2012)

Responding to questions from CAO as part of the compliance appraisal process, IFC advised that:

- a. India's Plantation Labor Act (PLA) covers all key IFC E&S requirements and that these are rigorously monitored and enforced by relevant government authorities with intense oversight from multiple (and powerful) labor unions.
- b. Most of the plantations have more than one trade union—all of which are very active—and that, as a result, workers have a strong and formal voice.
- c. There are regular external reviews and audits of the plantations, given the client's certification by ETP and SA8000.

As a result, IFC noted its view that the client was in compliance with all applicable local regulatory and IFC E&S requirements.

IFC review of client Annual Monitoring Report 2011/2012 (July 2013)

IFC received its client's 2011/2012 AMR in January 2013 (due June 30, 2012). IFC staff also visited two tea estates and met with the management in March 2013. During the visit to the tea estates, IFC staff visited workers' housing.

In July 2013, IFC completed a combined 2011/2012 AMR Review and BTOR for the field visit. IFC's overall conclusion was that the project was in compliance with PS requirements. Housing was described as being rudimentary, in accordance with local culture and lifestyle, though built strictly in accordance with regulatory requirements and maintained as per schedule, as well as in response to any complaints received. Water and sanitation issues were noted as being in need of improvement. This was described partly as a "cultural/lifestyle issue," but also as something that the company should upgrade.

Regarding its client's grievance mechanisms, IFC noted that information was provided for only 11 of the 24 tea estates. Based on this information, IFC concluded that each estate has a different approach to handling worker grievances and that a company-level mechanism was lacking. IFC downgraded the investment to ESRR 3 (Partly Unsatisfactory).

IFC site supervision visit (July/August 2013)

IFC staff conducted site supervision visits to the client's office and three tea estates in July/August 2013. The purpose of these visits was to evaluate its client's E&S Management Program (ESMP), in particular, issues related to working conditions, OHS, and the concerns raised in complaints to CAO. The report notes that IFC staff visited the three plantations named in the CAO complaint and met with representatives of the NGOs representing the complainants.

IFC's report from the site visits described discussions with client management in relation to its ESMP and notes certifications including ISO22000 (Food Safety) and SA8000 (Social Accountability).⁷⁷

IFC also reported a range of challenges identified by the client in relation to ESMP implementation. These include managing the multitude of requirements (ISO 22000, SA 8000, Ethical Tea Partnership, Rain Forest Alliance certification,⁷⁸ and IFC PS), each of which involves periodic internal and external audits, coupled with limited management capacity at each tea estate. The outcome was described as inconsistent application of the standards. This challenge is further compounded, the report noted, by the large scale of the client's operations, workers' distinct sociocultural characteristics, lack of employment of workers from outside the tea estate structure, low literacy levels among workers, and the traditional nature of this industry, which includes deeply ingrained traditional command structures. Additionally, the report noted that IFC and the client discussed the adequacy of grievance mechanisms, procedures for handling and responding to findings of internal and external audits, the development of a Personal Protective Equipment matrix, and the use of World Health Organization (WHO) Class Ib and Class II pesticides.⁷⁹

To overcome these challenges, the report noted that the client had identified a number of objectives, including: integrating different management systems and eliminating overlapping requirements; seeking expert advice on interpretation of standards; providing greater detail on implementing standards and requirements; establishing a core team at the corporate level to oversee implementation and provide advice to individual tea estates; establishing a pool of internal auditors; training employees through tailored programs; and developing a comprehensive communication strategy.⁸⁰ These measures were recorded in an Action Plan, though this was not time bound or costed. As explained by IFC, timelines for implementation were expected to be finalized upon the appointment of an expert advisor by the client.

IFC Rights Issue (January 2014)

In January 2014, immediately before the conversion of the workers preference shares into ordinary equity, IFC agreed to participate in an equity rights issue for ordinary equity holders. The IFC investment team recommended IFC's participation in the rights issue, as the investment outlook for the client remained strong and the Rights Issue price was significantly discounted vis-à-vis current valuations of the company. Issues relating to the rights issue are discussed further in section 4.3.

⁷⁷ The client achieved SA8000 certification for all of its workplaces in 2011. See <http://goo.gl/sRS0PZ> (accessed May 10, 2016). All of the client's estates were recertified in 2015.

⁷⁸ For further details on Rain Forest Alliance certification, see <http://goo.gl/k4egYc> (accessed August 30, 2016).

⁷⁹ As per IFC PS3, a "client will not use products that fall in World Health Organization Recommended Classification of Pesticides by Hazard Classes Ia (extremely hazardous) and Ib (highly hazardous); or Class II (moderately hazardous), if the project host country lacks restrictions on distribution and use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply, and dispose of these products properly" (PS3, para. 15).

⁸⁰ A summary of this approach was subsequently disclosed by IFC. For further details, see <http://goo.gl/8A9331> (accessed December 10, 2015).

IFC One Minute Brief (January 2014)

On January 31, 2014, IFC prepared a One Minute Brief⁸¹ in advance of the publication by Columbia Law School of a report on living and working conditions on APPL's tea plantation.⁸²

The brief noted that the Columbia Law School report alleges that the living and working conditions on the client's plantations were extremely poor, that freedom of association was lacking, and that deception and coercion were used in the roll-out of the employee stock option plan.

As background to IFC's investment, the brief noted that labor disturbances had been a common occurrence in northeast India, a low-income region of India with a history of violence. Further, the brief stated that: "Inadequate implementation of the PLA is a systemic problem amongst tea plantations across India." At the same time, the brief noted that its client was considered to be among the better performers in the tea sector in India and was compliant with the Ethical Tea Partnership, Tata Group and SA8000 standards.

IFC updated this One Minute Brief in March, following the release of a documentary film by The Guardian News and Media (UK).⁸³ The updated brief noted that IFC had escalated the matter to the office of the Tata Group Chairman, who was scheduled to meet with the World Bank President. Further, the brief noted that the client commissioned an independent social audit of its tea estates.

As a result of the Columbia Law School report and the Guardian documentary, IFC provided advice to the client in drafting a communications strategy.

IFC response to Columbia Law School report

In response to the Columbia Law School report, IFC released a statement noting that the challenges in the tea sector "are well known" and that "poverty is deeply entrenched" across Assam and other tea plantation areas. IFC stated that it chose to partner with APPL in this project because APPL had adopted strong E&S sustainability standards.

IFC also noted that it agreed with the Columbia Law School report's contention that "the weaknesses of SA8000 relate not so much to the standards themselves as to their implementation" and that effective implementation of an SA8000-certified Management System would address the key findings of the report.⁸⁴

At the same time, IFC acknowledged that "there is more to be done to address living conditions and poverty at APPL and throughout the tea industry" and that "plantation workers live a fragile, tenuous existence with few opportunities for economic advancement."⁸⁵

A summary of the Columbia Law School report is presented in Appendix C.

⁸¹ An IFC One Minute Brief is an internal document prepared by the IFC project team and communication team for senior management. The brief provides a synopsis of key developments in a project or outlines potential reputational risk to IFC.

⁸² Columbia Law School 2014.

⁸³ Guardian News and Media, March 2014. *India's tea firms urged to act on slave trafficking after girls freed*. For further details, see <http://goo.gl/G3nzYG> (accessed November 25, 2015).

⁸⁴ IFC (no date).

⁸⁵ IFC (no date).

IFC review of client Annual Monitoring Report 2012/2013 (June 2014)

IFC completed a combined 2012/2013 AMR Review and BTOR for the project on June 10, 2014. IFC received its client's 2012/2013 AMR in February 2014 (due June 30, 2013) and IFC staff met with its client's senior management in April 2014. IFC's report noted that its client had enhanced and targeted efforts to improve living conditions, strengthened its grievance mechanism and addressed concerns raised by stakeholders. Further, IFC noted that the client has hired a third party to support the client's implementation of a system-wide management system called APSITE.⁸⁶ The management system, IFC noted, was expected to integrate all of the client's standalone management to ensure consistent implementation.

However, IFC also recorded a number of information gaps. The report noted that a number of serious incidents recorded in the client's AMR were not reported to IFC at the time and that the level of information provided in relation to these incidents was insufficient. The report further noted noncompliance with the requirements of the Performance Standards, citing as an example the recorded use of WHO Class Ib and Class II pesticides.

In a follow-up communication, IFC requested its client to undertake a comprehensive review of all pesticides in use on tea estates and discontinue use of WHO Class Ia (extremely hazardous), Class Ib (highly hazardous), and Class II (moderately hazardous) pesticides, in addition to providing further information in relation to identified information gaps, serious accidents and incidents reported.

IFC assigned the investment an ESRR of 3 (Partly Unsatisfactory).

TGB audit (November 2014)

Following the release of the Columbia Law School report and the documentary film by The Guardian (UK), Tata Global Beverages (TGB), the largest shareholder of APPL, "appointed legal advisors to verify compliance by independent review."⁸⁷ Completed in June and released publicly in November 2014, the report by Solidaridad (henceforth Solidaridad Report (2014)), an international civil society organization, identified a number of issues related to APPL operations and accordingly recommended that these issues be addressed. The issues included: employee malnutrition; sanitation and women's well-being; provision of housing; conservatories, bathing units and drainage; working conditions; health and other welfare measures; and shareholder financial literacy. At the same time, TGB released a time-bound Action Plan agreed with the client outlining how these issues would be addressed.⁸⁸ The client has reported its progress on implementing the action plan items agreed with TGB under an initiative called Project Unnati.⁸⁹

TISS social audit (Undated 2014)

In addition to the TGB audit, APPL hired Tata Institute of Social Sciences (TISS) to undertake a social audit of a sample of five tea estates. The final report was provided to IFC in late 2014. The report was compiled on the basis of site visits to five tea estates and interaction sessions with client management, welfare staff and workers. The report focused on the following issues: working conditions (factory and plantation); social welfare indicators (schools and hospitals); access to

⁸⁶ Amalgamated Plantations Systems Integrated Towards Excellence (ASPITE) is the client's E&S management system.

⁸⁷ TGBL (March 2014).

⁸⁸ TGBL (2014).

⁸⁹ For additional information see APPL web site, <http://goo.gl/eGqOUW> (accessed July 25, 2016).

basic amenities; worker compensation and consumption pattern; recreation; freedom of association; labor supply; client documentation; and grievance mechanisms. The TISS report made a series of findings regarding the client's provision or lack of provision of "decent" working conditions.⁹⁰ Relevant to the issues raised by the complainants, the TISS social audit noted: (a) that wages paid to workers "are not sufficient to survive;" (b) that there is an "acute lack of effectiveness" of social welfare schemes provided by the client; and (c) that "freedom of association is...very weak."⁹¹ These issues are discussed in more detail in section 4.3.

IFC Supervision Report (March 2015)

IFC staff conducted a site supervision visit (SSV) to five tea estates in August 2014 and held subsequent discussions with the client in January 2015. The SSV report, which was completed in March 2015, noted that the TISS social audit made findings consistent with those of the Columbia Law School report. IFC's BTOR recorded client actions undertaken to resolve issues identified in the Columbia Law School report and the TISS social audit. Specifically, the report highlighted steps taken to address noncompliance with: provisions of the Plantations Labour Act; employee grievance mechanisms; workers' living conditions; and larger social problems affecting tea estate workers and their families. Further, the report noted that the client had developed an ESMS manual as part of its APSITE management system which reflected multiple standards the client was required to implement (e.g., PLA, SA8000, ETP and PS). IFC reported that the rollout for the APSITE system was expected to commence shortly.

IFC assigned the investment an ESRR of 3 (Partly Unsatisfactory).

IFC Supervision Report (February 2016)

In February 2016, IFC completed a joint AMR review and SSV report. The report recorded the IFC supervision visit to the three estates named in the CAO complaint and subsequent meetings with its client's management. The report also reviewed the client's AMR for 2014/2015, which IFC received in July 2015. The client's AMR for 2013/2014, which was submitted in June 2015 (but due June 30, 2014) almost a year overdue, was not referenced in the AMR review report. See Appendix D for the client's AMR submission dates and date of completion of IFC AMR reviews.

IFC reported that while the company had made progress in addressing some of the issues identified in the Columbia Law School report, a number of areas still needed to be addressed. In particular, IFC noted that further progress is required to: (a) address the accommodation shortfall, which will take five to seven years to fully resolve; (b) strengthen the grievance mechanism and documented record of issue resolution; (c) implement a company-wide ESMS; (d) implement procedures to ensure that tea leaves purchased by the client for factory processing meet PS2 requirements; and (e) improve the quality of the client's reporting to IFC. Further, IFC noted that the client continued to report the use of WHO Hazard Class 1b pesticides. While acknowledging steps toward the development of a company-wide E&S Management Program (known as APSITE), IFC's recent reporting has recorded that it has yet to be implemented due to technical difficulties. IFC noted that the client still lacked a common document that could track the status of actions taken to address all audit findings.

⁹⁰ As defined by the International Labour Organization, decent work "involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men." For further details, see <http://goo.gl/5oji3w> (accessed April 26, 2016).

⁹¹ Tata Institute of Social Sciences 2014, p. 17.

IFC assigned the investment an ESRR of 3 (Partly Unsatisfactory).

Discussion and Findings

CAO finds that IFC's supervision of this investment did not meet the requirements of the Sustainability Policy or relevant ESRPs.

Over a period of more than seven years, IFC did not “develop and retain the information needed to assess [its client's] status of compliance with the Performance Standards”.⁹² Where gaps in compliance have been identified, IFC has not ensured that these are translated into time-bound and resourced Action Plans of the type required by PS1. As a result, E&S compliance issues raised by the complainants remain unaddressed.

In making these findings, CAO notes that since late 2013, IFC has developed a gap analysis of the client's ESMP and E&S performance. As a result, IFC supported the development of a corrective Action Plan, which is significantly more detailed than the Action Plan agreed to at the time of commitment in 2009. This Action Plan included a requirement to review the client's approach to E&S management with reference to a number of external standards. CAO notes IFC's assertion that, studies commissioned by TGB and the client after the release of the Columbia Law School report and the Guardian documentary meet the requirements of this review. At the same time, CAO notes that these studies did not assess the client's performance against IFC's Performance Standards. CAO also notes a lack of documentation to suggest that IFC E&S staff reviewed or provided feedback on the adequacy of the completed studies against its E&S standards.

Further, CAO notes that the Action Plan discussed between IFC and the client is neither time bound nor adequately resourced to support the achievement of compliance with IFC's E&S requirements. Of particular concern, while noting progress in some areas, IFC's most recent supervision documentation indicates that the client still lacks a systematic, company-wide approach to tracking compliance gaps and monitoring the status of requirements to address audit findings.

Weaknesses in IFC's supervision occurred for a number of reasons.

First, *IFC's pre-investment due diligence did not provide an adequate foundation for supervision.* As a result, IFC did not clearly discern the challenges that its client would face in meeting applicable E&S requirements and was not in a position to provide advice and support in this regard.

Second, *IFC paid insufficient attention to its client's E&S Management Program.* As a result, IFC did not ensure that the client had in place an operational framework to deliver on its E&S commitments. Such a framework would have included systematic identification of E&S requirements and compliance gaps, as well as an analysis of the organizational and resourcing needs to meet these requirements.

Third, *IFC did not ensure that the client was monitoring and reporting on E&S performance indicators based on systematic data collection and analysis.* As a result, the client's reporting did not provide an adequate basis for supervising compliance.

⁹² IFC ESRP6 v5, para. 1.

Fourth, *IFC overly relied on regulatory oversight and the client's participation in social certification programs as providing assurance of E&S compliance.* This was problematic in a context—acknowledged by IFC in 2014—where incomplete implementation of PLA requirements is a “systemic problem amongst tea plantations.”

CAO recognizes that external certification can support IFC E&S supervision, particularly in instances where the client runs a large or complex business. Nevertheless, CAO is concerned that IFC did not assure itself that the external certification programs it relied on could be expected to deliver the expected results. In particular, there is no evidence to suggest that IFC: i) undertook a gap analysis between IFC's requirements and external certification requirements; ii) reviewed the methodology for assessing certification; or iii) reviewed the reports prepared by third parties assessing compliance with the certification requirements. Accordingly, IFC's reliance on external certification was problematic.

In this instance, IFC relied heavily on the client's commitment to SA8000 certification, which was achieved in 2011 and renewed in 2015.⁹³ CAO concurs with IFC that weaknesses of SA8000 relate not so much to the standards themselves but to their implementation. Questions regarding the robustness of SA8000 and similar certification processes are acknowledged in the literature⁹⁴ and among industry leaders.⁹⁵ In this context, it is notable that IFC's supervision has not included a review of the SA8000 audits, their coverage or the methodology they applied, particularly in the context of allegations of noncompliance with SA8000 requirements.

Fifth, *IFC has not assured itself that the measures and actions included as part of the Action Plan between TGB and the client (through an initiative called Project Unnati), which IFC is monitoring, were developed on the basis of the outcomes of consultations with affected communities, a requirement of PS1.* See section 4.3.1 for further discussion.

Sixth, *IFC did not take action to address client E&S reporting, which was inconsistent, incomplete and regularly submitted late.* A key point of failure here was the adequacy of IFC's Annual Monitoring Reporting (AMR) template, which did not support the presentation of necessary information to determine compliance with relevant client-specific E&S requirements. This made IFC oversight of E&S requirements difficult and undermined the rigor of the supervision process. In making this finding, CAO recognizes that IFC has had numerous interactions with the client outside the AMR process. While these interactions informed IFC's supervision, they have yet to result in the presentation of information in a manner that would allow IFC to assess compliance with agreed requirements.

⁹³ ETP, described in IFC's ESRS as providing certification, in fact does not provide a certification program.

⁹⁴ “Whether these codes represent a substantive or merely symbolic approach to governing working conditions is the subject of an ongoing debate...Advocates promote SA 8000 and similar codes as a necessary tool to improve workplace conditions, especially in nations that lack robust enforcement of regulatory standards. Many detractors worry that codes place too much emphasis on process rather than performance, and note that to be effective such codes require scrupulous monitoring by a reliable and credible third-party organizations.” Authors: Hiscox, Michael J.; Schwartz, Claire; Toffel, Michael W.; SA8000: The First Decade: Implementation, Influence, and Impact, pp. 147-165(19).

See also Andreas Rasche and Dirk Ulrich Gilbert, “Social Accountability 8000 and socioeconomic development,” in *Business Regulation and Non-State Actors: Whose Standards? Whose Development?* (United Nations Research Institute for Social Development, 2012).

⁹⁵ “The challenge with certification programs is that they are not very good at picking up and being a way to redress ... labor and human rights issues in general. The audit-based approach is not suited to picking up these deep-seated, complex challenges that we are finding.” Duncan Pollard: Vice President, Sustainability (Nestle) *Scope for Improving Land Governance through the Value Chain*. Available at <http://goo.gl/4pTkEE> (accessed May 10, 2016).

Seventh, *in relation to some issues, noncompliance was evident from the client's reporting, but was either not identified by IFC in a timely manner or did not result in agreement to a time-bound and resourced corrective Action Plan between IFC and the client.* This is particularly the case in relation to the client's use of harmful pesticides, the findings of the 2011 OHS audit and the client's approach to grievance redress (each discussed in more detail in section 4.3).

Eighth, in relation to the serious incidents such as fatalities that have occurred in the course of supervision, *IFC did not require the conduct of a root cause analysis or ensure that corrective actions were taken to prevent recurrence.* IFC's reliance on client self-assessment in relation to the three serious incidents described is of particular concern and did not meet the requirement for adequate, accurate and objective presentation of issues prepared by qualified and experienced persons, or those for consultation and disclosure, as required by PS1.

Ninth, while the project had potential significant adverse social risks and impacts, IFC E&S supervision was conducted exclusively by environmental specialists. *No social specialist was assigned to the project.* This undermined IFC's ability to identify social compliance issues and support the client to address them as required by the Sustainability Policy.⁹⁶

⁹⁶ IFC Sustainability Policy (2006), para. 26.

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

4.3.1 *Living conditions for workers on the client’s tea estates*

The complainants raise concerns regarding living conditions and access to adequate medical and educational facilities on plantations. They allege that current conditions violate India’s Plantations Labour Act and IFC Performance Standards. In particular, the complainants allege the following:

- Housing and sanitation facilities are in disrepair.
- Water pumps are inoperable, requiring workers to dig their own wells.
- Electricity supplied to workers is charged at the higher industrial rate instead of the domestic rate.
- The standard of education provided to children is inadequate. In some instances, the complainants allege that the teacher-student ratio ranges from 1:200 to 1:300, with instruction provided for one hour to each grade per day. Further, they allege, where a crèche is available, it closes early, requiring older children to forgo education to care for younger children.
- The standard of medical facilities and ratio of medical personnel is not in compliance with national regulations. Further, the complainants allege that workers unduly bear the cost of medical treatment for themselves and their dependents.

CAO also notes that Incident One at Nowera Nuddy, as described above, raises concerns with respect to access to medical treatment for workers.

Summary of Findings

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

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

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

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

Requirements

IFC Requirements

IFC's Performance Standards do not address workers' living conditions directly. However, a series of more general requirements apply.

Overarching requirements are set out in PS1, which provides for an IFC client to engage with potential adverse E&S impacts on workers and affected communities in accordance with the framework to "assess, avoid, minimize, mitigate, [and] compensate" such impacts. PS1 also requires the establishment of an ESMS that is appropriate to the nature and scale of a project and commensurate with its level of E&S risks.⁹⁷

Compliance with national law is a requirement that should be addressed through the client's E&S Assessment and ESMS. This includes collecting baseline data on compliance with national law, addressing any gaps through an Action Plan and monitoring/reporting on compliance.⁹⁸

IFC has also developed benchmarks for workers' accommodation, referencing the objective of PS2 to "promote safe and healthy working conditions, and to protect and promote the health of workers,"⁹⁹ which IFC has indicated can be read as covering living conditions when they are the responsibility of employers.¹⁰⁰

In all cases, IFC notes, the minimum standard is to ensure that "relevant national and local regulations have been identified and implemented."¹⁰¹ As relevant to this investigation, IFC provides benchmarks in relation to general living facilities, drainage facilities, provision of potable water, management of wastewater and solid waste, provision of toilet facilities, provision of medical facilities and guidance on charging for accommodation.¹⁰²

Plantations Labour Act, Assam Rules (1956)

Depending on the size of a tea estate, the PLA requires employers to provide workers with housing accommodation, medical facilities and educational facilities. Under rules enacted in Assam in 1956 ("Assam Rules"), employers are required to provide workers with facilities at a prescribed standard, for example:

- Housing accommodation rent-free for workers and their families residing on an estate. Accommodation is to conform to standards prescribed in the Assam Rules. The ongoing maintenance expense is to be borne by employers.
- An adequate supply of clean drinking water, supplied from a public system or from suitable storage facilities, which is renewed daily. Where water is provided from a well, it is to be sterilized and documented.
- One latrine for every 50 acres under cultivation. Latrines are required to comply with public health authorities requirements.
- Drainage that is constructed in masonry or other impermeable material, with waste flushed regularly.

⁹⁷ IFC PS1 (2006), paras. 1 and 7.

⁹⁸ IFC PS1 (2006), paras. 4, 14–16, and 24–26.

⁹⁹ IFC PS2 (2006), para 2.

¹⁰⁰ IFC and EBRD 2009.

¹⁰¹ IFC and EBRD 2009, 11.

¹⁰² For relevant benchmarks, see IFC and EBRD 2009, 11–23.

- A plantation hospital with at least one full-time qualified medical practitioner for plantations employing more than 500 workers on an estate. Treatment shall include free provision of all drugs considered necessary.
- A canteen and worker recreational facilities.
- A crèche in every estate where at least 50 women are employed, for use by children up to the age of 6.
- A primary school for children between the ages of 6 and 12, where there are at least 25 children living on the estate.

Discussion and Findings

Living Conditions

Concerns regarding living conditions and compliance with PLA requirements on tea estates are well documented, both before and since IFC's investment in APPL. Sources include public news articles, books and academic journals. For example, a 2003 study of 178 tea estates in Assam conducted by the North Eastern Social Research Centre noted:

Most gardens [e.g. plantation] do not have the basic facilities they are supposed to have. Most did not have a crèche in its proper sense. In most cases an untrained worker looks after them in a run-down building. In more than one garden crèche is in the place meant to be a cow shed. The children do not get proper meals. In many gardens the management gives some facilities for sports and entertainment but in most gardens the dispensary is ill equipped without enough medicines and with untrained staff. The workers do not have a club. There is inadequacy of drinking water and many of them are deprived of the basic facilities. The hospital too is of very bad qualities. A few gardens have trained nurses or even doctors. In most cases the building used for these facilities is decaying with time. We did not see any major difference by district or even the type of management. We expected gardens run by national or multinational companies to be better than the others since they have to be accountable to their shareholders. But during the study we realised that it was not always the case. In fact, in some cases we found better facilities in family owned gardens than in those owned by bigger companies.¹⁰³

With regard to oversight for PLA implementation, the same author notes:

Three agencies are involved in its implementation. The government, the first of them provides the basic framework and appoints a chief inspector of plantation and inspectors for the supervision of the PLA. Their role is to monitor its implementation. The other two agencies are the management and the unions. All three seem to be responsible for non-implementation of the Act. The labour inspectors rarely do their work properly.¹⁰⁴

Based on a sample that included one of the client's tea estates, a 2007 report by an Indian Parliamentary Committee on the PLA notes that 16 percent of workers in the sample were not provided with housing facilities. The same report notes that there is a need to repair and maintain existing housing facilities. The report also states that 50 percent of estates sampled needed to improve drinking water facilities.¹⁰⁵

¹⁰³ Bharali 2004. p.3.

¹⁰⁴ Bharali 2004. p.6.

¹⁰⁵ Government of India, Ministry of Commerce and Industry 2007.

In discussing the health, welfare, and working conditions provisions contained in the PLA, a 2012 report by the Indian Parliament notes that “the Committee during its Study Visit to various tea plantations found that the statutory requirements as laid down in the Plantations Labour Act were in general being overlooked by the plantation managements. On enquiry, it was informed that it has increasingly become difficult for the management to bear the social cost due to higher cost of production and thinning of profit margins on account of high labour wages and rise in input costs.”¹⁰⁶

In a submission to CAO, the complainants provided CAO with a series of news articles from 1998 to 2015 that note inadequate living conditions on tea estates in northeast India.¹⁰⁷

Health Indicators

A 2004 World Bank report on the health sector in Assam notes that “[e]ven though the data on tea garden hospitals and dispensaries are difficult to come by, the limited information available shows that the condition of these facilities is far below the minimum requirement.” This report notes inadequate supply of medication and staff at tea estate medical facilities.¹⁰⁸

A review of available literature identified a number of studies that have examined health indicators of tea workers in Assam. Of note, a 2006 study of 880 households across eight estates records a 72 percent incidence of anemia¹⁰⁹ and 65 percent incidence of participants carrying at least one intestinal parasite. Infectious diseases like tuberculosis (12 percent) and respiratory illness (7 percent) were also registered among participants. Further, the study notes that 60 percent of preschool children were underweight. The study concludes that:

Most of these diseases among them appeared to be emanated from poor personal and household hygiene, unsatisfactory sanitation and housing coupled with ignorance due to lack of education. Poor nutrition among them also probably makes them vulnerable to infectious diseases and vice versa. Presence of [a] household toilet was found to reduce ...transmitted diseases.... However, high prevalence even among toilet holders may be because of contaminations of surroundings due to open field defecation by large numbers of other community members and poor maintenance of toilets facilities. Unfavorable housing may be attributable to higher rate of tuberculosis and respiratory conditions.¹¹⁰

A 2014 study supported by the Assam Medical Centre and UNICEF analyzes the prevalence of anemia among adolescent girls on tea estates. Sampling 802 girls in 16 tea estates, the study finds an incidence rate of 96 percent. The study noted that “[t]he high prevalence of anemia may be because of frequent occurrence of diarrhea and high worm infestation related to poor housing condition and environmental sanitation.”¹¹¹

¹⁰⁶ Parliament of India 2012. p.29.

¹⁰⁷ For further details, see the complainant’s submission to CAO, September 2015, available at <https://goo.gl/Jm5tkA> (accessed April 26, 2016).

¹⁰⁸ World Bank 2004. para. 53.

¹⁰⁹ “Anaemia is a condition in which the number of red blood cells or their oxygen-carrying capacity is insufficient to meet physiologic needs, which vary by age, sex, altitude, smoking, and pregnancy status. Iron deficiency is thought to be the most common cause of anaemia globally, although other conditions, such as folate, vitamin B12 and vitamin A deficiencies, chronic inflammation, parasitic infections, and inherited disorders can all cause anaemia. In its severe form, it is associated with fatigue, weakness, dizziness and drowsiness. Pregnant women and children are particularly vulnerable” (World Health Organization, <http://goo.gl/qQsi4X>).

¹¹⁰ Medhi and others (2006), page 496.

¹¹¹ Mahanta and others, (2006).

IFC performance

IFC's 2006 E&S Report Summary (ESRS) for the project noted that its client ensured that "basic housing, sanitation facilities, and water supply are available to all workers" and that it provided "significant employee/community infrastructure at all of the tea estates, including drainage systems and roads, streetlights and security services, recreation centers, and school buses for worker's children studying outside the estates."¹¹² The ESRS also noted that the client provided additional health services to workers and their dependents.

There is no evidence, however, that IFC's appraisal included either: (a) an analysis of the client's performance against the PLA requirements; or (b) a review of baseline data on the quality or standard of housing, sanitation, and provision of water and medical and educational services provided to workers. In the context of the preceding general discussion of living conditions and health indicators in Assam among tea workers and their families, CAO finds that IFC did not assure itself that its client was discharging its obligation to provide housing and other services in a manner that met the PS2 standard of promoting safe and healthy working conditions or protecting and promoting the health of workers. Further, in a context where there were questions as to the effectiveness of regulatory oversight, CAO finds that IFC's appraisal did not provide assurance that the client was in material compliance with requirements of the PLA.

These issues persisted during supervision. In supervision documentation dated November 2010, IFC noted that the client was in compliance with requirements related to housing, medical facilities, crèches and schools as per the law and market practice. This conclusion, however, was reached without supporting evidence, as the client's E&S reporting to IFC provided neither descriptions of the relevant legal requirements nor verification of their fulfillment.

Some relevant information is contained in the IFC-supported, third-party OHS audit (July 2011). While the audit itself did not make any finding in relation to housing or living conditions, a review of the underlying plantation-level documentation reveals that these issues were considered in relation to two of the eight estates included in the audit. Where housing and living conditions were reviewed, the plantation-level documentation noted: (a) inadequate maintenance of drains near houses and crèches; (b) unsanitary latrines; (c) lack of provision of waste collection; and (d) poor ventilation in kitchens, creating health issues. While the audit presented a positive summary of the client's medical facilities, noting that all estates had an attached hospital managed by a registered medical practitioner and an adequate number of paramedical staff, a separate review of six estate hospitals, commissioned by the client and presented to its Board at the same time, presented a highly critical assessment of a number of hospitals run by the client, noting unacceptable standards of sanitation and health care delivery.

Despite the issues identified in the 2011 OHS audit and the client's review of estate hospitals, no Action Plan was agreed between IFC and the client to ensure that the issues were addressed, and IFC has not assured itself that actions agreed between the auditor and the client were implemented.

Following a site supervision visit to the client in July/August 2013, the client agreed to discuss with IFC improvement needs for worker accommodation following an external expert's review of the client's performance.

¹¹² IFC (2006b).

Issues related to housing and living conditions gained further prominence following the submission of the CAO complaint (2013) and the release of the Columbia Law School report (2014). An IFC site supervision visit to the client in April 2014 reported that the client had decided to alter its approach to repairing worker living facilities with a targeted focus on a sub-section of the client's 25 estates each year.

In response to the Columbia Law School report, TGB commissioned the Solidaridad Report (2014) which identified a number of issues in relation to the living conditions of workers. As a result, TGB and the client agreed to a five-year budgeted Action Plan ("the TGB Action Plan" or Project Unnati) to resolve these issues. Table 4.3.1 below presents a summary of the issues identified and a December 2015 update from the client on implementation.

Table 4.3.1 Summary of Solidaridad Report Findings and Client Update

| Issue | 2014 Solidaridad Report findings¹¹³ | 2015 December Implementation Update¹¹⁴ |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Housing | 5% shortfall. Backlog of complaints related to repairs for almost all estates. | 12 houses complete (<i>1% of 1,110 target</i>). 191 kitchen units complete (<i>4% of 5,107 target</i>). Repair works to 6,286 houses complete. Client affirms remaining works to be complete by December 2019. |
| Latrines and toilets | 40% inoperable. Most latrines in Assam have technical problems. | 1,954 latrines constructed (<i>84% of 2,317 target</i>). Client affirms remaining works to be complete by March 2016. 5,108 toilets repaired. |
| Bathing enclosures | 77% shortfall. | 744 new bathrooms constructed (<i>6% of 12,560 target</i>). Client affirms remaining works to be complete by 2019. |
| Estate drainage | Most of the estates' drains require repair. Their current condition was considered to be a serious public health risk. | Construction of cement drains complete in the three estates subject to the CAO complaint. Construction of cement drains in other estates to be completed in a phased manner. |
| Electricity meters | Most estates implemented individual meter systems in combination with cluster meters. | Individual electricity meters provided in 21 estates. Client pursuing implementation in other estates. |
| Medical facilities | While the client was found to be providing best-in-class medical facilities, there was scope for improvement in systems to maintain the attendance of doctors. | A system to register medical practitioner's attendance implemented. |
| Incidence of Malnutrition | Industry-wide problem among tea workers in northern India. | 40 child health volunteers provided with training on nutrition. Nutrition diet charts for crèches and hospitals revised from 400 calories to 700 calories. |

¹¹³ TGBL (2014).

¹¹⁴ APPL 2015.

IFC's supervision documentation after 2014 has noted a series of infrastructure improvements, mainly concentrated at the three estates subject to the CAO complaint. While IFC considers these upgrades to be significant, IFC notes they represent a small percentage of the total work required. In the context of the client's capitalization, IFC notes that upgrading of all tea estates to model accommodation standards would be a significant cost.

In summary, IFC has not responded systematically to issues regarding housing and living conditions as raised by the complainants. In 2012, in the course of CAO's compliance appraisal, IFC expressed the view that the client was in full compliance with all applicable local regulatory and IFC requirements. It was not until a site supervision visit in July/August 2013, that IFC requested the client to detail improvements in worker accommodation. Indeed, it was only when TGB took the initiative following release of the Columbia Law School report in 2014 that a range of deficiencies related to housing and living conditions were confirmed and a time bound and resourced Action Plan was developed. There is no evidence to suggest that IFC reviewed or provided input into the TGB Action Plan. Contrary to the requirements of PS1,¹¹⁵ IFC did not assure itself that either the Action Plan or the assessment on which it was based was: (a) developed following consultation with workers; and (b) disclosed to workers in an accessible manner. Further, IFC did not assure itself that the client has reported back to workers on implementation of the Action Plan, which is also a PS1 requirement.

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

Of further concern, given the client's capitalization and progress reported to date, CAO notes that timely delivery of the commitments in the TGB Action Plan may not be possible. In this context, CAO finds that IFC has not been successful in "work[ing] with the client to bring it back into compliance" as required by the Sustainability Policy.¹¹⁶

Reasons for shortcomings in IFC's supervision of issues related to housing and living conditions as identified by CAO include: (a) a failure to ensure the client had a business-wide management system that identified and reported on compliance against IFC and national legal requirements; (b) IFC's Annual Monitoring Report template, which did not capture data in relation to workers' living and working conditions; and (c) an overreliance on regulatory supervision and third-party certification to provide assurance of compliance.

4.3.2 Compensation practices

This section considers how IFC responded to allegations that its client is paying workers' wages that are below the minimum wage and engaging in unfair compensation practices.

In their complaint and in additional information provided to CAO, the complainants allege the following:

- a. Tea workers at the client's estates receive compensation below the minimum wage.

¹¹⁵ IFC PS1 (2006), para. 16 and 21.

¹¹⁶ IFC Sustainability Policy (2006), para. 26.

- b. The client implements improper work practices, including not providing pay slips in the workers' local language, failure to pay overtime and excessive demands for the volume of tea for each worker to pluck. Further, the workers raise concerns that the cost of electricity has been deducted from their wages.
- c. The client has increased its use of temporary workers to avoid providing full benefits under the PLA.
- d. Workers are impoverished and suffer from malnutrition due to inadequate compensation.

Summary of Findings

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

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

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

Requirements

IFC requirements

PS2 sets out the objective "[t]o promote the fair treatment, non-discrimination and equal opportunity for workers, and compliance with national labor and employment laws." In relation to wages and terms of employment, PS2 provides as follows:

Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment (such as wages and benefits, hours of work, overtime arrangements and overtime compensation, and leave for illness, maternity, vacation or holiday) the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.¹¹⁷

IFC guidance on PS2 further provides that the client "should comply with legal requirements covering such matters as minimum wage, hours of work, overtime payments, health and safety conditions, contribution to health insurance and pension schedules and other legally mandated employment terms."¹¹⁸

In relation to the communication of wages and working conditions, PS2 provides that:

¹¹⁷ IFC PS2, para. 8.

¹¹⁸ IFC PS2 Guidance Note, G64.

The client will document and communicate to all employees and workers directly contracted by the client their working conditions and terms of employment, including their entitlement to wages and any benefits.¹¹⁹

IFC further guides clients to ensure that documentation “is clear, easily understandable, and accurate, and in the language of the employee or directly contracted worker.”¹²⁰

Indian National Law and recent negotiations

The Minimum Wage Act (1948) provides for each State government to set a minimum wage on the basis of the cost of living within that State. The Act provides for this wage to be composed of a cash wage and a non-cash wage (that is, the provision of certain essential commodities at concession rates). The Act explicitly notes, however, that the wage does not include the value of house accommodation, supply of water, medical attendance, and any contribution paid by the employer to any pension or provident fund.¹²¹

In the tea industry, wages are provided on the basis of a full day’s work. During the tea plucking season, wages are provided on the basis of plucking 24 kilograms, with incentives/disincentives for plucking more or less than this amount.¹²²

In Assam, it is established practice for the daily wage to be agreed through negotiation between the largest union (ACMS) and a group of tea sector employers’ associations. Once agreed, the state government issues a notification ratifying the agreement.¹²³ The minimum wage was last ratified in December 2010 for the period of November 2010 to September 2013. This notification provided for the daily wage rate to increase from Rs 66.50 to Rs 76.50. CAO understands that a subsequent bilateral agreement between ACMS and a group of employers’ associations for the period of January 2012 to December 2014, which raised the daily rate to Rs 94, was never ratified.

ACMS and a group of employers reached a new bilateral agreement for the period of January 2015 to December 2017, raising the daily rate from Rs 115 in 2015 to Rs 137 in 2017.¹²⁴ While this agreement has not been ratified by the state government, the client has stated to CAO that it is operating in accordance with this agreement.

Discussion and Findings

Minimum wages

The complainants’ view is that the daily wage for tea workers is below the statewide minimum wage for Assam, and thus, tea workers should be paid in accordance with the statewide minimum wage. The client’s view is that, including non-cash benefits provided in accordance with the PLA, the daily wage for tea workers exceeds the statewide minimum wage for Assam.

¹¹⁹ IFC PS2 (2006), para 7.

¹²⁰ IFC PS2 Guidance Notes (2007), G12.

¹²¹ Indian Minimum Wage Act (1948). Available at <http://goo.gl/1g6gm3>.

¹²² Assam Tribune (March 21, 2013) Tea bodies fix new plucking rates. Available at <http://goo.gl/WUuM9c> (accessed May 13, 2016).

¹²³ At the time of writing, the Assam government had yet to ratify the 2015 bilateral wage agreement. Instead, it issued a draft notification in August 2015 proposing a higher wage than agreed.

¹²⁴ The Times of India, Economic Times (February 26, 2015) Wages of tea workers in Assam revised to Rs 115 per day. Available at <http://goo.gl/XQV2gf> (accessed August 30, 2016).

IFC's ESRS does not consider whether workers are paid in accordance with national law, other than to note that the client is in the process of obtaining ETP certification for all its estates, which would involve independent monitoring of the "minimum wage... [and] total remuneration," among other indicators.¹²⁵

In 2014, based on concerns raised in the CAO complaint, IFC obtained external legal advice with regard to whether its client was paying workers in accordance with the local law. The advice concluded that pay was in compliance with relevant laws. The Solidaridad Report (2014) affirmed that the client was "in full compliance with law in terms of wages paid and there were no illegal deductions," though it did not include any analysis to support this conclusion.¹²⁶

In response to the allegations that the client compensates workers below the minimum wage, CAO finds that IFC took appropriate action in obtaining external legal advice on the issue. CAO notes, however, that the advice, while dated March 2014, stated that it was only current through September 2013 (the date when the gazetted minimum wage for the tea sector expired). In this context, CAO finds that IFC did and does not have up-to-date advice on the issue.

In relation to the substance of the advice IFC commissioned, CAO notes that the complainants contest the value of the non-cash benefits component of the daily wage provided to tea workers, which the client uses to argue that the tea sector wage is greater than the statewide minimum wage. A robust review of this issue by IFC would require independent valuation of the non-cash benefits rather than reliance on the figures provided by an employer's organization. A robust analysis would also consider the impact of the non-gazetted status of the tea sector wage agreement post-September 30, 2013. Finally, a robust review would incorporate consultation and disclosure in accordance with PS1 requirements.

Compensation Practices

The complainants allege that the client does not provide pay slips in their local language, fails to pay overtime and imposes excessive tea plucking demands on workers. Further, the complainants have raised concerns about the high cost of electricity that has been deducted from their wages.

In response to these issues, IFC noted in its Supervision Report for June 2014 that the client had made amendments to its information technology system to ensure that issues related to overtime pay are controlled. Further, IFC noted that the client introduced pay slips in Assamese. IFC supervision did not comment on the volume of tea which workers are required to pluck nor on the allegation that the client deducts excessive amounts for the cost of electricity from workers.

In relation to the issue of deductions for electricity, the Solidaridad Report (2014) noted, "most of the estates visited except some of the labour lines in Hathikuli and Nahorani are following individual meter systems in combination with the cluster meter approach."¹²⁷ The report noted that three estates provide direct electricity connections, an approach Solidaridad recommended.

¹²⁵ IFC (2006b).

¹²⁶ TGBL (2014).

¹²⁷ TGBL (2014). p. 6.

During CAO's 2015 visit to the client's tea estates, CAO noted that electricity meters inspected at workers' houses in the Nahorani estate were not functioning.¹²⁸ Some workers at Nahorani also presented CAO with pay slips indicating that the same amount for electricity was being deducted from each worker in every pay cycle. In Hattigor and Majuli, new meters were installed and were generally functioning. However, CAO was presented a sample of pay slips from workers indicating that while the amount deducted for electricity changed each month, each worker was charged the same amount. Further, CAO noted that some of these pay slips from 2015 were in English.

Accordingly, CAO finds that IFC has not adequately assured itself that the client is systematically presenting information in a "clear, easily understandable, and accurate, and in the language of the employee or directly contracted worker" and that IFC has not responded adequately to the concerns raised by workers with regard to deductions for electricity or failure to meet task rates.

Temporary Workers

The complainants allege that the client has increased the use of temporary workers and replaced retiring permanent workers with temporary workers at the three tea estates subject to the complaint. The complainants note that temporary workers are not provided the same benefits as permanent workers under the PLA. Accordingly, the complainants allege that the client's increased utilization of temporary contracts, sometimes into years, is intended to avoid welfare obligations.

IFC's supervision does not comment on this issue. A review of IFC's supervision documentation for the three estates subject to the complaint reveals minimal change in the proportion and number of permanent workers to temporary workers in Nahorani from 2009 to 2015. In Majuli, however, the number of permanent workers has increased by 13 percent, while the number of temporary workers has increased by 275 percent from 2010 to 2015. In Hattigor, the number of permanent workers has increased by 30 percent, while the number of temporary workers has increased by 65 percent from 2009 to 2015.

The client has affirmed to CAO that all temporary workers receive the same benefits and entitlements as permanent workers while they are on contract, with the exception of housing, which is provided only to permanent workers. As explained to CAO, the client noted that all temporary workers are from families where there is a permanent worker, and therefore they do not require housing. The complainants and other stakeholders have affirmed that while temporary workers receive the same cash wage and food rations, they do not receive firewood, clothes and equipment for tea plucking.

It is clear from IFC's documentation that there has been a significant increase in the utilization of temporary workers at two of the three estates subject to the CAO complaint. Further, during CAO's site visit, CAO met with workers who claimed to be employed on temporary contracts over the course of several years. As they did not have a permanent worker in their family, they have constructed rudimentary housing on the tea estates. In this context and considering the issues regarding wages, health and nutrition discussed above, CAO finds that IFC has not assured itself that the client is providing employment that "protect and promote the health" of temporary workers in accordance with PS2.¹²⁹

¹²⁸ The client explained to CAO that a disagreement with the electricity provider on responsibility for deploying meters at Nahorani had impeded installation of individual meters.

¹²⁹ IFC PS2 (2006), paras 2 & 8.

Fair and Decent Wage

IFC affirms that jobs are “the principal way out of poverty.” A job contributes to development by boosting living standards, raising productivity and fostering social cohesion. At the same time, IFC recognizes that “jobs that do not meet environmental and social standards might have a lower development or transformational impact or even a negative impact.”¹³⁰ While defining and creating good jobs is usually reflected by wage employment metrics, IFC recognizes that other factors such as OHS policies, worker-management relations, opportunities for career advancement and flexibility regarding doctors and sick leave should also be considered. Accordingly, IFC defines a good job in terms of PS2 as “a job that guarantees workers’ fundamental rights while paying them a decent and fair wage.”¹³¹

As a result of the current wage level (cash and non-cash), the complainants allege that workers suffer from malnutrition. The Solidaridad Report (2014) noted that “[m]ost of the researchers have found severe levels of under-nutrition in tea plantations, yet levels of awareness remain low. Such under-nutrition may lead to direct losses in productivity and resources from reduced labour output and physical productivity due to illness, fatigue or other health related problems.”¹³² Further, the 2014 TISS report noted that the daily cash income at the time (Rs94)¹³³ was not sufficient to cover consumption of even basic food and nutritional requirements.

The health indicator data (discussed above), the findings in relation to malnutrition in the Solidaridad and TISS reports, and the persistence of high levels of illiteracy among tea workers,¹³⁴ raise concerns about the general well-being of the client’s workforce. In this context, CAO finds that IFC has not assured itself that the wages paid by the client are consistent with IFC’s commitment to support jobs which offer a “way out of poverty” or “protect and promote the health” of workers accordance with PS2.¹³⁵

4.3.3 Issues related to freedom of association and handling of grievances

The CAO complaint and the incidents that triggered the original CAO compliance appraisal raise a range of issues related to workers organizations and grievance handling.

The complainants note that on all but one of the client’s plantations in Assam, workers are required to pay dues to Assam Chah Mazdoor Sangha (ACMS), the largest tea worker representative union in Assam. They allege that the union is “in league with management to suppress worker protests” and does not represent workers. Additional information provided by the complainants indicates concerns that workers have not been informed of how to opt out of ACMS and that most believe that they have no choice but to pay the dues to this union. Further, the complainants allege that the client’s management has influenced the selection of workers’ representatives, and that workers fear retaliation from plantation management if they join other unions. The complainants also allege that the client imposes restrictions on access by nonresidents and nonworkers to plantation housing areas, which hinders the ability of workers and workers’ representatives to organize.

¹³⁰ IFC 2013, p. 4-5.

¹³¹ IFC (2013), 137.

¹³² TGBL (2014).

¹³³ In 2015, the client provided workers with a daily cash wage of R115. In 2016, the client is providing workers with a daily cash wage of R126.

¹³⁴ Tata Review (July 2013). For additional assessment on literacy levels in the tea section see Singh, Narain, Kumar (2006), p 137; Devi (2014).

¹³⁵ IFC PS2 (2006), paras 2 & 8.

The complainants also raise more general concerns regarding the client's approach to grievance handling. They claim that complaints lodged with client Welfare Officers are routinely ignored and that this leads to the escalation of grievances into protests. They also claim that workers are reluctant to raise issues because they fear retaliation from management. In one instance, they allege that the client's management physically assaulted a worker who complained. In another instance, they allege that workers who "spoke up" were denied work or terminated.

In addition, CAO's November 2013 Assessment Report noted that workers are "not aware how the process [grievance mechanism] works beyond the concerns, name of requester and date being registered."¹³⁶ The CAO Assessment Report also discussed allegations of retaliation against workers who participated in meetings with NGOs to discuss the CAO process.

Summary of Findings

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

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

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

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

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

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

Requirements

In relation to issues of freedom of association and collective bargaining, PS2 (Labor and Working Conditions) provides that "the client will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively."¹³⁷

IFC guidance in relation to the application of PS2 further provides that clients should not: (a) "interfere with workers' rights to form or join a workers' organization, for example, by favoring one

¹³⁶ CAO Assessment Report (November 2013). Available at <http://goo.gl/R0sRA2> (accessed April 20, 2016).

¹³⁷ IFC PS2 (2006), para 10.

workers' organization over another"; or (b) discourage workers from forming or joining a workers' organization."¹³⁸

In relation to client grievance mechanisms, PS1 and PS2 requirements apply, as the issues raised impact workers and other affected people.

PS2 provides as follows:

The client will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns. The client will inform the workers of the grievance mechanism at the time of hire, and make it easily accessible to them. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution.¹³⁹

Similar requirements exist for community grievances under PS1:

The client will respond to communities' concerns related to the project. If the client anticipates ongoing risks to or adverse impacts on affected communities, the client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution. The mechanism should not impede access to judicial or administrative remedies. The client will inform the affected communities about the mechanism in the course of its community engagement process.¹⁴⁰

Discussion and Findings

Freedom of Association

The union issues that IUF and the complainants raise have a complex historical background. To provide a brief summary: the main union of tea workers in Assam, ACMS, emerged in the era immediately following independence and is affiliated with the Congress Party through the Indian National Trade Union Congress. Wages in the tea sector are set through collective bargaining between a group of employer associations and ACMS.¹⁴¹ The dominance of the ACMS has been a source of grievance for other groups that seek to represent tea workers in Assam and that allege—as IUF and the complainants do—that ACMS, the employers and the state government collude to stifle workers' rights to associate and bargain collectively.¹⁴²

A search of available literature indicates that worker grievances regarding pay and conditions were a well-known feature of the tea industry in northeast India when IFC invested in its client. Minutes of Standing Labor Committee meetings in Assam chronicle demands regarding wages,

¹³⁸ IFC PS 2: Guidance Notes (2006), paras. 21-22.

¹³⁹ IFC PS 2 (2006), para. 12.

¹⁴⁰ IFC PS 1 (2006), para. 23.

¹⁴¹ ETP 2013, p.17.

¹⁴² ETP 2013, Complainants' submission to CAO.

access to clean drinking water and other welfare issues.¹⁴³ Reports from West Bengal indicate long-standing worker grievances in relation to health care, housing, basic infrastructure (including drinking water, drainage, and electricity) and the use of temporary workers.¹⁴⁴ Similarly, a 2003 article on the killing of an estate manager in Assam's Sonitpur district, identifies “managements’ ... ignoring the demands of workers, especially for welfare measures” and non-implementation of the PLA as causes of unrest in the tea estates.”¹⁴⁵

IFC’s ESRS for the project noted that the client is in the process of obtaining certification from ETP, and that ETP has among its objectives to provide verification that freedom of association and the right to collective bargaining are respected. Neither the potential for worker grievances nor the client’s approach to grievance handling was discussed.

CAO notes that this does not represent a substantive review of the issues. Accordingly, CAO finds that IFC’s review was not “commensurate to risk,” as required by IFC’s Sustainability Policy.¹⁴⁶

During supervision, issues related to freedom of association first arose in 2010 following the Nowera Nuddy incident. In its review of the incident, IFC noted that the incident appeared to be an isolated case of labor unrest that escalated because of a power struggle between competing labor unions.

An IUF report on the May 2010 incident in Powai alleged that workers’ rights to freely associate on the client’s Assam plantations are circumscribed. In particular, the IUF report alleges that an “alliance between the government and the employers ... has locked all unions other than ACMS out of the [collective bargaining] process.”¹⁴⁷

Issues related to freedom of association arose again in 2011, when IUF lodged a complaint regarding the Nowera Nuddy and Powai incidents to IFC. In response, IFC explained that multiple workers’ organizations exist on each plantation and are recognized by management. IFC also stated that management engages with all the recognized unions in regular, good faith negotiations.

In supervision documentation dated December 2013, IFC discussed the February 2013 complaint to CAO and acknowledged that this raises issues of a perceived lack of right to form unions among plantation workers. IFC, however, did not provide any documented follow-up on the issue.

By way of contrast, the scope of the TGB-commissioned Solidaridad Report (2014), which was completed in June 2014, described its scope in terms of the “assessment of working conditions in APPL gardens—including ... *employer employee relations and trade unions*” (emphasis added).¹⁴⁸ The union issue was also taken up by the TISS Social Audit commissioned by the client.

While the findings of the Solidaridad Report have not been disclosed, under the headings of “Unions,” it recommended the establishment of “Estate Employees Councils” that would meet

¹⁴³ ACMS (1970–2007) Minutes of Standing Labor Committee Meetings. <http://goo.gl/Ksu4yk> (accessed April 20, 2016).

¹⁴⁴ Centre of Workers’ Management 2015; Lahiri 2000.

¹⁴⁵ Misra 2003.

¹⁴⁶ IFC Sustainability Policy (2006), para. 13.

¹⁴⁷ IUF 2010.

¹⁴⁸ TGBL (2014).

monthly to discuss critical issues concerning welfare, health, sanitation and other related issues. Solidaridad further recommended that minutes of these meetings be taken and shared with APPL senior management, with action points monitored.¹⁴⁹

The TISS Social Audit (2014) commissioned by the client included among its findings that “freedom of association is one of the prime components of decent work which is found to be very weak [in the five APPL estates reviewed].” In this context, the study noted that four of the five estates visited have “only one trade union representing workers’ voice.” The report recommended that supporting greater freedom of association would “help enhancing workers’ voice and reduce workers’ grievances.”

The issue of unopposed access to tea estates is not considered in IFC’s supervision documentation. During the investigation, however, IFC affirmed that the client has confirmed that they do not deny nor attempt to control access to workers’ accommodation. However, considering the history of disturbance in Assam, IFC noted that the client is required by directives from district authorities to maintain and provide to district authorities, when required, information related to visitors on tea estates.

IFC’s approach to the application of the PS2 Workers Organizations requirements has largely been to rely on ETP and SA8000 certification as evidence of compliance. Relevant ETP and SA8000 requirements are similar to those of PS2. For reasons discussed above, however, CAO finds that the client’s participation in these programs provided IFC with insufficient evidence that its requirements in relation to freedom of association and collective bargaining were being met. This is particularly the case given ongoing concerns regarding freedom of association and collective bargaining as raised by the complainants, global unions and a social audit commissioned by the client.

Grievance handling

In relation to the client’s approach to grievance handling, IFC had more information. Starting in 2009, the client provided information on estate-level grievances and their handling through its AMRs. Initially, IFC found this information to be insufficient, noting that there did not seem to be common procedures applied across the client’s estates. As a result, IFC noted that there appeared to be good practice in some units, but considerably weaker practice in others in terms of grievance procedures.

By 2010, however, the assessment was positive. IFC noted that detailed information had been provided regarding the grievance procedures, including a summary of grievances raised by the employees and actions taken by the company in response. The basis on which IFC reached this conclusion is unclear, as the client’s AMR provided no information in relation to grievance handling on 11 of the client’s 24 estates, and did not meet IFC’s reporting requirements in relation to the remaining 13. A review of supervision during 2011-2012 revealed the same outcome.

From 2013 to 2015, IFC raised concerns regarding the quality of the client’s grievance reporting, noting gaps and inconsistencies in the information provided. Further, IFC discussed with the client its approach to handling grievances. IFC noted in 2014 that the client was strengthening its grievance redress process through the establishment of Employee Estate Councils (EECs), which are being formed at each estate to enhance worker participation in company decisions and to strengthen the process for receipt and redress of complaints. Opportunities for improving the

¹⁴⁹ TGBL (2014).

client's grievance redress procedures were identified by IFC at multiple points during this period; however, no specific action items were documented.

IFC's first detailed engagement with the functioning of the client's grievance mechanisms can be found in its review of the client's 2015 AMR, which was combined with a write-up of a May 2015 supervision visit. This report, dated February 2016, noted that EEC meetings have been regularized, but that recording and documentation of follow-up action taken to close out issues from previous meetings should be improved. In relation to the client's grievance mechanisms, IFC noted that details of the responses were not available for many of the grievances received.

On one of the estates visited, IFC noted the existence of a step-by-step time-bound redress procedure. This was identified as a good practice that should be replicated. In the other estate visited, IFC found that the status of grievance redress was not available for many of the grievances received. IFC also noted the need to provide feedback to workers if there is a delay in addressing grievances. In addition, IFC noted that the client needs to put in place procedures to ensure that the absence of an employee (for example, the estate Welfare Officer) does not impact the grievance redress process.

A summary of the client's E&S performance prepared at this time indicated IFC's view that the client did not have in place an effective grievance mechanism for workers and their organizations to raise concerns. As a result, it was suggested that the client strengthen its grievance process, particularly with respect to: (a) recording of compliant close-out; and (b) recording and communicating to the complainant reasons for delay in addressing the complaint, where delay is expected. IFC also noted ongoing concerns regarding the completeness and usefulness of the client's E&S reporting and recommended a revision of the reporting format.

In conclusion, CAO finds that IFC has not adequately supervised the client's implementation of PS1 and PS2 grievance handling requirements. During the initial period of supervision (2009 to 2012), IFC did not address this issue, despite evidence from client reporting that an effective company-wide system for grievance handling was lacking. From 2013, IFC has consistently identified a need for the company to improve its approach to grievance handling. This observation, however, has not been converted into either an agreed time-bound Action Plan or the type of hands-on support that the client would need to meet IFC requirements. As a result, as of February 2016, IFC was of the view that the client did not have in place a grievance mechanism compliant with the Performance Standards. Further, IFC's supervision record provides no assurance that the complainants' concerns regarding retaliation have been addressed.

4.3.4 Risks related to the employment of children on the client's tea estates

This section considers how IFC analyzed and responded to risks related to the employment of children on the client's tea estates.

The complainants raise issues of child labor in their complaint to CAO, noting that task rates¹⁵⁰ have been increasing for all types of tea plantation work, and that in order to complete the amount of work required to get a full day's wage, workers "hire other family members, *including children*" (emphasis added). Additional information provided to CAO by the complainants in 2014

¹⁵⁰ Task rates refers to the quantity of tea a worker is required to pluck in a day to receive the full daily wage. The current task rate is 24 kilograms of tea leaf.

elaborates on this concern, alleging that to meet quotas for plucking, pruning, maintaining drains and other tasks, workers are forced to rely on other family members, including children.

Summary of Findings

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

Requirements

In relation to issues of child labor, PS2 (Labor and Working Conditions) provides as follows:

The client will not employ children in a manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for the employment of minors, the client will follow those laws applicable to the client. Children below the age of 18 years will not be employed in dangerous work.¹⁵¹

IFC guidance on PS2 provides that if "IFC is approached by a potential client employing, using or knowingly benefiting from child labor...IFC will not proceed to process the project, unless the client is able to demonstrate that it will eliminate child labor prior to IFC's financing."¹⁵²

IFC guidance further provides that:

Clients should set a corporate minimum work age that at a minimum complies with national law and Performance Standard 2 and develop a corporate policy against employing, using or benefiting from child labor. In countries or sectors where there is a risk of child labor, clients should review and retain copies of verifiable documentation, in addition to those required through paragraph 7 of Performance Standard 2, concerning the age and employment profile of all people under 18 working in the business, paying particular attention to those under school leaving age. As a matter of good practice, clients should maintain on-site legal documentation of all workers below the age of 18.¹⁵³

Discussion and Findings

IFC's ESRS for the project does not address the issue of child labor, other than to note that the client is in the process of obtaining certification from ETP, and that ETP has among its objectives providing verification that child labor is not used.

Child labor is known to be prevalent in India's agricultural sector, including on tea plantations.¹⁵⁴ In relation to the client, the allegation is not that the client is directly employing children on its tea estates in breach of IFC requirements, but rather that the client benefits from the work of children who assist adult family members to meet production targets. This phenomenon is also documented independently of the complainants. One author, writing in 1991, cited the former chairman of the Tea Board in West Bengal as follows:

¹⁵¹ IFC PS 2 (2006), para. 14.

¹⁵² IFC PS 2: Guidance Notes (2006), para. 41.

¹⁵³ IFC PS 2: Guidance Notes (2006), para. 43.

¹⁵⁴ Mishra, Upadhyay, and Sarma 2012.

The workers are as attached to the land as the tea bushes. They were born in the tea estates. They live there all their lives. They die there. The mother who works in the tea gardens has no place to leave her children. She puts her child on her back and brings the child with her when she works. What is more natural than that the child wants to know what the mother is doing and wants to help her pluck tea. That is how the child becomes a worker. It is easy for children to pluck. Their fingers are nimble and the bushes are at their height. The child plucks [to] increase the pay of the mother. I would not say the children are employed. They are helping their parents. Then when the child is twelve, she is given a basket of her own and earns her own wages.¹⁵⁵

A similar account dating from 2008 noted that the piece rate system of wages “encouraged the use of children as helpers or as full-fledged workers.” The same article noted that in Assam children, “though not employed by the garden administration, help their mothers in plucking tea leaves during the flush season” with a “little girl able to contribute 1-5kg to her mother’s basket” and therefore her wages.¹⁵⁶

While the Tea Board, a Government of India agency, ceased reporting the incidence of children working on Assam tea estates in 1995, in 2004 the Tea Board recorded that adolescents made up 5 percent of the work force in Assam in 2004.¹⁵⁷ A 2015 study, which included tea estates in West Bengal and Kerala, but not Assam, concluded that 16 percent of 11–14 year-olds and 30 percent of 15–17 year olds living on the plantations were working inside the plantations, including helping a parent (usually the mother) fulfill the productivity quota during the lean season to avoid wage deductions. This is described as leading to seasonal drop-outs from school.¹⁵⁸

The Indian Tea Association (ITA) advises members not to employ anyone below the age of 15 years, but has affirmed, “[i]t is practically impossible therefore to prevent small children from being seen in the fields with their mothers. However, all measures are in place to ensure that they do not get involved in the work sphere. Their mere presence must not be interpreted as participation of child labour.”¹⁵⁹ Additionally, the client noted to CAO that it generally does not employ anyone below the age of 18, however, in exceptional circumstances it may provide a job to someone close to this age in lieu of a family member being unable to work.

While the sources cited do not lead to the conclusion that there is a child labor problem on the client’s estates, they do indicate that the issue as raised by the complainants is a long-standing and well-known concern in the Indian tea sector.

In this context, CAO finds that IFC’s appraisal of the risk of child labor on its client’s plantations was not commensurate with risk. In an industry where child labor was known to be prevalent, and where (in 2006) 12-year-olds could be legally employed, IFC should have ensured that the E&S Assessment covered this issue in detail, outlined the risk, reviewed relevant baseline information and described the client’s approach to managing the issue. There is no evidence that IFC took any of these steps.

Once the issue of child labor was raised by way of the February 2013 complaint to CAO, IFC had a duty to assure itself that its client was in fact in compliance with the child labor requirements of PS2. CAO finds no indication that this was done. While IFC initiated an OHS audit in 2011, this

¹⁵⁵ Weiner 1991, 51.

¹⁵⁶ Tripathi 2008, 8.

¹⁵⁷ Tea Board, Tea Statistics, 2006, p. 162. Available at <http://goo.gl/TBYPFD> (accessed April 20, 2016).

¹⁵⁸ Center for Worker’s Management 2015.

¹⁵⁹ Indian Tea Association (2015).

did not include questions on child labor. Neither the Solidaridad report commissioned by TGB nor the TISS study commissioned by the client indicate that they considered the issue. IFC's supervision documentation is similarly silent. IFC's approach to this issue has been to rely on ETP and SA8000 certification as evidence that relevant requirements are being met. ETP and SA8000 requirements in relation to child labor are similar to those of PS2. For reasons discussed above, however, CAO finds that the client's participation in these programs provided IFC with insufficient evidence of compliance.

4.3.5 Risks related to the client's use of pesticides

This section considers IFC's approach to the appraisal and supervision of risks related to the client's use of pesticides.

Both the CAO complaint and the incidents that triggered the original CAO compliance appraisal raise concerns regarding the client's use of pesticides. These include:

- Incident Two at the Powai tea estate related to a 25-year old worker, Gopal Tanti, who collapsed and died at work on May 28, 2010, allegedly due to exposure to pesticides. According to an IUF report on the incident, Gopal Tanti and other spray workers with him were not wearing protective equipment (gloves, masks, goggles, or boots).
- The February 2013 complaint to CAO, which alleges that sprayers have "insufficient and poor quality protective equipment" and that only "an arbitrary proportion" of workers receive gear. The complaint further states that "only workers who mix chemicals [are] given gloves" and that workers using pesticides receive no training or no medical check-ups and are not rotated. The complaint also raises concerns regarding the client's use of a particular pesticide, Endosulfan.
- CAO's 2013 Assessment Report in relation to the complaint, which notes that workers allege impacts on vision after prolonged spraying work. CAO's Assessment Report also notes a concern that the protective equipment provided to spray workers last only two to three months, after which the company does not replace them. Workers further allege that "safety equipment comes out during audits and then disappear[s]."
- An update provided to CAO by the complainants in September 2015, which indicates that the above issues remain of concern.

Summary of Findings

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

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

Requirements

IFC's pesticide use requirements are set out in PS2 (Labor and Working Conditions) and PS3 (Pollution Prevention and Abatement).

Under PS3, a client is required to "formulate an Integrated Pest Management (IMP) and/or Integrated Vector Management (IVM) approach to pest management activities" using chemical means "as a last resort" to prevent unacceptable levels of pest damage.¹⁶⁰ The client is to "select pesticides that are low in human toxicity and have minimal effects on non-target species and the environment."¹⁶¹

IFC Guidance Notes provide that "[i]n the event that the use of pesticides beyond isolated or incidental use is proposed as an integral aspect of the client's activities, the client should present evidence in the Social and Environmental Assessment of the need to use pesticides that describes the proposed use and intended users, and the nature and degree of associated risks." The client is also required to manage pesticides "in accordance with FAO's [Food and Agricultural Organization's] International Code of Conduct on the Distribution and Use of Pesticides or other good international industry practice."¹⁶²

In terms of the handling and use of specific toxic substances, PS3 states that "[t]he client will avoid the...use of chemicals and hazardous materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, potential for bioaccumulation, or potential for depletion of the ozone layer, and consider the use of less hazardous substitutes for such chemicals and materials."¹⁶³

World Health Organization (WHO) Class Ia (extremely hazardous) and Ib (highly hazardous) chemicals cannot be used. The use of WHO Class II (moderately hazardous) chemicals is similarly not permitted if the country in question "lacks restrictions on distribution and use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply and dispose of these products properly."¹⁶⁴

IFC Guidance Notes further provide that "[c]lients should review the list of active ingredients included in Annex A and B of the Stockholm Convention and ensure that no chemical formulations are...used in the project that include these ingredients unless it is under the highly exceptional circumstances noted in Annexes A and B of the Stockholm Convention." In relation to the Rotterdam Convention, IFC's Guidance Notes require the client to "review the list of chemicals included in Annex III...and seek to prevent their...use."¹⁶⁵

¹⁶⁰ IFC PS 3 (2006), para. 12.

¹⁶¹ IFC PS 3 (2006), para. 13.

¹⁶² IFC Guidance Notes, PS3 (2007), para. 14.

¹⁶³ IFC PS 3 (2006), para. 6.

¹⁶⁴ IFC PS 3 (2006), para. 15.

¹⁶⁵ IFC Guidance Notes (2007): PS3, G. 19 and 21.

Relevant OHS requirements are provided in PS2 and associated guidelines. Generally, the client is required to provide a safe and healthy workplace, taking measures to avoid and protect workers from harm by applying “good international industry practice.”¹⁶⁶ Specific requirements from the IFC Environmental, Health and Safety Guidelines include:

- Identifying and providing appropriate personal protective equipment (PPE).
- Ensuring adequate and competent supervision of the work, work practices and the appropriate use of PPE.
- Ensuring that PPE is cleaned when dirty, properly maintained and replaced when damaged or worn out.
- Providing easily accessible first aid stations, including eye-wash and/or emergency showers as appropriate.
- Ensuring that all chemicals and hazardous materials are properly labeled and that Materials Safety Data Sheets (or equivalent data/information) are available to exposed workers in their local language.
- Monitoring and record keeping, including audit procedures designed to verify and record the effectiveness of prevention and control of exposure to occupational hazards.

Further, IFC’s Hazardous Materials Management Guidelines include:

- Job safety analysis to identify specific potential occupational hazards and industrial surveys, as appropriate, to monitor and verify chemical exposure levels, and compare with applicable occupational exposure standards.
- Hazard communication and training programs to recognize and respond to workplace chemical hazards.¹⁶⁷

Discussion and Findings

CAO finds that IFC has not properly applied its requirements regarding the handling and use of pesticides to this project. This is a matter of serious concern, given long-standing concerns from workers regarding the health impacts of the client’s pesticide use.

IFC’s treatment of this issue has been inadequate from the outset. At appraisal, IFC reviewed a list of pesticides and herbicides used by the client. This included 10 WHO Class II (moderately hazardous) pesticides, including Endosulfan (WHO Class II), about which the complainants raise specific concerns.¹⁶⁸ In all, the client reported using 95,000 liters/kilograms of Class II pesticides. The client also reported using one Class Ia (extremely hazardous) pesticide, Phorate, though no usage amount was given for this substance.

Having reviewed the list of chemicals provided by the client, IFC concluded that none of the chemical the client uses “is listed on IFC’s Environmental, Health and Safety Guidelines for Pesticide Handling and Application (July 1, 1998) as either banned pesticides or pesticides whose

¹⁶⁶ IFC PS 2 (2006), para. 16.

¹⁶⁷ See IFC OHS Guidelines (2003); IFC EHS Guidelines for Hazardous Materials Management (2007); and, IFC EHS Guidelines for Plantation Crop Production (2007).

¹⁶⁸ Endosulfan is a WHO Class II (moderately hazardous) chemical. It is also listed under the Rotterdam Convention on international trade in hazardous chemical and the Stockholm Convention on Persistent Organic Pollutants. In the United States, Endosulfan is being phased out, with the U.S. Environmental Protection Agency stating that it has “high acute oral and inhalation toxicity” and that it “can pose unacceptable health risks to farmworkers and wildlife and can persist in the environment.” See U.S. Environmental Protection Agency for further details, <https://goo.gl/4GwwUY> (accessed April 16, 2016).

use should be avoided if suitable alternatives are available.”¹⁶⁹ While this statement was correct, IFC did not note that the client was using a large amount of WHO Class II pesticides, which have restricted usage. Given the information presented to IFC by the client, the requirements of PS3 and associated guidelines, IFC did not provide adequate support to the client in the preparation of a pesticide management and monitoring plan or in relation to the selecting pesticides that are low in human toxicity. A review of the client’s approach to pesticide handling, use and storage was absent.

Shortcomings in IFC’s approach to the application of its requirements regarding pesticide use have persisted into supervision. There is no evidence to suggest that IFC adequately reviewed a COD for the client to provide IFC with new procedures and training material for employee handling, storing and applying chemicals. Rather, the first documented review of these procedures was in November 2010.

IFC received its first AMR from the client in June 2009. By this stage, the client’s list of pesticides used included 21 WHO Class II, 2 Class Ib and 1 Class Ia pesticides. However, IFC did not identify this as a compliance issue.

The pattern continued in 2010, 2011, and 2012, when the client’s reported usage of WHO Class Ia and Ib pesticides peaked at 17,500 liters/kilograms. It was not until December 2013 that IFC first documented a concern regarding its client’s use of hazardous pesticides. At this point, IFC noted that its client needed to undertake a comprehensive review of all pesticides it uses and discontinue the use of WHO Class Ia, Ib and II pesticides by replacing them with other less hazardous pesticides. However, no time-bound Action Plan was agreed with the client in relation to this issue.

By 2015, the client’s reported use of Class Ia and Ib pesticides was reduced to less than 200 liters/kilograms by 2015, however, its use of Class II pesticides had increased to 129,000 liters/kilograms, with 24 Class II substances in use (a 36-percent increase over the figure reported at appraisal). In this context, IFC’s most recent supervision documentation records the client’s use of hazardous pesticides as an issue of continued concern.

Another important aspect of the pesticide issue relates to the client’s occupational health and safety (OHS) practices. Again, this issue has not been adequately handled by IFC. At appraisal IFC presented the project as follows:

[The client] provides all requisite personal protective equipment (PPE) including hand gloves, goggles, masks, boots and aprons as per requirements and recommendations for handling the various types of chemicals used on the estates. [The client] also endeavors to rotate employees involved in agrochemical handling/application every quarter to a non-hazardous operation. Employees involved in spraying operations are given quarterly medical check-ups, including cholinesterase and other blood tests, bilirubin test, chest x-ray and urinalysis. Any employee whose tests indicate excessive exposure is immediately rotated off spraying operations. Although [the client] has previously undertaken training on safe handling and application of agrochemicals, [it] is stepping up this training for all employees involved in spraying/handling of chemicals. All chemicals are stored in a locked and ventilated building. A color-coding system (ANSI) is in place for hazardous chemicals identification, including detailed labeling including information such as hazardous

¹⁶⁹ IFC ESRS. See <http://goo.gl/6xy4hE> (accessed January 20, 2015).

properties, recommended first aid measures and preventive measures. The [client] will expand this system to include daily-use chemicals and stock chemicals, and will ensure that Material Safety Data Sheets (MSDSs) for all chemicals in use are made available in all locations.¹⁷⁰

IFC's pre-investment review of the issues outlined in the paragraph above was deficient in a number of ways. First, it neglects key requirements. For example, IFC considered only whether the client provided PPE, and not whether it ensured adequate supervision of the work with hazardous materials, including the use of PPE. Secondly, as noted, IFC lacked adequate and objective information on which to base its E&S review. Thus, IFC's position on the client's approach to OHS issues was based on the client's self-assessment, verified only by a brief site visit to three of the client's 24 estates. Indeed, much of the paragraph from IFC's ESRS above is reproduced from a client document describing mitigation measures developed as part of its Environmental Management Framework. As indicated by later audits, IFC's 2006 E&S review significantly overstated the client's level of OHS compliance.

Potential OHS issues related to the client's use of pesticides became acute following the death of a Powai spray-worker, Gopal Tanti, in May 2010. While the client cited an autopsy report in support of its position that the cause of death was not related to Tanti's duties as a sprayer, following the incident, IFC decided to commission independent OHS audit of selected tea estates belonging to the client.

The audit was designed to assess compliance with IFC and national OHS requirements and develop a corrective Action Plan for any gaps identified. Supporting the client to conduct an OHS audit was consistent with the requirements for E&S Assessment under PS1.¹⁷¹

The audit, delivered in July 2011, found IFC's client to be in general compliance with the requirements of state factory rules and statutory OHS requirements, though sporadic cases of deviation were identified. The audit, however, also made a series of critical findings, including that the client:

- a. Lacked adequate systems for the identification, evaluation and mitigation of OHS hazards;
- b. Captured data on accidents, but does not conduct root cause analysis to prevent recurrence of similar accidents; and
- c. Had an approach to OHS training that was sporadic and not well documented.

In relation to the use and handling of pesticides, the report noted that the use of PPE by personnel engaged in spraying of insecticides and plucking of leaves had been found to be satisfactory, except for sporadic cases of violation. At the same time, however, five of the eight individual estate reports that underlie the audit raised issues regarding the use of PPE. These included failure to maintain or replace worn-out PPE; workers not wearing required PPE; and workers not receiving adequate training on the use of PPE.

The audit also raised issues regarding the storage of chemicals. Findings in this respect include lack of proper containment facilities in case of chemical spills; lack of appropriate facilities (including wash stations); and lack of accessible information on chemical safety in areas where hazardous chemicals are stored and mixed.

¹⁷⁰ IFC ESRS. See <http://goo.gl/6xy4hE> (accessed January 20, 2015).

¹⁷¹ See IFC PS 3 (2006), para. 8, for further details.

While recommendations are identified in the audit, no Action Plan to address the audit findings was agreed between the client and IFC.

It is thus of particular concern that a number of the OHS concerns noted by the 2011 audit were raised again in the Solidaridad Report (2014). This assessment, commissioned by TGB, found as follows:

The PPE used in different APPL estates are *not of sufficient quality and do not offer workers adequate protection*. APPL needs to invest in procuring high quality and yet locally suitable PPE, which could be standardised across all estates. The *sprayers are not rotated* at present from their duties and they need to be done so every three months to avoid continuous exposure to chemicals. Finally, APPL must come up with a plan of providing a wash station in each estate where the PPE could be washed and workers could take bath. The *present practice of washing the PPE at the same place from where they collect drinking water is dangerous* (emphasis added).¹⁷²

As a result of the Solidaridad Report (2014), TGB and the client agreed that the client would: (a) procure high-quality and locally suitable PPE; (b) provide a wash station in each estate where the PPE could be washed and workers could bathe; and (c) ensure that duty roster sprayers are rotated every three months to avoid prolonged exposure to hazardous chemicals. An update report published by TGB indicated that these actions had been completed by November 2014, though no follow-up audit has been conducted to verify this.

IFC's March 2015 supervision documentation notes that training on spraying pesticides has been provided at the tea estates and PPE provided without presenting details of which estates this relates to and what, if any, verification was undertaken. A February 2016 supervision document indicated IFC's view, however, that the client had not met PS2 requirements to have an OHS Management Program that is: (a) appropriate for the risks posed by its operations; and (b) adequately protective of its workforce.

In conclusion, CAO finds that supervision of risks related to pesticide use in this project has not met IFC standards. In particular, IFC did not identify in a timely manner the client's use of pesticides that are prohibited or restricted according to IFC requirements. Further, IFC did not provide adequate guidance to the client on how to address compliance issues related to pesticide use. It is of significant concern that, to date, IFC does not have assurance that specific noncompliance issues related to the client's use of pesticides have been addressed. These include issues that have been raised by external stakeholders since 2010, and were confirmed as concerns by external audits conducted in 2011 and 2014, such as: (a) selection of pesticides that are low in human toxicity; (b) storage of pesticides; (c) training of workers in relation to safe use of pesticides; (d) use of appropriate PPE; and (e) provision of adequate wash facilities for workers engaged in the use of pesticides. The lack of an Action Plan agreed between IFC and the client which is time bound and resourced is of note.

¹⁷² Tata Global Beverages Limited–November 2014 Recommendations and Action Plan. For further details, see <http://goo.gl/JB2iyR> (accessed February 3, 2015).

4.3.6 Risks related to the client's approach to security

This section considers IFC's handling of the client's approach to security. It considers the client's reliance on armed government security personnel that are assigned to protect client management and property. It also considers the client's response to specific security incidents that involved the use of force.

Summary of Findings

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

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

Requirements

Performance Standard 4 details requirements in relation to a client's use of security forces. Specifically, PS4 provides:

When the client directly retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks to those within and outside the project site posed by its security arrangements. In making such arrangements, the client will be guided by the principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel, and applicable law. The client will make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, will train them adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat. A grievance mechanism should allow the affected community to express concerns about the security arrangements and acts of security personnel.

If government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, communicate its intent that the security personnel act in a manner consistent with paragraph 13 above, and encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.

The client will investigate any credible allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities when appropriate.¹⁷³

In relation to these requirements, IFC's Performance Standards Guidance Notes provide:

¹⁷³ IFC PS 4 (2006), para. 13–15.

There may be cases where the government decides to deploy public security forces to protect a client's operations, whether on a routine or as needed basis.... Clients are expected to communicate their principles of conduct to the public security forces, and express their desire that security be provided in a manner consistent with those standards by personnel with adequate and effective training. The client should request that the government make information about the arrangements to the client and the community, subject to overriding safety and security needs.¹⁷⁴

Discussion and Findings

Security context

A history of organized violent incidents in Assam, and in some instances related to the tea sector, can be traced back to the 1980s.¹⁷⁵ In response to violent incidents against tea management and workers, notably the 11-month kidnapping of a Tata Tea executive, the government of Assam established the Assam Tea Plantation Security Force (ATPSF) in 1993.¹⁷⁶ The ATPSF is a government security force deployed on tea estates; however, it is funded by the India Tea Association. Their duties include providing security to "key" tea garden personnel, escorting cash and guarding tea estate facilities.

A 2004 World Bank report noted that while the security situation in Assam was improving, there was "still some lingering social unrest in the more peripheral parts of the state, with sporadic acts of violence, particularly in the tea plantations."¹⁷⁷

IFC performance

IFC's appraisal documentation did not assess the client's approach to security. In visiting the tea estates, however, IFC staff were escorted by the client's armed security. Following IFC's appraisal, according to news reports in March 2007, eight people were injured at the Borjan tea estate when police opened fire after workers were locked out after protesting the share program.¹⁷⁸ While this incident was reported in the media and noted in the client's annual report, there is no documented communication between IFC and the client on this issue. In this context, CAO finds IFC's pre-investment assessment of the client's approach to security to be inadequate.

The incidents at Nowera Nuddy, Powai and Borhat involved the use of security forces to a varying degree.

- At Nowera Nuddy in August 2009, the client reported to IFC that the medical officer had to be rescued by police following an outbreak of violence on the tea estate.
- At Powai in May 2010, two individuals were killed and 16 injured after police opened fire on workers following the death of a worker who was involved in pesticides spraying.
- At Borhat in December 2011, at least 10 people and a number of police were injured after a protest turned violent following the death of a worker.¹⁷⁹

¹⁷⁴ IFC PS 4 Guidance Notes (2007), G35.

¹⁷⁵ American Progress (2012) *Understanding the Historical Conflicts Behind Today's Violence in Assam*, see <https://goo.gl/1WHqT5> (accessed August 8, 2016).

¹⁷⁶ Ghosh 1995, 292–297.

¹⁷⁷ World Bank (2004).

¹⁷⁸ Reuters (March 20, 2007), *Indian tea workers wounded in Tata Tea protests*.

¹⁷⁹ Telegraph India (December 31, 2011), *Lockout at Borhat garden*.

The IFC-commissioned Third-Party Audit (July 2011) found that the management of the estates sampled did not have a policy for the recruitment of security personnel as required under PS4. There is no evidence of any substantive follow up on this point by IFC.

During CAO's investigation, given the history in the region of socio-political turmoil and risks to tea estates, IFC noted that IFC had invoked the "overriding security concerns" provision of PS4. IFC noted that as the client must rely on public authorities' assessment and guidance on all security-related matters, IFC's view is that the client is not able to implement several provisions of PS4.

As outlined in the requirements and the guidance notes, the "overriding security concerns" provision provides an exception for the disclosure of the client's security arrangements to the public. Other requirements of PS4 remain in place (e.g., assess risks arising from use of government security personnel and communicate its intent that the security personnel act in a manner consistent with PS4).

CAO notes that IFC's supervision documentation does not record any substantive engagement on the client's approach to security, either prior to the above noted incidents or thereafter. There is also no record in IFC's supervision documentation that the "overriding security concerns" provision was invoked prior to July 2016.

In this context, CAO finds that IFC has not assured itself that the client's approach to the use of security forces is in accordance with the requirements of PS 4. Further, in light of a negative assessment of the client's approach to security, made in the context of an OHS audit, IFC has not required its client to undertake a security assessment which would be required under PS4. Further, IFC has not assured itself that the client has communicated its intent to the government security forces, deployed to provide protection to the client's properties and personnel, that they act in a manner consistent with PS4.

4.3.7 Allegations of economic displacement as a result of the project.

The CAO complaint raises a concern that as part of a diversification program, the client "built a fishery on paddy land of sixteen families." When workers protested, the complaint claims "the company says it's our land and then promises them one job per family ... which the company calls 'regular temporary employment in perpetuity' [but] includes no benefits except for basic medical facilities and 'labor tea.'"

Similarly, the complaint alleges that in another estate workers were operating a fishery for their own consumption, which the company shut down, saying it was company land, and offering no compensation. This issue is also covered in the Columbia Law School report.¹⁸⁰

Summary of Findings

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

¹⁸⁰ Columbia Law School 2014.

Requirements

Performance Standard 5 (Land Acquisition and Involuntary Resettlement) applies in cases where an IFC-supported project leads to economic or physical displacement, including where the people displaced have no recognizable legal right or claim to the land they are using.¹⁸¹ PS5 establishes as a principle that involuntary resettlement should be avoided or at least minimized.¹⁸² Economic displacement exists if land acquisition for the project causes loss of income or livelihood.¹⁸³

In cases of economic displacement, and where the displaced persons do not have legal rights to the land in question, the client is required to: (a) compensate the displaced persons for loss of assets (other than land); and (b) provide additional assistance to “improve or at least restore [the displaced persons’] income earning capacity, production levels, and standards of living.”¹⁸⁴

PS5 also sets out planning requirements for projects that involve involuntary resettlement.¹⁸⁵

Discussion and Findings

At appraisal, IFC did not anticipate that the project would involve economic or physical displacement. As a result, the application of PS5 was not considered. While the client’s plan to develop fisheries on some estates is discussed in IFC’s Environmental and Social Review Summary, IFC did not consider where these activities would be located and whether they would displace existing economic activities undertaken by workers.

In communications with CAO, IFC has stated that it looked at all of the allegations made in relation to its client’s operations very seriously, engaged with all the complainants and responded as appropriate. In relation to the potential economic displacement of workers’ supplemental agricultural activities, IFC sought information from the client. However, an IFC review of this information is absent.

The Solidaridad Report (2014) noted that the client did not violate any law in pursuit of its non-tea agricultural program at the ten estates the audit covered. However, the report noted the incidence of workers engaged in the fisheries program working on contracts under the condition of “regular temporary employment in perpetuity”.¹⁸⁶ In response, the client reports that it has provided the concerned workers with alternative land or permanent employment to a family member.¹⁸⁷ CAO finds no evidence that IFC has assessed whether this meets the requirements of PS5 in relation to the issues raised by the complainants.

¹⁸¹ IFC PS 5 (2006), para 5.

¹⁸² IFC PS 5 (2006), Objectives.

¹⁸³ IFC PS 5 (2006), para 20.

¹⁸⁴ IFC PS 5 (2006), para 20.

¹⁸⁵ IFC PS 5 (2006), para 11ff.

¹⁸⁶ Tata Global Beverages Limited–November 2014 Recommendations and Action Plan. For further details see <http://goo.gl/J1VmnJ> (accessed April 20, 2016).

¹⁸⁷ APPL 2015.

4.3.8 Application of Performance Standard 7 (Indigenous Peoples) to the project

The complainants maintain that the workers are Indigenous Peoples as defined in IFC Performance Standard 7, and thus that the workers should be considered “partners in development” with their culture and identity protected.

The basis for this claim, the complainants argue, is that the workers come from various Adivasi tribes whose forebears were forcibly located to the plantations in the 19th century. These various tribes, the complainants note, are recognized as “Scheduled Tribes”¹⁸⁸ in other Indian states, but not in Assam. Further, the complainants assert that the workers speak a distinct language and organize their society differently from the dominant culture in India.

Summary of Findings

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

Requirements

IFC PS7 notes that Indigenous Peoples are “often among the most marginalized and vulnerable segments of the population” and their “languages, cultures, religions, spiritual beliefs, and institutions” often expose them to “different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.”¹⁸⁹ As such, PS7 recognizes that Indigenous Peoples “may play a role in sustainable development by promoting and managing activities and enterprises as partners in development.”

Noting that there is no universally accepted definition of “Indigenous Peoples.” PS7 states that the term 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 dominant society or culture
- An indigenous language, often different from the official language of the country or region.”¹⁹⁰

In considering the application of PS7, IFC guides its clients to evaluate the above characteristics “independently,” with “no characteristic weigh[ing] more than the others.”¹⁹¹ In determining whether a group or community should be considered Indigenous for the purpose of PS7, IFC notes that the client should retain qualified social scientists using a mixture of ethnographic and participatory approaches.¹⁹²

¹⁸⁸ “Scheduled Tribe” is the terminology frequently used to define Indigenous Peoples in India. See footnote 44.

¹⁸⁹ IFC PS7 (2006), para. 1.

¹⁹⁰ IFC PS7 (2006), para. 5.

¹⁹¹ IFC PS7 (2006), GN5.

¹⁹² IFC PS7 (2006), GN6.

Discussion and Findings

IFC did not consider whether Adivasi workers on the client's tea estates should be considered Indigenous Peoples, either at appraisal or after this issue was raised by the complainants in 2013.

As part of its investigation, CAO has reviewed a body of material contending that tea workers in Assam should be considered as Indigenous Peoples.¹⁹³ The basis for these arguments is that while the "Tea Tribes," as the Adivasi are sometimes known, do not have ancestral attachment to Assam, they have maintained their own language, have a distinct cultural identity which is different from other groups and self-identify as members of an ethnic group that is recognized as a Scheduled Tribe in neighboring West Bengal, where the client has four tea estates.

On this basis, CAO finds that IFC did not assure itself that PS7 was properly applied to this investment. Given the characteristics of the Adivasi tea workers of northeast India as described, CAO finds that expert analysis in relation to the application of PS7 was required. In accordance with IFC guidance, this should have involved qualified social scientists employing using a mixture of ethnographic and participatory approaches.

4.3.9 Consultation and disclosure in relation to the share program

Support for the employee share purchase plan was a key justification for IFC's investment. To date, the return on investment of the shares has been positive (both capital growth and dividends) and some costs of participating in the share program have been borne by the client (e.g., cost of providing interest-free loans). Nevertheless, questions arise as to the process of consultation and disclosure that accompanied the roll-out of the program.

The complainants allege that workers were not properly informed about the share program or the loan provided to finance participation in the program. They allege that some workers were threatened and experienced harm for not participating in the program (such as nonpayment for work). The complainants also raise concerns about the lack of consultation on the share program during implementation.

In this context, the section below considers IFC's review and supervision of risks associated with the employee shareholder program, including:

- Assessment of its client's approach to consultation on the share program;
- Assessment of risk and potential impacts of the project upon workers;
- Response to low worker participation in the project;
- Response to allegations in relation to the implementation of the share program; and
- Role in the January 2014 Rights Issue.

Summary of Findings

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

¹⁹³ Fernandes 2003; Frontline (2007) – see <http://goo.gl/M1O6pi> (accessed August 8, 2016); See also Enclosure 1 of complainants' submission to CAO September 2015, available at <https://goo.gl/Jm5tkA> (accessed April 26, 2016).

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

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

Requirements

Central to IFC's development mission are "its efforts to carry out its investment operations and advisory services in a manner that 'do no harm' to people." In particular, IFC is committed to "ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable...[and] IFC believes the client's regular engagement with local communities about matters that directly affect them plays an important role in avoiding or reducing harm to people."¹⁹⁴

Performance Standard 1 requires a client to engage with affected communities through disclosure of information, consultation and informed participation, in a manner commensurate with the risks to and impact on affected communities. Such engagement is required to be "free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information."¹⁹⁵ Specific measures are set out in PS1 for communities that may be "subject to risks or adverse impacts" from the project.

If affected communities may be subject to risks or adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them. Effective consultation: (i) should be based on the prior disclosure of relevant and adequate information, including draft documents and plans; (ii) should begin early in the Social and Environmental Assessment process; (iii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iv) will be carried out on an ongoing basis as risks and impacts arise. The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. The client will tailor its consultation process to the language preferences of the affected communities, their decision-making process, and the needs of disadvantaged or vulnerable groups¹⁹⁶ (emphasis added).

Employee Share Purchase Plan

The employee share purchase plan (ESPP, or "share program") provided employees with the opportunity to buy shares in the client. The number of shares each employee could buy was based on the employee's status (e.g., management, staff, and worker). Further, to assist

¹⁹⁴ IFC Sustainability Policy (2006), para. 8.

¹⁹⁵ IFC PS 1 (2006), para. 19.

¹⁹⁶ IFC PS 1 (2006), para. 21.

workers to participate in the share program, the client arranged interest-free loans. Loan repayments were deducted from employee salaries.

As structured, employees who participated in the share program were provided with Cumulative Compulsory Convertible Preference Shares (CCCPS), which would convert to ordinary shares after four years. While these shares had greater capital protection than ordinary shares, CCCPS did not have the same rights as an ordinary shareholder (e.g., voting rights and participation in additional share offering rights issues). CCCPS did, however, have a guaranteed dividend of 6 percent per year or dividend at the ordinary share rate, whichever was higher. Employee's CCCPS were converted to ordinary shares in February 2014.

Discussion and Findings

Buying shares in a company involves risk and potential adverse impacts (for example loss of capital investment). Informed investment requires a level of understanding financial issues that is beyond common knowledge. Committing to a loan to finance an investment with repayments deducted from salary adds complexity to the overall transaction.¹⁹⁷

As noted above, during its pre-investment due diligence IFC explained its role in terms of providing support to an innovative business model with the potential to bring about “fundamental change” in an industry that faces large fixed costs, low productivity and burdensome regulation. IFC also held itself out as an “*honest neutral broker to support a fair transaction*” between employees and existing shareholders.¹⁹⁸

IFC's review of its client's approach to consultation on the share program

In assessing the client's consultation during its E&S appraisal, IFC reported that the client had “undertaken extensive consultations on the sale of [APPL] shares to employees and others in the local community...The discussions, which included presentations on a timetable outlining how and when the change will be undertaken, have taken [place] at all levels of employees.” IFC's E&S appraisal noted that the “consultations have taken place both indirectly, through worker representatives, as well as directly by the management team at each plantation” and were conducted over the seven to eight months prior to IFC's disclosure.¹⁹⁹ IFC noted that employees were expected to acquire 15–20 percent of the shares of the client.²⁰⁰ IFC's view was that the employee shareholding should be higher to provide the right incentive structure for employees. Over time, IFC expected employee shareholding to increase through additional share offerings to employees.

IFC's appraisal documentation did not, however, detail how IFC assured itself that these consultations were “conducted on the basis of timely, relevant, understandable and accessible information.”²⁰¹ Analysis of the extent of worker support for the share program was similarly absent from IFC's appraisal documentation, as was a framework for monitoring the effectiveness of the client's ongoing consultation with workers in relation to the share program. These deficiencies were compounded by the fact that IFC did not substantively engage with workers or their representatives during appraisal.

¹⁹⁷ Kaarsemaker & Pendleton (2009) *Employee Share Ownership Plans: A Review*. Working Paper No. 44.

¹⁹⁸ IFC (2006a).

¹⁹⁹ IFC (2006b).

²⁰⁰ IFC (2006a).

²⁰¹ IFC PS1 (2006), para.19.

IFC's assessment of risk and potential impacts of the share program on workers

In order to facilitate workers' participation in the share program, the client arranged an interest-free, seven-year loan. The monthly repayments by employees, IFC noted, represented a small fraction of a worker's salary. There is, however, no evidence of an IFC assessment of what proportion of a tea worker's salary would be an acceptable deduction given their minimal disposable income and associated health issues. CAO notes the complainants' assertion that the cost to workers who participated in the share program amounted to 10 percent of their total cash income. In this context and in considering the PS requirement for IFC to consider adverse impacts of a project upon affected communities, CAO finds that IFC did not adequately consider the potential adverse impacts of participation in the project on workers. In particular, IFC did not assess the ability of workers to afford the reduction in income required to repay the loan or the potential impacts on workers if the share price fell.

IFC's response to low worker participation in the project

Between IFC's approval of the project in October 2006 and April 2009 when IFC invested, both IFC documentation and media reports noted challenges in getting workers to sign up for the share program. In March 2007, the client declared a lockout at its Borjan tea estate in Assam, "arising from unruly behaviour of a section of workforce with the support of outsiders."²⁰² As reported in the media, the lockout was initiated after workers protested following an announcement by the client, offering workers loans to participate in the share program. Eight workers were injured after police opened fire during the protests.²⁰³

In February 2008, IFC was informed that less than 8 percent of workers had expressed an interest in the share program. In response, IFC and another investor sponsored a training program with 54 sessions covering all estates in Assam for workers on investing and saving. The goal of the program was to train 3000 workers (10 percent of the client's workforce) on "Savings and Investments" in order that they could make an informed decision on the equity investment. The training session at Hattigor, IFC's documentation noted, was suspended due to worker agitation. The primary objective of this course, the Tata Group noted, was to "encourage ownership among all of the company's employees."²⁰⁴ Reflecting on the training program, the Tata Group noted that "educating and convincing the workers, most of them illiterate, proved tough even though the management tried several methods."²⁰⁵ CAO notes that the training materials described purchasing a share as a profitable method of saving compared to a deposit at a bank. While the training material acknowledged that share prices can fluctuate, the material did not describe the risk of partial or total loss of investment. From discussions with workers and staff who attended these sessions, CAO was informed that the share program was presented in an overtly positive way, with limited discussion of the risks of participation.

As a condition of IFC's first disbursement in April 2009, the client was required to provide evidence that a sufficient number of employees had expressed an interest in participating in the share program. At this point, IFC was aware that workers interested in participating in the share program was low. However, due to high participation from management and staff, the condition of disbursement was met.²⁰⁶

²⁰² Tata Tea Annual Report 2006/2007.

²⁰³ Reuters (March 20, 2007), *Indian tea workers wounded in Tata Tea protests*.

²⁰⁴ Tata Review 2013.

²⁰⁵ Tata Review 2013.

²⁰⁶ See footnote 17 for an explanation of the clients' employment categories.

As a condition of IFC's investment, the client agreed to ensure that at least 50 percent of employees subscribed to the share program within four years.

Nine months later, in January 2010, 59 percent of workers had agreed to participate in the share program. Explaining this increase, the Tata Group noted that the guarantee of a 6-percent dividend return to workers for the first five years of the investment had "evoked some response."²⁰⁷

According to the complainants, workers felt pressured into participating in the share program during this time. In this context, CAO finds that IFC did not take action to assure itself whether the increase in worker participation in the share program was due to effective consultation and outreach (as argued by the client) or to pressure applied by client management (as argued by the complainants).

IFC's response to allegations in relation to the implementation of the share program

In their complaint to CAO in February 2013, the complainants alleged that they had not received any information on the performance of the program since its launch. In subsequent submissions to IFC, the complainants note that they have received documentation only in English on the share program. Five years after the share program was implemented, the complainants maintain that they do not understand the concept of the shares nor do they know where to find out or raise questions about the program. Documentation provided to CAO in September 2015 by the complainants indicated that worker shareholders had been provided the client's annual report in English only.

Recent IFC E&S supervision documentation noted that a lack of clarity existed among worker shareholders on procedural requirements for next-of-kin to sell the share in the event of death of a worker shareholder. IFC noted that additional awareness programs on these procedures were required.

While this step is positive, in the context of the issues raised in the complaint, allegations noted in the Columbia Law School report and public articles on the lack of consultation, however, CAO finds that IFC has not adequately supervised the client's PS1 requirements for ongoing consultation in relation to the share program. Specifically, IFC has not adequately assured itself that ongoing consultation has been "conducted on the basis of timely, relevant, understandable and accessible information."²⁰⁸ Further, since the workers became ordinary shareholders in February 2014, CAO notes that IFC's supervision documentation has not commented on whether these shareholders have adequate representation on the client's Board.

IFC's role in the January 2014 Rights Issue

IFC and another investor were scheduled to buy shares in the client in 2009, making two disbursements, with the employees subscribing to their shares in between. However, IFC and the other investor's second disbursement was delayed and subsequently did not take place because of financial policy regulations. Accordingly, IFC documentation recorded that the employees' equity stake in client would be higher than anticipated, following the conversion of the CCCPS to ordinary shares in February 2014.

²⁰⁷ Tata Review 2013.

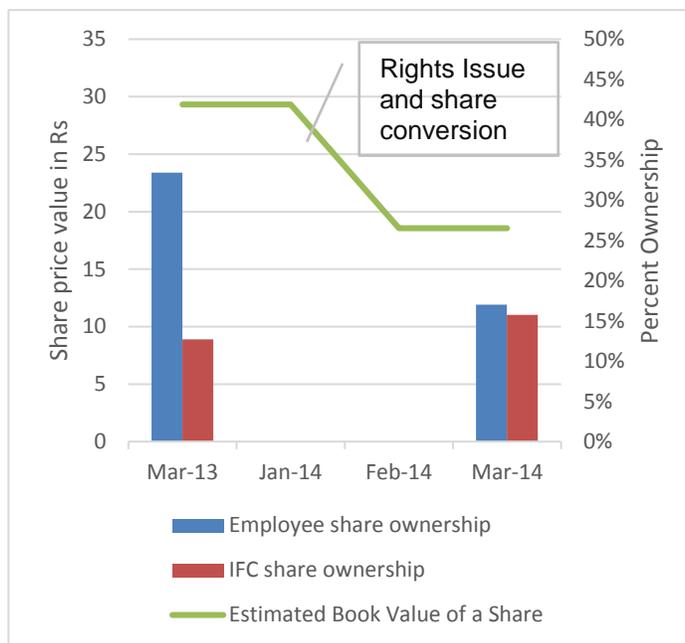
²⁰⁸ IFC PS 1 (2006), para. 19

IFC documentation notes that IFC and other investors discussed various proposals to complete their second disbursement between 2009 and 2013. In late 2013, IFC and other investors considered and subsequently approved a Rights Issue in the client in January 2014.

The IFC team proposed IFC’s participation in the Rights Issue in January 2014 on the basis that: (a) it would significantly reduce the dilution of IFC’s shareholding following the employee subscription to the company; (b) it was not prejudicial to the interests of the employees, as their expected shareholding at commitment in 2009 was expected to be 15 percent; (c) the client had strong management; and (d) the rights issue price was at a significant discount, compared to valuations of the company at the time. As noted by the client, the purpose of the share issue was to “complete the shareholding structure as per the Stakeholder’s agreement and also to support the future expansion plans of adding 21,000 additional shareholders.”²⁰⁹

As the employees were not ordinary shareholders in the client until their shares converted in February 2014, they did not have the opportunity to participate in the Rights Issue. Nor were they involved in the decision on its terms. While the shares were valued in March 2013 at Rs29.32 per share, the Rights Issue price was Rs10, the par value of a share in 2009.²¹⁰ The effect of this transaction was to dilute the worker’s ownership stake in the company and reduce the value of the shares which they held (see Chart 1).²¹¹

Chart 1. Change in estimated share value and employee share ownership due to Rights Issue



As noted above, IFC held itself out as an honest broker to ensure a fair transaction between other investors and employees,²¹² who it acknowledged as vulnerable. Further, IFC’s pre-commitment documentation noted a need to increase employees’ share ownership in order to create the right incentive structure for workers. In this context, CAO finds that IFC did not consider the adverse impacts of the 2014 Rights Issue on the dilution of the employees’ share value and ownership. Further, CAO finds no evidence to suggest that IFC required its client to consult with affected workers in accordance with the requirements of PS1 on the potential adverse impacts of this transaction.

²⁰⁹ APPL Chairman’s Address, July 2014. See <http://goo.gl/RJsHTQ> (accessed December 10, 2015).

²¹⁰ CAO calculation based on Tata Global Beverages Annual Report FY13–14 (page 111, note 5) and Tata Investment Corporation Annual Report FY13–14.

²¹¹ Chart based on data available in Tata Global Beverages and Tata Investment Corporation annual reports prior to and post rights issue, Tata Review (2013) and IFC (no date). Value of a share from Tata Investment Corporation annual report FY 13-14, p. 67. Note - the employees did not hold ordinary shares in March 2013. Accordingly, share ownership in March 2013 is the expected percent ownership the employees and IFC would control once the employees’ CCCPS converted.

²¹² IFC (2006a)

4.3.10 Consultation and disclosure requirements generally

Consultation and disclosure of E&S information are central to IFC's Sustainability Framework. In this context, the complainants have raised concerns that the client's approach to the identification of E&S risk is not transparent because key E&S assessment and audit documentation is not disclosed.

Summary of Findings

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

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

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

Requirements

PS1 requires disclosure of client E&S assessment documents.²¹³ Where project-affected communities may be subject to risks or adverse impacts, the client will engage in "effective consultation," which requires "prior disclosure of relevant and adequate information including draft documents and plans."²¹⁴ Consultation should be carried out in a manner that is inclusive and culturally appropriate, tailored to the language preferences of the affected communities and mindful of the needs of disadvantaged groups.²¹⁵

Where a client identifies measures that need to be undertaken for the project to meet IFC's E&S requirements, PS1 envisages the preparation of an E&S Action Plan (ESAP). These actions "reflect the outcomes of consultation" with affected communities on the E&S risks and adverse impacts and the proposed measures and actions to address these issues.²¹⁶ The ESAP, including a timeline for implementation, should be disclosed. Updates to the ESAP and periodic reports on ESAP implementation should also be disclosed.²¹⁷

Discussion and Findings

Table 4.2 presents the main E&S assessment documents and ESAPs prepared by or on behalf of the client in the course of project implementation.

As noted to CAO by the client, some tea estates operated employee engagement councils up until the mid-2000s.²¹⁸ However, implementation was not systematic across all estates. The client explained to CAO that since 2014 it has sought to reestablish employee estate councils across all tea estates. IFC's recent supervision documentation notes that these councils have been regularized and that meeting records are maintained, though no evaluation of their effectiveness is available.

²¹³ IFC PS1, para. 20.

²¹⁴ IFC PS1, para. 21.

²¹⁵ IFC PS1, para. 21.

²¹⁶ IFC PS1 (2006), para. 16.

²¹⁷ IFC PS1, para. 16 and 26.

²¹⁸ An employee engagement council is a committee comprised of workers, estate staff and estate management who meet once a month to discuss issues about the estate.

From the information presented in the table below, a number of conclusions can be drawn. Generally, IFC has not assured itself of proper application of PS1 consultation and disclosure requirements. In particular, key E&S assessment documentation has either not been disclosed or IFC has not sought assurance of disclosure in a manner that is accessible to a workforce with low levels of literacy and that does not speak English. IFC has similarly not assured itself that key E&S assessment processes and Action Plans were prepared following effective consultation with workers. Effective consultation with workers and their representatives will be essential to the resolution of the issues identified in this report.

Table 4.2 IFC Supervision of Consultation and Disclosure Requirements

| Year | Assessment document | Effective consultation | Disclosure of assessment | Time-bound ESAP developed, on basis of consultation | Disclosure of ESAP | Disclosure of ESAP progress |
|-------------|----------------------------|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|------------------------------------|
| 2006 | ESRS | No | Client undertook to disclose through press notifications and at plantations in English, Hindi and Assamese. IFC disclosed ESRS on website (English). No evidence of IFC supervision of client disclosure in the vernacular. | Time-bound ESAP. No evidence of consultation. | ESAP disclosed in English on IFC website. No IFC supervision of client disclosure. | No |
| 2011 | Third-party OHS audit | Workers interviewed as part of audit. No IFC supervision of effective consultation requirements. | No | Action items identified. Time-bound Action Plan. No IFC supervision of consultation requirement. | No | No |
| 2011 | SA8000 certification | SA8000 require meaningful consultation with interested parties. No IFC supervision of effective consultation requirements. | No | No IFC supervision of requirement. | No | No |

| Year | Assessment document | Effective consultation | Disclosure of assessment | Time-bound ESAP developed, on basis of consultation | Disclosure of ESAP | Disclosure of ESAP progress |
|-------------|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------|-----------------------------------------|
| 2013 | Updated Action Plan | No | No | Action Plan developed; no timelines for implementation. | Summary of ESAP disclosed in English on IFC's website. | No |
| 2014 | Minimum wage review | No | No | n.a. (finding of compliance). | n.a. | n.a. |
| 2014 | Living and working conditions review (Solidaridad Report) | Workers interviewed as part of audit. No IFC supervision of effective consultation requirements. | Summary report disclosed by TGB (in English). No IFC supervision of client disclosure. | Time-bound Action Plan developed. No IFC supervision of consultation requirements. | Disclosed by TGB (in English). | Disclosed by TGB and APPL (in English). |
| 2014 | Review of living and working conditions (TISS Social Audit) | Workers interviewed as part of audit. No IFC supervision of effective consultation requirements. | Report circulated to some stakeholders (in English). No IFC supervision of client disclosure. | No IFC supervision of requirement. | n.a. | n.a. |

n.a. = not applicable

Appendix B. Summary of Relevant Policies, Standards, Guidelines and Procedures

IFC Policy on Environmental and Social Sustainability (2006)

IFC's Policy on Social and Environmental Sustainability (Sustainability Policy) expresses the Corporation's mission in terms of promoting sustainable private sector development. The Sustainability Policy (2006) was adopted by IFC on April 30, 2006 and applied to IFC's investment in APPL.

The Sustainability Policy (2006) underscores IFC's commitment to ensuring that the "projects it finances are operated in accordance with the requirements of the Performance Standards."²¹⁹ The Sustainability Policy also notes that IFC's efforts to carry out its investment operations in a manner that "do no harm to people and the environment" are central to its development mission.²²⁰

The Sustainability Policy affirms IFC's expectation for its clients "to manage the social and environmental risks and impacts of their projects. This entails the client's assessment of these risks and impacts, and implementation of measures to meet the requirements of the Performance Standards. An important component of the client's management of its environmental and social performance is the client's engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation, as stated in Performance Standard 1."²²¹

Further, IFC affirms its role is to "review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards; to categorize the project in order to specify IFC's institutional requirements to disclose to the public project-specific information; to help identify opportunities to improve social and environmental outcomes; and to monitor the client's social and environmental performance throughout the life of IFC's investment."²²²

Performance Standards on Social and Environmental Sustainability (2006)

The Performance Standards detail the E&S responsibilities of an IFC client. IFC's 2009 Shareholders Agreement (SHA) and Subscription Agreement between APPL, IFC and other shareholders were prepared under the Performance Standards (2006), and APPL's commitment to these standards was incorporated in these agreements.

The Performance Standards were subsequently updated and implemented for new investments made after January 1, 2012. As IFC has not processed a new investment with the client after this date, the revised version of the Performance Standards is not applicable to this project.²²³

²¹⁹ IFC, Sustainability Policy (2006), para. 5.

²²⁰ IFC, Sustainability Policy (2006), para. 8.

²²¹ IFC, Sustainability Policy (2006), para. 10.

²²² IFC, Sustainability Policy (2006), para. 11.

²²³ IFC, Performance Standards on Social and Environmental Sustainability. The 2006 and 2012 versions are available at <http://goo.gl/7h7UXQ>.

Environmental and Social Review Procedures

IFC's Environmental and Social Review Procedures (ESRP) outline the process through which IFC staff implement the IFC's commitment to promoting projects that are socially and environmentally sustainable.

Unlike the Sustainability Policy and the Performance Standards, which are approved by the IFC Board, the ESRPs are issued at the IFC director level and are updated on a more regular basis.²²⁴

Applicable Indian E&S Legislation

Through legal agreement and as a commitment under the Performance Standards, IFC clients are required to operate their business in accordance with applicable national E&S legislation. As raised by the complaint, the Plantation Labour Act (1951) is relevant.

The Prefatory Notes to the Act affirm:

"2. The present Bill drafted as an All India measure seeks to regulate the conditions of plantation labour generally. It applies in the first instance to tea, coffee, rubber and cinchona plantations, but the state Government may apply it to any other plantation. Provision is made in the Bill for assuring to the worker reasonable amenities, as for example, the supply of wholesome drinking water or suitable medical and educational facilities or provision for canteens and crèches in suitable cases, or provision for sufficient number of latrines and urinals separately for males and females. Housing accommodation is also to be provided for every worker and standards and specification of such housing accommodation will be prescribed after due consultation. The Bill also regulates the working hours of workers employed in plantation.

3. Children under twelve are prohibited from employment in any plantation and State Governments are empowered to make rules regulating payment of sickness or maternity benefits.

4. Necessary provision is made in the Bill for the appointment of a suitable inspecting, medical or other staff for the purposes of securing in plantations of the various provisions in the Act."²²⁵

²²⁴ The current version of the ESRPs are available on IFC's website. See <http://goo.gl/S6B8Ur> (accessed December 10, 2015).

²²⁵ The Plantation Labour Act 1951, Prefatory Notes. Available at <http://goo.gl/ZvazCE> (accessed March 3, 2016).

Appendix C. Summary of “*The More Things Change...*”—*The World Bank, Tata and Enduring Abuses on India’s Tea Plantations*

A Report by the Human Rights Institute, Columbia Law School (January 2014)

In January 2014, the Human Rights Institute at Columbia Law School published a case study on Amalgamated Plantations Private Limited (APPL).²²⁶ It documents the conditions for APPL’s workers and their families on its plantations, evaluating them in the context of Indian law and international commitments. The report covers four major areas: (1) history and context of the persistence of abusive practices; (2) APPL’s failure to comply with the Plantations Labour Act (PLA); (3) the transition from Tata Tea to APPL and ensuing flawed implementation of the employee share ownership plan; and (4) IFC’s investment and failure to ensure compliance with IFC’s Performance Standards (PS), which provide and promote decent labor standards in accordance with international commitments.

The report states that abusive labor practices are rooted in the colonial origins of plantation life and are supported by weak legislation and little active involvement by the state in setting wages or monitoring working and living conditions. The report documents what it alleges are clear and widespread noncompliance with the PLA and IFC PS on the client’s plantations.

It raises concerns about the perceived unchecked power of management and absence of recourse for workers. It points toward a defensive response by APPL. It finds that government enforcement is lacking and trade unions do not operate independent from management.

The report asserts that implementation of the share program has been problematic. The report states the buy-in by workers was not voluntary, but attained through coercion and deception. The report also states that IFC abandoned its neutral position and actively promoted the shares.

The report raises concerns about IFC’s due diligence before the investment, as well as IFC’s supervisory role. An existing relationship with Tata Tea is considered to have led to an assessment that is positive without reservation.

The report lays down conclusions and recommendations that apply both sector-wide and specifically to APPL. The report argues that these problems can be addressed if Tata Tea, APPL and IFC engage in a process that is transparent and genuinely participatory. Addressing problems on APPL plantations, it is argued, could have a spillover effect in addressing problems that are present in the sector. Specific violations that the report suggests can be addressed immediately by the company include:

- a. Discriminatory denial of benefits to plantation workers and their dependents;
- b. Interference with workers’ right of free movement and their right to receive visitors in their own homes;
- c. Restrictions on workers’ right to form and join a union of their choice;
- d. Erosion of wages through unfair deductions and high task rates;²²⁷
- e. Sale of APPL shares to workers through deception and coercion; and
- f. Seizure of workers’ agricultural land.

²²⁶ Columbia Law School 2014.

²²⁷ Task rates refer to the minimum kilograms of tea a worker must pluck each day.

Finally, the report states that IFC has an important role to play in developing long-term remedies and ensuring their implementation. It recommends that IFC should not pull out of the investment, but stay fully engaged until the original stated goals of the project are achieved in compliance with the Performance Standards. Further, IFC should intervene promptly to ensure workers' safety in light of retaliation faced by those workers who attempt to reach out to auditors and grievance redress mechanisms.

Appendix D. Record of Client AMR Submission and IFC Completion of AMR Review

The client is required to submit an Annual Monitoring Report (AMR) to IFC 90 days after the end of its financial year. As the client's financial year is April 1 to March 30, the client is required to submit an AMR to IFC by June 30 each year. IFC's procedures require IFC to complete a review of the AMR within 30 days of the client's AMR submission. The table below details the due date and actual date of the client's AMR submission and completion of IFC's AMR Review.

| AMR year | Client submission of AMR to IFC | | Completion of IFC AMR Review | |
|------------------|---------------------------------|-------------|------------------------------|--------------------------|
| | Due Date | Actual date | Due Date | Actual Date |
| 2008/2009 | Jun-09 | Jun-09 | Jul-09 | Jan-10 |
| 2009/2010 | Jun-10 | Unclear | Unclear | Nov-10* |
| 2010/2011 | Jun-11 | Jun-11 | Jul-11 | Aug-12 |
| 2011/2012 | Jun-12 | Jan-13 | Feb-13 | Jul-13* |
| 2012/2013 | Jun-13 | Feb-14 | Mar-14 | Jun-14* |
| 2013/2014 | Jun-14 | Jun-15 | Jul-15 | No IFC Review documented |
| 2014/2015 | Jun-15 | Jul-15 | Aug-15 | Feb-16* |

* Combined Annual Monitoring Report review and IFC Site Supervision Visit Report

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