



APPRAISAL REPORT

CAO Appraisal for Audit of IFC

CAO Compliance

CAO Ref Code: C-I-R6-Y11-F133

January 08, 2013

Amalgamated Plantations Private Limited (APPL)

India

Case of

Appraisal initiated by CAO Vice President

Summary

This appraisal relates to labor related aspects of IFC's investment in Amalgamated Plantations Private Limited (APPL), a company which manages tea plantations in the Northeast of India.

The scope of this compliance appraisal of IFC's investment in APPL was established by the CAO Vice President based on allegations submitted by the International Union of Food Workers (IUF) to IFC's Communication Portal for Performance Standard 2 (PS2).¹ Concerns in relation to the investment were triggered by incidents on two APPL plantations in 2009/10 which led to disputes with unions representing APPL workers.

Having held discussions with the IFC team and reviewed relevant documentation, CAO has questions as to the extent of implementation of IFC's policies and procedures, in particular requirements to:

- conduct an Environmental and Social (E&S) review that is "commensurate with the level of social and environmental risks" of the project (Policy on Social and Environmental Sustainability, 2006, para. 13);
- assess whether the client's E&S Assessment meets the requirements of PS1, and if not request that the client undertake additional assessment(s) (Sustainability Policy, 2006, para 17);

¹ See PS2 complaint submitted to IFC by IUF dated 24 January 2011.

- identify any gaps between the client's assessment, the Performance Standards in the Environmental and Social Review Summary (ESRS), and where gaps exist, develop an Environmental and Social Action Plan (ESAP) to close these gaps (E&S Review Procedure, 2006, para. 3.2.12);
- ensure that Annual Monitoring Reports (AMRs) provide adequate information to assess the client's performance against the requirements of the investment agreement and the Performance Standards: and that
- follow up to ensure that the root causes of serious incidents are being investigated and appropriate corrective action is taken to prevent reoccurrence (E&S Review Procedure, 2009, para 6.2.8).

At a more general level, CAO finds that this case demonstrates challenges in the assessment and supervision of PS2 risks that emerge from the nature of the relationships between an IFC client, its workers and the unions that represent them.

Thus, in accordance with its Operational Guidelines, CAO will develop Terms of Reference for a compliance audit with regard to the following issues:

- whether IFC exercised due diligence in its review and supervision of the PS2 risks attached to the Project;
- whether IFC policies, procedures and staffing structures provide a robust framework for the advancement of the objectives of PS2 in its clients; and
- whether IFC policies and procedures provide sufficient guidance to staff on how to respond effectively to complaints regarding clients' E&S performance.

While CAO has assumed for the purposes of the current appraisal that the E&S review process should have been conducted under the 2006 framework, this question will remain open as part of the compliance audit.

About CAO

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

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

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

1. Overview of the CAO Compliance Appraisal process

The CAO Operational Guidelines (OG) provide for the CAO compliance process to be triggered at the discretion of the CAO Vice President (OG 3.3.1).

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

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

A compliance audit is concerned with assessing the application of relevant policy provisions and related guidelines and procedures to determine whether IFC and MIGA are in compliance. The primary focus of a compliance audit is on IFC and MIGA, but the role of the sponsor may also be considered.

In order to decide whether an audit is warranted, CAO Compliance first conducts a compliance appraisal.

To guide the appraisal process, CAO applies several criteria. These are framed as a series of questions to test the value of undertaking a compliance audit.

- Is there evidence of significant adverse social and environmental outcome(s) as a result of the project now or in the future?
- Are there indications that a policy or other audit criteria has not been adhered to or properly applied?
- Is there evidence that indicates that IFC/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection?
- Is there an argument for the value of an audit, either because a compliance audit is likely to support the realization of better social and environmental outcomes in the project under review, or because a compliance audit could yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

As part of the appraisal process CAO Compliance reviewed relevant documentation and held discussions with the IFC project team to understand the validity of the concerns, which criteria IFC used to assure itself/themselves of project performance, how IFC assured itself/themselves of compliance with these criteria, and generally whether an audit is the appropriate response. In addition to providing access to project documentation the IFC team provided detailed written responses to CAO's enquiries.

After a compliance appraisal has been completed, CAO can choose one of two options: to close the case, or to initiate a compliance audit of IFC or MIGA.

CAO will report and disclose the findings and decision of the CAO compliance appraisal in an appraisal report in order to inform the President of the World Bank Group, the Boards of the World Bank Group, senior management of IFC or MIGA, and the public in writing about its decision.

If CAO decides to initiate a compliance audit as a result of the compliance appraisal, CAO will draw up a Terms of Reference for the audit in accordance with CAO's Operational Guidelines.

2. Background

As described in the IFC's Statement of Project Information this investment was designed to enable the setting up of a company which would acquire and manage the 24 tea plantations located in Assam and West Bengal previously owned by Tata Tea Limited (TTL) and implement a sustainable employee-owned plantation model in which the management and employees would have a significant shareholding (15%-20%). IFC's commitment to the project was an INR 300 million equity investment for 19.9% of the common share capital of Amalgamated Plantations Private Limited (APPL).

3. Scope of Appraisal

The scope of this compliance appraisal of IFC's investment in APPL was established by the CAO Vice President. The issues raised do not reflect the position of CAO but are based on allegations made by unions representing workers on APPL plantations through the International Union of Food Workers (IUF) and submitted to IFC's Communication Portal for Performance Standard 2.²

Union concerns with regard to the project were triggered by allegations surrounding two incidents:

Incident one took place on 9 August 2009 when a pregnant tea garden worker at the Nowera Nuddy estate, who had allegedly made a request for maternity leave at an APPL clinic, collapsed at work in the field. This event led to a labor dispute which in turn resulted in a lock out, initially for two weeks and, following a further breakdown in negotiations, for a subsequent period of three months starting mid-September 2009.

Incident two relates to a 25 year old worker at the Powai estate who collapsed and died at work on 28 May 2010 after allegedly being assigned to pesticide spraying duties. This event led to a protest the same evening and a clash with police as a result of which two protesters were shot dead and up to 18 others were injured.

From the perspective of CAO's mandate, the general question raised is whether IFC exercised due diligence in its review and supervision of environmental and social (E&S) aspects of the Project, particularly as they relate to labor issues.

4. Discussion and Findings

The analysis that follows is organized chronologically following the IFC project cycle and the incidents that triggered union concerns.

Preliminary Issue – Application of Standards

As IFC's Corporate Investment Committee approved this investment on 26 April 2006 there is some lack of clarity as to whether it was to be processed with reference to the earlier IFC Safeguard Policies or the, at that time new, Sustainability Policy and Performance Standards (2006). On this point, the minutes of the IFC's June 2006 Decision Memorandum (p.32) contain a confusing reference to application of the "new environmental and social safeguard policies" (emphasis added). An August 2006 back to office report by E&S specialists includes a heading which suggests that the investment was "reviewed under the Safeguard Policies" while the substance of the report refers exclusively to the 2006 Performance Standards. As noted below, the 2009 legal agreement between IFC and APPL required compliance with the 2006 Performance

² See PS2 complaint submitted to IFC by IUF dated 24 January 2011.

Standards. Further, CAO notes that, 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” [see: www.ifc.org/sustainabilityframework], while the IFC Board Decision approving the Performance Standards endorses the President’s recommendation that these be “effective as of 30 April 2006” without further qualification [Ref. documents IFCR2006-0010 & IFC/M2006-0006/1]. In this context, while CAO has assumed for the purposes of the current appraisal that the E&S review process should have been conducted under the 2006 framework, this question will remain open as part of the compliance audit.

April 2006 – April 2009 (Pre-commitment)

In relation to the pre-commitment phase of the project cycle, the key question for CAO is whether IFC exercised due diligence in its review of and response to the client’s assessment of E&S impacts. In this case, CAO finds the following requirements to be of particular relevance:

- That IFC conduct an E&S review that is “commensurate with the level of social and environmental risks” of the project (Policy on Social and Environmental Sustainability, 2006, para. 13);
- That IFC ensure that the client’s E&S Assessment meets the requirements of PS1, and if not require that the client undertake additional assessments (Policy on Social and Environmental Sustainability, 2006, para. 15).
- That IFC identify any gaps between the client’s assessment, the Performance Standards in the Environmental and Social Review Summary (ESRS), and where gaps exist, develop an Environmental and Social Action Plan (ESAP) to close these gaps (E&S Review Procedure, 2006, para. 3.2.12).

The IFC’s E&S review was completed under the Category B provisions as defined in IFC’s procedures, meaning that the project was expected to have limited adverse social or environmental impacts that are few in number, generally site specific, largely reversible and readily addressed through mitigation measures. E&S information contained in the early review documentation predated a substantive review of E&S issues associated with the project and is limited to flagging a list of potential environmental, social, health and safety issues that may need to be considered as part of the E&S appraisal process.

The E&S review process was completed in May and August 2006. As documented in ESRS (dated September 2006) this involved an appraisal of technical, environmental, employment terms and social information submitted by the client, a site visit to the company’s offices in Guwahati, and visits to three of the 24 tea estates that comprise TTL’s North India plantation operations over three days in May 2006.

The findings in the ESRS in relation to labor relations issues are positive without reservation noting in particular that:

- the client’s labor management practices are consistent with the Tata Group’s approach to labor standards, which have been at the forefront of Indian corporate practices; and
- the client’s commitment to obtaining Ethical Tea Partnership and SA8000 certification for all of its estates.

Findings in relation to occupational health and safety (OHS) issues are also positive, with the ESRS noting that:

- the client, in accordance with its corporate philosophy and labor policies, has in place strong workplace health and safety programs including a range of health and social welfare programs for families living on the estates;
- potential chemical exposure is minimized by providing all requisite personal protective equipment 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 endeavours to rotate employees involved in agrochemical handling/application every quarter to a non-hazardous operation; and
- employees involved in spraying operations are given quarterly medical check-ups, with those whose tests indicate excessive exposure being immediately rotated off spraying operations.

Following E&S review, IFC and APPL agreed on an ESAP. This included a provision that APPL would confirm in writing that new procedures for handling, storing and applying chemicals had been implemented and submit copies of new procedures and training materials. The ESAP did not contain any actions relating to labor relations issues.

Board documentation for the project was completed in October 2006. Again the outcomes of the E&S review in relation to labor are reported as positive without reservation.

In reaching its findings CAO considers it noteworthy that discussion of the history of complex union politics, labor unrest and ethnic tension around the tea plantations of India's Northeast is absent from the E&S review and Board documentation.³ The E&S review documentation is similarly silent on issues of security under PS4. Noteworthy also is the absence of reference to discussions or meetings with workers or unions in IFC's E&S review documentation, particularly in a context where it is acknowledged that APPL's workforce of 30,818 full time employees will be the group most directly affected by the project.

While recognizing the weight that IFC placed on its assessment of the Tata Group's reputation in relation to environmental and social issues, CAO questions whether IFC had sufficient evidence to support the strong positive findings on labor relations and OHS issues that were made in the E&S review documentation. CAO understands from the IFC team that risks associated with labor and conflict in India's Northeast are inherently political and thus complex for IFC to engage with. Nevertheless, such risks were relevant to the project's E&S performance, and thus CAO is unclear why they were not raised in the E&S review and why approaches for their mitigation were not documented in the ESAP. In this context CAO has questions as to whether IFC's E&S review of labor issues was commensurate with risk, and further whether IFC adequately assured itself that its client's E&S Assessment met the requirements of PS1 in particular that of presenting an adequate evaluation and presentation of the risk of labor related conflict associated with its operations. Finally, CAO is unclear as to whether IFC's approach to grandfathering projects that went through IFC's initial credit review process prior to April 30, 2006 is consistent with relevant board resolutions.⁴

³ For a discussion of this history in the literature see for eg: Udayon Misra (2003) 'Assam Tea: The Bitter Brew,' *Economic and Political Weekly*, 38:29, 3029-3032; Arupjyoti Saikia (2008) 'Forest Land and Peasant Struggles in Assam, 2002-2007,' *The Journal of Peasant Studies*, 35:1, 39-59; Jayeeta Sharma (2011) *Empire's Garden: Assam and the Making of India* (Duke University Press); and Deepak Mishra *et al.* (2011) 'Invisible Chains? Crisis in the Tea Industry and the 'Unfreedom' of Labor in Assam's Tea Plantations,' *Contemporary South Asia*, 19:1, 75-90.

⁴ See FN 2 above.

April 2009 – (Supervision)

IFC's investment agreement with APPL is dated April 17, 2009. While it was mentioned above that there is some lack of clarity as to whether the IFC should have processed this project under its **pre-2006 Safeguard Policies**, CAO notes that the investment agreement includes in its warranties and conditions of subscription provisions that the company shall be in compliance with the IFC's **2006 Performance Standards**.

Following commitment, IFC's obligation is to monitor the client's E&S performance in accordance with its Policy on Social and Environmental Sustainability and E&S Review Procedures (ESRP). Relevantly, this includes the requirement to review project performance on the basis of the client's commitments in the investment agreement and Action Plan, as reported by the client's Annual Monitoring Reports (AMRs). In particular CAO notes that AMRs should provide adequate information to assess the client's performance against the requirements of the investment agreement and the Performance Standards, and that if this is not the case IFC should request additional information from the client (ESRP, 2009, paras 6.2.5ff). Further, CAO notes that if serious incidents occur IFC is committed to following up to ensure that the root causes of the incident are being investigated and appropriate corrective action is taken to prevent reoccurrence (ESRP, 2009, para. 6.2.8).

At the time of writing APPL had submitted AMRs for 2008/9, 2008/9 and 2010/11.

IFC's first E&S supervision review took place in January 2010 and was based on APPL's 2008/9 AMR (which covered the period 04/01/2008 to 03/31/2009). In contrast to the results of IFC's pre-commitment E&S review, this supervision review identifies labor risk as an issue from an operational and reputational perspective, however, no remedial measures are proposed. Neither the August 2009 incident in Nowera Nuddy nor the subsequent three month lockout (incident one above) is mentioned in this supervision review, although APPL informed IFC of the incident shortly after it occurred in August 2009.

A second supervision review was logged on 11/10/2010 and is based on the 2009/10 AMR and a site supervision visit conducted from 09/07/2010 to 09/10/2010 which included meetings with senior management in Kolkata and visits to 5 of APPL's 24 plantations.⁵ In addition to covering regular E&S issues, this review was designed to investigate allegations of human rights abuses including claims regarding the incident at Nowera Nuddy (incident one above). Regarding this incident, the supervision review finds that it is not possible for any estate to operate while denying applicable labor rights and benefits as tea estates are closely watched by government agencies as well as strong and active labor unions. The Nowera Nuddy incident is further found to reflect an isolated case of labor unrest which was blown out of proportion, in large part because of a power struggle between competing labor unions.

The second AMR review goes on to report that with the exception of Nowera Nuddy, the 23 other APPL estates have experienced smooth operations, a statement that is difficult to reconcile with the acknowledgement that APPL's Powai Estate also suffered a labor related incident in May 2010 (incident two above). Similarly difficult to reconcile, the text of the supervision review finds that APPL is complying with all applicable local regulatory requirements and IFC PS requirements, while at the same time the E&S risk rating (ESRR) for the project gives the client threes (indicating limited compliance) in terms of the performance standards as well as a for "incidents" (indicating

⁵ Plantations reported by IFC as visited were Assam (Nahartoli, Powai and Chubwa) and West Bengal (Rungamutty, and Dam Dim). IFC explains that Nowera Nuddy was not visited due to ongoing labor tensions at that plantation.

that there were major incidents recorded) and for “stakeholder communication” (indicating that stakeholders were ignored or considered irrelevant).

Turning to APPL’s 2009/10 AMR itself, the Nowera Nuddy incident is described in the following terms:

“Due to assault on medical officer and subsequent breakdown of law and order, estate suspended operations from August to December. Reconciliation meetings at bipartite and tripartite levels with the appropriate government authorities held to ensure normalcy and subsequently lift the lockout.”

Further details as required by the AMR template, including a complete description of the incident, costs incurred, lessons learned and process changes put in place to prevent reoccurrence are, however, absent from the 2009/10 AMR.

The Powai incident is covered in APPL’s 2010/11 AMR and treated in somewhat more detail than was the Nowera Nuddy incident in the 2009/10 AMR. Following the AMR template, the 2010/11 report includes the following under the heading of lessons learned and process changes put in place to prevent reoccurrence: “improve and better communications with workers.”

In addition to the regular supervision activities outlined above, IFC reports taking a number of specific measures in response to the Nowera Nuddy and Powai incidents. These included:

- Conducting (as part of the September 2010 site supervision visit) a review of allegations of human rights abuses around the Nowera Nuddy incident;
- Responding in writing to the January 2011 IUF complaint with regard to alleged Performance Standard 2 (PS2) violations around the Nowera Nuddy incident; and
- Commissioning, with support from APPL, consultants to conduct an OHS audit of APPL’s operations covering eight plantations (completed June 2011) and support for follow-up activities including OHS training for the Company’s operational staff.

In particular, CAO finds that the commissioning of the OHS audit represented good practice in project supervision. Having identified OHS issues as an underlying cause of the incidents that led to labor unrest on the estates, IFC supported the client in assessing their OHS performance and in coming up with recommended improvements to ensure both compliance and beyond that, good practice. Well executed and with appropriate follow up, this sort of initiative demonstrates the potential E&S ‘additionality’ of IFC involvement in the investment.

With regard to the broader issues of labor disputation and associated conflict around the plantations, CAO is unclear whether IFC adequately discharged its duty to supervise the project. As in the appraisal process, in supervision IFC appears to have relied significantly on communications with APPL management, and human resources policy documents in forming the view that the investment was PS2 compliant. Confidence was also drawn from the numerous levels of third party oversight (public, union, and standards bodies) which were seen to assure good labor practice in the plantations. While it appears that interactions with workers did occur as part of the supervision process, these are not well reflected in the documentation reviewed by CAO.⁶ Similarly

⁶ On this issue a 2011 report from the International Trade Union Confederation finds as follows:

“IFC conducted a site visit to Nowera Nuddy in September 2010. This site visit was poorly executed (...). Workers were not given advance notice of the audit. They were not interviewed independently, but in the presence of local management who acted as the workers’ interpreters. Potential fear of retribution and the possibility of managers accidentally or purposely misconstruing workers’ statements compromised the value of this audit” (Labor Standards and World Bank Group Lending (2011) p.26, available at: http://www.ituc-csi.org/IMG/pdf/Labour_StandardsEN_2011_web.pdf)

lacking was documentation to suggest that IFC was in a position to draw robust conclusions as to the adequacy of third party oversight of labor related aspects of the investment.

In relation to the incidents at Nowera Nuddy and Powei, CAO is unclear as to whether IFC took adequate measures to ensure that the client had identified the root causes of the incidents and taken appropriate corrective action to prevent their reoccurrence. Further, IFC's response to concerns raised by unions in relation to this case leads CAO to question whether IFC policies and procedures provide sufficient guidance to staff on how to respond effectively to complaints regarding clients' E&S performance.

In reaching these findings CAO notes that the Council of Global Unions, despite taking a critical stance with regard to IFC's response to its complaints about the Nowera Nuddy incident, recognizes IFC's role in what it sees as a positive outcome, namely the formation of an affiliated union on that plantation.⁷

5. CAO Decision

Having held discussions with the IFC team and reviewed relevant documentation, CAO has questions as to the extent of implementation of IFC's policies and procedures, in particular requirements to:

- conduct an E&S review that is "commensurate with the level of social and environmental risks" of the project (Policy on Social and Environmental Sustainability, 2006, para. 13);
- assess whether the client's E&S Assessment meets the requirements of PS1, and if not request that the client undertake additional assessment(s) (Sustainability Policy, 2006, para 17);
- identify any gaps between the client's assessment, the Performance Standards in the Environmental and Social Review Summary (ESRS), and where gaps exist, develop an Environmental and Social Action Plan (ESAP) to close these gaps (E&S Review Procedure, 2009, para. 3.2.11);
- ensure that AMRs provide adequate information to assess the client's performance against the requirements of the investment agreement and the Performance Standards: and that
- follow up to ensure that the root causes of serious incidents are being investigated and appropriate corrective action is taken to prevent reoccurrence (E&S Review Procedure, 2009, para 6.2.8).

At a more general level, CAO finds that this case demonstrates challenges in the assessment and supervision of PS2 risks that emerge from the nature of the relationships between an IFC client, its workers and the unions that represent them.

Thus, in accordance with its Operational Guidelines, CAO will develop Terms of Reference for a compliance audit with regard to the following issues:

- whether IFC exercised due diligence in its review and supervision of the PS2 risks attached to the Project;

⁷ Council of Global Unions (2012) *Report of Meeting on Multilateral Banks and Core Labour Standards, Including Campaign for a Labor Safeguard*, available at: http://www.global-unions.org/IMG/pdf/06-multilateral_banks_cls.pdf

- whether IFC policies, procedures and staffing structures provide a robust framework for the advancement of the objectives of PS2 in its clients; and
- whether IFC policies and procedures provide sufficient guidance to staff on how to respond effectively to complaints regarding clients' E&S performance.

While CAO has assumed for the purposes of the current appraisal that the E&S review process should have been conducted under the 2006 framework, this question will remain open as part of the compliance audit.