October 7, 2020
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

IFC Investment in Myanma Awba Group Company Ltd.
IFC Project # 35880
Myanmar
Complaint 01

Myanma Awba Group Company Ltd. ("Awba," or "the client") is a leading producer and distributor of agricultural inputs in Myanmar. Awba's business lines include manufacturing and packaging of crop protection products, including herbicides, fungicides, and insecticides, and fertilizers.

On June 15, 2016, the International Finance Corporation (IFC) approved a loan to Awba of up to US$10 million which included an option to convert debt to equity. According to IFC, the stated purpose of the loan is to support the expansion of the client's operations in Myanmar ("the project"), including: the construction of additional fertilizer warehouse storage facilities and fertilizer distribution stations, the acquisition of a second chemical license in order to construct a new agro-chemical formulation plant in an industrial zone next to the existing government pesticide factory [also known as Myanmar Pesticide Industry, or MPI], equipment (bottling and packaging machinery), warehouse storage facilities and working capital.

The MPI factory had been operated by the client since 2008 as a joint venture. According to the CAO Assessment, Awba's Board approved to relinquish the MPI factory in June 2018. While mentioned in IFC's project disclosures, it is not clear that IFC's pre-investment E&S review included a review of risks and impacts associated with the MPI joint venture. The client discontinued production at MPI in December 2018 and completed its exit from MPI in June 2019.

According to IFC, the client's new facility in an industrial zone in Hmawbi Township, Hmawbi Agricultural Inputs Complex (HAIC), is undergoing construction in three phases with expected completion in 2020.

On October 4, 2017, CAO received a complaint from a local individual on behalf of himself and other local community members living in the vicinity of the HAIC and MPI plants. In February 2018, a supplement to the complaint was submitted to CAO, expanding the items of concern and noting that the complainants are from a total of nine villages.

The complainants raise concerns about the environmental and social (E&S) impacts of the MPI and HAIC plants. The complainants make allegations in relation to: 1) contamination of local water sources with associated health impacts; 2) air pollution and strong odors causing dizziness and nausea; 3) restrictions on road access; 4) unfair and unsafe labor practices; 5) lack of consultation around the ESIA process and inadequate grievance handling procedures; 6) impact on flora and fauna due to air and water pollution; and 7) differential impacts on the livelihoods of ethnic minority groups in the local area.

The parties initially agreed to a CAO-facilitated dispute resolution process. However, there was a lack of agreement among the parties for the dispute resolution process to progress. Thus, the complaint was transferred to the CAO compliance function for appraisal in June 2020.

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

CAO acknowledges IFC's work with the client to upgrade its 2015 EIA through the preparation of a supplemental ESIA that was completed in 2018. CAO acknowledges IFC's recent increased engagement with the client to improve E&S performance by providing support for ESAP implementation as well as development and implementation of the environmental and social management plan (ESMP) for the new HAIC plant. CAO also notes IFC's engagement with the client in relation to the assessment of the residual impacts of the MPI plant post-closure. However, considering the serious nature of the impacts alleged and the questions regarding IFC's compliance outlined below, CAO concludes that the complaint raises substantial concerns regarding the E&S outcomes of IFC's investment.

The following questions related to IFC's E&S review and supervision of the project, particularly the two pesticide plants MPI and HAIC, emerge from CAO's preliminary review of project documentation:

a. whether IFC's pre-investment E&S review of the client was commensurate with the level of E&S risk and impacts arising from its operations, particularly as relates to the MPI joint venture;
b. how IFC assessed and mitigated historical pollution from the MPI joint venture against PS3 requirements;
c. how IFC assessed and mitigated residual impacts when the client exited the MPI joint venture in 2018 given the requirements of PS1;
d. how IFC assured itself of the environmental, health, and safety (EHS) performance of the client's MPI and HAIC operations, including air emissions and water contamination as well as impacts on community health against PS3 and PS4 requirements, EHS Guidelines, and Myanmar law requirements;
e. how IFC assured itself of the client's compliance with PS1 requirements for disclosure, consultation, and grievance handling;
f. whether IFC disclosed relevant E&S project information, specifically, the initial 2015 EIA for the HAIC plant following Access to Information Policy requirements; and
g. whether IFC adequately assessed and retained documentation to justify its determination that PS7 (Indigenous Peoples) was not applicable to this investment and/or that PS1 requirements on vulnerable groups were properly applied given ethnic minorities in the project area.

CAO notes that the signatories of the complaint do not include workers employed by the contractors of the project, nor do they include former workers at the MPI plant or former/current workers at HAIC. Therefore, CAO has decided to exclude labor-related issues raised in the complaint from the scope of this review. Such issues could be considered if CAO received a complaint from workers or former workers.

Overall, CAO concludes that these questions merit a compliance investigation. In making this decision, CAO has taken into account the seriousness of the concerns regarding project impacts raised in the complaint, along with the range of related compliance questions identified in this appraisal. The scope of the investigation will be further defined in the investigation terms of reference in accordance with CAO's Operational Guidelines.

About CAO

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

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

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

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Acronyms

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

I. Overview of the Compliance Appraisal Process

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

A compliance appraisal can also be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

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

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

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

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

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

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

II. Background

Investment

Myanma Awba Group Company Ltd. ("Awba," or "the client") is a leading producer and distributor of agricultural inputs in Myanmar. Awba's business lines include manufacturing and packaging of crop protection products, including herbicides, fungicides, and insecticides, and fertilizers.

On June 15, 2016, the International Finance Corporation (IFC) approved a loan to Awba of up to US$10 million which included an option to convert debt to equity. According to IFC, the stated purpose of the loan is to support the expansion of the client's operations in Myanmar ("the project"). As described by IFC, the project includes: "the construction of additional fertilizer warehouse storage facilities and fertilizer distribution stations, the acquisition of a second chemical license for its Myanma Awba Group in order to construct a new agro-chemical formulation plant in an industrial zone next to the existing Government Hmawbi pesticide factory [also known as Myanmar Pesticide Industry, or MPI], equipment (bottling and packaging machinery), warehouse storage facilities and working capital."[1]

Relevant, given the issues raised in the complaint, though not mentioned in IFC's project disclosures, the MPI factory had been operated by the client since 2008 as a joint venture. The plant was built in the 1990s and was operated by the government until 2007. According to the CAO Assessment, Awba's Board approved to relinquish the factory in June 2018. The client discontinued production at MPI in December 2018 and completed its exit from MPI in June 2019.

According to IFC, the client's new facility in an industrial zone in Hmawbi Township, Hmawbi Agricultural Inputs Complex (HAIC), is undergoing construction in three phases with expected completion in 2020. The first phase of the development of the HAIC was completed in 2018.

Complaint and CAO Assessment

On October 4, 2017, CAO received a complaint from a local individual on behalf of himself and other local community members living in the vicinity of the HAIC and MPI plants.[2]

In February 2018, a supplement to the complaint was submitted to CAO, expanding the items of concern and noting that the complainants are from a total of nine villages: Wanet Chaung village, Nyaung Gone village, Ye Ta Shay village, Pa Ywet Seit Gone Village, Shan Gone village of Sat Tha Daw village tract, Bo Daw Na Gone village, San Gyi village, and Tha Byay Gone village.[3]

The parties initially agreed to a CAO-facilitated dispute resolution process. However, there was a lack of agreement among the parties for the dispute resolution process to progress. Thus, the complaint was transferred to the CAO compliance function for appraisal in June 2020.[4]

The complainants raise concerns about the environmental and social (E&S) impacts of MPI and HAIC. The complainants make allegations in relation to: 1) contamination of local water sources with associated health impacts; 2) air pollution and strong odors causing dizziness and nausea; 3) restrictions on road access; 4) unfair and unsafe labor practices; 5) lack of consultation around the ESIA process and inadequate grievance handling procedures; 6) impact on flora and fauna

[1] IFC (2016) Summary of Investment Information (SII) and Environmental and Social Review Summary (ESRS), project number 35880. Available at: https://bit.ly/3jArKcA and https://bit.ly/2XITBhr, respectively.
[2] Complaint to CAO in relation to IFC's investment in Myanma Awba Group Company Ltd. (October 2017), available at: https://bit.ly/Awba-CAOCase
[3] CAO Myanmar: Myanma Awba Group Company Ltd.-01/Myanmar case page, available at: https://bit.ly/Awba-CAOCase
[4] CAO Dispute Resolution Conclusion Report (June 2020), available at: https://bit.ly/AwbaDRConclusion

due to air and water pollution; and 7) differential impacts on the livelihoods of ethnic minority groups in the local area.

The perspectives of the complainants and the client on these issues, as set out in CAO's Assessment Report,[5] are summarized in Annex A.

III. Analysis

This section outlines IFC's environmental and social (E&S) policies and procedures as they apply to the project. It then provides a preliminary analysis of IFC's performance against these standards during pre-investment due diligence and supervision of the project, and in the context of the issues raised by the complainants.

In conducting this appraisal, the CAO compliance team reviewed internal IFC project documents and publicly available information related to the client and project. It also carried out discussions with IFC project staff as well as with the complainants and NGO representatives who have been supporting the complainants. The complainants and NGO representatives provided documentation relating to their concerns.

The compliance appraisal is designed to determine whether a CAO compliance investigation is required. It is does not present definitive findings or conclusions in relation to IFC's compliance or project impacts.

IFC Policy Framework

IFC's investment in the project was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), and Access to Information Policy, jointly referred to as the Sustainability Framework. The Sustainability Policy (para. 9) outlines IFC's commitment to "do no harm" to people and the environment through their investment activities. IFC is committed to ensuring that the costs of economic development do not fall disproportionately on the poor or vulnerable and that the environment is not degraded in the process (para. 9). Through its due diligence, monitoring, and supervision efforts, IFC seeks to ensure that the business activities it finances are implemented in accordance with the requirements of the Performance Standards (para. 7).

The outcome of IFC's environmental and social (E&S) due diligence of a proposed business activity is an important factor in the approval process, as it determines the E&S conditions of IFC financing (Sustainability Policy, para. 7). The E&S review of the project must be commensurate with the nature, scale, and stage of the business activity, and with the level of E&S risks and impacts (Sustainability Policy, para. 26). Where E&S risks and impacts are identified, IFC agrees an E&S Action Plan (ESAP) with the client committing to corrective measures to mitigate these risks in accordance with the Performance Standards (Sustainability Policy, para. 28).

According to IFC's E&S Review Procedures (ESRP), when IFC's financing involves provision of working capital or equity, IFC's review "will take into account the full range of operations undertaken by the entity in which IFC plans to invest" (ESPR 3.2.1). When the use of proceeds from IFC's investment involves unidentified assets, the review will investigate "the capacity, maturity, and reliability of the client's E&S corporate management system to effectively manage E&S performance," including the "E&S performance of a representative set of past and prospective identified projects as a measure of management system effectiveness" (ESPR 3.2.1).

[5] CAO Assessment Report (June 2018), available at: https://bit.ly/AwbaAssessment

IFC's review identifies client actions required to close certain E&S gaps before investment milestones, such as board approval, commitment, or first disbursement.

Following IFC's investment, IFC supervises the client to ensure compliance with the Performance Standards and other specific E&S requirements agreed with the client, including agreed ESAP (Sustainability Policy, para. 45).

The Sustainability Policy and the Performance Standards apply to a project's entire life cycle including decommissioning, closure, or post-closure, where applicable (PS1, para. 4). This includes requirements to assess, avoid, and minimize impacts "and where residual impacts remain, compensate/offset for risks and impacts to workers, Affected Communities, and the environment" (PS1, para. 3).

IFC's Pre-investment Due Diligence and Supervision

Pre-investment Due Diligence

IFC initiated its pre-investment E&S review in early 2015. In addition to meetings with Awba's management team, IFC conducted a series of visits to Awba's headquarters in Yangon and its existing agrochemical and fertilizer facilities, as well as a review of technical documents provided by Awba.

In February 2016, IFC disclosed an E&S Review Summary (ESRS) for the project.[6] The ESRS notes that the project is expected to have "limited adverse environmental and social impacts which are expected to be site-specific and none is expected to be significant."[7] Hence the project was classified as Category B. The ESRS noted that "[m]ost of Awba's existing operations visited during IFC's appraisal were located in Industrial Zones…and the location of the proposed Awba's pesticide formulation plant and fertilizer warehouse financed by IFC's loan is located in an industrial area." As a result, it was concluded that "there are no communities that may be adversely impacted by Awba'[s] manufacturing and warehouse operations."[8]

The ESRS notes that IFC considered the project's E&S planning process and documentation as well as any gaps against IFC's requirements. IFC identified the key project E&S issues as the following: 1) compliance with applicable national laws and international regulations on distribution and use of pesticides; 2) validity of the client's operational licenses; 3) implementation and monitoring of environmental, occupational health and safety (EHS), and labor management systems for agrochemical and fertilizer manufacturing and distribution; 4) compliance with Myanmar's labor laws and PS2 requirements in providing safe and fair working conditions for permanent and casual workers, and contractors; 5) emergency preparedness and fire safety provisions; 6) water and energy use efficiency; 7) solid/hazardous waste and effluent disposal, and air emissions from incinerators; 8) community health and traffic safety; and 9) training of the client's agronomists and end-customers (farmers) on Integrated Pest and Disease Management (IPM/IDM) Plans.

In relation to these identified issues, IFC determined that the following Performance Standards were applicable to the project: Performance Standard 1 (Assessment and Management of E&S Risks and Impacts); Performance Standard 2 (Labor and Working Conditions); Performance Standard 3 (Resource Efficiency and Pollution Prevention); and Performance Standard 4 (Community Health, Safety, and Security).

IFC determined that PS5 (Land Acquisition and Involuntary Resettlement), PS6 (Biodiversity

[6] IFC (2016) ESRS, available at: https://bit.ly/2XITBhr
[7] Ibid.
[8] Ibid.

Conservation and Sustainable Natural Resources Management), PS7 (Indigenous Peoples), and PS8 (Cultural Heritage) were not applicable for the following reasons: "all the land related transactions within the context of this investment are/will be based on a willing seller: willing buyer and/or willing lessor: willing lessee and are expected to be located within industrial areas…Awba is not directly involved in agricultural primary production and its operating facilities are[/]or will be developed in urban industrial sites. There is no presence of Indigenous Peoples or known cultural artifacts within the company's operational footprint."[9]

IFC documentation indicates that the client did not commission an environmental impact assessment (EIA) and/or screening report for its four agrochemical plants, as national law did not require such study at the time the plants were constructed. In accordance with Myanmar's 2012 Environmental Conservation Law and its associated 2015 Environmental Impact Assessment Procedure, IFC notes that the client commissioned an EIA study for the new HAIC plant. During IFC's due diligence review, IFC found the EIA for the new plant to be insufficient to ensure compliance with PS1. As a result, IFC required the client to develop an EHS risk assessment process commensurate with the level of its E&S risks and impacts pertaining to the HAIC plant.

IFC does not appear to have disclosed the client's 2015 environmental impact assessment.

An E&S Action Plan (ESAP)[10] was agreed with the client which outlined corrective measures intended to close the gaps within a reasonable period of time. According to the IFC documentation, there were no E&S conditions of disbursement.

Based on available documentation it is not apparent that IFC's pre-investment E&S review considered risks and impacts associated with the client's involvement in the MPI joint venture. This is relevant given the complainants' concerns regarding the environmental and health impacts of this older pesticide production facility.

General Supervision

IFC supervision started after disbursement in December 2016. Initial supervision documentation describes limited client progress on ESAP items.

IFC noted improvements in the client's E&S performance in 2018, particularly in relation to establishing EHS leadership and completing a PS-compliant ESIA for the new HAIC plant which IFC noted as including a stakeholder engagement plan and a community grievance mechanism. The ESIA, undertaken by a consultant ERM who was commissioned by Awba, was published in 2018, and presents as an assessment of the HAIC plant against IFC standards and national requirements. While a detailed review of the ESIA is beyond the scope of this compliance appraisal, it presents as a comprehensive international standard assessment of a new plant incorporating a review of baseline data, potential impacts and mitigation measures.

Also during 2018, IFC noted that the client retained consultants to support implementing a community grievance mechanism and developing the ESMP outlined in the ESIA. IFC provided technical assistance to advance ESAP implementation and to address comments from the Environmental Conservation Department (ECD) of the Ministry of Natural Resources and Environmental Conservation (MONREC) regarding the ESIA.

Regarding the MPI factory specifically, IFC recommended immediate decommissioning due to poor EHS working conditions. The client committed to exit from the plant and conveyed to the government its intention to not renew its license. Per the ESAP, IFC noted the client's delay in phasing out the production of carbofuran, a chemical classified as highly hazardous by WHO and

[9] Ibid.
[10] ESAP, available on the IFC Disclosure web site: https://bit.ly/32eMvUB

forbidden under PS3. The client discontinued production at MPI in December 2018 and completed its exit from MPI in June 2019. As of the last IFC supervision in late 2019, MPI was not in operation.

In early to mid-2019, IFC increased engagement with the client in an effort to reassess E&S risks and address potential E&S non-compliances raised by the CAO complaint. IFC supervision documentation from 2019 concludes that the client had made progress in establishing operational and OHS management systems across all its facilities commensurate with associated E&S risks. However, other items remained pending including: stopping the use of the incinerator; updating the waste management contract; environmental monitoring results and wastewater disposal plans; in-house treated wastewater monitoring records; and evidence of sell-off of MPI plant and disposal of carbofuran inventory.

Late 2019 supervision documentation confirmed receipt of client monitoring reports for the treated wastewater discharged in the storage pond, which indicated absence of pesticide residues. The client was also reported not to be using the incinerator any longer.

In late 2019, IFC discussed with the client measures to correct the lack of an E&S assessment related to legacy pollution from MPI per PS3 requirements, and to address CAO complainants' concerns about pollution from MPI. The client acknowledged the importance of such an assessment. However, the client also advised that it was not possible to conduct such an assessment as it had already exited MPI and no longer had access to the premises. Thus, the client agreed to an alternative approach to monitor groundwater and soil contamination from samples taken from the HAIC premises, including samples close to the MPI boundary and wastewater treatment plant. As of the writing of this appraisal report, monitoring was ongoing.

Discussion

During the CAO appraisal process, the complainants expressed that they are primarily concerned with the air (odor) and water pollution allegedly caused by the client's pesticide and agricultural inputs factories including both the old MPI and the new HAIC plants. They claim the quality of water in their wells and streams have deteriorated due to the client's operations, and that they cannot use the water for drinking, irrigation, or for their animals. They claim health impacts from contaminated water and polluted air including odor. They also raise issues about the lack of adequate consultation prior to and during construction of the new plant, inadequate information disclosure, and the lack of an effective grievance mechanism. The complainants claim economic impacts due to a restriction in road access and deterioration in crop production such as citrus trees and agarwood. Other alleged impacts include impacts on indigenous peoples and labor concerns. Alleged noncompliance with national law in the permitting process was also noted by the complainants.

According to the CAO Assessment Report, the client claimed that the E&S concerns raised in the complaint could only be related to the old MPI factory, given that operations at the new HAIC plant had not commenced operations as of the writing of the Assessment Report. The client indicated that it has implemented some of the ESIA recommendations, including a drainage system for discharge water to prevent contamination of local streams. The client stated that the odor could not be related to the HAIC plant because of the state-of-the-art air purifying systems installed at the new factory. While the client did not address consultations during the ESIA process, it stated that a company grievance mechanism was rolled out in July 2017. The client also noted plans for monthly stakeholder meetings to discuss the ESIA report and promote the grievance mechanism. The client claims there is no access road between the monastery and neighboring villages, but that the client has built its fence at the required distance from the land boundary to provide road access. The client did not comment on the complainants' concerns regarding the termination of security staff which it noted were hired through a third-party contractor. As for impacts to local

ecology, the client referred to the ESIA report's conclusions that the new HAIC plant would have no adverse impacts on the ecology, livelihoods, or economy. The client did not address the issue of alleged impacts on indigenous communities in the CAO Assessment report.

The issues in the complaint raise a number of questions in terms of the application of IFC's E&S requirements to the investment.

As part of its pre-investment due diligence, per the Sustainability Policy (para. 26), IFC is required to conduct an E&S review of the project that is commensurate to the level of E&S risks and impacts. When IFC's financing involves provision of working capital or equity, the E&S Review Procedures (ESRP) instruct IFC to take into account the full range of operations by the entity in which IFC plans to invest (ESRP 3.2.1).

According to the information disclosed by IFC (SII and ESRS), IFC's investment involved the "specific use of proceeds for the expansion of Awba's core business, including…the acquisition of a second chemical license for its Myanma Awba Group in order to construct a new agro-chemical formulation plant in an industrial zone next to the existing Government Hmawbi pesticide factory…and working capital." IFC's legal agreement with the client indicates that IFC's financing was a general corporate loan that could be converted into equity. Thus, a pre-investment E&S review of the company's full range of operations that is commensurate to the level of E&S risks and impacts would be required under the Sustainability Policy. Of particular note is the agrochemical factory MPI. While this factory was built and owned by the government, it was operated as a joint venture by the client at the time of IFC's pre-investment review. According to the CAO Assessment, the client stated that its decision to build a new factory was due to MPI's outdated standards that were not up to Good International Industry Practice. MPI is located adjacent to the client's new HAIC factory.

Based on CAO's preliminary review of IFC appraisal documentation, it is not apparent that IFC's pre-investment review of the client's MPI joint venture met the standard of being commensurate to risk, particularly considering the potential impacts of operating an older pesticide facility. IFC noted that no ESIA existed of the plant as none was required by national law at the time of its construction. IFC concluded that no communities would be impacted by the client's manufacturing operations due to their location in industrial zones. However, it is unclear that IFC had sufficient basis to reach this conclusion considering the proximity of agricultural and residential areas to the client's MPI and HAIC operations.

In addition, PS3 (para. 10) requires an assessment of and mitigation measures for historical pollution including water contamination. PS4 (paras. 5, 8–9) requires an assessment of the risks and impacts to the health and safety of affected communities, including potential impacts on freshwater and community exposure to water-borne or water-related diseases that could result from project activities. CAO has not seen evidence of an environmental assessment of MPI or an assessment of historical pollution related to MPI during IFC's pre-investment review.

The complainants raise concerns regarding impacts following the closure of the MPI factory. IFC's Performance Standards apply to the entire project life cycle, including the decommissioning or exit. The Performance Standards Guidance Notes (GN4, para. 16) specify that the client should consider environmental impacts and ensure ambient quality of a project site during the decommissioning phase. CAO acknowledges IFC's recommendations made to the client to exit the MPI plant, stop using the incinerator, and phase out a WHO Class Ib (highly hazardous) product. CAO also notes the effort to conduct water monitoring on HAIC premises after the client's exit from MPI. However, it is not apparent that IFC required the client to develop an environmental assessment or decommissioning plan when MPI was closed.

The complainants also raise concerns regarding the environmental impacts and the ESIA process for the new HAIC plant. As noted above, the supplemental ESIA for the HAIC presents as a comprehensive international standard assessment of a new plant, incorporating a review of baseline data, potential impacts and mitigation measures. Nevertheless, CAO has a number of questions regarding IFC's review of the ESIA process for the HAIC plant. IFC's 2012 Access to Information Policy (para. 31(a)(vi)) requires IFC to disclose environmental and social impact assessment documents prepared by or on behalf of the client on its website. IFC noted that the client completed an initial EIA for the HAIC plant in 2015, but it appears IFC did not disclose the 2015 EIA, though the subsequent supplemental ESIA was disclosed by the client in 2018. The complainants assert that the HAIC plant does not have all relevant environmental permits required to operate under Myanmar law. CAO notes IFC's views regarding a pending Environmental Compliance Certificate (ECC)[11] for the HAIC plant, however, based on available information CAO has questions as to whether the lack of an ECC presents a national law compliance issue that IFC would be required to address during supervision.

The complainants' ongoing concerns regarding air and water pollution and associated impacts on community health give rise to questions regarding IFC's supervision of the ESMP for the HAIC plant. PS1, PS3, and PS4 require the environmental and community health impacts of an IFC-supported business to be managed according to Good International Industry Practice as well as specific requirements set out in the World Bank Group Environmental, Health and Safety Guidelines. As set out in the ESIA for the HAIC plant, with proper implementation of the recommended mitigation measures, as detailed in the ESMP, residual E&S impacts of the HAIC plant to air and water quality as well as community health and safety were found to be of "minor significance" with risks associated with accidental events found to be of "moderate significance." However, given the complainants' specific concerns regarding air and water pollution and impacts on community health, CAO has questions as to how IFC assured itself that its client is implementing the actions necessary to meet the PS requirements on pollution control and community health.

The complainants raise concerns about impacts on Shan ethnic minority groups who have traditionally cultivated citrus fruit trees in the area. They claim contaminated water and polluted air caused by the client's MPI and HAIC plants have affected production and thus the community members' livelihoods. Both PS1 (para. 12) and PS4 (para. 9) require consideration of and differentiated measures for disadvantaged or vulnerable individuals or groups, taking into account differentiated exposure to or higher sensitivity to these individuals or groups. PS7 contains additional measures to ensure that Indigenous Peoples are not adversely impacted by IFC-funded projects. Among potentially disadvantaged or vulnerable groups include ethnic minority groups, to which some of the complainants identify. While the ESIA for the HAIC plant reports on the presence of ethnic minority groups such as Shan, Kayin, and Mon in the affected communities, CAO has not seen any assessment of differential impacts on these groups and why PS7 was not applicable to the HAIC plant.

With regard to information disclosure, consultation, and grievance mechanism, the complainants' concerns relate mainly to the ESIA process for the HAIC plant. They claim consultations took place after the project had already been designed and constructed initiated. The complainants state they had no opportunity to ask questions or express their concerns, nor do they have access to the company to raise concerns.

[11] Environmental Impact Assessment Procedure, The Government of the Republic of the Union of Myanmar, Ministry of Environmental Conservation and Forestry [now Ministry of Natural Resources and Environmental Conservation], Notification No. 616/2015. Available at: https://bit.ly/2GgGiis.html

Another impact described by the complainants includes the restriction of access to a road connecting communities. According to the complainants, the reduction in road width has impacted farmers who are no longer able to pass through with their tractors to transport goods to the market. This concern was raised by communities during the ESIA consultation and community grievance procedure, but the response given by the client referred to a lease agreement between the client and the Ministry of Agriculture. CAO is unclear how IFC assured itself that the E&S risk and impact identification process for HAIC considered this issue and that the grievance handling procedures were adequate.

IV. CAO Decision

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

In this case, the complainants expressed that they are primarily concerned with the air and water pollution allegedly caused by the client's operations including both MPI and the new HAIC plant. They claim the quality of water in their wells and streams have deteriorated and they cannot use the water for drinking, irrigation, or for their animals. They claim adverse health impacts from contaminated water and polluted air including odor. They also raise issues about the lack of adequate consultation prior to and during construction of the new plant, inadequate information disclosure, and inaccessible grievance mechanism. The complainants claim economic impacts due to a restriction in road access and deterioration in productivity of fruit trees, such as citrus, and other flora such as agarwood that are sources of livelihoods. Other alleged impacts include impacts on indigenous peoples and labor concerns. Alleged non-compliance with national law in the permitting process was also raised by the complainants.

CAO acknowledges IFC's work with the client to upgrade its 2015 EIA through the preparation of a supplemental ESIA that was completed in 2018. CAO also acknowledges IFC's recent increased engagement with the client to improve E&S performance by providing support for ESAP implementation as well as development and implementation of the ESMP for the new HAIC plant. CAO also notes IFC's engagement with the client in relation to the assessment of the residual impacts of the MPI plant post-closure. However, considering the serious nature of the impacts alleged and the questions regarding IFC's investment compliance outlined below, CAO concludes that the complaint raises substantial concerns regarding the E&S outcomes of IFC's investment.

The following questions related to IFC's E&S review and supervision of the project, particularly the two pesticide plants MPI and HAIC, emerge from CAO's preliminary review of project documentation:

a. whether IFC's pre-investment E&S review of the client was commensurate with the level of E&S risk and impacts arising from its operations, particularly as relates to the MPI joint venture;

b. how IFC assessed and mitigated historical pollution from the MPI joint venture against PS3 requirements;
c. how IFC assessed and mitigated residual impacts when the client exited the MPI joint venture in 2018 given the requirements of PS1;
d. how IFC assured itself of the environmental, health, and safety (EHS) performance of the client's MPI and HAIC operations, including air emissions and water contamination as well as impacts on community health against PS3 and PS4 requirements, EHS Guidelines, and Myanmar law requirements; and
e. how IFC assured itself of the client's compliance with PS1 requirements for disclosure, consultation, and grievance handling;
f. whether IFC disclosed relevant E&S project information, specifically, the initial 2015 EIA for the HAIC plant following Access to Information Policy requirements; and
g. whether IFC adequately assessed and retained documentation to justify its determination that PS7 (Indigenous Peoples) was not applicable to this investment and/or that PS1 requirements on vulnerable groups were properly applied given ethnic minorities in the project area.

CAO notes that the signatories of the complaint do not include workers employed by the contractors of the project, nor do they include former workers at the MPI plant or former/current workers at HAIC. Therefore, CAO has decided to exclude labor-related issues raised in the complaint from the scope of this review. Such issues would be considered if CAO received a complaint from workers or former workers.

Overall, CAO concludes that these questions merit a compliance investigation. In making this decision, CAO has taken into account the seriousness of the concerns regarding project impacts raised in the complaint, along with the range of related compliance questions identified in this appraisal.

The scope of the investigation will be further defined in the investigation terms of reference in accordance with CAO's Operational Guidelines.

Annex A: Perspectives about issues raised in the complaint (from CAO Assessment Report)

	Complainants	Awba
Water contamination	The complainants allege that the ESIA report for the HAIC project tested and identified contaminated water sources, including streams, within a one-mile radius of the factory. These streams are the main source of water for the community and the complainants claim these are being polluted by discharges from the new factory. Further, it is noted that the client built a lake for capturing runoff wastewater from their operations. However, the complainants believe the lake is not properly constructed as there is still seepage from it into the communities' water sources. Consequently, inhabitants are facing health impacts from consumption of contaminated water and likewise financial hardship with increased need for medical attention. They question the adequacy of the ESIA and IFC's review of the report.	It is acknowledged that the initial ESIA conducted in 2015 was deemed insufficient when IFC got involved in the project. Hence, corrective actions were agreed in the E&S Action Plan (ESAP) which included conducting an ESIA in accordance with IFC Performance Standards (PS) and WBG EHS Guidelines for pesticide manufacturing, formulation and packaging. The updated ESIA study has since been conducted by a third-party consultant and the report is publicly available. Further, the corrective actions provided in the ESIA are being implemented as the factory prepared for full operations (with retained support from aforementioned consultant). Nonetheless, the new factory was not yet operational. Also, it is designed to operate as an agro-formulation facility and will not produce active ingredients or highly dangerous byproducts that would impact the environment, including water contamination.
Air pollution	The complainants describe a strong, burning odor allegedly emanating from the factory at night and at various times during the day. They claim the strong odor causes them to experience nausea and dizziness. Due to these physical effects on people, they claim that they are unable to work on their plantations thus impacting their agricultural productivity. It is also alleged that even schools are forced to shut when the odor becomes unbearable. The complainants further claim that the client brings in waste by trucks from their other sites for burning at the factory. These trucks cause dust which further impacts the people's health.	The client stated that the new factory has the state-of-the-art air purifying systems installed which prevents strong odors from emanating from the factory, even as test runs are carried out. They maintain that the air pollution is not from their new factory.
Restricted road access	According to the complainants, the client fenced off part of a road which connects two local villages. It is noted that the client claims this is part of the land concession for their factory. the client's fence has narrowed road access thus preventing thoroughfare for tractors used for farming and cars for transporting market goods.	The client noted that the factory is built on land leased by the Ministry of Agriculture and the fencing has been done in compliance with the Ministry of Land & Housing Development's registered map. They maintain that, according to the map, there is no access road in the area the complainants' contest. Further, were there to be an access road between two fences, the parties of either sides are required by law to each contribute 6.5 feet of their land to create a 13-foot-wide road. The client stated that they have already complied with this requirement. However, the landowner on the other side is yet to comply despite having been informed by the authorities.
Labor issues	The complainants claim that some community members were hired on a six-month contract by the client through a contractor to work as security guards and were dismissed shortly after IFC's inspection of the factory. They state the reason for their dismissal was that they	The client explained that a third-party company was hired to support with sourcing of security personnel and the security workers were not direct employees of Awba. Hence, they are unable to comment on

	were locals. They allege they were only hired to show IFC during a supervision visit that locals were employed. Further, there are concerns about lack of protective work gear for workers handling chemicals. This has been the practice in the old factory and the complainants believe this will be the same in the new factory.	why the workers were dismissed by the hiring company. They maintain that, once the factory is operational, vacancies will be posted and all qualified persons are welcome to apply. No comments were provided regarding the lack of protective gear for workers in the old factory.
Inadequate consultation and grievance	The complainants maintain that the consultation with the community members was inadequate and in fact they were not consulted as part of the ESIA process. There was no avenue for the people to ask questions nor express their concerns about the construction and operation of the factory. further, there is no known grievance mechanism available for the communities to access and raise concerns.	The company's grievance mechanism was rolled out in July 2017. To create awareness of the existence of this resource, information sessions and campaigns were conducted in seven villages, namely Pya kone Payut Seik Kone, Pyay Kone, War Nat Chaung, War Phyu Taw, Kyauk Taung Su, Ashay Pine -2, and San Gyi. The client further noted that they intend to expand the GRM workshops to all villages by July 2018.
Impact on local ecology	The complainants state that indigenous animal species and bees have decreased, and trees such as lemon, gum-kino (hardwood), cashew, and mango no longer grow on the lands. The complainants allege that fish have died in the Sapagyi stream due to the discharged water from the plant. The complainants allege this is a result of the poor air and water quality from the client's operations.	Referring to the updated ESIA study, the client maintains that no impact to ecology, including air, noise, soil, water, fauna and flora was identified. Additionally, the ESIA did not identify impacts on livelihoods and economy, and as also noted in the ESIA, the location of the factory operations was decided by the government. Nonetheless, the client explained that there is a monitoring system in place which they believe will ensure that there is minimal ecological impact once the plant becomes operational. The client did not address the issue of alleged impacts on indigenous communities in the CAO Assessment report. This issue was raised in the complaint addendum and the CAO dispute resolution conclusion report, in addition to conversations with the complainants during appraisal.
Impact on Indigenous Peoples	Ethnic minority groups including Zaw Ti Shan and Shan Gyi ethnic groups—minority groups within the minority Shan group--are represented among the complainants, and they allege that they have been impacted by the government-owned factory. They claim that the smoke and fumes from the factory have destroyed their citrus fruit trees such as lemon and lime crops, which they have been farming for over 100 years.	The client did not address the issue of alleged impacts on indigenous communities in the CAO Assessment report.