



TERMS OF REFERENCE

CAO terms of reference for an Audit of IFC

CAO Compliance

C-I-R6-Y08-F096

December 03, 2008

**Wilmar Group
Indonesia**

**Case of
Forest Peoples Programme**

About the CAO

The CAO (Office of the Compliance Advisor/Ombudsman) is an independent office that reports directly to the president of the World Bank Group. The 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).

If CAO Ombudsman concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance arm of the CAO, CAO Compliance, to appraise whether the concerns raised in the complaint merit a compliance audit of IFC/MIGA.

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

The CAO discloses the findings of its compliance appraisal in an appraisal report to inform the president and boards of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

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



Background to Concerns Leading to the Compliance Audit

IFC has undertaken three investments with the Wilmar Group: Wilmar Trading (IFC No. 20348), Delta - Wilmar (IFC No. 24644), and Wilmar WCap (IFC No. 25532).

Nineteen representatives of civil society organizations (CSOs) filed a complaint under the lead of Forest Peoples Programme, claiming that Wilmar Group's activities in Indonesia violated a number of IFC standards and requirements. CAO Ombudsman transferred the IFC-related allegations to CAO Compliance for a compliance appraisal; CAO Ombudsman continues to work on resolving other matters raised in the complaint through negotiations between the parties.

IFC's involvement in Wilmar Group started in 2003 with its first investment, followed by two further investments in 2006. On October 2008, IFC approved a fourth investment, the Delta–Wilmar CIS Expansion (IFC No. 26271). The Delta–Wilmar CIS Expansion (IFC No. 26271) approved in October is not within the scope of this audit, since the complaint received by CAO only refers to the three first investments.

Actions by CAO Compliance	
2007	
July 18	Complaint received by the CAO from 19 CSO representatives under the lead of Forest Peoples Programme. The complaint was dated July 18, 2007.
2008	
March 26	CAO Compliance received the case for appraisal after CAO Ombudsman closed the negotiations on claims related to IFC. CAO Ombudsman continues to support a parallel process of negotiated dispute resolution on the remaining issues in the complaint.
September 4	Appraisal report disclosed by CAO Compliance.
December 3	CAO Compliance discloses the Terms of Reference for the audit



Scope of the Audit of IFC

The overall scope of the compliance audit is to assess the reasonableness of IFC's approach to these investments based on its mission, experience, and guidance.

This includes an assessment of:

- Whether the current procedures, and established practices, provide sufficient and correct guidance to staff in assessing upstream supply chain issues to ensure that the outcomes of the investments made meet the intent of applicable policies, as well as IFC's mission and mandate.
- How IFC assured itself that these investments would achieve an outcome consistent with IFC's development mission, and how earlier experiences of achieving sustainable development outcomes within the region, the sector, and with the client were considered by IFC during its review process.
- Whether the allocation of Category B and C to these investments was reasonable taking into account the specifics of the sector, the region, earlier experiences; and whether the allocated categorization, although consistent with the established practice of staff at the time, were consistent with IFC's environmental and social policies and standards at the time of the different investments.
- Whether IFC's rationale for defining the upstream supply chain as not associated with, and outside the area of influence of, their investments was reasonable and correct taking into account IFC's policies, mandate, and mission.

The scope of the audit also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

The scope of CAO Compliance appraisals and audits are limited to the issues raised in the request, and related to the complaint. CAO can not, accept an expansion of the scope defined in the request, or expansion away from issues related to the complaint.

The complainant listed the following issues as of general concern in their original complaint to the CAO:

- Illegal use of fire to clear lands
- Clearance of primary forests
- Clearance of areas of high conservation value
- Take over of Indigenous Peoples' customary lands without due process
- Failure to carry out free, prior, and informed consultations with Indigenous Peoples leading to broad community support
- Failure to negotiate with communities or abide by negotiated agreements
- Failure to establish agreed areas of smallholdings
- Social conflicts triggering repressive actions by companies and security forces
- Failure to carry out or wait for approval of legally required environmental impact assessments



- Clearance of tropical peat and forests without legally required permits.

A major underlying issue of concern is how a sustainable livelihood is achieved, or secured, for the impacted people.

The complainants further detailed their concerns as violations of IFC Performance Standards and Safeguard Policies in the context of: compliance with applicable national laws, including host country obligations under international law; analysis of social and environmental risks and impacts in a Social and Environmental Assessment, and related action plans to address potential impacts; assessments and actions related to provisions given for land acquisition and involuntary resettlement; for biodiversity conservation and sustainable natural resource management, and for Indigenous Peoples and cultural heritage.

The focus of compliance auditing is on IFC, and how IFC assured itself of project performance.

The current scope of the audit is limited to compliance with IFC's applicable policy provisions, and does not include an assessment of how IFC assured itself of compliance with applicable national laws. This limitation relates to the grouping by the CAO Ombudsman of the concerns raised by the complainant in three topic groups:

- Group One concerned the dispute between local communities in Sambas (Senuju, Sajingan Kecil and Sasak) and the Wilmar Group.
- Group Two concerned compliance with applicable national law.
- Group Three concerned compliance with IFC applicable policies provisions and procedures.

CAO Ombudsman closed Group Three due to not being amendable to resolution through the CAO Ombudsman process. Group three is the scope of this audit by CAO Compliance.

Group One and Two remain, as of the date of this document, with CAO Ombudsman.

Please see the CAO Ombudsman assessment report dated November 2007 on www.cao-ombudsman.org for further details.

Audit Criteria, Approach and Preliminary Timeline

The audit criteria are the conditions for IFC's involvement, including IFC policies, performance standards, guidelines, procedures, and requirements.

IFC's policies and guidelines are updated, improved, and changed over time. A significant change was the introduction of the Performance Standards on April 30, 2006. The policies, guidelines and procedures that apply to a project are determined by the date a project is approved by the IFC Corporate Investment Committee (CIC). The Performance Standards apply to projects approved by CIC as of April 30, 2006.

Wilmar Trading (IFC No. 20348) was approved by CIC in August 2003. Therefore, the World Bank Group Safeguard Policies and the December 1998 IFC Environmental and Social Review Procedure apply.



Delta – Wilmar (IFC No. 24644) was approved by CIC in February 2006. Therefore, the World Bank Group Safeguard Policies and the December 1998 IFC Environmental and Social Review Procedure apply.

Wilmar WCap (IFC No. 25532) was approved by CIC in October 2006. Therefore, the IFC Performance Standards and the April 2006 IFC Environmental and Social Review Procedure apply.

The approach to the audit is described in the CAO Operational Guidelines (April 2007), and states that the working definition of compliance auditing adopted by CAO Compliance is as follows:

“A compliance audit 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 audit criteria.

The audit will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the audit process.”

CAO will, as per standard practice in conducting audits, hire an audit panel of three specialists. For this particular audit, CAO considers the following competences as necessary for the audit panel;

- In depth understanding of palm oil operations, plantations, and supply chains.
- Knowledge of the World Bank Group and IFC sector strategies.
- In depth understanding, experience and knowledge of IFC’s business, operations, procedures and practices.
- In depth knowledge of IFC’s Performance Standards, former Safeguard Policies, applicable Environmental and Social Review Procedures, as well as internal work practices.
- Experience and knowledge of auditing, legal practices, and the complexity of development institutions.

The preliminary time schedule is for CAO to have a draft audit report ready during February 2009. CAO’s Operational Guidelines state that the draft audit report is to be circulated to senior management of IFC and all relevant departments for factual review and comment. Comments should be submitted in writing to the CAO within 15 working days of receipt by the departments. Upon receiving comments from IFC on the draft, CAO Compliance will finalize the report. The final report will be submitted to the senior management of IFC for a response. A notification will be posted on the CAO’s Web site. IFC has 15 days to submit a written response to the CAO. The audit report and any response from IFC will then be forwarded to the Office of the President of the World Bank Group. The Office of the President will have no editorial input to the content of the audit report. The President may take the opportunity to discuss the audit findings with the CAO. Once the President is satisfied with the response by senior management of IFC, the Office of the President will provide clearance for the audit report and the response. The President retains discretion over clearance. After clearance, CAO Compliance will share the audit report and the senior management response with the World Bank Group Board and will disclose both documents on the CAO Web site. This indicates a public disclosure of the audit report no sooner than during April 2009.