



COMPLIANCE MONITORING REPORT

IFC Investment in Delta-Wilmar (Projects #25532 and #26271)

Complaint 03

**Monitoring of IFC's Response to:
CAO Investigation of IFC Investment in
Delta-Wilmar (#25532 and #26271)
Complaint 03**

June 5, 2018

Office of the Compliance Advisor Ombudsman (CAO)

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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Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to adhering compliance with relevant requirements and improving the E&S performance of the institutions.

Following a CAO compliance investigation, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed.

CAO's monitoring considers IFC/MIGA's response to a compliance investigation at two levels:

- Firstly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the project level.
- Secondly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to address project level concerns identified by CAO. The second level is designed to document progress in the IFC/MIGA's approach to the identification and management of E&S risk.

This is CAO's first monitoring report documenting CAO's assessment of IFC's response to its investigation of IFC's investment in Delta Wilmar ("the compliance investigation"), which was finalized in March 2016.¹ This report documents IFC's response to the compliance investigation in the period to April 2018.

Background

The compliance investigation relates to IFC investments in Delta Wilmar Limited in Ukraine (the client). The client is a joint venture, co-owned by Wilmar Group, a large agribusiness conglomerate specializing in the production and trade of palm oil and operating in Asia, Eastern Europe, and Africa.

IFC approved two loans to Delta Wilmar totaling \$62.5 million, in 2006 and 2008, to establish and expand a greenfield palm oil refinery in Ukraine. Delta Wilmar prepaid its loan to IFC in July 2013.

This is the second compliance process related to IFC's investments in the Wilmar Group. CAO received an earlier complaint and completed a compliance audit in June 2009.² The 2009 Audit found that IFC's pre-investment due diligence did not properly consider the requirements of Performance Standard 1 in relation to the risks and impacts associated with Delta Wilmar's palm oil supply chain in Indonesia.

The current compliance process was triggered by a complaint received in November 2011 from a coalition of NGOs on behalf of groups including indigenous peoples and smallholders living near Wilmar Group plantations in Indonesia.³ The complaint raised concerns about the environmental and social (E&S) impacts of the company's supply chains in Indonesia with a focus on land issues. In particular, the complaint focused on PT Asiatic Persada (PT AP), a company that operated an

¹ CAO Investigation of IFC Investment in: Delta-Wilmar (Projects #25532 and #26271), Complaint 03, March 8, 2016, available at: <https://goo.gl/tZSCSB>. The CAO investigation, IFC's response to the investigation and related materials are available on the CAO website. See <https://goo.gl/kVWdS1>.

² CAO Audit of IFC's Investments in: Wilmar Trading (IFC No. 20348), Delta-Wilmar CIS (IFC No. 24644), Wilmar WCap (IFC No. 25532) and Delta-Wilmar CIS Expansion (IFC No. 26271), June 19, 2009, available at: <https://goo.gl/GDMKiE>.

³ The November 2011 complaint was the third received by CAO in relation to the Wilmar Group and is thus referred to as the Wilmar-03 complaint.

oil palm plantation in Jambi (Sumatra), and was, until 2013, owned by the Wilmar Group. The complainants specifically referred to PT AP's reliance on the mobile brigade or BRIMOB, a paramilitary unit of the Indonesian police, for security on the PT AP concession. In April 2011, a violent confrontation between local residents and company staff and security culminated in the demolition of settlements in the subvillage where those residents lived.⁴

CAO found the complaint eligible and, in March 2012, the parties agreed to a mediated dialogue between PT AP and several local communities. In April 2013, the mediation process stalled following the parent company's sale of PT AP. As the new owners decided not to continue with the CAO-facilitated mediation, the case was transferred to CAO's compliance function in September 2013.

The compliance investigation was completed in March 2016 and released in May 2016. The investigation made a number of non-compliance findings in relation to IFC's disbursement, supervision, and disclosure of information relating to the Delta Wilmar loans. CAO also found that questions around IFC responsibilities for E&S impacts of projects after the end of IFC's involvement would benefit from further clarification. A summary of findings as presented in the compliance investigation is set out in Annex 1.

A management response from IFC was released together with the compliance investigation report in May 2016.⁵ Although the response did not propose any project-specific actions to address CAO findings, the IFC response acknowledged that a more rigorous and systematic approach in due diligence and supervision of the palm oil supply chain was warranted. IFC noted that its policies and practices had advanced, with many improvements developed and implemented subsequent to CAO's 2009 Audit.

IFC's response did not address the CAO finding of a need to clarify IFC's responsibilities for the E&S impacts of projects after IFC's involvement in a project ends. IFC's response also did not address the CAO finding in relation to disclosure and consultation on a consultant review of Wilmar Group Indonesia plantation operations initiated by IFC.

IFC noted that it was committed to maintaining its leadership in promoting sustainability in supply chains.

⁴ Further details of the incident are discussed in the Wilmar-03 Investigation report, p. 27.

⁵ IFC Management Response to the CAO Investigation Report on Delta-Wilmar 03/Jambi (#25532 and #26271), March 3, 2016, available at: <https://goo.gl/4DphHu>.

Observations from CAO Monitoring (April 2016 – May 2018)

During the monitoring period, CAO sought information from IFC on its project-level and system-level responses to the investigation findings. CAO also sought information from the complainants regarding IFC's engagement to address the investigation findings.

This section summarizes key developments during the monitoring period at the project level, and provides an overview of IFC actions to address CAO findings at the level of policies, procedures, practice and knowledge.

1. *Project level developments*

During the monitoring period, IFC has not reported any action that addresses CAO's project level findings. These include non-compliance findings in relation to IFC's decision to disburse its investment, and its approach to supply chain issues through engagement with the parent company, rather than through supervision of its investment. CAO also found IFC and the client had not complied with requirements for disclosure or consultation with affected communities in relation to a consultant review carried out of Wilmar Group Indonesia plantation operations.

In explaining the decision not to take up the findings with the company, IFC noted that it no longer had a relationship with the company or with the Wilmar Group. Further, as noted in CAO's investigation report, Wilmar International sold its share of PT AP in April 2013.⁶

CAO notes that, in the absence of an ongoing contractual relationship, IFC's ability to influence changes at the project level may be limited. However, CAO notes that IFC remains engaged with the palm oil sector through its membership of the Roundtable on Sustainable Palm Oil (RSPO), among other industry activities.

Following the CAO compliance investigation, the complainants expressed frustration at the lack of action by IFC, by the former IFC client, or by the new owners of PT AP in relation to their concerns. The complainants reported that no action had been taken by IFC or by the company to address the impacts on the complainants at the project level.

During and subsequent to the CAO compliance investigation, the complainants continued efforts to advocate for resolution of their concerns, including through RSPO Dispute Settlement proceedings⁷ and through appeals for government action.⁸ In May 2018, the complainants reported to CAO that numerous Wilmar Group operations still have land disputes with communities.⁹

In relation to the impacts of Wilmar Group supply chains, the complainants noted that "despite repeated complaints and the recognition that IFC Performance Standards should apply to the whole supply chain and not just to company-owned operations, the CAO was never able to carry out a transparent review of the social and environmental impacts of this wider supply chain let

⁶ See CAO Investigation Report – IFC Investment in Eco Oro, p. 4.

⁷ Communities have submitted complaints regarding other Wilmar International subsidiaries to the RSPO Dispute Settlement Facility, see RSPO, Case Tracker: PT Bumi Sawit Kencana II, 27 June 2016, available at: <https://goo.gl/A5iqgd>.

⁸ In March 2016, prior to the publication of the CAO compliance investigation, a group of Suku Anak Dalam community members and farmers marched from Jambi to the State Palace of Jakarta to demand government action to resolve conflicts around agrarian land, see Welly Hadinata, Tribunnnews, "Suku Anak Dalam Jambi Long March 1.000 KM Menuju Istana Negara," 29 March 2016, available at: <https://goo.gl/2Qb1J9>.

⁹ Correspondence with CAO, May 18, 2018. See also Forest Peoples' Program, "Wilmar International implicated in police shooting of two farmers on oil palm estate," Indonesia, January 9, 2018, available at: <https://goo.gl/eozxpY>

alone get Wilmar to make remedy for these impacts.”¹⁰ The complainants noted that the consultant review that had been carried out for IFC on the impacts of the wider supply chain has never been shared, despite repeated requests.

2. Developments in IFC policies, procedures, practice or knowledge

CAO’s investigation findings also identified issues that relate to IFC’s broader policy framework, and not to the project alone. In its response to the investigation, and during the monitoring period, IFC reported steps that have been and are being taken that relate to the investigation findings at the level of policy, procedures, practice or knowledge. In particular, these include steps relating to:

- The completion of the World Bank Group Palm Oil Strategy Process;¹¹
- Introduction of more rigorous Performance Standards requirements;
- Use by IFC of comprehensive environmental and social risk screening tools, such as the Global Map of Environmental and Social Risks in Agro-Commodity Production (GMAP);¹²
- Development of a Good Practice Handbook for Agro-Commodities Risk Assessment and Management;¹³
- New screens and measures in place to guide prospective IFC direct investments in palm oil, including an Integrated Biodiversity Assessment Tool, GIS mapping, and High Conservation Value assessments by third parties; and
- A practice of undertaking Country Situation Analysis in collaboration with the World Bank prior to considering any new palm oil investment.¹⁴

CAO notes that, during the monitoring period, IFC has not processed any new palm oil investments. CAO understands that, as part of E&S due diligence work for proposed investments, IFC has utilized the new screens and measures noted above.

Subsequent to IFC’s response, additional internal guidance has been prepared and implemented for IFC staff. In January 2017, IFC introduced enhanced procedures for identifying and assessing contextual risks in an investment’s region, country or sector.¹⁵ In August 2017, IFC published internal guidance for staff on identifying and addressing the risks posed by use of security personnel.¹⁶ At the same time, IFC published guidance and resources for IFC clients and other companies in its *Good Practice Handbook on Use of Security Forces*.¹⁷ The Handbook sets out

¹⁰ Correspondence with CAO, May 18, 2018.

¹¹ WBG, “The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector,” March 31, 2011, available at: <https://goo.gl/1VwKyq>.

¹² See IFC website, “Global Map of Environmental and Social Risks in Agro-Commodity Production (GMAP) Pilot,” available at: <https://goo.gl/yxxb4s>.

¹³ IFC, “Good Practice Handbook: Assessing and Managing Environmental and Social Risks in an Agro-Commodity Supply Chain,” August 2013, available at: <https://goo.gl/heVrKL>.

¹⁴ World Bank, Press Release, “World Bank Group Adopts New Approach for Investment in Palm Oil Sector,” April 3, 2011, available at: <https://goo.gl/tnAo1H>.

¹⁵ IFC’s contextual risk review procedures are discussed in further detail in the *CAO Monitoring Report of IFC’s Investment in Avianca S.A., Colombia*, May 10, 2017, pp.8-9, available at: <https://goo.gl/BojYdF>.

¹⁶ IFC, “Good Practice Note: Supporting Compliance with Security-Related Aspects of Performance Standard 4,” August 2017, on file with CAO.

¹⁷ IFC, *Good Practice Handbook Use of Security Forces: Assessing and Managing Risks and Impacts; Guidance for the Private Sector in Emerging Markets*, February 2017, available at: <https://goo.gl/v2SRgt>.

guidance on managing private security and relationships with public security forces informed by PS 4 and the Voluntary Principles on Security and Human Rights.¹⁸

In addition, CAO's Advisory function has drafted an advisory memo series on business risks and opportunities in supply chains, informed in part by learnings from the Wilmar-03 case.

CAO is not aware of any action taken by IFC in relation to the CAO finding of a need to clarify IFC's responsibilities for the E&S impacts of projects after IFC's involvement in a project ends.

At the level of policies and procedures, the complainants recognized that the World Bank Group adoption of its Framework Strategy on Palm Oil and the screening tool on palm oil were key achievements of the CAO process. The complainants noted that "it is time there was a WBG-wide operational evaluation of the effectiveness of these tools."¹⁹

The complainants were not satisfied that the palm oil strategy process had adequately addressed the issues raised in relation to Wilmar Group, in particular regarding the Wilmar Group decision to sell PT AP in the course of an active CAO dispute resolution process. The complainants expressed concern about IFC policies as they relate to a client's exit from investments that have ongoing and serious E&S risks or impacts, noting that IFC policies and procedures did not place any obligation on the client to engage with stakeholders prior to divestment, or to disclose in advance its intention to exit.²⁰

The complainants reported that they had sought to engage with IFC about the possibility of contractual or policy arrangements with clients that would address these concerns, but had not received a response from IFC after the release of CAO's 2016 investigation report.²¹

Conclusion

IFC does not report any actions taken to address CAO's finding at the project level, on the basis that it has no contractual relationship with the client or with its parent company. However, IFC has reported institutional changes that partially address CAO's non-compliance findings related to the adequacy of IFC's policies, procedures, and practices as applied to this investment.

CAO is not assured that the measures proposed by IFC fully address the investigation findings. Beyond the actions outlined in this report, CAO sees benefit in IFC reporting publicly on measures it is taking to address CAO's findings at a systemic level, including the consideration of:

- IFC's appropriate role and responsibility when considering exit or divestment from a project with ongoing concerns in relation to E&S performance; and
- The role and responsibility of clients when considering exit or divestment from a project with ongoing concerns in relation to E&S performance.

Overall CAO finds that IFC's response to this compliance investigation has only partially addressed its compliance findings. Nevertheless, CAO has decided to close its monitoring of the investigation considering that IFC has no ongoing investment in the company, and in light of IFC's decision not to engage in a project level response with its former client or the complainants.

¹⁸ *Ibid*, p. 15, "Box 3: Performance Standard 4 and the Voluntary Principles."

¹⁹ Correspondence with CAO, May 18, 2018.

²⁰ Call with CAO, October 17, 2016.

²¹ More information is set out in the complainants' letter to IFC, dated 4 July 2013, and available on the Forest Peoples Programme website, "Complaint regarding Wilmar Group's sale agreement of PT Asiatic Persada (Jambi, Indonesia) to non-RSPO member and non-IFC funded companies without prior consultation with Suku Anak Dalam (SAD) affected communities," available at: <https://goo.gl/rfd2tL>.

Findings from CAO's investigation that require a response at the level of IFC's policies, procedures and practices may be addressed through CAO's ongoing compliance and advisory work.

Annex 1 – Summary of Investigation Findings

Finding No. 1: Disbursement	
1.1.	In its response to the 2009 CAO Audit, IFC management accepted that there were shortcomings in supply chain due diligence in relation to the DW loans.
1.2.	IFC did not assure itself that its E&S Conditions of Disbursement, as they related to supply chain risks and impacts, were met when it decided to disburse \$47.5m to the client in January 2010.
1.3.	IFC should have applied PS supply chain requirements in relation to the DW loans. However, it instead sought to address supply chain issues with the parent company on a voluntary basis. This decision was inconsistent with IFC's E&S Policies.
1.4.	At the point of disbursement, there was not enough information to conclude that supply chain requirements could have been met over a reasonable period of time. The decision to disburse was thus not in compliance with the Sustainability Policy (para.17).
Finding No. 2: Supervision	
2.1.	Throughout the supervision period of the DW loans, IFC continued to treat those investments as if they had no supply chain requirements.
2.2.	IFC did not adapt its approach to supervision of the DW loans as information became available about serious E&S risks in the company's supply chain. In particular, IFC did not take into account in its supervision of the DW loans: <ul style="list-style-type: none">• the findings of the 2009 CAO Audit;• the findings of the Consultant Review of Wilmar's Indonesia Plantations; or• the Wilmar-03 complaint made to CAO in November 2011.
2.3.	IFC attempted to respond to shortfalls in E&S performance at the group level through voluntary activities with the parent company. However, these activities were not sufficient to address the E&S risks in DW's supply chain.
2.4.	The parent company's sale of PT AP during the CAO dispute resolution process does not raise an E&S compliance issue. However, questions as to IFC's responsibilities for the E&S impacts of projects after IFC's involvement in a project ends arise frequently in CAO cases, and would benefit from further clarification.
Finding No. 3: Disclosure	
3.1.	Affected communities were not consulted with and did not have an opportunity to provide input into the Consultant Review or the resulting draft action plan which IFC commissioned in relation to the parent company's Indonesia plantations.
3.2.	The process which IFC supported for conducting the Consultant Review did not meet the disclosure and consultation requirements of PS1