



TERMS OF REFERENCE

CAO terms of reference for an Audit of IFC

CAO Compliance

C-I-R6-Y08-F096

March 12, 2009

**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).

When CAO receives a complaint, the CAO Ombudsman will undertake an assessment of the opportunities for collaborative settlement of the issues raised.

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 four investments with the Wilmar Group: Wilmar Trading (IFC No. 20348), Delta – Wilmar CIS (IFC No. 24644), Wilmar WCap (IFC No. 25532), and Delta- Wilmar Expansion (IFC No. 26271).

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.

In July 2007, 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.

In November 2007, CAO Ombudsman disclosed a “Preliminary Stakeholder Assessment” report. Based on division of topics made in the CAO Ombudsman report, CAO Ombudsman transferred IFC-related allegations to CAO Compliance for a compliance appraisal at two different occasions; in March 2008 CAO Ombudsman transferred what was defined as “Topic 3”, and in December 2008 CAO Ombudsman transferred what was defined as “Topic 2”.. For details on how CAO Ombudsman divided the complaint into three different topic areas, see the November 2007 CAO Ombudsman “Preliminary Stakeholder Assessment” report available on www.cao-ombudsman.org.

CAO Compliance concluded on September 4, 2008 that the issues transferred from CAO Ombudsman in March 2008 merited an audit. See the CAO Compliance Appraisal report on www.cao-ombudsman.org for details. CAO Compliance disclosed Terms of Reference for the audit on December 3, 2008. The Delta–Wilmar CIS Expansion approved in October 2008 was not within the scope of the audit at the time when the first Terms of Reference was released on December 3, 2008.

CAO Compliance concluded on March 11, 2009 that the issues transferred from CAO Ombudsman in December 2008 merited an audit. See the CAO Compliance Appraisal report on www.cao-ombudsman.org for details.

In late December 2008, the CAO Vice President initiated a compliance appraisal of IFC's fourth investment in Wilmar, the Delta- Wilmar Expansion. CAO Compliance disclosed an appraisal report on March 11, 2009. The appraisal report concluded that an audit was merited, and that the scope of the ongoing audit should be expanded to include the fourth investment, but stay within the issues transferred by CAO Ombudsman and originating from the July 2007 complaint to CAO.

This revised Terms of Reference differs from the December 3, 2008 version by including the second transfer from CAO Ombudsman as well as the fourth IFC investment, the Delta- Wilmar Expansion.



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 Ombudsman transfers issues related to IFC under what is referred to as “Topic 3” in CAO Ombudsman Preliminary Stakeholder Assessment report.
September 4	Appraisal report disclosed by CAO Compliance.
December 3	CAO Compliance discloses the Terms of Reference for the audit.
December 17	CAO Ombudsman transfers issues related to IFC under what is referred to as “Topic 2” in CAO Ombudsman Preliminary Stakeholder Assessment report.
December 18	CAO VP initiates compliance appraisal of the fourth investment, the Delta-Wilmar Expansion.
2009	
March 11	CAO Compliance discloses appraisal report addressing the issues transferred December 17.
March 11	CAO Compliance discloses appraisal report addressing the fourth investment, the Delta- Wilmar Expansion.
March 11	CAO Compliance discloses updated and expanded 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, policies, standards, 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 country, 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 was 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 cannot accept an expansion of the scope defined in the request, or expand away from issues related to the complaint.

The complainant listed the following issues as of general concern in their July 2007 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.



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.

Delta - Wilmar Expansion (IFC No. 26271) was approved by CIC in June 2008. Therefore, the IFC Performance Standards and the July 2007 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 standard practice in conducting audits is to hire an audit panel of three specialists. Based on the December 2008 Terms of Reference, CAO hired three specialists. CAO does not see any need to change the members of the audit panel due to the expanded scope. For this particular audit, CAO considered 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 revised preliminary time schedule is for CAO to have a draft audit report ready late April or early May 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 June 2009.