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APPRAISAL REPORT

CAO Compliance Appraisal

C-I-R5-714-F199

June 26, 2014

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## **IFC Investments in Delta Wilmar**

### **Case of**

Wilmar-3 / Jambi

### **Summary**

The Wilmar Group is an agribusiness conglomerate specializing in the production and trade of plant oils. Since 2003, IFC has made four investments with the Wilmar Group.

CAO received the Wilmar-3 complaint in November 2011. The Wilmar-3 complaint alleges that PT Asiatic Persada (PTAP) has developed oil palm plantations on land under the customary ownership of indigenous communities in Jambi Province, Indonesia. PTAP was a subsidiary of Wilmar until March 2013. The Wilmar-3 complaint also raises broader issues related to the Wilmar supply chain in Indonesia.

CAO finalized an audit of IFC's investments in Wilmar in June 2009. The 2009 CAO audit report made a number of findings of non-compliance. These included findings that IFC did not handle palm oil supply chain risks around the investments in accordance with its environmental and social (E&S) requirements.

Wilmar-3 is the third complaint to CAO relating to IFC's investments with the Wilmar Group. The first complaint was filed in 2007 and led to the 2009 audit. The second complaint was lodged in 2008 and closed by CAO in 2012 following a partial settlement of the issues. In the context of CAO's compliance mandate these complaints raise substantively similar issues. Consequently, this compliance appraisal focuses on IFC's performance in relation to its investments in the period subsequent to the CAO Wilmar-1 audit (ie. post June 2009).

Having reviewed available documentation, it is unclear to CAO whether IFC supervised its investments in Delta-Wilmar in accordance with its E&S requirements. In particular, and in relation to the issues raised by the complaint, it is unclear to CAO whether IFC adequately assured itself that the E&S conditions of disbursement of its loans to Delta-Wilmar were met prior to disbursement in January 2010. In light of recent case work, CAO also finds that the questions regarding disbursement and supervision raised by this appraisal are of systemic importance to IFC. Thus CAO will develop Terms of Reference for a compliance investigation of IFC's supervision of its Wilmar investments in the period after the June 2009 audit.

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## About the 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 lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

Office of the Compliance Advisor Ombudsman (CAO)  
for the  
International Finance Corporation (IFC)  
Multilateral Investment Guarantee Agency (MIGA)  
Members of the World Bank Group

## 1. Overview of the CAO 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 CAO compliance for appraisal and potential compliance 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 the performance of IFC and MIGA, not their client. 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 is 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 compliance 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, the CAO applies several criteria. These criteria test the value of undertaking a compliance investigation. Thus, as part of the appraisal process CAO considers 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 on the project and other stakeholders to understand which criteria IFC/MIGA used to assure itself of the performance of the project, how IFC/MIGA assured itself of compliance with these criteria, how IFC/MIGA assured itself 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, the CAO can close the case or initiate a compliance investigation of IFC/MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the President of the World Bank Group, and the IFC/MIGA Board in writing. If a compliance appraisal results from a complaint, the complainant will also be advised the outcome. The appraisal report will be made public on the CAO website.

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.

## 2. Background

### ***Investment***

The Wilmar Group is an agribusiness conglomerate specializing in the production and trade of plant oils, operating in Asia, Eastern Europe, and Africa.

Since 2003, IFC has undertaken four investments in the Wilmar Group: Wilmar Trading (IFC No. 20348); Delta–Wilmar CIS (IFC No. 24644); Wilmar WCap (IFC No. 25532); and Delta- Wilmar CIS Expansion (IFC No. 26271).

A brief description of each of the investments follows.

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#### **Wilmar Trading - Indonesia (2004) – IFC Project No. 20348**

*IFC Investment:* Guarantee of up to \$33.3 million for a pre-shipment finance facility.

*Timeline:*

- IFC Corporate Investment Committee (CIC) review: August 2003.
- Investment Review Meeting: November 2003.
- Board approval: May 2004.
- Commitment: June 2004.
- Disbursement: November 2005.
- Closure: January 2007.

*IFC Project Description:* Wilmar Trading is the merchandising and trading arm of Wilmar Holdings. IFC's support would facilitate Wilmar Trading to finance its 2003/2005 export program and allow continued sustainable long-term growth in a sector where Indonesia has a strong comparative advantage. Project to enable Wilmar Trading to scale up its off take of crude palm oil (CPO) from palm oil plantations in Indonesia and process them into refined oil. Reviewed according to 1998 Environmental and Social Review Procedure and 1998 Safeguard Policies.

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#### **Delta Wilmar CIS – Ukraine (2006) – IFC Project #24644**

*IFC Investment:* Loan - US\$17.5 million.

*Timeline:*

- CIC Review: February 2006.
- Investment Review Meeting: June 2006.
- Board approval: June 2006.
- Commitment: July 2006.
- Disbursement: October 2006, January 2010.
- Closure, November 2012.

*IFC Project Description:* Delta-Wilmar CIS to construct, equip and place into operation a 1,500 metric ton per day crude CPO refinery in Ukraine. Reviewed according to 1998 Environmental and Social Review Procedure and 1998 Safeguard Policies.

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**Wilmar Working Capital – Indonesia (2006) – IFC Project #25532**

*IFC Investment:* Guarantee of up to \$50 million for a pre-shipment finance facility.

*Timeline:*

- CIC Review: October 2006.
- Investment Review Meeting: November 2006.
- Board approval: December 2006.
- Commitment: February 2007.
- Disbursement: March 2007.
- Closure: June 2009.

*IFC Project Description:* Project to enable Wilmar Trading to meet working capital needs to purchase crude palm oil (CPO) from palm oil plantations in Indonesia and process them into refined oil for export. IFC's support essential to enable the company to finance its export program and allow continued sustainable long-term growth in a sector where Indonesia has a strong comparative advantage. Seen as an illustration of IFC's support for good sponsors in a socially sensitive sector. Project to ensure continuous operation of the CPO supply chain and the preservation of all economic interests and employment associated with that chain such as plantation, transportation, storage, processing and shipping. Reviewed according to 2006 Environmental and Social Review Procedure and 2006 IFC Performance Standards.

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**Delta Wilmar CIS Expansion – Ukraine (2008) - IFC Project #26271**

*IFC Investment:* Loan - US\$45 million.

*Timeline:*

- CIC Review: June 2008.
- Investment Review Meeting: August 2008.
- Board approval: October 2008.
- Commitment: November 2008.
- Disbursement: January 2010.
- Closure: July 2013.

*IFC Project Description:* Delta-Wilmar CIS, a palm oil refinery and shortening manufacturer and current IFC client in Ukraine, will increase its capacity and invest in related infrastructure near the Yuzhny port in Odessa region. Reviewed under the 2007 Environmental and Social Review Procedure and the 2006 IFC Performance Standards.

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**CAO Audit of IFC Investments in Wilmar**

CAO finalized an audit of IFC's investments in Wilmar in June 2009.

Key findings are presented in the Executive Summary of the Wilmar-1 audit report as follows:

With regard to its Wilmar Group investments, IFC applied a *de minimis* approach towards assessing each project's supply chain. For each investment, commercial pressures were allowed to prevail and overly influence the categorization and scope and scale of environmental and social due diligence. As a result, IFC's development mandate and mission were not robustly represented in the decision-making processes. This had the effect of insulating IFC from obtaining key information as to how each project would impact the palm oil supply chain. Because commercial pressures dominated IFC's assessment process, the result was that environmental and social due diligence reviews did not occur as required (p.2).

Therefore, the CAO concludes that IFC did not meet the intent or requirements of its own Performance Standards for its assessment of the Wilmar trade facility investment. Incorrect assumptions were made about the impact of certain types of financial products (trade facilities) without proper consideration of the sector and country context of the investment. As for the Wilmar refinery investment, IFC failed to assess the supply chain plantations or other companies and suppliers linked through the Wilmar Group, as required by its Performance Standards (p.2-3).

CAO concludes that the adoption of a narrow interpretation of the investment impacts—in full knowledge of the broader implications—is inconsistent with IFC's asserted role, mandate of reducing poverty and improving lives, and a commitment to sustainable development (p.3).

Of particular relevance to the current appraisal, CAO notes the following findings from its 2009 audit report:

IFC Performance Standards (2006) state that adverse impacts associated with *supply chains* shall be considered where low cost labor is a factor, or where the resource utilized is ecologically sensitive (p.25) [emphasis added].

The CAO finds that both impacts on low cost labor and ecologically sensitive resources are directly relevant to the palm oil sector (p.25).

IFC's focus on whether CPO is traceable back to Wilmar-owned plantations is inconsistent with IFC's Performance Standards, which require a broader assessment of suppliers and supply chains (p.27).

The CAO finds that IFC's stated inability to trace CPO to specific plantation areas in Indonesia is incorrect and is therefore not a valid argument for excluding a supply chain with social and environmental concerns that are well documented (p.24).

IFC failed to correctly assess the supply chains related to its investment in Delta Wilmar Expansion, thereby limiting the scope of IFC's environmental and social impact assessment of the investment (p.27).

CAO concludes that the IFC assessment of Delta Wilmar CIS Expansion (IFC No. 26271) *failed to take into account the supply chain plantations and other companies and suppliers linked to the Wilmar Group, as required in the Performance Standards*. This led to a scope of IFC's due diligence that was too narrow and limited, and that in turn failed to trigger assessment of applicable Performance Standards (p.29) [emphasis added].

### ***IFC response to CAO Audit***

In its August 4, 2009 response to the CAO audit IFC emphasizes that Environmental and Social (E&S) management in supply chains is key to assessing and reducing or eliminating negative impacts on the environment, employees and communities. More specifically, IFC acknowledges that supply chain issues should have received closer scrutiny as part of its Delta-Wilmar investments and undertakes to put renewed emphasis on supply chain management issues in the future. In this context, IFC notes that: "Wilmar can now better track palm oil from its own plantations to its processing facilities..." (p.6).

On August 28, 2009, World Bank Group President Robert Zoellick wrote to the Wilmar-1 complainants stating that he had directed IFC management to take all necessary steps to ensure that the problems identified in the CAO audit not be repeated. Relevantly, at this point Mr. Zoellick also states that IFC would:

- a. Not approve new palm oil projects until IFC had developed a strategy to ensure that this would be done in an environmentally and social sustainable manner.<sup>1</sup>
- b. Review the E&S performance of all portfolio investments in palm oil.
- c. Increase IFC's engagement with the Round Table on Sustainable Palm Oil as a means to promote improved E&S performance across the industry.
- d. Develop and implement an advisory services program targeting the palm oil sector in Indonesia.
- e. Subject to reaching agreement with Wilmar, incorporate issues around the impacts of its Indonesian plantations into its supervision of the ongoing Delta-Wilmar investments.

### **Wilmar-3 Complaint**

On November 9, 2011, signatories from community groups and local and international NGOs, led by Forest Peoples Programme (FPP), lodged the Wilmar-3 complaint with the CAO. The complaint relates primarily to land disputes between local communities in Indonesia's Jambi Province and PT Asiatic Persada (PTAP). PTAP owns and operates oil palm plantations and was a subsidiary of Wilmar until March 2013.<sup>2</sup> The complainants allege that the company invoked government forces to dismantle a settlement on disputed land. In addition to the Jambi dispute, the complainants allege that unresolved land conflicts are a problem in relation to Wilmar subsidiaries in Indonesia more generally. As a result the complainants request that CAO carry out a review of Wilmar's operations as they relate to land acquisition and dispute resolution more generally.

The complaint specifically mentions IFC's 2008 Delta Wilmar investment (#26271) which it asserts is contributing, through its supply chains, to the expansion of oil palm plantations owned by Wilmar subsidiaries in Indonesia.

Wilmar-3 is the third complaint to CAO prepared by FPP relating to IFC's investments with the Wilmar Group. The first complaint (Wilmar-1) was filed on July 18, 2007, and was the subject of a CAO Compliance Audit dated June 19, 2009. The second complaint (Wilmar-2) was lodged on December 19, 2008 and closed by CAO in June 2012 following a partial settlement of the issues. The Wilmar-3 complaint picks up the issues between the communities and PTAP not resolved in CAO's Wilmar-2 dispute resolution process. Wilmar-3 was transferred to CAO's Compliance team from CAO's Dispute Resolution team in December 2013 following PTAP's withdrawal from the CAO dispute resolution process in late September 2013.<sup>3</sup>

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<sup>1</sup> This suspension was lifted in April 2011 following approval of *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector* (The Palm Oil Strategy). Available at: <http://goo.gl/P04rb4>

<sup>2</sup> NGOs recently raised concerns regarding Wilmar's March 2013 sale of PTAP, arguing that IFC has an ongoing responsibility regarding Jambi conflict. See NGO letter to IFC (July 2013). Available at: <http://goo.gl/DtMQnM>

<sup>3</sup> CAO, Dispute Resolution Conclusion Report – Wilmar-3, December 2013, p. 1. For further details of the three Wilmar complaints see Annex 1: Overview of CAO Wilmar complaints.

### 3. Scope of the Compliance Appraisal

In cases referred to Compliance after assessment, the scope of the appraisal is defined by issues raised in the complaint and identified during the CAO assessment phase.

As part of the Wilmar-1 process, CAO has previously audited IFC's performance in relation to each of the four Wilmar investments listed above. This audit report (dated June 19, 2009) contains detailed analysis of IFC's involvement in the Wilmar projects up until that date.<sup>4</sup>

As outlined above, each of the Wilmar complaints relates to the environmental and social impacts of plantations owned by Wilmar subsidiaries on local communities in Indonesia. In the context of CAO's compliance mandate (which focuses on IFC's E&S performance) these complaints are considered to raise substantively similar issues.

Consequently, this compliance appraisal focuses on IFC's E&S performance in relation to its investments in the period subsequent to the Wilmar-1 audit (ie. post June 2009).

### 4. CAO Discussion

For reasons noted above, this appraisal focuses on IFC's supervision of the Wilmar projects post June 2009. At this point two of the four Wilmar investments remained active. These were Delta Wilmar CIS – Ukraine (2006) – IFC Project #24644 and Delta Wilmar CIS Expansion - Ukraine (2008) - IFC Project #26271.

#### Disbursements post June 2009

IFC processed disbursements totaling US\$47.5 million to Delta Wilmar in January 2010. These comprised US\$2.5 million under Delta Wilmar CIS and US\$45 million under Delta Wilmar CIS Expansion.

According to the Environmental and Social Review Procedures (ESRPs) in place at the time of these disbursements (v.4, 2009) IFC's role in project supervision includes "ensuring that any E&S conditions of disbursement (CODs) are met by the client prior to disbursements."<sup>5</sup> This requirement is detailed as follows:

After the legal agreements have been executed and where there are E&S CODs to be completed prior to certain disbursements, obtain requisite information from the Transaction Leader to determine the status of their fulfillment. Inform the Transaction Leader if there are any E&S CODs not complied with. Waivers of E&S CODs must be cleared by the Manager CESI and documented in the ESRD.<sup>6</sup>

The primary responsibility for clearing environmental and social CODs is assigned to the lead environmental and social specialist working on the project.<sup>7</sup>

IFC's loan agreements with Delta Wilmar (Projects #24644 and #26271) contain CODs that are derived from standard IFC templates. These include environmental and social CODs that link back

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<sup>4</sup> CAO (2009) *CAO Audit of IFC's investments in Wilmar*. Available at <http://goo.gl/AdkEBy>

<sup>5</sup> IFC - *ESRP* v.4, para. 6.2.1.

<sup>6</sup> *Ibid.*, para. 6.2.2.

<sup>7</sup> *Ibid.*, para. 6.2.3.

to the requirements of the 1998 Safeguard Policies (in the case of Project #24644) and the 2006 Performance Standards (in the case of Project #26271).

The documentation prepared by IFC when processing the Wilmar disbursements in January 2010 indicates that IFC was of the view that the CODs, including the environmental and social CODs for each loan were met, and thus that disbursement was required.

Following a review of the project documentation and discussions with relevant IFC staff, however, it is unclear to CAO whether IFC adequately assured itself that Delta-Wilmar met the environmental and social CODs prior to disbursement of its loans in January 2010. This is particularly the case in relation to the loan agreement for Project #26271 which incorporates IFC's 2006 Performance Standards with attendant requirements to ensure analysis and management of risks emerging from a company's supply chains.<sup>8</sup>

### General Supervision

IFC is required to monitor clients' E&S performance throughout the life of an investment. Project supervision is conducted on the basis of annual monitoring reports (AMRs) submitted by the client as well as site supervision visits. As set out in the ESRP "the purpose of E&S supervision is to develop and retain the information needed to assess the status of compliance with the Performance Standards ... and the Environmental and Social Action Plan."<sup>9</sup>

If a client fails to comply with its E&S commitments IFC's approach is to work with the client to bring it back into compliance to the extent feasible and "if the client fails to reestablish compliance, exercise remedies where appropriate."<sup>10</sup>

In considering IFC's approach to the supervision of its Delta-Wilmar investments in the period post June 2009, CAO has reviewed IFC's supervision documentation and spoken with members of the IFC team responsible for the project. A presentation of Delta-Wilmar's E&S supply chain analysis or its approach to the management of the E&S risks that emerge from its palm oil supply chain is not present in the AMRs submitted to IFC by Delta-Wilmar. CAO notes a similar absence of discussion of the supply chain management requirements under the Performance Standards in IFC's AMR reviews.

At the same time, CAO understands that IFC has since 2009 undertaken a number of measures to enhance its engagement around E&S issues in the palm oil sector. These are set out in a Status Report on implementation of the 2011 Palm Oil Strategy. As part of this process IFC has promoted the use of sustainability codes of practice through the Round Table on Sustainable Palm Oil. Specifically in Indonesia, IFC has implemented advisory initiatives on community benefit sharing and small holder farming models for oil palm.<sup>11</sup> In relation to Wilmar, IFC supported a study of six oil palm plantations in Indonesia based on the Performance Standards which was completed in May 2011.

While acknowledging commitments and actions which IFC undertook in response to its 2009 audit of the Wilmar investments, it is unclear to CAO whether IFC met the requirements of the

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<sup>8</sup> IFC (2006) *Performance Standard 1*, paras. 6 & 13.

<sup>9</sup> *ESRP*, v5., para. 1.

<sup>10</sup> *Sustainability Policy* (2006), para. 26.

<sup>11</sup> *Status Report on the Implementation of the World Bank Group Framework & IFC Strategy for Engagement in the Palm Oil Sector* (September 2012). Available at: <http://goo.gl/P04rb4>

Sustainability Policy and the ESRP in relation to the supervision of the supply chain issues around Delta Wilmar.

## 5. CAO Decision

The decision about whether CAO should initiate a Compliance Investigation requires the weighing of a number of factors including the potential environmental and social impact of an investment, a preliminary appraisal of IFC's E&S performance, as well as a more general assessment of whether there is an argument for the value of a compliance investigation for project-related or systemic reasons.

The complaint in this case raises significant concerns regarding the environmental and social impacts of Wilmar oil palm plantations in Jambi Province, Sumatra, Indonesia, and asserts that these are linked to the Delta-Wilmar supply chain.

After reviewing available documentation and conducting preliminary discussions with IFC staff, it is unclear to CAO whether IFC supervised its investments in Delta-Wilmar in accordance with the applicable E&S requirements in the period following the release of its June 2009 audit. In particular and in relation to the issues raised by the complaint, it is unclear to CAO:

- a. whether IFC adequately assured itself that the environmental and social CODs of its loans to Delta-Wilmar were in fact met prior to disbursement in January 2010; and
- b. whether IFC otherwise supervised its Delta-Wilmar investments in accordance with applicable E&S policies, procedures and standards.

The fact that CAO has already completed a compliance audit in relation to IFC's investments in Wilmar has been considered in this context; as has the fact that the investments in question are closed. However, in light of recent case work, CAO finds that the questions regarding disbursement and supervision raised by this appraisal are of systemic importance to IFC.

Thus, in accordance with its Operational Guidelines, CAO will develop Terms of Reference for a compliance investigation.

### Annex 1: Overview of CAO - Wilmar Cases

CAO Case	Wilmar-1	Wilmar-2	Wilmar-3
<b>Date of Complaint</b>	July 2007	December 2008	November 2011
<b>Case Status</b>	Compliance Audit issued (June 2009); Compliance Audit closed (March 2013).	Closed following dispute resolution (June 2012).	Compliance process ongoing.
<b>Complainants</b>	Civil society organization “on behalf of palm oil affected groups including indigenous peoples and smallholders” allegedly impacted by Wilmar oil palm plantations; in Sumatra and Kalimantan.	Complaint from community groups represented by civil society organizations allegedly impacted by Wilmar oil palm plantations; particularly in Sumatra and Kalimantan.	Civil society organization “on behalf of palm oil affected groups including indigenous peoples and smallholders” allegedly impacted by Wilmar oil palm plantations and plantations from which Wilmar sources palm oil; particularly in Sumatra and Kalimantan.
<b>Allegations</b>	<ol style="list-style-type: none"> <li>1. Illegal use of fire to clear lands.</li> <li>2. Clearance of primary forests.</li> <li>3. Clearance of areas of high conservation value.</li> <li>4. Take over of indigenous peoples’ customary lands without due process.</li> <li>5. Failure to carry out free, prior and informed consultations with indigenous peoples leading to broad community support.</li> <li>6. Failure to negotiate with communities or abide by negotiated agreements.</li> <li>7. Failure to establish agreed areas of smallholdings.</li> <li>8. Social conflicts triggering repressive actions by companies and security forces.</li> <li>9. Failure to carry out or wait for approval of legally required environmental impact assessments.</li> <li>10. Clearance of tropical peat and forests without legally required permits.</li> </ol>	Similar to Wilmar-1, with additional mention of land conflict between communities and a number of Wilmar subsidiaries as the result of non-compliance with IFC Performance Standards 5 (Land Acquisition).	<ol style="list-style-type: none"> <li>1. Imposing a settlement on communities in Jambi (Sumatra) that is viewed as both contrary to IFC Performance Standards and with the use of coercive measures.</li> <li>2. Serious human rights abuses and forced evictions of local community members by PTAP staff and Indonesian Mobile Police Brigade (BRIMOB) in Jambi (Sumatra).</li> <li>3. Clearance and planting of estates without paying compensation for lands and other properties taken.</li> <li>4. Land acquisition and dispute resolution problems in Wilmar’s other subsidiaries.</li> <li>5. Unresolved land conflicts in relation to Wilmar subsidiaries in Indonesia more generally.</li> </ol>