August 31, 2010

Via Electronic Mail

The World Bank Group
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Re: Palm Oil Strategy Review Comments

Dear Palm Oil Review Staff,

Accountability Counsel and the Center for International Environmental Law ("CIEL") submit the following comments for consideration in the Palm Oil Sector Strategy Review. Our organizations are based in the United States and work on behalf of communities impacted by the World Bank Group's policies and practices around the world. In particular, Accountability Counsel works with the Papua New Guinea-based organization Centre for Environmental Law and Community Rights ("CELCOR") in their complaint to the World Bank Inspection Panel on behalf of smallholders opposed to the World Bank's Smallholder Agricultural Development Project.[1] That complaint was found eligible and an Inspection Panel investigation is proceeding. We offer the following comments based on this work, a study of other World Bank Group palm oil projects, and a review of the World Bank Group's draft Framework for Engagement in the Palm Oil Sector ("Draft Framework").

First, we are pleased that the World Bank Group has acknowledged systemic problems with its work in the palm oil sector and that the sector-wide moratorium has led to this set of consultations. However, the future of the World Bank Group's work in this sector must not be a foregone conclusion. We offer the following points, which we hope inform this Review and contribute to a change in course.

Among the impacts of World Bank Group support for palm oil that drive these comments are:

- harm to vulnerable groups, including lack of respect for indigenous land rights, rights to self-determination and other rights;
- destruction of livelihoods and food security impacts that can exacerbate poverty;

[1] We join groups in PNG, including CELCOR, in voicing concern that the consultation in Frankfurt was not open to the public. Groups appear to have been hand-picked by the World Bank Group, which will not lead to an open and full discussion. We submit these comments in writing because we do not have invited representatives that will be attending in person.

- environmental impacts that can convert forest land, create erosion, harm biodiversity and introduce environmental contaminants that can enter food and water supplies; and
- waste of scarce public resources on unsustainable or even doomed projects based on a false assumption that a borrower has the capacity (legal, technical, regulatory, administrative) to undertake projects.

Close the FI and Advisory Services Loophole

While our comments below follow the format of the Draft Framework, we first highlight that the Draft Framework fails to close the loophole for Financial Intermediary ("FI") and Advisory Services activities. These activities make up an increasingly large percentage of the World Bank Group's portfolio, and must not be used to circumvent World Bank Group policies meant to avoid harm to people and the environment. The current Draft, discussed below, fails to ensure that projects categorized as FI will be adequately screened, that due diligence is adequately conducted, and that plans are implemented to avoid or mitigate harm where these projects are supporting palm oil activities, even if indirectly. Additional comments relating to FI activities in the context of IFC lending and issues related to implementation of Performance Standards are found in the recently submitted joint civil society "Comments On IFC's Consultation Drafts of the IFC Sustainability Policy and Performance Standards and Disclosure Policy." Given the significant impacts related to palm oil development, and the significant issues related to addressing these impacts, the World Bank Group should not allow investments through FIs for palm oil.

Furthermore, we call on the World Bank Group to immediately verify that the moratorium on support for palm oil is being applied to FI and Advisory Services projects. We request immediate public disclosure of projects that are suspended as a result of the palm oil moratorium.

Thematic Areas

While the Draft Framework notes some of these impacts, attempts to address these World Bank Group palm oil project impacts are insufficient. The Draft Framework outlines four central themes that encompass the actions the World Bank Group plans to take in order to achieve what it defines as sustainable and successful development in the palm oil sector:

- Policy and Regulatory Environment
- Mobilization of Sustainable Private Sector Investment
- Benefit Sharing with Smallholders and Communities
- Sustainable Codes of Practice

The Policy and Regulatory Environment section emphasizes work with governments to design appropriate policy and institutions, support for implementation of land registration systems, capacity building for environmental and social impact assessment and regulation, strengthening forest and land governance and administration, building of knowledge bases for productivity and dialogue on policy and regulatory issues. Importantly, *the Bank has not taken the crucial next*

step of committing to sequence its involvement so that there is no investment – direct or indirect, through advisory services or financial intermediaries – in countries where there are deficiencies in the policy and regulatory environment.

Without appropriate policy and institutions, there can be no assurance that World Bank Group investment in palm oil will be able to fulfill stated objectives such as poverty alleviation and sustainable development. Appropriate policy must be defined here to include changes to the IFC Sustainability Policy and Performance Standards so that reliance on these policies will protect people and the environment in palm oil project areas. Changes to IFC policy prior to reliance on such policy to justify palm oil lending must require:

> (1) adequate identification and attention to risks (in particular, appropriate recognition of a project's area of influence and supply chains, and categorization of project risk where palm oil projects merit Category A designation);[2]
>
> (2) strong development outcomes (including qualitative indicators to determine whether, for example, creation of jobs in the palm oil sector has nonetheless hurt the quality of life for those workers and their communities; such information must be verified through information directly from affected populations);[3]
>
> (3) financial intermediary ("FI") lending that meets poverty alleviation needs and does not avoid standards – in the case of palm oil, given the significant unaddressed issues in the sector, palm oil lending through FIs should be on the IFC's exclusion list;
>
> (4) respect for indigenous peoples' rights and other human rights (include human rights impact assessment requirements for appropriate projects, including Category A palm oil projects; include compliance with the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP")

[2] This policy change is needed due to cases such as the IFC's investment in the Wilmar Group's palm oil operations where the CAO found three violations of IFC policy: (1) the trading facility projects were incorrectly categorized and did not follow the proper procedures with respect to either Category B or C; (2) IFC engaged in inadequate due diligence by excluding supply chains from the assessment; and (3) IFC did not follow its own Performance Standards and had an incomplete strategy with respect to the palm oil industry. COMPLIANCE ADVISOR OMBUDSMAN, CAO CASES, INDONESIA / WILMAR GROUP-01 / WEST KALIMANTAN, CAO'S AUDIT REPORT 2, June 19, 2009, *available at* http://www.cao-ombudsman.org/cases/document-links/links-76.aspx; see also FOREST PEOPLES PROGRAMME, PROCEDURAL IRREGULARITIES AND STANDARDS VIOLATION IN IFC SUPPORT FOR WILMAR TRADING 6 (July 18, 2007) *available at* http://www.cao-ombudsman.org/cases/document-links/links-76.aspx.

[3] For instance, an assumption was made in the Wilmar case that an increase in demand necessarily means a benefit to the smallholders and plantations workers. An increase in demand could lead to palm oil expansion – and increase in supply, which can lead to an eventual decrease in profits for the smallholder or the plantation worker who has limitations as to their participation. Furthermore, such an increase would likely have more of an environmental impact, which in turn could impact the people and wildlife in plantation areas. There was no evidence in this case for the theory that increased demand would automatically translate into an improvement in quality of life for the individual growers. CAO WILMAR AUDIT Report 2 at 2.1.3. In the case of the Papua New Guinea Smallholder Agricultural Development Project ("PNG SADP"), requesters to the World Bank Inspection Panel argue that the project failed to incorporate poverty reduction into its design. SADP Complaint at 2, *available at* http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PNGSADPRequest_03-26-10.pdf.

as a policy requirement that triggers free, prior, informed consent as a requirement for projects involving indigenous peoples);[4]

(5) protection of biodiversity (for example, placing the burden on clients to demonstrate offsets and conducting cumulative impact assessments before lending to multiple projects within the same country or region);[5] and

(6) strong application of standards to IFC activities through advisory services (the IFC must conduct its own assessment of risks; for example, when advisory services support the palm oil industry, IFC must assess the risks associated with the projects intended to benefit from that advice).

This is a necessary but not exhaustive list that gives examples of the policy changes that must be *implemented* before relying on IFC policy to justify palm oil lending. Even in the areas where current policy *is* adequate, lack of Performance Standard implementation and failure to monitor and report on implementation in a transparent and participatory way presents a deficiency in IFC practice. Project-affected people must become active participants in monitoring implementation of IFC – and IBRD and IDA – policy commitments.

Land registration systems must recognize traditional, community-based and indigenous land rights. Without implementation of land registration systems prior to considering projects, World Bank Group investment in palm oil will continue to create situations where the land rights of communities are undermined by World Bank Group investment.[6]

Without capacity building for environmental and social impact assessment and regulation, investment in palm oil under the guise of protection by the World Bank Group's Performance Standards and Safeguard Policies means that the harm the policies seek to avoid and mitigate will occur, as is often the case now. The same is true for capacity for forest and land governance and administration that must be in place and functioning *prior to* World Bank Group palm oil investment.

If there is recognition that a national or sub-national government has deficient systems in place for undertaking or overseeing environmental and social impact assessment and regulation, the World Bank Group should not be simultaneously investing in activities that create those risks. Where projects are allowed to go through without proper protections and capacity, World Bank Group staff should be held accountable for this failure.

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[4] For example, in the Papua New Guinea SADP case, the indigenous claimants and other locally affected people argue that they were not consulted about the project at all. SADP Complaint at 2, *available at* http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PNGSADPRequest_03-26-10.pdf.

[5] In the PNG SADP case, for example, the claimants demand that an effluent study of the proposed milling operations and a forest inventory take place. SADP Complaint at 2. The World Bank has committed to undertake these studies only after the filing of the Inspection Panel complaint.

[6] In the Wilmar case, Forest Peoples Programme notes that IFC approved the project even through Wilmar failed to obtain land through negotiated settlements. Had it done so, IFC would have discovered a number of land conflicts related to Wilmar's operations. FOREST PEOPLES PROGRAMME, PROCEDURAL IRREGULARITIES AND STANDARDS VIOLATION IN IFC SUPPORT FOR WILMAR TRADING 6 (July 18, 2007), *available at* http://www.cao-ombudsman.org/cases/document-links/links-76.aspx.

For this Policy and Regulatory Environment plank in the platform to hold weight, a commitment to sequencing this step, and all of its elements, should be added before any World Bank Group investment in palm oil.

The Mobilization of Sustainable Private Sector Investment theme acknowledges the IFC's role as a catalyst in private investments. The Bank sees its activities taking place throughout the "value chain" in order to create universal support for sustainable palm oil. The Bank suggests that its normal list of products and services will contribute to sustainable palm oil development, but since this is not a new list, and does not address the criticisms of the World Bank Group's role in palm oil, it is unclear how this portion of the Draft Framework would do more than contribute to "business as usual," which often harms people and the environment.

Where mobilizing private investment has caused problems in the palm oil sector, further mobilization of private capital is not a solution. *None of the activities enumerated in this list that fund expansion of or new palm oil production should take place absent the steps in the Policy and Regulatory Environment and other key recommendations for bringing the World Bank Group's practices into compliance with international law and standards. Consistent with this recommendation, the World Bank Group moratorium on lending in the palm oil sector must continue.*

Under the Benefit Sharing with Smallholders and Communities theme, the Bank emphasizes the need for increased support for smallholders by way of infrastructure development, strengthening smallholder organizations, scaling up sustainable business models, strengthening advisory services and improving access to finance. The Draft Framework is deficient, however, in that it has ignored some of the regional consultation stakeholder comments and experiences describing, for example, the decline in an individual's quality of life due to an increase in malnutrition because palm oil has exploited local labor and decreased wages or displaced sustainable community gardens with plantations.[7]

Furthermore, projects that increase and improve roads, help producer organizations and scale up operations are useful only where consent has been gained by affected indigenous communities, alternatives have been analyzed and palm oil is the community choice for poverty reduction, and palm oil projects are not degrading forest areas. Otherwise, these seemingly beneficial programs will ultimately serve only the large corporations that bring palm oil to market. In addition, benefit sharing will not address the needs of those displaced due to plantations and is unlikely to help communities where these initiatives are already in place but are failing because corruption is causing the investment to deepen poverty.

It should go without saying that in communities where violence is used by palm oil companies to forcibly take land from indigenous people,[8] it is premature for the World Bank Group to focus on benefit sharing – a moratorium is the only way for the Bank to avoid aiding and abetting this violence. Benefit sharing in these areas will be achieved only with a robust policy and regulatory environment, as discussed above.

[7] *See*, *e.g.*, Stakeholder Consultation Report No. 5 at 12.
[8] *See*, *e.g.*, *id.* at 11.

The Bank's commitment to palm oil and on the premise that it contributes to improved livelihoods and reduced poverty, despite the political, economic, or social reality that provides evidence to the contrary, is echoed here as it is throughout the Draft Framework. *This reality must be examined – it is false in many areas where the Bank works – and the truth about the political, social and economic situation in countries of operation must serve as the building block for all World Bank Group project-level decisions about palm oil investment. Country Assistance Strategies must draw from local experience and will be key to this change.*

In the Sustainability Codes of Practice section, the World Bank Group emphasizes the Roundtable on Sustainable Palm Oil ("RSPO") as the key player in the certification of sustainable palm oil. While this is positive in that RSPO certification requires adherence to a variety of international agreements including UNDRIP and ILO Convention 169 on Indigenous and Tribal Peoples,[9] as the Bank notes, smallholders are unlikely to have capacity to obtain independent certification as an RSPO adhering member. Nonetheless, the Bank is committed to continuing palm oil lending even if this capacity is not yet in place. Therefore, this is a meaningless commitment, particularly where the World Bank Group itself has policy inconsistent with RSPO (*i.e*. failure to agree to adhere with UNDRIP FPIConsent requirements).

Furthermore, we agree with comments at civil society consultations on palm oil that before becoming the lynchpin of World Bank Group palm oil strategy, RSPO must become more credible by making "certification," as opposed to mere "membership" more transparent and efficient[10] so that 'green washing' through RSPO does not occur in the future, as it did in the Wilmar case.[11]

The Implementation Approach

The Implementation Approach to this Framework first offers enhanced World Bank-IFC collaboration. There is no information that would appear to address harm from the palm oil sector in this section of the Framework *unless the 'sequencing of policy and capacity building before investment' approach is adopted, as discussed above*.

The second approach is Country and Project Level Actions. These actions are composed of Country Assistance Strategies and Project Level Investment and Advisory Services. These actions fail to mention the benefits to be drawn from community level monitoring schemes and the fact that monitoring and reporting for certification must be implemented with transparency and must be verified by stakeholders in order to be credible. While the implementation plan is

[9] ROUNDTABLE ON SUSTAINABLE PALM OIL, PRINCIPLES AND CRITERIA FOR SUSTAINABLE PALM OIL PRODUCTION (2007) at 6-7.

[10] Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No 8 (Amsterdam, Netherlands)*, THE WORLD BANK GROUP at 4 (2010); Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No 4 (Costa Rica)*, THE WORLD BANK GROUP at 4 (2010); see also ROUNDTABLE ON SUSTAINABLE PALM OIL, CODE OF CONDUCT FOR MEMBERS OF THE ROUNDTABLE ON SUSTAINABLE PALM OIL 3.1.

[11] RSPO MEMBER CODE OF CONDUCT at 2.1; IFC PROJECTS, DELTA-WILMAR CIS, PROJECT NO. 24644, ENVIRONMENTAL & SOCIAL REVIEW SUMMARY; *see also* COMPLIANCE ADVISOR OMBUDSMAN, CAO CASES, INDONESIA / WILMAR GROUP-01 / WEST KALIMANTAN, CAO'S AUDIT REPORT 2, June 19, 2009.

insufficient for producers and others in the supply chain (particularly with regard to measurement of vague terminology used as standards), the major deficiency is with regard to Financial Intermediaries ("FIs").

The Draft Framework contains inadequate consideration of the role of IFC support to FIs given IFC's tremendous activity in this area. The role of IFC in FI investment that funds palm oil projects is particularly important due to the comparatively minimal oversight of these decisions by IFC staff and the Board.

The Draft states that IFC will invest in FI clients only if they (i) commit to adherence to the Performance Standards, (ii) the client "will promote the requirement for independent certification as part of its own due diligence process", and (iii) "The project is expected to have clear and measurable development impacts which contribute to economic growth and poverty reduction."

These three qualifiers for FI lending are important in that they recognize the role of IFC's FI lending in the palm oil sector, but they are not sufficient to address the overall concerns raised above. That a client will follow the Performance Standards is no change and, as we have seen, has not been sufficient to avoid harm. That the client will promote independent certification is first, not a requirement, and even if it were, there is no guidance here regarding when its "own due diligence process" is triggered such that this requirement would apply. Finally, there is no indication of what measurement will be used to determine whether a project is "expected to have clear and measurable development impacts which contribute to economic growth and poverty reduction."

The additional critiques of IFC's approach for its direct lending to clients engaged in palm oil apply here with regard to FIs as well. However, an additional critique, as raised above, is the lack of transparency for FI and Advisory Services lending – this lack of transparency and disclosure must be addressed to close this loophole in the Framework. ***For example, is the IFC's "BSP Debt and Equity Financing" in Papua New Guinea,[12] categorized as "FI", in violation of the World Bank Group's palm oil moratorium? There is no way to know.***

Due to the acknowledged problems with palm oil that have yet to be addressed, and compounded with the lack of transparency and disclosure for FI activities, the Draft Framework should commit to ***exclusion*** of IFC support for palm oil through FI lending.

Thank you for your consideration of these comments. We strongly urge the World Bank Group to continue the moratorium on lending in the palm oil sector while these issues are fully explored and until the new elements of a Framework that address lack of capacity and appropriate policy are implemented.

[12] *See* Summary of Proposed Investment, *available at* http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/e016dd3d413c21ab85257719005f4522?opendocument (Approved May 13, 2010).

We look forward to the results of the Review and to your further engagement with civil society as you consider the World Bank Group's leadership in palm oil sector strategy.

Sincerely,

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