

A CALL FOR REFORM OF WORLD BANK GROUP AGRIBUSINESS POLICIES AND PRACTICE:

**A Proposal to End Violations of Indigenous
and Traditional Peoples' Rights**

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**ACCOUNTABILITY
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Executive Summary

Each year, the World Bank Group¹ provides grants, gives loans and guarantees, and makes debt and equity investments to support agribusiness in developing and emerging market countries. This support for production of commercial export commodities—such as palm oil, sugarcane, cocoa, cotton and soybeans²—often disrupts traditional farming and cultural practices, and undermines community knowledge, environmental sustainability, and food security. The impacts of the World Bank’s role in agribusiness can be devastating for local communities where these products are grown, and are particularly severe for indigenous people and other smallholders who cultivate small plots of land.³

The problems associated with agribusiness that can exacerbate poverty and harm sustainability of indigenous and traditional communities are well known—and particularly to the World Bank Group;⁴ they include the unjust acquisition of land on which local communities depend (‘land grabbing’), deforestation, loss of biodiversity, loss of sustenance garden plots causing inadequate access to food, contributions to climate change, toxic contamination of waterways, human health impacts from use of pesticides and fertilizers, and even violent land disputes.⁵

¹ The World Bank Group consists of the public-sector financing institutions—International Development Association (IDA) and International Bank for Reconstruction and Development (IBRD)—and private-sector financing institutions—International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)—as well as the International Centre for Settlement of Investment Disputes (ICSID).

² Agribusiness refers to large-scale production of commodities for export. Agribusiness subsectors of the IFC include animal processing, beverages, grains and milling, dairy products, fruits and vegetables, vegetable fats and oils, sugar, and other foods. See IFC AGRIBUSINESS, OVERVIEW, IFC’S AGRIBUSINESS PORTFOLIO BY SUBSECTOR, http://www.ifc.org/ifcext/agribusiness.nsf/Content/Overview?OpenDocument&ExpandSection=3#_Section3 (last visited Sept. 19, 2010) [hereinafter IFC AGRIBUSINESS OVERVIEW].

³ See, e.g., Special Rapporteur on the Right to Food, *Agribusiness and the Right to Food*, Human Rights Council, ¶ 28, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009) (by Oliver De Schutter) (“Smallholders in developing countries, cultivating small plots of land often with little or no public support, are the single most important group of those who are food insecure in the world today.”) [hereinafter De Schutter]; see also generally RAINFOREST ACTION NETWORK, FACT SHEET: AGRIBUSINESS IMPACTS ON INDIGENOUS COMMUNITIES, available at http://ran.org/fileadmin/materials/rainforest_ag/ag_indigenous_factsheet.pdf (last visited Aug. 5, 2010) [hereinafter RAN INDIGENOUS COMMUNITIES FACT SHEET].

⁴ See WORLD BANK, RISING GLOBAL INTEREST IN FARMLAND, CAN IT YIELD SUSTAINABLE AND EQUITABLE BENEFITS? 51 (Sept. 7, 2010), available at http://www.donorplatform.org/component/option.com_docman/task.doc_view/gid.1505 (“many investments [in the agribusiness study] failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment . . . benefits were lower than anticipated or did not materialize at all.”) [hereinafter FARMLAND REPORT].

⁵ See generally e.g., RAINFOREST ACTION NETWORK, FACT SHEET: AGRIBUSINESS IN THE RAINFOREST, available at <http://ran.org/content/agribusiness-rainforest> (last visited Aug. 5, 2010) [hereinafter RAN AGRIBUSINESS IN THE RAINFOREST FACT SHEET] (describing harms caused by the rapid expansion of soy and palm oil plantations in Paraguay, Brazil, Indonesia, Malaysia, and Papua New Guinea); see also De Schutter, *supra* note 3, at ¶¶ 28-29; The World Bank Group, *The World Bank Group’s Framework for Engagement in the Palm Oil Sector: Draft for Consultation 22-23* (July 2010), available at [http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Draft+Framework+Paper+for+consultations/\\$FILE/WBG_Framework_for_Palm_Oil-DRAFT+FOR+CONSULTATION.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Draft+Framework+Paper+for+consultations/$FILE/WBG_Framework_for_Palm_Oil-DRAFT+FOR+CONSULTATION.pdf) [hereinafter Draft Framework]; see also Agribusiness Accountability Initiatives, *Impacts of Agribusiness, Corporate oligopoly power affects the economy, the political process, the environment, and everyone who grows food or eats it*, available at http://www.agribusinessaction.org/index.php?option=com_content&view=article&id=6&Itemid=10&lang=en (last

Despite these well-documented problems, the World Bank has *increased* lending in this sector.⁶ Areas in Asia where agribusiness has had a lengthy history of causing harm to local peoples are now showing what is to come for communities just beginning to feel harm throughout Africa and Latin America.⁷

A recent flurry of activity surrounding the World Bank Group's palm oil activities is instructive of the Bank's recognition of the problems with agribusiness, but also of its unwillingness to give up relationships with governments and corporations that are the Bank's most important donors and clients. Unable to ignore mounting criticism of its agribusiness policies and practices in the palm oil sector, the World Bank Group initiated a review of its palm oil sector strategy in 2009. The recently released draft for consultation of the Framework for Engagement in the Palm Oil Sector identifies many of the problems with palm oil, but without discussion of the fact that these problems exist with the World Bank Group's agribusiness practices as a whole.⁸ Consultations that contributed to the Framework also identified "social issues and [violations of] human rights. Land rights issues, poor application of the [Free, Prior, Informed Consent] principle of land acquisition and unfair treatment of local and indigenous communities" were also identified as serious problems.⁹

Despite the criticism of the World Bank's investment in palm oil,¹⁰ recognition by the Bank itself of the harm its investment causes, and evidence that the rights of indigenous and traditional peoples are often harmed by palm oil investments, the draft Framework envisions Bank investment in palm oil as continuing.¹¹ While code words of "sustainability," and "benefit sharing" have been

visited Aug. 5, 2010); *see generally* Molly D. Anderson, *A Question of Governance: To Protect Agribusiness Profits or the Right to Food?* (Agribusiness Action Initiatives Nov. 2009), available at

<http://www.agobservatory.org/library.cfm?refID=107086> [hereinafter Anderson]; *see generally* ACTION AID INTERNATIONAL, *POWER HUNGRY: SIX REASONS TO REGULATE GLOBAL FOOD CORPORATIONS* (2005) [hereinafter POWER HUNGRY]; *see generally* Gar Smith, *A Harvest of Heat: Agribusiness and Climate Change, How Six Food Industry Giants are Warming the Planet*, AGRIBUSINESS ACTION INITIATIVES, Spring 2010.

⁶ The public sector institutions of the World Bank Group, IBRD and IDA, spent US \$1.48 billion of their US \$24.7 billion budget (6%) on Agriculture, fishing and forestry in FY2008, compared with 7% of a budget of US \$46.9 billion in FY2009. *Compare* THE WORLD BANK, *THE WORLD BANK ANNUAL REPORT 2008* 55 (2008), with THE WORLD BANK, *THE WORLD BANK ANNUAL REPORT 2009* 33, 55 (2009) [hereinafter ANNUAL REPORT 2009]. While not all of the investment in this sector is agribusiness, and while some agribusiness investments are in other sectors (such as transportation), this categorical rise captures the increasing World Bank investment in agribusiness investment. In the private sector, IFC lending to the agriculture and forestry sector has risen from US \$619 million in 2008 to US \$793 million in 2009. IFC 2009 FINANCIALS, PROJECTS, AND PORTFOLIO 49 (2009).

⁷ *See, e.g.,* Jim Woodhill, *World Bank Group Palm Oil Strategy 2010: Stakeholder Consultation Workshops, Facilitators Synthesis Report*, THE WORLD BANK GROUP 2 (2010) available at

[http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+all+consultations/\\$FILE/Consultations+Summary+_FINAL.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+all+consultations/$FILE/Consultations+Summary+_FINAL.pdf) (noting World Bank palm oil stakeholders' critiques that "Indonesia with its long history and large scale of palm oil production and particular governance issues was were [sic] the most serious environmental and social concerns arose... it should be noted that some issues that have arisen to a serious level in Indonesia may not have done so in other regions simply because of the relatively nascent stage of the sector's development in those regions.") [hereinafter *Woodhill Synthesis Report*].

⁸ Draft Framework, *supra* note 5, at 3; *see also* Woodhill Synthesis Report, *supra* note 7, at 6.

⁹ Woodhill Synthesis Report, *supra* note 7, at 2.

¹⁰ *See* Draft Framework, *supra* note 5, at 6.

¹¹ *See* Draft Framework, *supra* note 5, at 3 ("The World Bank Group, with its primary mission of poverty reduction, sees the palm oil sector as an important contributor to furthering economic development in many developing countries.").

added to the palm oil Framework, the Bank has committed to continuing investment in a commodity that has been shown to cause harm.¹² While the new Framework may slightly alter World Bank Group lending in the palm oil sector, it seems evident that the Bank's decision to stay in the business of palm oil was a foregone conclusion. And still, the lessons from the palm oil strategy review are not translating into a Bank-wide conversation with the public about the other agricultural commodities that often cause the same type of harm.

This report argues for a wholesale change in the World Bank's approach to agribusiness. To meet its mandate of poverty alleviation and its international law obligations to indigenous and traditional peoples, ***the World Bank Group must immediately cease using public money to support commercial, export-oriented agribusiness that enriches multinational corporations at the expense of indigenous and traditional peoples' rights.*** The current World Bank Group moratorium on support for palm oil should be extended to *all* World Bank Group agribusiness activities, and should be lifted in the future only in circumstances where the following conditions have been achieved:

- changes to World Bank Group policy to ensure protection of indigenous people and their environment, including:
 - adequate identification of and attention to risks (in particular, categorization of agribusiness project risk as “Category A,” appropriate recognition of a project's area of influence and supply chains, conduct of human rights impact assessments, and commitment to robust environmental impact assessment to assure the environmental sustainability of projects);
 - assurance of strong development outcomes (including qualitative indicators to determine whether, for example, creation of jobs in the 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*);
 - assurance of respect for indigenous peoples' rights and other human rights, including:
 - compliance with applicable host country and international law,
 - appropriate disclosure of project information,
 - respect for land rights, including recognition of existing land conflicts, good faith voluntary land transfers through negotiated agreements, and
 - respect for the self-determination of indigenous peoples, including adoption of the standard of free, prior, informed consent;
 - closing of the policy loophole for Financial Intermediaries and Advisory Services so that World Bank Group policy applies equally to these activities

¹² See Draft Framework, *supra* note 5, at 4-6.

and meets the World Bank Group poverty alleviation mandate;

- assurance that World Bank Group staff who fail to adhere to these policies will be held accountable;
- verification, including as part of Country Assistance Strategies, of an appropriate regulatory environment in the host country in order to ensure capacity and willingness to implement World Bank Group policy, including:
 - a political environment that allows indigenous and community groups to organize and assert their rights;
 - respect for land rights, including land registration systems that recognize traditional, community-based and indigenous land rights, and a commitment to negotiate land transfers in good faith and in compliance with relevant laws, standards, and norms;
 - prohibition on and credible sanctions for corporations, individuals, and state authorities that forcibly take land through threats or violence;
 - regulatory capacity to administer project funds in an open and transparent way and to oversee any agencies involved in project implementation; and
 - grievance mechanisms made available to project affected people that are fair, effective and transparent.

Changes afoot at the World Bank Group are currently insufficient to address the harm caused by investment in agribusiness. The private sector arm of the World Bank Group, the International Finance Corporation (“IFC”), is currently revising its policies, but changes proposed to date will not address pressures to undermine the rights of indigenous and traditional peoples and will not prevent harm to local environments caused by corporate agribusiness.¹³ The policies of the World Bank’s public sector institutions that fund the infrastructure and technical support for agribusiness are also insufficient to prevent harm. Initiatives such as the Roundtable on Sustainable Palm Oil (“RSPO”) and the IFC’s Biodiversity and Agricultural Commodities Program (“BACP”) are a step in the right direction but are inadequate to address the root causes of problems caused by commercial agribusiness.

Therefore, a moratorium on World Bank Group support for commercial agribusiness is the only guarantee that the World Bank Group will reverse its course and use its power to alleviate poverty, the Bank’s sole mandate, rather than contributing to a sector that harms indigenous and traditional communities and their environment. The World Bank Group has a positive role to play in the agribusiness sector, but not primarily as a supporter of agribusiness projects. Its present agenda should be to use its convening power to push agribusiness corporations and governments toward the standards listed above as prerequisites to any future agribusiness lending. Only if and when these policy changes are implemented will responsible agribusiness investment be possible.

¹³ See generally, POWER HUNGRY, *supra* note 5.

I. Introduction

The World Bank Group's support of agribusiness through loans, grants and guarantees has particularly negative impacts on groups and traditional peoples that are most vulnerable: indigenous and traditional small landholders. Far from "doing no harm," agribusiness projects often degrade the non-economically productive aspects of the land that vulnerable groups value, exploit lack of documentation as to land rights, undermine sustainability and self-sufficiency, and exacerbate poverty by tying vulnerable groups to large-scale farms and a global market. Indigenous groups have traditionally had a:

profound symbiotic relationship with the forest, for millennia, which shaped their societies, their worldviews, knowledge, cultures, spirituality and values. Hence, they evolved strict spiritual and customary laws and sophisticated land tenure, mostly under communal ownership, and resource management systems that both ensures their needs are met and that forests are protected from destruction. The maintenance of the integrity of the forests is crucial for indigenous peoples as it represents the past, present, and future aspects of how to live in mutual reciprocity among themselves and with nature.¹⁴

In other words, one reason agribusiness projects have a disproportionately negative effect on indigenous and other traditional peoples is because agribusiness approaches land with an eye for economic development alone, while indigenous and other traditional peoples see land as having both tangible and intangible values and purposes. IFC support of large-scale soy projects in Brazil, for example, has led to the destruction of indigenous peoples' traditional medicines, religion, and ways of life connected to the forest biosphere.¹⁵ Agrochemicals and soil erosion resulting from the clearing of large tracts of forest also have profound impacts on the river systems that provide drinking water and sources of food to indigenous and traditional communities.¹⁶ The invasion of agribusiness into small local communities has highlighted the tension between these different ways of viewing and using the land. It has also sown distrust and led to violent clashes between indigenous communities and local farmers.¹⁷

¹⁴ Permanent Forum on Indigenous Issues, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, E/C.19/2007/CRP.6 (May 7, 2007) (prepared by Victoria Tauli-Corpuz and Parshuram Tamang), available at www.un.org/esa/socdev/unpfii/documents/6session_crp6.doc.

¹⁵ GREENPEACE, *EATING UP THE AMAZON 5* (April 2006), available at <http://www.greenpeace.org/raw/content/international/press/reports/eating-up-the-amazon.pdf> ("The Amazon rainforest is one of the most biodiverse regions on earth . . . [and] is also home to about 220,000 people from 180 different indigenous nations, along with many more traditional forest-dependent communities. The rainforest provides these people with everything from food and shelter to tools and medicines, and plays a crucial role in the spiritual life of indigenous peoples.") [hereinafter GREENPEACE REPORT]; RAN INDIGENOUS COMMUNITIES FACT SHEET, *supra* note 3; *see also infra* Section II.a.

¹⁶ GREENPEACE REPORT, *supra* note 15, at 21-22.

¹⁷ *See, e.g.*, Ben Block, *In Brazil, Violence Looks at the Forest Edge*, WORLDWATCH.ORG, Apr. 9, 2008, available at <http://www.worldwatch.org/node/5697>. In Paraguay, such clashes have been especially violent. *See, e.g.*, RAN AGRIBUSINESS IN THE RAINFOREST FACT SHEET *supra* note 5.

The World Bank Group's IFC and MIGA (which finance and guarantee projects in the private sector) and IBRD and IDA (which invest in public sector projects), each have symbiotic roles that enrich agribusiness corporations. IBRD and IDA provide grants and loans to governments to prepare and support the infrastructure required for agribusiness.¹⁸ Examples of IBRD and IDA projects include development of roads that are used to export crops,¹⁹ creation of ports used for commercial shipping of crops,²⁰ support for federal policy reform to liberalize export taxes,²¹ and training of agricultural extension workers to use improved technologies and practices for farming.²²

According to IFC, at the end of fiscal year 2009, its agribusiness portfolio stood at US \$3.9 billion.²³ IFC's activities in the sector include provision of advisory services²⁴ and debt and equity investment in farming of commodities,²⁵ chemical input companies,²⁶ processing plants,²⁷ pre-harvest finance,²⁸ and assistance with financial services such as trade facilities for exports.²⁹ Agribusiness processing is seventy-five percent of IFC's agribusiness portfolio.³⁰ While IFC claims that its agribusiness strategy is a priority "because of its potential for broad development

¹⁸ See Draft Framework *supra* note 5, at 4 (explaining the World Bank Group's role in the palm oil sector as "supporting the development of an enabling policy and regulatory environment").

¹⁹ See, e.g., WORLD BANK, PROJECTS AND OPERATIONS, PNG-SMALLHOLDER AGRICULTURE DEVELOPMENT, PROJECT ID P079140, <http://web.worldbank.org/external/projects/main?Projectid=P079140&theSitePK=40941&piPK=64290415&pagePK=64283627&menuPK=64282134&Type=Overview> (last visited Aug. 5, 2010).

²⁰ See, e.g., WORLD BANK, PROJECTS AND OPERATIONS, EXPORT CROP PROJECT, PROJECT ID P007437, <http://web.worldbank.org/external/projects/main?pagePK=64312881&piPK=64302848&theSitePK=40941&Projectid=P007437> (last visited Aug. 5, 2010).

²¹ See, e.g., WORLD BANK, PROJECTS AND OPERATIONS, ECONOMIC GOVERNANCE AND RECOVERY GRANT III, PROJECT ID P117281, <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P117281> (last visited Aug. 5, 2010).

²² See, e.g., WORLD BANK, PROJECTS AND OPERATIONS, FOSTERING AGRICULTURAL PRODUCTIVITY, PROJECT ID P095091, <http://web.worldbank.org/external/projects/main?pagePK=64312881&piPK=64302848&theSitePK=40941&Projectid=P095091> (last visited Aug. 5, 2010).

²³ IFC, *Global Agribusiness, Creating Opportunity in Emerging Markets 5* (2010), available at [http://www.ifc.org/ifcext/agribusiness.nsf/AttachmentsByTitle/AgriBrochure_Nov09/\\$FILE/IFC+Agribusiness_Dec+28_FINAL.pdf](http://www.ifc.org/ifcext/agribusiness.nsf/AttachmentsByTitle/AgriBrochure_Nov09/$FILE/IFC+Agribusiness_Dec+28_FINAL.pdf) [hereinafter *IFC Global Agribusiness*].

²⁴ See, e.g., INT'L FIN. CORP., IFC PROJECTS, BUSINESS EDGE AFRICA – PHASE ONE, PROJECT NO. 568347, <http://www.ifc.org/ifcext/spiwebsite1.nsf/a24f910d8d23aa078525753d00658ca8/852568b10055270d85257686006cbe3c?opendocument> (last visited Aug. 5, 2010).

²⁵ See, e.g., INT'L FIN. CORP., IFC PROJECTS, SEKEM II, PROJECT NO. 29235, <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/76E68A8229B7BB9D8525771B00628FF5> (last visited Aug. 5, 2010).

²⁶ See, e.g., INT'L FIN. CORP., IFC PROJECTS, AGROCERES NUTRICA O ANIMAL LTDA, PROJECT NO. 28643, <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/56ACC23FCE01C999852576F80070C1AC> (last visited Aug. 5, 2010).

²⁷ See, e.g., INT'L FIN. CORP., IFC PROJECTS, GOLD RIDGE, PROJECT NO. 27766, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/7cb7f53542d4fa09852576ba000e2d8c?opendocument> (last visited Aug. 5, 2010).

²⁸ IFC, *Global Agribusiness, supra* note 23, at 4 (IFC provided Ecom with "\$80 million corporate loan facility to a commodity trader for onlending to farmers for capital expenditures and crop financing and to improve supply-chain standards, social and environmental practices, and key performance indicators of coffee suppliers.").

²⁹ See, e.g., INT'L FIN. CORP., IFC PROJECTS, EXPORT TRADE GROUP GUARANTEE, PROJECT NO. 28472, <http://www.ifc.org/ifcext/spiwebsite1.nsf/f451ebbe34a9a8ca85256a550073ff10/0628686ea1d60ef0852576ba000e327e?OpenDocument> (last visited Aug. 5, 2010).

³⁰ IFC, *Global Agribusiness, supra* note 23, at 2.

impact and especially strong role in poverty reduction,”³¹ these impacts are unproven and contrary to the visible results of the growth of large-scale agribusiness around the world. MIGA’s role is as a guarantor of these projects.³² Typical private-sector World Bank agribusiness clients are large, family-owned conglomerates, medium to large-scale industrial producers,³³ and in the case of MIGA, mostly multinational corporations from wealthy countries.³⁴

The World Bank Group has decades of experience in agribusiness lending to look to as evidence of the need for change: its accountability mechanisms, the Inspection Panel and the Compliance Advisor Ombudsman (“CAO”), have both encountered agribusiness projects where systemic problems are at issue;³⁵ the Internal Evaluation Group (“IEG”) has repeatedly found that agribusiness projects are unsatisfactory where these same problems have arisen repeatedly;³⁶ the Palm Oil Sector Strategy Review has found that “many of the issues raised are symptomatic of the broader challenges affecting the entire agri-food sector. . . . [I]ssues raised by stakeholders in relation to palm oil probably can not be and should not be dealt with just from a palm oil perspective.”³⁷ A recent World Bank report on farmland has found that agricultural investment “invariably entails high risks” and requires “a good policy, legal and institutional framework” to “minimize risks and maximize benefits from large-scale investment involving land and related natural resources.”³⁸ The need for change could not be clearer. The World Bank Group should immediately cease support for agribusiness until a policy shift—and a shift in practice—creates conditions for a responsible role for the World Bank Group in this sector.

Dramatic change in World Bank Group policy and practice, in a sector as important to the Bank as agribusiness, requires a detailed examination of why such change is justified and required. Section II of this report examines specific cases that demonstrate how World Bank Group-supported agribusiness projects harm indigenous and traditional peoples.

Section III addresses why current World Bank Group policies are insufficient to stem the harm caused by investment in commercial agribusiness. The policies are examined in light of proposed policy reforms and agribusiness-related initiatives involving the Bank’s work in the agribusiness sector. This Section concludes that even with the World Bank Group’s proposed reforms and initiatives, further change is required to fulfill the Bank’s international law obligations, ethical duties, and poverty alleviation mandate.

³¹ IFC Agribusiness, IFC’s Strategy in Agribusiness, <http://www.ifc.org/ifcext/agribusiness.nsf/Content/Strategy> (last visited Aug. 5, 2010).

³² See, e.g., MULTILATERAL INVESTMENT GUARANTEE AGENCY, PROJECTS, ATF BANK JSC, PROJECT NO. 9160, http://www.miga.org/projects/index_sv.cfm?stid=1517&pid=831 (last visited Aug. 5, 2010).

³³ See, e.g., INT’L FIN. CORP., IFC PROJECTS, WADI II, PROJECT NO. 26138, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/3f242082556d7586852576ba000e2a45?opendocument> (last visited Aug. 5, 2010).

³⁴ See, e.g., MULTILATERAL INVESTMENT GUARANTEE AGENCY, PROJECTS, MANAS MANAGEMENT COMPANY, PROJECT NO. 1806, http://www.miga.org/projects/index_sv.cfm?stid=1517&pid=807 (last visited Aug. 5, 2010).

³⁵ See the case studies discussed *infra* Section II.

³⁶ See Draft Framework, *supra* note 5, at 30-35 (describing IEG assessments of unsatisfactory World Bank palm oil projects in Indonesia, Nigeria and Cameroon where issues ranged from “poor performance of the responsible agencies”, to “questions over land use rights for smallholders” to “financial difficulties.”).

³⁷ Woodhill Synthesis Report, *supra* note 7, at 6.

³⁸ FARMLAND REPORT, *supra* note 4, at 68.

Section IV concludes with recommendations for key changes required to bring World Bank Group policy and practice into compliance with indigenous and traditional peoples' rights. Above all else, the conclusion calls for the World Bank to cease funding for agribusiness that favors multinational corporations over local community rights and to adopt an approach to agricultural lending that is consistent with international standards, ethical practice, and the World Bank Group's own mandate.

II. In Practice: World Bank Group Agribusiness Impacts on Indigenous and Peoples' Rights

While having robust policy is an important step toward the protection of indigenous and traditional peoples' rights, how that policy is implemented determines whether rights are respected. As a result of inadequate policies in some areas and inadequate implementation in others, both IFC and IBRD/IDA agribusiness projects have harmed indigenous and traditional peoples.

A. IFC in Practice in the Agribusiness Sector

The following case studies of IFC agribusiness projects, Wilmar in Indonesia and Mato Grosso in Brazil, demonstrate a systemic pattern of policy violations that has undermined livelihoods and disrupted ecosystems upon which indigenous and traditional communities depend.

i. The Wilmar Group: Demonstrating the Harmful Impacts of Palm Oil

Despite mounting evidence of the negative impacts of industrial palm oil production in Indonesia,³⁹ IFC has supported investments in the palm oil sector. For example, between 2003 and 2007, IFC invested in the “scal[ing] up” of palm oil production by The Wilmar Group (“Wilmar”) through multi-million dollar investments in Wilmar’s palm oil subsidiaries Wilmar Trading and Wilmar WCap, located in Indonesia.⁴⁰

Founded in 1991, Wilmar is self-described as Asia’s “leading agribusiness group.”⁴¹ It is the world’s largest processor and merchandiser of palm oils and palm biodiesel, one of the leading plantation owners in Indonesia and Malaysia, and a leading producer/refiner of edible oils worldwide.⁴² With headquarters in Singapore, Wilmar has operations “in more than 20 countries across four continents” and primarily focuses oil palm operations and distribution in Indonesia, Malaysia, China, India and Europe.⁴³

³⁹ 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) 2, June 19, 2009, available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76 [hereinafter CAO Wilmar Audit].

⁴⁰ See INT’L FIN. CORP., IFC PROJECTS, WILMAR TRADING, PROJECT NO. 20348, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/fd16bea37bd7c0fa852576c10080cbf4?opendocument&Highlight=0,wilmar> (last visited Aug. 5, 2010) [hereinafter WILMAR TRADING]; see also INT’L FIN. CORP., IFC PROJECTS, WILMAR WCAP, PROJECT NO. 20348, available at <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/8543fa9ee72860bb852576c10080cd3d?opendocument&Highlight=0,wilmar> (last visited Aug. 5, 2010) [hereinafter WILMAR WCAP].

⁴¹ Wilmar International Limited, About Us, http://www.wilmar-international.com/about_index.htm (last visited Aug. 5, 2010).

⁴² *Id.*

⁴³ *Id.*

In July 2007, a consortium of local and international non-governmental organizations registered a complaint with the Compliance Advisor Ombudsman (“CAO”)⁴⁴ regarding adverse social and environmental impacts resulting from Wilmar’s projects in Indonesia.⁴⁵ The complaint alleged that Wilmar’s project expansion efforts would expropriate and clear indigenous peoples’ land without prior consultation or consent as required by IFC Performance Standard (“PS”) 7. The complaint also alleged that no Indigenous Peoples Development Plans were carried out, and that this would lead to the very harms that IFC policy provisions were designed to avoid.⁴⁶ Details of IFC’s Wilmar investments are instructive in understanding how IFC has approached lending in the agribusiness sector and how this model is undermining indigenous and traditional peoples’ rights despite explicit IFC policy protections.

In 2004 and 2006, IFC approved two separate guarantees to Wilmar subsidiaries, Wilmar Trading (IFC No. 20348) and Wilmar WCap (IFC No. 25532) in the amounts of US \$33.3 million and US \$50 million, respectively.⁴⁷ This funding was meant to allow continued long-term sustainable growth in the Indonesia palm oil industry by increasing Wilmar’s capability to purchase palm oil from third-party Indonesian plantations.⁴⁸ Initially, both projects were designated as Category B⁴⁹ by IFC’s Environmental and Social Department. Following outside pressure, and under the influence of IFC’s own Investment Department, however, the projects were downgraded to Category C.⁵⁰

IFC focused the project categorization on the conclusion that Wilmar’s trading facilities were expected to “have a positive effect” on farmers and local businesses by facilitating increased palm oil export.⁵¹ The Category C determination indicated that, in IFC’s opinion, these projects were likely to have minimal or no adverse environmental and social impact,⁵² therefore, no further analysis was required to determine whether Wilmar’s operations complied with rigorous IFC social and environmental due diligence standards.⁵³ Yet, at the same time, IFC acknowledged that these projects would have profound effects on the palm oil supply chain.⁵⁴ These very supply chain

⁴⁴ The CAO is an independent recourse mechanism for the IFC and MIGA. For more information, see COMPLIANCE ADVISOR OMBUDSMAN, <http://www.cao-ombudsman.org> (last visited Aug. 5, 2010).

⁴⁵ See generally Forest Peoples Programme, *Procedural Irregularities and Standards Violation in IFC Support for Wilmar Trading* (July 18, 2007), available at <http://www.cao-ombudsman.org/cases/document-links/links-76.aspx> [hereinafter *FPP Procedural Irregularities*].

⁴⁶ *Id.* at 7.

⁴⁷ WILMAR TRADING *supra* note 40; WILMAR WCAP *supra* note 40.

⁴⁸ *Id.*

⁴⁹ *Definitions of Project Categories*, IFC Disclosure, IFC, http://www.ifc.org/ifcext/disclosure.nsf/Content/Project_Categories (last visited Aug. 5, 2010) (Category B: “Projects expected to have limited adverse social and/or environmental impacts that can be readily addressed through mitigation measures.”).

⁵⁰ *Id.* (Category C: “Projects expected to have minimal or no adverse impacts, including certain financial intermediary projects.”); see also CAO WILMAR AUDIT, *supra* note 39, at 2.1.6; see also WILMAR WCAP *supra* note 40, at “Environmental and Social Issues – Category C”.

⁵¹ See WILMAR WCAP *supra* note 40, at “Anticipated Development Impact of the Project”.

⁵² *Id.* at “Anticipated Development Impact of the Project”, “Environmental and Social Issues – Category C”; see also generally WILMAR TRADING *supra* note 40.

⁵³ See generally *FPP Procedural Irregularities*, *supra* note 45.

⁵⁴ See WILMAR TRADING *supra* note 40, at “Project Development Impact and IFC’s Role”; see also WILMAR WCAP *supra* note 40, at “Anticipated Development Impact of the Project”.

effects, argued the CAO complainants, merited a more stringent project categorization.⁵⁵ By concentrating solely on the potentially positive outcomes, rather than taking into account the negative effects that increased demand for palm oil would have on the stakeholders in Indonesia (including indigenous peoples and other smallholders), IFC incorrectly applied its own project categories.⁵⁶

The CAO complaint also claimed that Wilmar violated PS 5 (Land Acquisition and Involuntary Resettlement) and PS 7 (Indigenous Peoples).⁵⁷ PS 5 encourages clients to acquire land rights through negotiated settlements even when it is possible to gain access to land without the seller's consent.⁵⁸ The CAO complaint argued that IFC failed to adequately address this requirement. Had it done so, IFC would have discovered a number of land conflicts related to Wilmar operations.⁵⁹ With respect to PS 7 and the customary lands of indigenous peoples acquired by Wilmar, there is no evidence that the consultations, required of Wilmar under PS 7, had been carried out at all.⁶⁰

Finally, the CAO complaint highlighted IFC's lack of compliance with its obligations as a member of the Roundtable on Sustainable Palm Oil ("RSPO").⁶¹ In approving the Wilmar loan agreement, IFC claimed that the Wilmar project was consistent with RSPO Principles and Criteria.⁶² These Principles and Criteria were adopted in 2005.⁶³ Yet the RSPO did not adopt a Certification Protocol for compliance with these Principles and Criteria until June 2007.⁶⁴ Furthermore, RSPO members themselves had formally agreed not to make any claims about RSPO compliance pending initiation of the third-party Certification Protocol.⁶⁵ By claiming that Wilmar's Indonesian operations were consistent with RSPO Principles and Criteria, IFC, the complaint argued, was in direct violation of its obligations under the RSPO Code of Conduct for Members.⁶⁶

⁵⁵ See *FPP Procedural Irregularities*, *supra* note 45, at 3.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 6.

⁵⁸ INT'L FIN. CORP., Performance Standards 18 (2006), available at [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf) (last visited Sept. 19, 2010) [hereinafter IFC Performance Standards].

⁵⁹ See *FPP Procedural Irregularities*, *supra* note 45, at 6. Indeed, the IFC should have already been aware that this was a risk. The World Bank Group Draft Framework for Engagement in the Palm Oil Sector notes that in Indonesia between 1969 and 1983, World Bank engaged in eight palm oil projects. IEG found two to be unsatisfactory "due to the poor performance of the responsible agencies, and logistical and management difficulties. Land titling was identified as being subject to delays, and remains a challenge to this day. It was noted that in one case in West Java there were difficulties with competing land claims from local communities which did not want to participate in the project. Based on the disappointing performance of the public agencies, the GOI subsequently encouraged [with IFC support] private sector development of oil palm plantations." Draft Framework, *supra* note 5, at 31.

⁶⁰ *FPP Procedural Irregularities*, *supra* note 45, at 7.

⁶¹ *Id.*

⁶² See INT'L FIN. CORP., IFC PROJECTS, DELTA-WILMAR CIS, PROJECT NO. 24622, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/9e0db6c8d6f773b7852576ba000e2afc?opendocument> (last visited Aug. 5, 2010) [hereinafter DELTA-WILMAR CIS].

⁶³ See *FPP Procedural Irregularities*, *supra* note 45, at 7.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; see also CODE OF CONDUCT FOR MEMBERS OF THE ROUNDTABLE ON SUSTAINABLE PALM OIL 2.1, <http://www.rsपो.org/sites/default/files/RSPO%20Code%20of%20Conduct.pdf> [hereinafter RSPO CODE OF CONDUCT]

CAO's Conclusion

The CAO found three violations of IFC policy in the Wilmar project financing: (1) the trading facility projects were incorrectly categorized and did not follow the proper procedures with respect to either category; (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 this particular industry.⁶⁷

With respect to the trading facility projects, the CAO concluded that IFC put an emphasis on certain development indicators and impacts (such as macroeconomic demand and the effect on local businesses), while ignoring other indicators, including the livelihood and economic disenfranchisement facing smallholders and plantation workers.⁶⁸ This resulted in an improper Category C classification that failed to properly take into account Wilmar's position in the supply chain.⁶⁹ This classification was deemed inconsistent with IFC policies and procedures.⁷⁰

As to Wilmar's refinery projects, the CAO found that readily available information contradicted IFC's conclusion that an assessment of the supply chain was unwarranted because the sources of Wilmar's palm oil could not be verified.⁷¹ Wilmar's own 2006 Annual Report emphasized development of a vertically integrated business strategy in order to capture value and control costs at every point along their supply chain.⁷² Furthermore, the report highlighted a third party's verification of the presence of Wilmar's palm oil at every point along the supply chain.⁷³ Thus, IFC's failure to consider Wilmar's supply chain as to its refinery projects was inconsistent with IFC policies.⁷⁴ More importantly, the CAO concluded that, regardless of the ability to trace the crude palm oil back to its source, IFC policy mandates a broad assessment of suppliers and supply chains.⁷⁵

Finally, by allowing external pressures to determine the categorization and scope of assessment of the various Wilmar projects,⁷⁶ the CAO found IFC in contravention of its mandate

⁶⁷ See *FPP Procedural Irregularities*, *supra* note 45, at 2.

⁶⁸ CAO WILMAR AUDIT, *supra* note 39, at 2.1.3. For instance, an assumption was made 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 for the theory that increased demand would automatically translate into an improvement in quality of life for the individual growers.

⁶⁹ CAO WILMAR AUDIT, *supra* note 39, at 2.1.8. Additionally, the CAO found that IFC had an internal debate as to the categorization. Initially the project had received a categorization of "B" by the Environmental and Social Department, yet the Investment Department argued for a category of "C". *Id.* at 2.1.6. The Investment Department recognized that the categorization of C would be greatly improve, and perhaps was necessary, to close this deal and would lay the groundwork for future investments in Wilmar. Its argument ultimately prevailed despite the blatant incongruity of the project and its designation. *Id.* at 2.1.6–2.1.7.

⁷⁰ CAO WILMAR AUDIT, *supra* note 39, at 2.1.7–2.1.8.

⁷¹ *Id.* at 2.2.10–2.2.12.

⁷² *Id.* at 2.2.10.

⁷³ *Id.*

⁷⁴ *Id.* at 2.2.10–2.2.12.

⁷⁵ *Id.* at 2.6.6–2.6.7.

⁷⁶ *Id.* at 2.7.2–2.7.5, 3.1.3.

to reduce poverty, improve lives, and encourage sustainable development.⁷⁷ This led to numerous incidents of IFC non-compliance in an attempt to insulate itself from the real impacts of its investments.⁷⁸

IFC's Response

IFC Management accepted the shortcomings highlighted by the CAO report: project categorization, supply chain due diligence, and the lack of strategic framework for the palm oil sector.⁷⁹ In August 2010, IFC claimed the effect of the categorization problem would be to categorize future palm oil projects as either "A" or "B".⁸⁰ IFC Management also agreed that the supply chain should have received more searching scrutiny,⁸¹ though they continued to assert the difficulties of supply chain identification.⁸² Still, IFC claimed that supply chains would receive more scrutiny in the future and would be mapped to be included in due diligence.⁸³

At the writing of its response, IFC was developing the palm oil sector strategy that intended to incorporate input from key stakeholders from the Roundtable on Sustainable Palm Oil.⁸⁴ Meanwhile, in August 2009, the President of the World Bank Group suspended further private sector financing of the Indonesian palm oil sector.⁸⁵ This moratorium was expanded to the palm oil sector worldwide, and was then expanded to palm oil lending in the public sector institutions of the Bank as well.⁸⁶ Only one IDA-financed project in Papua New Guinea remains unaffected by the moratorium. This project is the subject of an investigation by the World Bank Inspection Panel and is discussed below.

When the moratorium on palm oil is lifted, what lessons will IFC have learned to prevent another Wilmar? The World Bank Group's Draft Framework for Engagement in the Palm Oil Sector tries to answer this question, but as discussed below, comes up short.

ii. Mato Grosso: Soybean Operations in Brazil

The detrimental effects of World Bank Group agribusiness lending are not limited to palm oil. The well-documented case of Grupo Maggi's operations in Mato Grosso, Brazil is instructive.⁸⁷

⁷⁷ *Id.* at 2.7.6.

⁷⁸ *Id.* at 2.7.5.

⁷⁹ INT'L FIN. CORP., FINAL IFC MANAGEMENT GROUP RESPONSE TO CAO'S AUDIT REPORT ON WILMAR 1 (Aug. 4, 2009) available at <http://www.cao-ombudsman.org/cases/document-links/documents/FinalIFCsManagementResponseToWilmarAudit2009-08-04.pdf> [hereinafter IFC WILMAR AUDIT RESPONSE].

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ COMPLIANCE ADVISOR OMBUDSMAN, AUDIT MONITORING REPORT, C-I-R6-Y08-F096 (April 22, 2010), available at http://www.cao-ombudsman.org/cases/document-links/documents/CAO_Monitoring_of_Audit_C_I_R6_Y08_F096_ENG.pdf [hereinafter CAO AUDIT MONITORING REPORT].

⁸⁶ *Id.* at 2.

⁸⁷ See, e.g., GREENPEACE REPORT, *supra* note 15.

Grupo Maggi is one of the leading soybean operators in the Mato Grosso state of Brazil's center-west Amazon.⁸⁸ Originally established by André Maggi in southern Brazil in 1950, Grupo Maggi moved to the Mato Grosso region in 1978 and quickly increased its landholdings to become one of the world's largest soy producers.⁸⁹ In October 2002, Blairo Maggi, Grupo Maggi's acting director, was elected governor of Mato Grosso and called for a tripling of soy plantings in the region within ten years.⁹⁰ This led to a 40% increase in deforestation in Mato Grosso,⁹¹ and has caused a number of severe social and environmental problems including the displacement of peasant farmers and indigenous communities, illegal privatization of public lands, involuntary servitude, and irreversible biodiversity contamination and devastation.⁹²

In and around Mato Grosso, Grupo Maggi owns and operates a farming business, transport services, barge terminal, modern deep-sea port facility, two crushing plants, and a number of grain silos which, in 2001 netted a sales volume of 1.8 million metric tons of soy, primarily for the export market (88%).⁹³ Apart from its own soy production in west-central Brazil, Grupo Maggi also purchases significant soybean reserves from other regional, third-party farmers and transports these reserves to market.⁹⁴ As of 2004, Grupo Maggi expected fully 85% of their soybean production to come from third-party farmers.⁹⁵ Grupo Maggi solicits the participation of these third-party farmers through a pre-financing program that extends seeds and fertilizer on credit at the beginning of the cropping season (June-July), until after Grupo Maggi is able to sell the soybean inventories at peak harvest time (May-June).⁹⁶

In June 2002, IFC provided its first loan to Grupo Maggi, US \$30 million working capital to fund "(i) farmers' advances, such as inputs and cash for soybean production, and (ii) inventory of soybean and its by-products."⁹⁷ This loan agreement was designated as a Category B project according to IFC's Environmental and Social Review Procedure.⁹⁸ Additionally, IFC required Grupo Maggi to develop an environmental and social management system ("ESMS") to address, among other things, environmental and social issues related to their pre-financing activities.⁹⁹ This

⁸⁸ INT'L FIN. CORP., IFC PROJECTS, AMAGGI EXPANSION, PROJECT NO. 22561, <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/9276FD013FC1B05B852576BA000E25F8> (last visited Aug. 5, 2010) [hereinafter AMAGGI EXPANSION].

⁸⁹ Jan Willem van Gelder, Bank Loans and Credits to Grupo André Maggi, FUNDAÇÃO CEBRAC (June 4, 2004), available at http://www.banktrack.org/download/the_financing_of_grupo_andre_maggi/040516_the_financing_of_grupo_andre_maggi_soy.pdf [hereinafter van Gelder].

⁹⁰ Larry Rohter, *Relentless Foe of the Amazon Jungle: Soybeans*, N.Y. TIMES, Sept. 17, 2003, available at <http://www.nytimes.com/2003/09/17/world/relentless-foe-of-the-amazon-jungle-soybeans.html?scp=1&sq=Relentless%20foe%20of%20the%20Amazon%20jungle:%20soybeans%20&st=cse>.

⁹¹ *Id.*; For a striking visual image of the extent of these deforestation activities between 1992 and 2006, see NASA, Earth Observatory, Deforestation in Mato Grosso, Brazil, <http://earthobservatory.nasa.gov/IOTD/view.php?id=35891> (last visited Aug. 5, 2010).

⁹² GREENPEACE REPORT, *supra* note 15, at 9.

⁹³ INT'L FIN. CORP., IFC PROJECTS, GRUPO ANDRE MAGGI, PROJECT NO. 11344, <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/3914BDFE91B893E0852576BA000E2420> (last visited Aug. 5, 2010) [hereinafter GRUPO ANDRE MAGGI].

⁹⁴ See van Gelder, *supra* note 89.

⁹⁵ *Id.*

⁹⁶ See GRUPO ANDRE MAGGI, *supra* note 93.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

included pre-financing clauses stipulating that Grupo Maggi's third-party farmers were not engaging in forced or child labor, land conflicts, or any farming activities negatively affecting indigenous peoples or the environment.¹⁰⁰ Grupo Maggi was to recruit full-time, qualified staff to screen each third-party applicant and to assess the environmental and social risks of their farming operations as well as to monitor their ongoing performance in relation to their environmental and social obligations.¹⁰¹

Despite these protections, however, there was abundant evidence that Grupo Maggi's soybean monocropping operations were having profound detrimental impacts. For example, funds were regularly being spent to finance transport infrastructure projects that invited deforestation, such as "new roads, port facilities and navigable waterways cutting through the heart of the rainforest."¹⁰² As one expert stated, "[s]oy—at this moment—is the most important driver for deforestation, directly and indirectly."¹⁰³ Specifically, there was substantial criticism of the known indirect deforestation impacts of Grupo Maggi's third-party soybean suppliers.¹⁰⁴ The project attracted "considerable criticism" from local and international NGOs regarding IFC's Category B designation of the project despite these adverse environmental impacts.¹⁰⁵

In September 2004, IFC proposed an additional US \$30 million loan to Grupo Maggi, through Grupo Maggi's subsidiary Amaggi Exportação e Importação Limitada ("Amaggi").¹⁰⁶ This loan would enable Amaggi to increase its production capacity in the Mato Grosso region.¹⁰⁷ According to IFC, Amaggi "presented plans to strengthen its programs to ensure that the proposed project will, upon implementation of specific agreed measures, comply with the environmental and social requirements, host country laws and regulations and the World Bank/IFC environment and social policies and the environmental, health and safety guidelines."¹⁰⁸ Again, however, there was abundant evidence that Amaggi's soybean expansion efforts were not meeting the requisite environmental and human rights safeguards. For example, in June 2005, forty-eight Amaggi officials were arrested on corruption charges for allegedly condoning the illegal extraction of Amazon timber.¹⁰⁹ This included Amaggi's Secretary of the Environment, Hugo Jose Scheuer Werle.¹¹⁰ These allegations were bolstered by evidence that in 2005, the area where IFC financed Amaggi's soybean project expansion had the highest rate of deforestation in the entire Amazon.¹¹¹ Deforestation in this area was increasing at a rate of thirty-four percent annually, while overall

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² GREENPEACE REPORT, *supra* note 15, at 17.

¹⁰³ Sasha Lilley, *Paving the Amazon With Soy: World Bank Bows to Audit of Maggi Loan*, CORPWATCH, Dec. 16, 2004, <http://www.corpwatch.org/article.php?id=11756> [hereinafter Lilley].

¹⁰⁴ COMPLIANCE ADVISOR OMBUDSMAN, CAO CASES, BRAZIL / AMAGGI EXPANSION-01 / IFC EXECUTIVE VICE PRESIDENT REQUEST, Nov. 1, 2004, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=91 [hereinafter CAO AMAGGI COMPLAINT].

¹⁰⁵ *Id.*

¹⁰⁶ *See* AMAGGI EXPANSION, *supra* note 88.

¹⁰⁷ *Id.*

¹⁰⁸ *See* van Gelder, *supra* note 89.

¹⁰⁹ Bretton Woods Project, *From Bad to Worse: IFC Safeguards* (June 13, 2005), <http://www.brettonwoodsproject.org/art-235769> (last visited Aug. 5, 2010) [hereinafter *Bad to Worse*].

¹¹⁰ *Id.*

¹¹¹ Bretton Woods Project, *IFC Green Gloss: New Private Sector Guide to Biodiversity* (Mar. 26, 2006), <http://www.brettonwoodsproject.org/art-531506>.

deforestation rates in the Amazon were actually declining by twenty-nine percent.¹¹² Finally, a May 2005 ILO-commissioned report revealed that Amaggi was purchasing soybean reserves from Amazon farms that engaged in slave labor.¹¹³ In fact, Amaggi later admitted that they had received soybeans from two farms where federal agents freed a total of eighty-four slaves as recently as 2004.¹¹⁴ Despite this evidence, in signing the project expansion loan agreement IFC stated that Amaggi had “made significant efforts . . . to manage environmental and social issues in their own operations and on farms with which the company has prefinancing contracts.”¹¹⁵

More significant than the direct consequences of the IFC loan, however, were the residual effects this loan had throughout the international lending community. Following IFC’s 2004 project expansion loan, Amaggi was able to attract much larger loans from private banks. Rabobank, the Netherlands’ largest agricultural bank, led a consortium of 11 banks to loan Amaggi an additional \$230 million to expand their market share in the Brazilian Amazon.¹¹⁶ As a Dutch Rabobank spokesperson stated, “[our] reasoning was that if IFC approves this project and they classify it only as a class B, low-risk project, we can safely invest [an additional] \$230 million . . . in this corporation.”¹¹⁷

But Grupo Maggi’s practices did not escape the notice of Friends of the Earth Brazil, who expressed their concerns about Grupo Maggi’s soy cultivation and exploitation practices to World Bank president James Wolfensohn.¹¹⁸ As a result, in November 2004, Peter Woicke, the outgoing Executive Vice President of IFC, asked the CAO to conduct a compliance audit of IFC’s categorization of the most recent loan to Amaggi.¹¹⁹

CAO’s Conclusion

In its May 2005 Final Report, the CAO concluded that, while IFC followed its own procedures on categorization, it was unjustified in classifying Amaggi’s operations as a Category B project.¹²⁰ This unjustified categorization was due to a breakdown of professional discretion, likely resulting from IFC’s failure to “provide disclosure around categorization decisions that would enable interested or affected parties to make an informed judgment about the adequacy of IFC’s categorization decisions.”¹²¹

¹¹² *Id.*

¹¹³ Bad to Worse, *supra* note 109.

¹¹⁴ *Id.*

¹¹⁵ *See* van Gelder, *supra* note 89.

¹¹⁶ *See* Lilley, *supra* note 103. The 11 bank consortium included ING Bank (Netherlands), HSBC (UK), BNP Paribas (France), Crédit Suisse First Boston (Switzerland), UFJ Bank (Japan), WestLB (Germany), Fortis Bank (Netherlands/Belgium), HSB Nord Bank (Sweden), Banco Bradesco and Banco Itaú (Brazil). *Id.*

¹¹⁷ RICHARD JONASSE ED., FOODFIRST, INSTITUTE FOR FOOD AND DEVELOPMENT POLICY, AGROFUELS IN THE AMERICAS 58-59 (2009) available at http://www.foodfirst.org/files/pdf/Agrofuels_in_the_Americas.pdf [hereinafter AGROFUELS].

¹¹⁸ Bretton Woods Project, IFC Funds Amazon Deforestation, Undermines Safeguard Policies (Jan. 26, 2005), available at <http://www.brettonwoodsproject.org/art-107739>.

¹¹⁹ *Id.*, *see also* CAO AMAGGI COMPLAINT, *supra* note 104.

¹²⁰ COMPLIANCE ADVISOR OMBUDSMAN, CAO AUDIT OF IFC’S ENVIRONMENTAL AND SOCIAL CATEGORIZATION OF THE AMAGGI EXPANSION PROJECT (May 2005), available at <http://www.cao-ombudsman.org/cases/document-links/links-91.aspx> [hereinafter AMAGGI EXPANSION].

¹²¹ *Id.*

While IFC had required Amaggi to implement an Environmental and Social Management System (“ESMS”), it did not “adequately assure itself of whether or not the ESMS would afford an appropriate level of environmental and social protection, and ensure compliance with IFC’s environmental and social requirements.”¹²² Further, while IFC had “assured itself” that Amaggi’s operations were in compliance with their environmental and social obligations, IFC “[d]id not undertake a sufficiently rigorous assessment” of Amaggi’s operational implementation for such assurances to be warranted.¹²³ Finally, while IFC had “assured itself that the potential impacts of [the expansion project] could be adequately addressed” through an environmental impact assessment, IFC did not “clearly define its expectations of Amaggi as regards issues to be addressed by the assessment.”¹²⁴

The CAO’s final recommendation was that IFC prepare and publicly disclose “a note on the actions it intends to take in response to the audit findings.”¹²⁵

IFC Response

In a letter dated November 4, 2005, IFC responded that its staff were “surprised by [the CAO’s] findings given the focus and attention that IFC has put on [Amaggi’s] management systems since the first investment was made.”¹²⁶ IFC further indicated that Amaggi has been addressing the deforestation issue “by raising awareness of better management practices [and providing] increased training and technical assistance to its third-party suppliers.”

Concluding that IFC has “been strongly encouraged by [Amaggi’s] pioneering efforts to use tools developed as part of its ESMS, to change the behavior of its suppliers,” IFC determined—despite the CAO’s concerns—that “[t]he ESMS is consistent with international good practice, and fulfills IFC’s requirements.”¹²⁷ Despite IFC’s response to the CAO, in the first half of 2008 the Brazilian environmental ministry (“IBAMA”) embargoed Amaggi farms over rainforest destruction and destructive farming practices.¹²⁸

The Mato Grosso case, like Wilmar, demonstrates not only the degree to which the IFC’s role in project finance in the agribusiness sector causes harm to people and the environment—including enabling of deforestation, slavery, taking of indigenous peoples’ land without consent—but also the predictability of this harm.

In the Wilmar case, the World Bank Group knew that palm oil projects can create tremendous social and environmental risks, but classified the project so as to avoid due diligence regarding those known risks nonetheless.¹²⁹ Based on the World Bank Group’s own lessons learned in the sector over decades, the land conflicts surrounding the Wilmar case should have

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ COMPLIANCE ADVISOR OMBUDSMAN, IFC RESPONSE TO CAO AUDIT REPORT, (Nov. 4, 2005), available at <http://www.cao-ombudsman.org/cases/document-links/links-91.aspx>.

¹²⁷ *Id.*

¹²⁸ AGROFUELS, *supra* note 117, at 58-59.

¹²⁹ *See, e.g.*, Draft Framework, *supra* note 5, at 30-35.

caused a Category A project designation and appropriate due diligence, consultation and risk management should have ensued. Likewise, the supply chain issues were known in advance of the designation that allowed their avoidance in project due diligence.

In the Mato Grosso case, despite evidence of corruption, environmental devastation and even slavery associated with the project, IFC satisfied itself that the project could be categorized as B and failed to require an adequate risk management system. That a project with these risks was allowed to go forward at all, let alone with an inadequate management system, shows the tremendous incentive within IFC to take on large agribusiness projects.

These projects both show that even with social and environmental policy safeguards in place, the motive to finance projects in a manner inconsistent with these safeguards overwhelms when it comes to policy implementation, therefore, a new approach to IFC's role in agribusiness is needed.

Systemic issues of policy non-compliance causing harm to indigenous people and the environment are seen in examples from the World Bank Group's public sector institutions as well.

B. IDA Agribusiness Projects in Practice: The Papua New Guinea Smallholder Agricultural Development Project

In the Oro province of Papua New Guinea ("PNG"), indigenous communities that rely on subsistence agriculture inhabit the majority of districts. Oil palm was initially introduced fifty years ago by the government of PNG under World Bank pressure to build an export economy through oil palm development.¹³⁰ Multinational corporations, including Cargill, entered PNG to establish oil palm operations on indigenous lands, claiming that decades-old subsistence farmlands were simply unused.¹³¹ Indigenous peoples, forced to become cash crop farmers due to the expropriation of their lands, were now considered "small shareholders." The system was, and is, designed so that smallholders are responsible for all the costs of oil palm production through "deductions" on the prices for their oil palm taken from milling companies (shifting costs of production from companies to the smallholders), but do not receive the benefits of revenue generated from the final product's export.

In December 2009, smallholders in the Oro province of PNG ("Requesters") filed a complaint with the World Bank's Inspection Panel regarding the World Bank's Smallholder Agricultural Development Project ("SADP") in PNG.¹³² The SADP, approved by the World Bank Board of Directors in December 2007, was launched in PNG in March 2009. The aim of this US

¹³⁰ See WORLD BANK INSPECTION PANEL, REQUEST FOR INSPECTION: SMALLHOLDER AGRICULTURAL DEVELOPMENT PROJECT – PAPUA NEW GUINEA 4 (Dec. 2009), available at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PNG_SADP_Request_Public_Version.pdf [hereinafter SADP INSPECTION PANEL REQUEST].

¹³¹ This misconception is a common problem worldwide, see Michael Taylor and Tim Bending, *Discussion Paper, Increasing commercial pressure on land: Building a coordinated response* (International Land Coalition July 2009) 7, available at http://www.landcoalition.org/cpl-blog/wp-content/uploads/09_07_cpl_discussionpaper.pdf ("all usable land is very likely to be already occupied or used by local communities in a variety of ways important to livelihoods and food security, if not cultural identity. In particular, local populations who use the land for non-arable uses such as pastoralism or hunting and gathering are liable to be ignored. In addition to direct local usage, the ecosystem services provided by such lands to the wider population appear often to have been ignored.") [hereinafter Taylor and Bending].

¹³² SADP INSPECTION PANEL REQUEST, *supra* note 130, at 1.

\$69 million IDA project was to support the growth of oil palm as the main income-generating activity in the region through oil palm expansion (‘infilling’) and road maintenance.¹³³

The affected communities that filed the Inspection Panel complaint were not asked to give the free, prior and informed consent for the project that they are guaranteed under international law.¹³⁴ Nor did the World Bank abide by its policies to consult the indigenous Requesters about the project, disseminate project information in the national language (it was eventually provided in English on a CD-Rom in the capital), and allow Requesters the opportunity to provide their input on the project objectives and design. Furthermore, Requesters argue that the environmental assessment for this project is not adequate and that the project design will force them deeper into poverty, exacerbating the problems that palm oil has already caused in their region.¹³⁵ Requesters also argue that the road maintenance component of the project is unjust because it charges smallholders unfair rates on top of the levies that the palm oil producers deduct from the farmers’ revenues, leaving the smallholder farmers with almost nothing, despite having been forced to produce oil palm at the exclusion of household gardens or other cash crops.¹³⁶

The World Bank’s accountability mechanism, the Inspection Panel, found the claim eligible in March 2010 and moved forward with a still-underway investigation of alleged World Bank policy violations. Management responded to the Inspection Panel Request by admitting to an array of policy violations, particularly with respect to the environmental assessment and information disclosure and consultation allegations.¹³⁷

Given the policy violations admitted by Bank officials, in April 2010, Requesters called on Bank Management to suspend disbursement of substantive funds under the SADP until the violations are corrected. In a May 2010 response, the World Bank Vice President for East Asia and Pacific Region, James W. Adams, stated, “the Bank is fully committed to ensuring compliance

¹³³ *Id.* at 2.

¹³⁴ See International Labor Organization, Convention No. 169, Convention concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, Art. 16 [hereinafter ILO Convention 169]; United Nations Declaration on the Rights of Indigenous Peoples, Arts. 3, 4, 10, 26, 28, G.A. Res. 61/295, Annex, U.N. c.A/RES/61/295/Annex (Sept. 13, 2007) [hereinafter UNDRIP]; International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at Arts 1(2), 11(1), U.N. Doc. A/ 6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) (“The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”) [hereinafter ICESCR]; International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, 660 U.N.T.S. 195 (entered into force 4 Jan. 1969), reprinted in 5 I.L.M. 352 (1966) [hereinafter CERD]; UN Human Rights Committee, Ángela Poma Poma 27/3/2009, Communication No. 1457/2006. See also *infra* Section III for a more detailed discussion of international law, standards, and norms. Arguably, the World Bank is required under its own policies to ensure that consent of indigenous peoples exists for a given project, but it does not acknowledge this reading of the rules; OMS 2.20 requires that a “project’s possible effects on the country’s environment and on the health and well-being of its people must be considered at an early stage... Should international agreements exist that are applicable to the project and area, such as those involving the use of international waters, the Bank should be satisfied that the project plan is consistent with the terms of the agreements.” WORLD BANK OPERATIONAL MANUAL STATEMENT, OMS 2.20, pm. 24.

¹³⁵ SADP INSPECTION PANEL REQUEST, *supra* note 130, at 2.

¹³⁶ *Id.* at 6.

¹³⁷ WORLD BANK INSPECTION PANEL, MANAGEMENT RESPONSE: SMALLHOLDER AGRICULTURAL DEVELOPMENT PROJECT – PAPUA NEW GUINEA 12 (Dec. 2009), <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22512209~pagePK:64129751~piPK:64128378~theSitePK:380794,00.htm> [hereinafter SADP MANAGEMENT RESPONSE].

with its safeguard policies and procedures.”¹³⁸ Mr. Adams noted that the environmental study of mill effluents would be reviewed “prior to commencement of infill planting.”¹³⁹ This statement belies the true point of the project—infilling—which is shown here as a *foregone conclusion* regardless of the results of the effluent study that was supposed to have been conducted and reviewed prior to project approval. There is no suggestion in the letter that the lack of consultation could cause a road-bump in the project, let alone require it to be halted so that the consultation could be conducted and fed into project design, as World Bank policy requires.

Just as was the case in the Wilmar project, despite well-known harmful impacts of palm oil,¹⁴⁰ the project was categorized as “B” and the Bank proceeded with insufficient information dissemination, lack of consent from indigenous people, and inadequate environmental study.

Two problems arise with the policy framework surrounding the World Bank Group’s approach to lending in the agribusiness sector as seen through the examples above: (1) *current policy proves inadequate* to address indigenous rights and political and administrative realities of agribusiness projects that impact communities and the environment; and (2), the World Bank Group *fails to implement* policies that do provide social and environmental safeguards.

These shortcomings are addressed in Section III, below, along with analysis of the initiatives currently underway relating to the World Bank Group’s agribusiness activities. In taking stock of the current World Bank Group agribusiness scenario, Section III discusses the changes that the World Bank Group should make before any further agribusiness lending.

III. A Critique of Current World Bank Group Policies and Agribusiness-related Initiatives

Current World Bank Group policy fails to protect indigenous and traditional peoples’ rights in the agribusiness sector and is insufficient to meet international law obligations.¹⁴¹ Apart from deficiencies in policy itself, as seen in the examples above from Indonesia, Brazil and Papua New Guinea, implementation of existing safeguard policies is often a concern.¹⁴² While a number of initiatives are underway to address these shortcomings, such as the World Bank Group’s review of its palm oil strategy, a major new report on Farmland, and IFC’s involvement in the Roundtable on Sustainable Palm Oil (“RSPO”), they are neither wide enough in scope, nor deep enough in breadth or commitment, to correct deficiencies in the World Bank Group’s current approach to agribusiness lending.

¹³⁸ See Letter from World Bank Vice President James W. Adams to the Author (May 12, 2010) (on file with author).

¹³⁹ *Id.*

¹⁴⁰ See, e.g., Draft Framework, *supra* note 5, at 30-35.

¹⁴¹ Anderson, *supra* note 5, at 13 (arguing that international human rights and environmental law should be utilized as the framework for agribusiness policies). Regarding a critique of how the IFC’s policies are at times inconsistent with domestic human rights standards and norms, see Leonardo A. Crippa & Rebecca Aleem, Comments and Recommendations on the IFC’s Proposed Policy on Social and Environmental Sustainability and Performance Standards 2, 9, 13-14 (July 2010), available at http://www.firstpeoplesfirst.in/admin/pdf/58_Centers%20IFC%20Comments%20FINAL%20ENG.pdf. It is also worth noting that the standards set forth in 2007 in the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), mentioned throughout this subsection, are now accepted by every state in the world excepting two.

¹⁴² See discussion *supra*, Section II.

A. Analysis of Changes Required to Bring the World Bank Group From Policy and Implementation Shortcomings to Best Practice

While World Bank direct investment in agribusiness is itself a multi-billion dollar activity each year,¹⁴³ the cumulative indirect impact of the World Bank Group's investment in agribusiness dwarfs its direct investment. World Bank funds are rarely the sole source of funding in either private or public sector projects, but they catalyze other private sector or government funds. Yet despite the import of its involvement in agribusiness, the World Bank Group has no single policy governing its support for agribusiness.

While the Bank is in the midst of developing a sector strategy for palm oil,¹⁴⁴ other commodities that have similar impacts have no similar strategies under preparation. Rather, the public and private sector institutions of the Bank have policies that relate to various themes under which agribusiness projects fall. The World Bank relies on its purported compliance with these policies to justify its investment in the agribusiness sector and its protection of indigenous and traditional peoples' rights.¹⁴⁵

IFC has a series of policies that pertain to its investments: IFC's Policy and Performance Standards on Social and Environmental Sustainability, and its Environmental, Health, and Safety ("EHS") Guidelines.¹⁴⁶ These policies are responsible for ensuring that indigenous and traditional peoples' rights and livelihoods are respected in IFC-supported agribusiness projects. In addition to governing IFC projects, the IFC Performance Standards serve as an industry benchmark.¹⁴⁷ For example, they are the basis for investment lending decisions by a grouping of major commercial banks called the "Equator Principle Financial Institutions", and are often used by multinational corporations (even without a formal IFC role) when they conduct project due diligence.¹⁴⁸

The IFC Performance Standards ("PS") are almost all relevant to the social and environmental impacts of agribusiness projects on indigenous people. They include: PS 1 on Social and Environmental Assessment and Management Systems; PS 2 on Labor and Working Conditions; PS 3 on Pollution Prevention and Abatement; PS 4 on Community Health, Safety and Security; PS 5 on Land Acquisition and Involuntary Resettlement; PS 6 on Biodiversity Conservation and Sustainable Natural Resource Management; PS 7 on Indigenous Peoples; and PS

¹⁴³ See generally ANNUAL REPORT 2009, *supra* note 6.

¹⁴⁴ See generally Draft Framework, *supra* note 5.

¹⁴⁵ See Letter from World Bank Vice President James W. Adams to the Author, *supra* note 138 (In response to concerns about a palm oil project in Papua New Guinea, Mr. Adams states: "Let me assure you that the Bank is fully committed to ensuring compliance with its safeguards [sic] policies and procedures.").

¹⁴⁶ See IFC Sustainability Framework, <http://www.ifc.org/ifcext/policyreview.nsf/Content/AboutFramework> (last visited Sept. 11, 2010).

¹⁴⁷ The Performance Standards underpin the Equator Principles, the OECD's common approaches for export credit agencies, and the Rome Consensus for the European Development's financial institutions.

¹⁴⁸ See EQUATOR PRINCIPLES, PRINCIPLES, <http://www.equator-principles.com/principles.shtml> (last visited Aug. 5, 2010); see also Kirk Herbertson, Kim Thompson, Robert Goodland, A ROADMAP FOR INTEGRATING HUMAN RIGHTS INTO THE WORLD BANK GROUP 23 (WRI April 2010), available at <http://www.wri.org/publication/roadmap-for-integrating-human-rights-into-world-bank-group> ("More than 118 financial institutions worldwide have adopted the Performance Standards for their own risk management systems.") [hereinafter ROADMAP FOR INTEGRATING HUMAN RIGHTS].

8 on Cultural Heritage.¹⁴⁹ Together, these policies paint a picture of the standards that IFC requires of its clients on paper.

IFC is currently reviewing its Policy and Performance Standards (“PPS”) on Social and Environmental Sustainability. In its first draft of the new PPS, IFC made some relatively small concessions for indigenous and traditional peoples’ rights, but also reduced standards in some ways. Notably, IFC has declined to adopt an explicit human rights policy and refuses to increase the standard in the new PPS for engagement with indigenous peoples from free, prior, and informed consultation (“FPIConsultation”) to free, prior, and informed consent (“FPIConsent”).

On the public-sector side, IBRD and IDA projects are governed by Operational Policies (“OPs”) and Bank Procedures (“BPs”). The OPs that relate to agribusiness practices are: OP 1.00 (Poverty Reduction), 4.01 (Environmental Assessment), 4.04 (Natural Habitats), 4.10 (Indigenous Peoples), 4.11 (Physical and Cultural Resources), 4.12 (Involuntary Resettlement), and 4.36 (Forests).¹⁵⁰ These policies were written and revised over a period of years, as opposed to being part of a deliberate policy framework. Many of the policies were developed as a reaction to particular ‘problem projects’ of the World Bank. As a result, this patchwork quilt of policies fails to put forward a strategic approach to agribusiness lending. These IBRD and IDA policies are not currently under review.

The World Bank Group’s policies are of particular importance in light of the political context of the countries in which the Bank does business. In places like the Democratic Republic of Congo, Sierra Leone, Indonesia and Papua New Guinea—all countries with World Bank Group agribusiness investment—there are limits on the ability of indigenous and traditional peoples to learn about projects before they begin to feel their impacts, let alone to enforce their rights, or even to voice dissent.¹⁵¹ World Bank Group policy is often the single source of protection of rights, and when those policies fail, the consequences are real.

The sections that follow are organized based on best practice principles for agribusiness measured against current World Bank Group policies and practices in order to see where change to the Bank’s current approach is required.

i. Properly identify and categorize risks

As examples above illustrate, the World Bank Group’s pattern of miscategorizing agribusiness projects with too low a level of risk is a contributor to environmental and social harm that violates the rights of indigenous people.¹⁵² This failure to meet current policy requirements

¹⁴⁹ IFC Performance Standards, *supra* note 58.

¹⁵⁰ THE WORLD BANK GROUP, OPERATIONAL POLICIES, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:64701763~pagePK:64719906~piPK:64710996~theSitePK:502184,00.html> (last visited Aug. 5, 2010) [hereinafter WORLD BANK OP].

¹⁵¹ See U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, *Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia Under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures*, 10, 20, SEVENTY-FIRST SESSION (June 25, 2007), available at www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf [hereinafter CERD URGENT ACTION]; see also RAN INDIGENOUS COMMUNITIES FACT SHEET, *supra* note 3.

¹⁵² In the Indonesian Wilmar example, the Bank classified the project as a low level “Category C” and thereby absolved both itself and the client of any obligations to engage with the locally affected peoples beyond an initial

happens across agribusiness subsectors and continents.¹⁵³ As a result of the miscategorization, agribusiness projects repeatedly fail to trigger policies that the World Bank Group has in place to require participation and cooperation with local and traditional affected peoples, additional and more intensive environmental and social assessments, and other safety policies.¹⁵⁴ In sum, proper classification of risks has bearing on all due diligence that follows. Project classification determines the type of impact assessment that clients conduct and what results from that assessment. The World Bank Group's practice of miscategorizing projects has meant a subsequent path of inadequate attention to social and environmental harm.¹⁵⁵

World Bank Group Policy¹⁵⁶ should require categorization of agribusiness projects as "Category A"¹⁵⁷—regardless of whether they are financed directly or through financial

environmental and social assessment. *See supra* Section II.A.i. (Indonesian Wilmar case). Further, note that had this project been a World Bank public sector project and received the same Category C classification, there would have been no duty to disclose Environmental Assessment information to project-affected groups, since the World Bank holds this duty of engagement to only apply for Category A and B projects. WORLD BANK OP, *supra* note 150, at 4.01. In the Papua New Guinea SADP case, there was also inadequate engagement of local indigenous peoples after a B classification. *See* SADP INSPECTION PANEL REQUEST, *supra* note 130.

¹⁵³ In addition to the examples above, based on the project documents alone, the following projects should warrant a Category A rating: IFC's support to **Export Trading Group in Zambia**, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6cf65d7a9e12a867852576ba000e327d?opendocument> (last visited Aug. 5, 2010) (where the commodity export project was categorized as B, despite one of the subsidiaries of the project's involvement in a court case due to forcible removal of "squatters."); *see also* IFC's support to the **Ghana Oil Palm Development Company Limited** ("GOPDC"), <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6049e44f7d45bd58852576ba000e2a18?opendocument> (last visited Sept. 12, 2010) (GOPDC aims to expand operations with IFC support by "re-planting and planting oil palm trees on its farms and new acquired land" among other activities. With an IFC investment estimated at \$25.4 million, the project in rural Ghana was given an environmental categorization of B); *see also* IDA's **Economic Governance and Recovery Grant III (EGRGIII) in Côte d'Ivoire** at 5, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/03/22/000262044_20100323143617/Rendere/d/PDF/CI010EGRG0III01isal0Stage1March022.pdf (last visited Aug. 5, 2010) (The project will encourage development of the cocoa sector in Cote d'Ivoire, by definition requiring land acquisition and conversion. The Bank recognizes that there will be social and environmental impacts in this *not-yet-classified project*: "The [Strategic Environmental Assessment of the cocoa sector] will [analyze] the implications for forest-dependent communities, whose welfare may be impacted from intensification and/or expansion of cocoa plantations The study will start when there is a permanent institutional structure and strategy for the sector, as the existing structure's mandate is due to expire in mid-2010." At the same time, the PID notes "weak or almost non-existent mechanisms for the collection, analysis and dissemination of environmental information."); *see also* IFC's **Nicaragua Sugar Estates Limited**, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=82 (where the Category B project should have been designated as A and is the subject of a CAO complaint that alleged health, environmental, labor and land acquisition problems).

¹⁵⁴ *See supra* Sections II.A.i., II.B. (Wilmar and PNG case studies); *see also* Draft Framework, *supra* note 5 at 44-45 (describing the importance of accurate project categorization as this categorization determines the requisite level of scrutiny to be applied via the Bank's Environmental Assessment, which then either opens or closes the door to the application of other social and environmental sustainability policies).

¹⁵⁵ *Accord* Civil Society Joint "Comments on IFC's Consultation Drafts of the IFC Sustainability Policy and Performance Standards and Disclosure Policy" Aug. 27, 2010 at 5-6 [hereinafter Civil Society Joint Comments], available at http://www.accountabilitycounsel.org/Accountability_Counsel/AC_News_files/8.27.10%20CSO%20IFC%20PS%20Review%20Submission.pdf.

¹⁵⁶ OP 4.01 sets out the IBRD and IDA requirement that an Environmental Assessment ("EA") be conducted for all proposed projects, looking at the natural environment, human health and safety, transboundary and global environmental aspects, and social aspects. WORLD BANK OP, *supra* note 150, at 4.10, ¶3. These social aspects are

intermediaries—so that due diligence appropriately recognizes project risks, areas of influence and supply chains impacts.¹⁵⁸

- ii. *Require human rights impact assessments for all agribusiness projects and follow through on action plans, grievance mechanisms and monitoring*

As discussed throughout this report, failure to properly identify human rights risks to indigenous people in agribusiness projects (including risks in the supply chain¹⁵⁹ and for financial intermediary projects), and subsequent failure to avoid or mitigate such risks, can cause violations of indigenous rights such as loss of land, impacts on culture, violations of the right to self-determination, forced eviction, and loss of livelihood.¹⁶⁰ Appropriate attention to risk requires conduct of human rights impact assessments (“HRIA”). Avoiding harm to indigenous groups also requires a commitment to robust environmental impact assessment to assure that projects are environmentally sustainable and do not create impacts on the rights of indigenous groups to their environment.

As noted by UN Special Representative John Ruggie, the responsibility “to respect human rights . . . means to act with due diligence to avoid infringing on the rights of others.”¹⁶¹ The World Bank Group is no exception. While social and environmental assessment is already a project requirement Bank-wide (though implementation remains an issue that requires attention),¹⁶² the World Bank Group is failing to meet international obligations until it has adopted an explicit requirement for HRIA.¹⁶³ IFC stands in a particularly awkward position regarding

involuntary resettlement, indigenous peoples, and physical cultural resources. The IFC addresses categorization in its Policy on Social and Environmental Sustainability, ¶ 18.

¹⁵⁷ Category A refers to “Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented.” IFC Policy on Social and Environmental Sustainability (2006), available at [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf).

¹⁵⁸ See Civil Society Joint Comments, *supra* note 155, at 5-6. Note that IFC proposes that PS 6 now require clients involved in projects with ecologically sensitive supply chains to examine the risks associated with primary suppliers, but requires only “verification” and not *independent* verification of sustainable management practices. INT’L FIN. CORP., PROGRESS REPORT ON POLICY AND PERFORMANCE STANDARDS ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY, AND POLICY ON DISCLOSURE OF INFORMATION, REVIEW AND UPDATE PROCESS 86 (April 14, 2010), available at http://www.accountabilitycounsel.org/Accountability_Counsel/AC_IFC_Advocacy.html [hereinafter IFC POLICY PROGRESS REPORT].

¹⁵⁹ IFC admitted during a self-analysis of its 2006 Performance Standards that environmental and social issues in supply chains, especially in the agribusiness sector, are growing in complexity. INT’L FIN. CORP., IFC’S POLICY AND PERFORMANCE STANDARDS ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY, AND POLICY ON DISCLOSURE OF INFORMATION: REPORT ON THE FIRST THREE YEARS OF APPLICATION v (July 29, 2009), available at [http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/ReportFirstThreeYears/\\$FILE/IFC_PPSThreeYearApplication.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/ReportFirstThreeYears/$FILE/IFC_PPSThreeYearApplication.pdf). The CAO’s analysis in Wilmar is a clear example of this. See *supra* Section II.A.i.

¹⁶⁰ See Crippa, *supra* note 141, at 2, 9, 13-14.

¹⁶¹ See Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Report, Business and Human Rights: Further steps toward the operationalization of the “protect, respect and remedy” framework, U.N. DOC. A/HRC/14/27 at ¶ 1 (Apr. 9, 2010) [hereinafter SRS April 9, 2010 Report].

¹⁶² See SADP INSPECTION PANEL REQUEST, *supra* note 130 (alleging the World Bank’s failure to properly assess environmental risks).

¹⁶³ See AMNESTY INTERNATIONAL, TIME TO INVEST IN HUMAN RIGHTS, A HUMAN RIGHTS DUE DILIGENCE FRAMEWORK FOR THE INTERNATIONAL FINANCE CORPORATION (2010) at 23-24, available at

human rights impact assessment because IFC has even failed in its draft revision of its Performance Standards to reference the human rights impact assessment and management (“HRIAM”) tool that it recently co-sponsored.¹⁶⁴ Furthermore, the World Bank Group is out of step with other development finance institutions in its failure to adopt an explicit HRIA requirement.¹⁶⁵

World Bank Group policy should include *explicit human rights due diligence language* so that human rights risks to indigenous people are identified and addressed through HRIA and corresponding management systems.¹⁶⁶ Policy should be clear that supply chains are within the ambit of assessments and that human rights policies—and all World Bank Group policies—apply equally to financial intermediary lending and advisory services.

Importantly, with regard to both HRIA and EIAs, the IFC should commit to independently verifying client information to ensure the credibility of this process *for each project*, just as OPIC has proposed.¹⁶⁷

Furthermore, cumulative risk assessment is crucial to understanding risks to indigenous rights from agribusiness projects, particularly when legacy issues are at play.¹⁶⁸ As the World Bank’s recent *Farmland* report notes, “[d]ealing effectively with investments that have been approved in the past but that may have ceased operation can, in some countries, pose significant challenges. In many instances, bankrupt investments have destroyed or degraded local resources but, [when] no resources are available for dealing with this legacy, it is local communities who are left with the cost.”¹⁶⁹ As examples, if a proposed IFC milling project is to be constructed by a river and there is no information regarding an existing or proposed series of mills upstream, the mill may contribute to a toxic load in the waterway that is above acceptable limits. In the social and human rights context, cumulative assessment is equally important: if in this example the new mill is constructed where past involuntary displacement of indigenous groups happened as a result of a previous project, the proposed IFC investment may contribute to indigenous rights violations.

Only with a cumulative impact assessment will the World Bank Group be able to holistically identify and address the true project risks. IFC Performance Standard 1 should include

<http://www.amnesty.org/en/library/asset/IOR80/004/2010/en/4c6c3700-22ba-47fd-9da7-a442d7e19594/ior800042010en.pdf> [hereinafter TIME TO INVEST].

The duty to conduct human rights impact assessment and develop management systems is identified by UN Special Representative John Ruggie as part of the corporate “duty to respect” human rights. See SRSG April 9, 2010 Report, *supra* note 161.

¹⁶⁴ See International Finance Corporation, Global Compact, International Business Leaders Forum, GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT (2010), available at <https://www.guidetohriam.org/guide/drawstep/pre-step1/human-rights-scenarios> (note that free registration is required for site access) [hereinafter HRIAM].

¹⁶⁵ For example, the Overseas Private Investment Corporation (“OPIC”) Draft Labor and Human Rights Policy Statement states that OPIC and its clients will review human rights risks and impacts of each project, including projects through financial intermediaries. OPIC Draft Labor and Human Rights Policy Statement, ¶ 4.6, available at http://www.opic.gov/sites/default/files/docs/opic_proposed_lhrps_080410.pdf (last visited Sept. 11, 2010).

¹⁶⁶ The IFC needs no advice detailing what an HRIAM should include given their co-sponsorship of just such a detailed tool. See HRIAM, *supra* note 164. See also ROADMAP FOR INTEGRATING HUMAN RIGHTS, *supra* note 148.

¹⁶⁷ OPIC Draft Labor and Human Rights Policy Statement, ¶ 4.6; see also Civil Society Joint Comments, *supra* note 155, at 5-6.

¹⁶⁸ See also Civil Society Joint Comments, *supra* note 155, at 7.

¹⁶⁹ FARMLAND REPORT, *supra* note 4 at 95.

analysis during impact assessment of past or existing projects and other planned and/or foreseeable activities within a project's area of influence.

Action plans and risk mitigation measures that follow from human rights impact assessment and management systems are an international law requirement when projects impact indigenous people. Under Article 32 of the UN Declaration of the Rights of Indigenous Peoples, with regard to “project[s] affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources[,] appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”¹⁷⁰ The World Bank Group must implement its own requirements to create, disclose, and consult with communities about action plans¹⁷¹ for projects that, without these steps, cause harm to indigenous groups.¹⁷²

Project-level grievance mechanisms are a further element of the framework established by UN Special representative John Ruggie under the banner of “access to remedies.”¹⁷³ While IFC's Performance Standards 1, 2 and 5 require project-level grievance mechanisms, there is often a failure to implement such mechanisms or inform indigenous groups that they exist.¹⁷⁴ Implementation of the grievance mechanism requirement should be prioritized in terms of staff training, staff sanctions, and World Bank Group project resources.

Finally, the project monitoring requirements in OP 4.01 and PS 1 must be integrated into human rights due diligence requirements.¹⁷⁵ Policy should be clear that monitoring is equally important for financial intermediary investments.¹⁷⁶

iii. Assure strong development outcomes

Despite a mandate of poverty alleviation, World Bank Group projects in the agribusiness sector often lead to poor development outcomes.¹⁷⁷ The World Bank itself recently noted that the

¹⁷⁰ UNDRIP, *supra* note 134 at Art. 32.

¹⁷¹ Action Plans are required as part of PS 1 and OP 4.01. See IFC Performance Standards, *supra* note 58; WORLD BANK OP, *supra* note 150.

¹⁷² In the PNG SADP case before the Inspection Panel, years after an action plan would have been required, there is still no action plan available to community members.

¹⁷³ SRSG April 9, 2010 Report, *supra* note 161 at ¶ 1.

¹⁷⁴ See ROADMAP FOR INTEGRATING HUMAN RIGHTS, *supra* note 148 at 34; see, e.g., Complaint from Citizens of the Shibibo-Konibo indigenous villages of Canaan de Cachiyacu and Nuevo Sucre regarding IFC client Maple Energy Plc (Maple), April 6, 2010 at 22, available at http://www.cao-ombudsman.org/cases/document-links/documents/MapleCAOComplaint_English_April2010.pdf (last visited Sept. 17, 2010) (regarding this IFC oil investment on indigenous land, “Neither the community of Canaán nor Nuevo Sucre is aware of a grievance mechanism for either workers or community members that pertains to Maple’s operations... Failure to have grievance mechanisms in these communities violates PS 1, para. 23 and PS 2, para. 13.”).

¹⁷⁵ Accord ROADMAP FOR INTEGRATING HUMAN RIGHTS, *supra* note 148 at 18.

¹⁷⁶ See Civil Society Joint Comments, *supra* note 155, at 17.

¹⁷⁷ In the palm oil sector, for example, the World Bank Group notes, “the sector’s negative environmental and social impacts, including deforestation, biodiversity loss, greenhouse gas emissions, land use conflicts, and questions over land tenure and human rights.” Draft Framework, *supra* note 5 at 3. The World Bank Group is aware of its own poor development outcomes through experience with complaints to the CAO and Inspection Panel, and IEG evaluations of projects in Indonesia, Nigeria, Cameroon, PNG and Malaysia. Annex III: World Bank Group’s Experience in the Palm Oil Sector, at 30-35.

recent upsurge in land acquisition for agriculture will create risks because “weak protection of land rights may lead to uncompensated land loss by existing land users or land being given away well below its true social value. This could lead to a large divergence between financial and economic benefits and an illusion of profitability even for projects that are undesirable from the country perspective.”¹⁷⁸ The Bank further noted, “these are real dangers that need to be addressed if the potential benefits from such investments are to be realized.”¹⁷⁹

Negative outcomes are particularly intense for indigenous groups. By tying indigenous and other local peoples to large monocrop farms for their livelihoods, and also forcing project affected people to purchase less nutritious foods that are imported at high prices, agribusiness can exacerbate the poverty of already vulnerable groups if these risks are not avoided or mitigated in project design.¹⁸⁰ A power imbalance can result from lack of income diversification where indigenous groups are forced to accept the terms of agribusiness producers no matter how unfair their terms. Thus, measuring development outcomes with indicators such as jobs created fails to take into account the countervailing economic pressures that can create impoverishment for those same ‘newly employed’ smallholders. Both the Indonesian and the Papua New Guinea palm oil examples discussed above are cases in point.¹⁸¹

Because large-scale agribusiness is most successful when leveraging economies of scale, it is often at odds with the maintenance of indigenous and traditional peoples’ ways of life.¹⁸² Agribusiness requires large amounts of land, and the lands of indigenous groups are often the ones that are sacrificed, through both formal and informal expropriation, to meet this insatiable need.¹⁸³ However, indigenous communities also require large tracts of land themselves in order to maintain traditional culture and livelihoods. Indigenous groups tend to use land non-intensively, but require

¹⁷⁸ FARMLAND REPORT, *supra* note 4, at 50-51.

¹⁷⁹ *Id.* at 51.

¹⁸⁰ See, e.g., Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No. 4 (Pontianak, Indonesia)*, THE WORLD BANK GROUP 10 (2010), available at [http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations_Pontianak/\\$FILE/Stakeholders+Consultations+Report+No4%2C+Pontianak.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations_Pontianak/$FILE/Stakeholders+Consultations+Report+No4%2C+Pontianak.pdf). [hereinafter *Woodhill Report No. 4*] (describing how the smallholder farmer’s income is not sufficient to meet his minimum physical needs, that “[v]egetables, rice, roots, corn, firewood, medicinal plants and side dishes (on land and in rivers/lakes) are lost when the whole forest and farming areas [are] developed into...plantations[;]” that family income is decreasing, and that indigenous peoples are suffering from malnutrition). See also, Saturnino M. Borrás Jr. & Jennifer Franco, *Towards a Broader View of the Politics of Global Land Grabbing*, Initiatives in Critical Agrarian Studies, Land Deal Politics Initiative and Transnational Institute, May 2010, at 5 (describing that peoples become increasingly dependent on international markets to achieve food security), see also Anderson, *supra* note 5, at 2 (stating that despite higher global food production rates, local smallholders are more hungry than before due to higher food prices, lower incomes, and more unemployment) and 3 (“Farmers raising export crops to feed wealthy consumers in industrialized countries are likely to get much more support than farmers raising staple food crops for home consumption and local or regional markets.”); see also CERD URGENT ACTION, *supra* note 34, at 11.

¹⁸¹ See generally CAO WILMAR AUDIT, *supra* note 39 (finding that the Indonesian agribusiness project led to no increase in quality of life for affected peoples, and perhaps even to a decrease in their quality of life; with respect to all Wilmar projects, the CAO found that IFC had violated its mandate of poverty alleviation); see *supra* Section II.B. (PNG SADP) (describing that because the smallholders will have to pay for burdensome tollroads, and do not enjoy the benefits of the revenue generated from the final export product due to unfair deductions, their way of life will not improve as a result of the agribusiness project).

¹⁸² Taylor and Bending, *supra* note 131, at 10 (“Large-scale mechanised agriculture is often not the most efficient form of production, over and above the significant social, environmental and political risks it poses.”)

¹⁸³ See, e.g., *supra* Section II.A.i. (regarding the IFC’s investment in Wilmar).

space to move periodically so that they can allow temporarily exploited areas the opportunity to recover.¹⁸⁴ The encroachment of agribusiness onto fallow lands then irreversibly harms traditional livelihoods, which become unsustainable.¹⁸⁵

International law recognizes that all peoples have the right to a certain minimum standard of living,¹⁸⁶ and to autonomy in providing for their own subsistence. The International Covenant on Economic, Social, and Cultural Rights states that “[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. *In no case may a people be deprived of its own means of subsistence.*”¹⁸⁷ Not only should the World Bank Group refrain from violating this international law obligation, it should ensure that its mission of poverty alleviation is being met through strong development outcomes.¹⁸⁸ Nonetheless, IFC’s proposed changes to Performance Standard 7 on indigenous people does not require that indigenous people impacted by a project receive compensation that improves their standard of living, rather, if harm cannot be avoided, PS 7 allows the client to merely “reduce” impacts.¹⁸⁹

Assessment of projects should include qualitative indicators to determine whether, for example, creation of jobs in the sector has nonetheless hurt the quality of life for those workers and their communities.¹⁹⁰ *Such information must be verified through information directly from affected populations.*

¹⁸⁴ GREENPEACE REPORT, *supra* note 15, at 48.

¹⁸⁵ FARMLAND REPORT, *supra* note 4, at 68.

¹⁸⁶ ICESCR, *supra* note 134, at Arts. 1, 11; see also Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR 34th Sess., Supp. No. 46 U.N. Doc. A/34/36 (1980), (entered into force 3 Sept. 1981), reprinted in 19 I.L.M. 33 (1980); Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), UN GAOR, 3rd Sess., (Resolutions, part 1), at 71, Supp. No. 13, U.N. Doc. A/810 (1948), reprinted in 43 AM. J. INT’L L. SUPP. 127 (1949) [hereinafter UDHR]; Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the World Food Conference, endorsed by G.A. Res. 3348 (XXIX) 1974, 29th Sess., U.N. Doc. E/CONF. 65/20 (1974) [hereinafter UDEHM]; Declaration on the Right to Development, G.A. Res. 41/128, annex, 41 U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (1986) [hereinafter DRD]; Committee on Economic, Social and Cultural Rights: General Comment No. 15, U.N. ESCOR, Comm. On Econ., Cultural and Soc. Rts., 29th Sess., E/C.12/2002/11 (2003); San Salvador Protocol, *supra* note 2; Rome Declaration on World Food Security, Food and Agriculture Organization of the United Nations, Report of the World Food Summit, Rome, 13–17 Nov. 1996, Part One (WFS 96/REP) (Rome, 1997), appendix; Istanbul Declaration and Program of Action on Human Settlements, adopted by United Nations Conference on Human Settlements, 4 June 1996.

¹⁸⁷ ICESCR, *supra* note 134, at Art. 1 (emphasis added). *See also id.* at Art. 11 §2 (“The States Parties to the present Covenant, recognizing the **fundamental right of everyone to be free from hunger**, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) **Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.**” (emphasis added)); International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Art. 1 §2, Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) [hereinafter ICCPR].

¹⁸⁸ IFC Performance Standards, *supra* note 58; WORLD BANK OP, *supra* note 150, at OP 1.00.

¹⁸⁹ IFC POLICY PROGRESS REPORT, *supra* note 158, at 88-89.

¹⁹⁰ Failures of the World Bank to ensure that agribusiness projects create positive development outcomes has been recognized recently by the World Bank’s own report. FARMLAND REPORT, *supra* note 4 at xi, 69.

iv. *Respect indigenous rights under host country and international law*

IFC has a clear directive that clients must comply with “applicable national laws, including those laws implementing host country obligations under international law.”¹⁹¹ World Bank policy applicable to IBRD and IDA states that international agreements must be followed to the extent that projects have effects on the “country’s environment and on the health and well-being of its people.”¹⁹² While this policy commitment is a good starting point, the World Bank Group’s policy must be more explicit regarding a commitment that its clients must respect international human rights law, and indigenous rights in particular.¹⁹³ In addition, World Bank Group policy should clearly state how client compliance with host country and international law is *verified* and on what public information that verification is based. Furthermore, the World Bank Group’s own policy must be consistent with international law. As seen throughout this report, World Bank Group standards do not meet international standards for protection of indigenous rights.¹⁹⁴ Finally, and most important, challenges of *implementation* of duties to follow host country and international law must be addressed as a precursor to further World Bank Group investment in agribusiness.¹⁹⁵

v. *Ensure appropriate disclosure of project information*

Failure to appropriately disclose project information and information regarding grievance mechanisms creates a significant barrier for upholding indigenous peoples’ rights. As the World Bank itself recently noted, “[c]onsultation with local right holders is in many cases superficial, with a lack of prior information and no written agreements that would clearly specify different parties’ responsibilities and thus could be used to provide a basis for redress in case agreements are not adhered to.”¹⁹⁶ Without the requisite information, indigenous peoples cannot give free, prior and informed consent (or consultation), cannot give input into project design, are prevented from making decisions about their own development, and cannot access the grievance mechanisms to which they are entitled.

On the public-sector side of the World Bank, OP 4.01, which requires consultation for a Category A or B project, states that the borrower must disclose the EA information to project-affected groups and local NGOs in a timely manner, prior to consultation, and in a form and language that is understandable and accessible to the groups being consulted.¹⁹⁷ OP 4.11 relates to indigenous peoples and their culture¹⁹⁸ and also requires disclosure of information of the Bank’s evaluation of impacts on cultural resources that are identified in the EA.¹⁹⁹ The issue with these

¹⁹¹ Introduction, Performance Standards on Social and Environmental Sustainability (April 30, 2006), para. 3.

¹⁹² World Bank, Operational Manual Statement (OMS) 2.20.

¹⁹³ For analysis of the World Bank Group’s international human rights law responsibilities, *see* Steven Herz and Anne Perrault, BRINGING HUMAN RIGHTS CLAIMS TO THE WORLD BANK INSPECTION PANEL, Oct. 2009, *available at* www.bicusa.org/en/Document.101841.aspx; ROADMAP FOR INTEGRATING HUMAN RIGHTS, *supra* note 148; Crippa, *supra* note 141; TIME TO INVEST, *supra* note 163.

¹⁹⁴ *Id.*

¹⁹⁵ *Accord FARMLAND REPORT*, *supra* note 4, at 69; Draft Framework, *supra* note 5, at 12 (recognizing the need for a policy and regulatory environmental appropriate for palm oil investment, but failing to make this a pre-condition for future lending).

¹⁹⁶ FARMLAND REPORT, *supra* note 4, at 51.

¹⁹⁷ WORLD BANK OP, *supra* note 150, at 4.01, para. 15.

¹⁹⁸ *Id.* at OP 4.11, para. 1.

¹⁹⁹ *Id.* at OP 4.11, para. 4.

provisions comes back again to classification of projects where agribusiness projects impacting indigenous peoples have been categorized as C, and even when they are categorized as A or B, there is an implementation failure where project documents are not disclosed pursuant to this policy. For example, in the PNG Smallholder Agricultural Development Project, classified as B, project documents were not distributed in a timely manner. When they were eventually distributed, they were not disclosed to all project-affected people, they were in English only, and were distributed on an inaccessible CD-Rom.²⁰⁰ As a result, the indigenous smallholders were not able to learn about the project and voice concerns in a manner that could contribute to project design. They now fear that the project will make them poorer, will cause particular harm to women, and will divert forest land, all issues that could have been ‘designed around’ had there been proper disclosure up front.

The IFC Disclosure Policy should be altered to change from a presumption of secrecy to a presumption of disclosure.²⁰¹ IFC Performance Standard 1 requires that project information be disclosed, including:

information on the purpose, nature and scale of the project, the duration of proposed project activities, and any risks to and potential impacts on such communities. For projects with adverse social or environmental impacts, disclosure should occur early in the Social and Environmental Assessment process and in any event before the project construction commences, and on an ongoing basis.²⁰²

However, there is no disclosure required of supervision and monitoring reports, or of how information is independently verified for determining broad community support.²⁰³ Even implementation of these current project-level information disclosure provisions is seriously deficient.²⁰⁴

Disclosure is also required of Action Plans.²⁰⁵ Such disclosure is often lacking in IFC agribusiness projects. As Bank Information Center has offered as a solution:

IFC can [make] clients’ documents publicly available on IFC’s website in addition to the disclosure of its own assessment. IFC can disclose how its clients are implementing Community or Indigenous Peoples Development Plans (IPDP), any benefit sharing agreements that project sponsors and affected communities agree on, or client reports on social assistance provided to communities. This measure will reinforce the client’s responsibility to report on development outcomes to communities directly. Disclosing client’s reports on impacts is consistent with the 2008 recommendation of IFC’s Compliance Advisor/ Ombudsman (CAO) on

²⁰⁰ SADP INSPECTION PANEL REQUEST, *supra* note 130, at 6-7.

²⁰¹ *Accord Civil Society Joint Comments*, *supra* note 155, at 5.

²⁰² IFC Performance Standards, *supra* note 58 at PS1, para. 20.

²⁰³ *See Civil Society Joint Comments*, *supra* note 155, at 10; *TIME TO INVEST*, *supra* note 163, at 21-22.

²⁰⁴ *See Bank Information Center, Review of IFC Sustainability Policy, Performance Standards and Disclosure Policy, BIC Concerns and Policy Recommendations* 3 (May 11, 2010).

²⁰⁵ IFC Performance Standards, *supra* note 58, at PS1, paras. 16, 20.

improving local development impacts at the project level.²⁰⁶

- vi. *Respect land rights, including recognition of existing land conflicts, and good faith voluntary land transfers through negotiated agreements*

Agribusiness projects cause inordinate harm to indigenous and traditional peoples because, despite significant attachment to their land, government and international entities often do not recognize land tenure and fail to account for customary land rights: as a result, land grabbing is a significant problem.²⁰⁷

For instance, despite government commitments to secure indigenous land tenure in a number of countries, few currently have well-funded national indigenous lands demarcation or titling programs.²⁰⁸ In most countries, indigenous agencies are a low priority for governments and have insufficient budgets, limiting their capacity to operate effectively in advocating for indigenous land tenure rights.²⁰⁹ The World Bank recently noted that:

[I]and boundaries (and rights) are often ill-defined and environmental and social safeguards can be neglected. Government capacity to monitor compliance is severely limited. But instead of relying on publicity of relevant documents and independent third party verification, agreements are surrounded by an air of secrecy that makes public reporting and monitoring near impossible.²¹⁰

In the Mato Grosso region of Brazil, as a result of the allure of IFC funding, the government's lack of an effectively enforced indigenous land tenure system, and a disregard for indigenous land rights, IFC-supported large soy farms illegally encroached upon indigenous territory throughout the 2000s.²¹¹ Undervaluation of land is another symptom of this problem. In a case study in Tanzania, for example, the World Bank itself has found that land users received "less than the benefits they derived from the land earlier, making them objectively worse off."²¹² Projects that cause an influx of cash often drive powerful actors to ignore or evade the rights of indigenous peoples in order to maximally exploit such funding.²¹³ Additionally, through the sheer approval of funding for these projects, the Bank perpetuates a persistent ethnocentric view that

²⁰⁶ Bank Information Center, *Review of IFC Sustainability Policy, Performance Standards and Disclosure Policy, BIC Concerns and Policy Recommendations* (May 11, 2010) at 3, available at http://www.ansa-africa.net/uploads/documents/publications/IFC-BIC_20100513.pdf.

²⁰⁷ See FARMLAND REPORT, *supra* note 4 at 69 (noting, *inter alia*, the need for rights recognition, voluntary land transfers). For an assessment of how the World Bank has addressed land grabbing in this controversial report, see GRAIN, *World Bank report on land grabbing: Beyond the smoke and mirrors*, available at <http://farmlandgrab.org/15542> (last visited Sept. 17, 2010). See also Taylor and Bending, *supra* note 131, at 7 ("Virtually no large-scale land allocations can take place without displacing or affecting local populations.").

²⁰⁸ A SURVEY OF INDIGENOUS LAND TENURE: A REPORT FOR THE LAND TENURE SERVICE OF THE FOOD AND AGRICULTURE ORGANIZATION 4 (Marcus Colchester ed., Food and Agriculture Organisation) (Dec. 2001), available at http://www.rightsandresources.org/publication_details.php?publicationID=1177 [hereinafter Colchester].

²⁰⁹ *Id.*

²¹⁰ FARMLAND REPORT, *supra* note 4, at 51; see also Taylor and Bending, *supra* note 131, at 15.

²¹¹ See, e.g., AMAGGI EXPANSION *supra* note 120; and GRUPO ANDRE MAGGI, *supra* note 93.

²¹² FARMLAND REPORT, *supra* note 4, at 78.

²¹³ See, e.g., Bad to Worse, *supra* note 109.

indigenous lands are under-utilized and free for the taking.²¹⁴ As a result of the insufficient checks on how land is transferred, the World Bank Group’s support for agribusiness encourages private enterprise and national governments to exploit these structural weaknesses at the expense of indigenous and traditional people.²¹⁵

While World Bank Group policies briefly allude to indigenous peoples having rights to natural resources on lands they occupy²¹⁶ and to respecting indigenous peoples’ land tenure and use rights when beginning a plantation project on indigenous lands,²¹⁷ nevertheless the land rights of indigenous and other traditional peoples are far from assured. As part of the Performance Standard review, the proposed change to IFC Performance Standard 5, regarding Land Acquisition and Involuntary Resettlement, includes a requirement of the client that there be a post-resettlement completion audit *under certain circumstances*, and a compensation plan.²¹⁸ While this is a positive step in the right direction if resettlement occurs, PS 5 should be altered to ensure that audits are always required where there is resettlement, the requirement should be time bound, and compliance with resettlement obligations should be independently verified in the audit by consultation with those resettled. Further, PS 5 should ensure that forced resettlement does not occur unless under “exceptional circumstances” and even then, only where plans for resettlement are made in consultation with those to be resettled and with the guarantee that livelihoods be *improved*, not just restored.²¹⁹ A major deficiency that remains in PS 5 even under the proposed IFC changes is that “land for land” is not required.²²⁰ This should be changed such that if “land for land” is not possible, there is no resettlement. The current proposed change to PS 5 would allow people to be displaced from their land and their livelihood to be restored at an equal level—in other words, IFC is proposing that its policy allow its projects to turn the landed poor into landless poor.²²¹ The proposed changes to PS 5 remain in direct violation of the UN Declaration on the Rights of Indigenous People.²²²

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 agribusiness will continue to create situations where the land rights of communities are undermined by World Bank Group investment.²²³ Without full information disclosure, and good faith negotiation on the part of buyers, ***land transfers will continue to be negotiated under standards that fail to meet international law designed to protect***

²¹⁴ Colchester, *supra* note 208, at 4.

²¹⁵ See FARMLAND REPORT, *supra* note 4, at 69 (discussing the risks of illegal land conversion in the absence of protections the World Bank Group does not provide, but failing to mention the World Bank’s role).

²¹⁶ WORLD BANK OP, *supra* note 150, at 4.10 (describing that indigenous peoples must be informed of their rights with respect to natural resources on their lands when a project involves the commercial development of the natural resources).

²¹⁷ IFC Performance Standards, *supra* note 58, at 24 (stating that part of the certification process that is required for plantation projects includes respecting the land tenure and use rights of indigenous peoples).

²¹⁸ IFC POLICY PROGRESS REPORT, *supra* note 158, at 13.

²¹⁹ Civil Society Joint Comments, *supra* note 155, at 24; see mark up of policy at IFC POLICY PROGRESS REPORT, *supra* note 158, at 74.

²²⁰ IFC POLICY PROGRESS REPORT, *supra* note 158, at 78-79.

²²¹ *Id.* (see the “equivalent to” language at the top of page 79).

²²² UNDRIP, *supra* note 134, at Arts.10, 26, 32.

²²³ In the Wilmar case, Forest Peoples Programme notes that IFC approved the project even though 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. *FPP Procedural Irregularities*, *supra* note 45, at 6.

*the human rights of indigenous peoples.*²²⁴

vii. *Ensure that projects impacting indigenous groups use free, prior and informed consent (“FPIC consent”) and prohibit forced relocation*

By requiring only FPIC Consultation and good faith negotiation rather than FPIC Consent from indigenous peoples when projects impact their land, the World Bank Group is an active player in the denial of indigenous peoples their traditional and customary land rights. When projects proceed without consent from indigenous groups, this can contribute to forced, even violent, displacement. When the World Bank Group proceeds with support for agribusiness in countries where indigenous leaders are intimidated from protesting against their forced displacement, the Bank is in danger of aiding and abetting these crimes.²²⁵

Although the World Bank Group states that the rights of indigenous peoples should be respected, its policies do not allow indigenous peoples the right to withhold consent from a project on their land, nor do they enumerate the right to refuse involuntary resettlement.²²⁶ The World Bank Group’s current policies only require that free, prior, informed consultation result in broad community support, even when projects impact indigenous communities.²²⁷ Even here, the details of how a borrower determines broad community support are ambiguous and non-transparent, yet the World Bank Group continues to uphold this standard.²²⁸

Moreover, the World Bank Group recognizes no right to consultation with indigenous peoples for projects not on their lands, but which may substantially affect their lands or

²²⁴ See UNDRIP, *supra* note 134, at Art. 17 (“States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”), Arts. 18 and 19 (rights of indigenous peoples to participate in decision-making and FPIC), Article 26 (indigenous rights to traditional lands), Article 27 (requirement to recognize indigenous peoples’ land tenure systems); Art. 32 (right to determine and develop land strategies); ILO Convention 169, *supra* note 134, at Art. 17 (“Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.”); CERD, *supra* note 134 at Art. 5(d)(v) (people have the “right to own property alone as well as in association with others”) and (e)(iii) (“the right to housing”); ICESCR, *supra* note 134 at Art. 1(2) (“In no case may a people be deprived of its own means of subsistence”); UDHR, *supra* note 186 at Art. 17 (“[e]veryone has the right to own property alone as well as in association with others.”); see also FARMLAND REPORT, *supra* note 4, at 69.

²²⁵ Colchester, *supra* note 208, at 4; see also RAN AGRIBUSINESS IN THE RAINFOREST FACT SHEET, *supra* note 5 (detailing the violent displacement of indigenous and traditional peoples in the countries of Paraguay, Papua New Guinea, and Indonesia).

²²⁶ IFC Performance Standards, *supra* note 58, at 28, 18; WORLD BANK OP, *supra* note 150, at 4.10, 4.12.

²²⁷ IFC Performance Standards, *supra* note 58, at PS 7 and IFC, Environment & Social Review Procedure, Version 2.0, (31 July 2007), 33.

²²⁸ See TIME TO INVEST, *supra* note 163, at 36; see also Crippa, *supra* note 141, at 12-13 (describing international precedent for the requirement for free, prior and informed consent for indigenous peoples, including a statement by the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples that “[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects[.]”); Bank Information Center, *Review of IFC Sustainability Policy, Performance Standards and Disclosure Policy, BIC Concerns and Policy Recommendations* (May 11, 2010) at 4 (“With the respect to the principle of Free Prior and Informed Consent, the IFC Policy and Performance Standards should be upgraded to ensure consistency with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Environmental and Social Policy of the European Bank for Reconstruction and Development (EBRD).”).

resources.²²⁹ IFC's proposed revision for PS 6, Biodiversity Conservation and Sustainable Natural Resource Management, states that in addition to the prior PS 6's requirement, clients must consult with indigenous peoples when they are stakeholders in a project's land "as appropriate," but only with regard to projects on legally protected and designated areas.²³⁰ This requirement should be extended to all projects on land in which indigenous peoples are stakeholders.

The World Bank Group's position on FPIC Consent is out of line with not only international law, but also the policies of other international financial institutions.²³¹ In its reports, *even the Bank itself* recognizes that its policies and practices will cause harm unless consent is required. The Bank's recent *Farmland* report states, "rights to land and associated natural resources need to be recognized, clearly defined on the ground, and enforced at low cost. This includes both ownership and user rights to lands that are managed in common areas, state lands and protected areas."²³² In the same vein, "[t]ransfers of land rights should be based on users' voluntary and informed **agreement**, provide them with a fair level of proceeds, and not involve expropriation for private purposes."²³³ Nonetheless, IFC's proposed changes to PS 7 on indigenous people still fail to require FPIC Consent.²³⁴

While IFC Policy on Social and Environmental Sustainability pledges generally that the Bank will do no harm to people while pursuing social and environmental opportunities in development, in practice, excessive force can take place during resettlements.²³⁵ Additionally, although IFC policy says that involuntary resettlements should be carefully planned and implemented,²³⁶ there is no explicit prohibition on the use of force when an involuntary resettlement is met with resistance by local peoples, as it often is.²³⁷

International law requires that when a development project will impact indigenous peoples, that project may not go forward without their free, prior, and informed consent.²³⁸ Failing to uphold the right under international law to FPIC Consent for indigenous groups leads to violations of

²²⁹ IFC Performance Standard, *supra* note 58, at 28; WORLD BANK OP, *supra* note 150, at 4.10; *see also* Crippa, *supra* note 141, at 3.

²³⁰ IFC POLICY PROGRESS REPORT, *supra* note 158, at 84.

²³¹ *See* European Bank for Reconstruction and Development ("EBRD"), 2008 Environmental and Social Policy, Performance Requirement 7, para. 4 at 50 ("This PR recognises the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples, that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 31–37, given the specific vulnerability of Indigenous Peoples to the adverse impacts of such projects.").

²³² *See* FARMLAND REPORT, *supra* note 4, at 68.

²³³ *Id.* (emphasis added).

²³⁴ IFC POLICY PROGRESS REPORT, *supra* note 158, at 87-92.

²³⁵ *See, e.g., Woodhill Report No. 4, supra* note 180, at 7 (At the Pontiak, Indonesia consultation, a government civil servant described that force was used to move people off their land who refused to move).

²³⁶ IFC Performance Standards, *supra* note 58, at 18; WORLD BANK OP, *supra* note 150, at 4.12.

²³⁷ Amnesty IFC Comments, *supra* note 42, at 20 (describing that the World Bank Group, specifically IFC, should but do not currently incorporate necessary safeguards which should accompany resettlement policies to ensure that they are not forced evictions of local peoples).

²³⁸ ICESCR, *supra* note 134, at Art. 11(1) ("The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."); UNDRIP, *supra* note 134, at Art. 10; CERD, *supra* note 134, "General Recommendation XXIII: Indigenous Peoples" (18 Aug. 1997) A/52/18, annex V, Para 5); UN Human Rights Committee, Ángela Poma Poma 27/3/2009, Communication No. 1457/2006.

the right of indigenous people—and all people—to have freedom and security of person.²³⁹ Forcible removal of indigenous peoples from their land or territory—whether by governments, corporations or international institutions—is an explicit violation of international law.²⁴⁰

FPIC consent is also required before adoption of legislative or administrative measures that impact indigenous peoples.²⁴¹ This has broad implications for the World Bank’s IBRD and IDA in particular, where consent should be freely given before loan agreements with governments are signed and projects proceed.

viii. Respect the self-determination of indigenous peoples, including respect of culture and their decisions about their own development

World Bank Group policy and practice fails to respect indigenous rights to self-determination, in particular with regard to their decisions about their own development. As Marcus Colchester states, agribusiness projects “ignor[e] indigenous visions of land and development in favour of narrow, ‘productivist’ goals.”²⁴²

International law recognizes the duty to respect the self-determination of indigenous peoples, including respect of culture and their decisions about their own development.²⁴³ For

²³⁹ ICCPR, *supra* note 187 at Art. 9; UDHR, *supra* note 186 at Art. 3 (“Everyone has the right to life, liberty and security of person.”). For indigenous peoples specifically, *see* UNDRIP, *supra* note 134 at Art. 7(1) (“Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.”) and 7(2) (“[i]ndigenous peoples have the collective right to live in freedom, peace and security as distinct peoples”); ICCPR, *supra* note 187 at Art. 12 (“[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).

²⁴⁰ UNDRIP, *supra* note 134 at Art. 10 (“[i]ndigenous peoples shall not be forcibly removed from their lands or territories.”); Olivier de Schutter, Report of the Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*, June 11, 2009; *see also* Taylor and Bending, *supra* note 131, at 11 (“Not only host States but also private investors and their home countries have an obligation to respect a range of human rights in connection with foreign direct investment in land.”).

²⁴¹ UNDRIP, *supra* note 134, at Art. 19.

²⁴² Colchester *supra* note 208, at 4.

²⁴³ ICESCR, *supra* note 134, at Art. 1 (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”); UNDRIP, *supra* note 134 at Art. 3 (“Indigenous people have the right to self-determination. By virtue of that right they freely . . . pursue their economic, social and cultural development.” Art. 31. “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions”. Art. 23. “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”); ILO Convention 169, *supra* note 134, at Art. 5 (“the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals. . . [also] the integrity of the values, practices and institutions of these peoples shall be respected[.]”), Art. 7 (“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect

instance, the UN Declaration on the Rights of Indigenous Peoples, Article 1, states that “[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms.” This means that indigenous peoples must have the ability to preserve and perpetuate their culture and traditional knowledge.

In contrast, the World Bank Group’s policies inadequately protect against adverse effects on indigenous culture and traditional knowledge. IFC policies urge their borrowers to engage with local communities only in certain project situations,²⁴⁴ and merely to “strive” to respect indigenous peoples.²⁴⁵ IFC’s policy on cultural heritage merely states that cultural heritage is important, and creates no affirmative preservation duty. Similarly, the World Bank’s policy on cultural heritage only requires that the Bank *attempt* to avoid harming cultural resources, and only aims to protect *physical* cultural resources.²⁴⁶

Furthermore, when borrowers forcefully remove indigenous and other peoples from their land, World Bank Group policy only requires borrowers to compensate these peoples for tangible losses such as loss of housing or agricultural land, and not for intangible losses to their traditional culture, practices, and knowledge resulting from relocation from their ancestral lands.²⁴⁷

The right to conserve their natural resources is an additional right that international law emphasizes for indigenous peoples.²⁴⁸ The World Bank Group’s policy language with respect to avoiding degradation of natural habitats, in contrast, is extremely weak and does not allow for indigenous people involvement at all. Throughout World Bank and IFC policies, they iterate the same language stating that borrowers should avoid degradation of natural habitats and critical natural habitats *if feasible*.²⁴⁹ However, there is no mandatory requirement to avoid certain high biodiversity value habitats or critical habitats, and no inclusion of indigenous peoples in the conservation or lack thereof decisions regarding habitats.²⁵⁰

The indigenous right to self-determination and a role in their own development can be reflected in World Bank Group policy through many of the changes recommended above, including disclosure of project information, creation of an explicit human rights due diligence policy, and adopting the standard of FPIC Consent.

them directly... The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.”).

²⁴⁴ IFC Performance Standards, *supra* note 58, at 1.

²⁴⁵ IFC Performance Standards, *supra* note 58, at 7 (describing that treating indigenous peoples with dignity and respect is a “goal” of the IFC).

²⁴⁶ IFC Performance Standards, *supra* note 58, at 24, 28, 32; WORLD BANK OP, *supra* note 150, at 4.10, 4.11.

²⁴⁷ IFC Performance Standards, *supra* note 58, at 18; WORLD BANK OP, *supra* note 150, at 4.12.

²⁴⁸ ILO Convention 169, *supra* note 134, at Art 15 (“The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”). *See also* UNDRIP, *supra* note 134 at Art. 29 (“Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”).

²⁴⁹ IFC Performance Standards, *supra* note 58, at 24; WORLD BANK OP, *supra* note 150, at 4.04, OP 4.36.

²⁵⁰ *See also* Crippa, *supra* note 141, at 10-11 (affirming that indigenous peoples should be involved in the management and control of protected areas on their land).

ix. *Apply IFC Policy to Financial Intermediary Lending and Advisory Services*

Improved IFC policy and a commitment to better implementing existing policy, are meaningless unless the loophole for Financial Intermediaries (“FIs”) and Advisory Services is closed. Safeguards for indigenous rights in IFC policy must apply equally to FIs in particular where the IFC now invests a majority of its funds.

The World Bank Group has addressed the impact of FIs in agribusiness in the context of the Bank’s palm oil review. However, the Draft Framework for palm oil fails to close the loophole because it does not require 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. There must be greater transparency in FI and Advisory Services activities to ensure that these activities are not masking harm. 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 and the large percentage of IFC investment in FI projects.²⁵¹

The transparency and disclosure recommendations above are particularly important with regard to FI and Advisory Services lending because the impacts of these activities are difficult to determine through project documents, but can cause serious harm to indigenous people.

x. *Assure that World Bank Group staff who fail to adhere to policy will be held accountable*

Indigenous people must be given “access to remedy” through both project-level grievance mechanisms and resort to the CAO and Inspection Panel. Current barriers to these mechanisms include the failure of clients to create project-level mechanisms and/or disclose such mechanisms, and lack of information about the CAO and Inspection Panel. Initial disclosures during project planning must begin to routinely include information about World Bank Group accountability.

Furthermore, the World Bank Group must ensure that its policies are meaningful by training staff on their importance²⁵² and creating sanctions when staff fail to uphold project requirements. Without sanctions for non-compliance, World Bank Group staff will be incentivized to view policies as voluntary, particularly given the pressures to speed through the safeguard process to approve loans quickly.²⁵³ Inverse incentives for staff should be established so that the Bank rewards staff who demonstrate strong policy compliance and positive project outcomes (as

²⁵¹ IFC’s investment in “global financial markets” is 35% of its portfolio. *IFC Global Agribusiness*, *supra* note 23, at 2.

²⁵² *Accord ROADMAP FOR INTEGRATING HUMAN RIGHTS*, *supra* note 148 at 23 (describing how “in 2009, the \$20 million Nordic Trust Fund began operating within the World Bank’s Operations Policy and Country Services unit. [...] The purpose of this fund is to increase the staff’s internal knowledge of the links between human rights and development. If successful, the fund will help coordinate human rights projects and awareness raising among the WBG’s institutions and staff.”).

²⁵³ See, e.g., Natalie L. Bridgeman, *World Bank Reform in the ‘Post-Policy’ Era*, 13 *Geo. Int’l Env’tl. L. Rev.* 1013 (2001) (regarding the need for staff incentive structure reform at the World Bank).

verified by local communities).²⁵⁴

xi. Verify Host Country Conditions

Finally, none of these recommendations will succeed in stemming harm from the World Bank Group's agribusiness practices until the Bank establishes a method to verify an appropriate regulatory environment in the host country that ensures capacity and willingness of host country governments to adhere to World Bank Group policy. In particular, the verification system must establish (1) a political environment that allows indigenous and community groups to organize and assert their land rights,²⁵⁵ and (2) prohibition on and credible sanctions for corporations, individuals, and state authorities that forcibly take land through threats or violence.

B. Current Initiatives to Address Agribusiness Issues are Insufficient

As discussed above, the World Bank Group is well aware of its impacts on indigenous people from its agribusiness lending. The World Bank Group's current initiatives, conferences,²⁵⁶ and a recently released report acknowledge these issues. However, these initiatives and reports do not commit to the changes that are required.

i. The World Bank Group Palm Oil Sector Strategy Review as a window into the Bank's approach to agribusiness reform

At the end of 2009, the World Bank Group was reeling from the scathing June 2009 CAO report on the Wilmar Group's investment and refinery activities in the palm oil sector, and the December 2009 complaint to the World Bank Inspection Panel regarding the SADP palm oil project, discussed above. In response and at the direction of President Zoellick, the World Bank Group suspended all palm oil projects (except for the SADP in Papua New Guinea), and initiated a holistic global review where it committed to consult with stakeholders in the formulation of an appropriate approach to its future activities in the palm oil sector.²⁵⁷ The World Bank Group Palm Oil Sector Strategy Review is comprised of two phases: multi-stakeholder consultations, which took place April to May 2010, and draft strategy and multi-stakeholder consultations taking place June to September 2010, which will in turn shape the final strategy due to be released in September 2010.²⁵⁸

From May to June 2010, the World Bank Group held a series of in-person stakeholder consultations, which took place in Washington D.C., Indonesia, Costa Rica, Ghana, and the

²⁵⁴ See Civil Society Joint Comments, *supra* note 155, at 11.

²⁵⁵ See FARMLAND REPORT, *supra* note 4, at 68.

²⁵⁶ For example, The 2010 Annual Land Conference on Land Policy and Administration at the World Bank raised many of the key issues discussed in this report, but failed to result in changed policy or practice. *About the Conference*, Annual Bank Conference on Land Policy and Administration, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/0,,contentMDK:22545500~pagePK:148956~piPK:216618~theSitePK:336682,00.html> (last visited July 26, 2010).

²⁵⁷ International Finance Corporation, World Bank Group Palm Oil Strategy 2010, About the Development of the World Bank Group Palm Oil Engagement Strategy 2010, <http://www.ifc.org/ifcext/agriconsultation.nsf/Content/AboutStrategy> (last visited Aug. 5, 2010).

²⁵⁸ International Finance Corporation, World Bank Group Palm Oil Strategy 2010, Stakeholder Consultations, <http://www.ifc.org/ifcext/agriconsultation.nsf/Content/ProvideInput> (last visited Aug. 5, 2010).

Netherlands.²⁵⁹ These consultations included representatives from across the stakeholder spectrum including civil society organizations, the private sector, government, research groups and think tanks, multilateral and development institutions, and the financial sector.²⁶⁰ The consultations focused on influencing and helping to develop the World Bank Group's upcoming policy on palm oil. Among the topics discussed, two themes emerged prominently: 1) Land Tenure and Forced Evictions,²⁶¹ and 2) Poverty and Food Security.²⁶²

Regarding the theme of land tenure, Indonesians at the consultation reported that much of the land used and to be used for palm oil is customary community-owned land. This has often led to ownership disputes where one communal owner decided to sell his land to a corporation without the permission or participation of other communal owners.²⁶³ Furthermore, there is a continuing problem of intimidation and the use of force by corporations to acquire indigenous peoples' land. A self-identified government official in Pontianak described an instance where the Indonesian government transferred a village's productive land to corporate hands so that the land would be available for palm oil production.²⁶⁴ When the village tried to contest the concession, a village leader in support of the government action refused to perform civic services for those villagers in opposition to the land transfer.²⁶⁵ These are not isolated incidents; rather, according to Indonesians at the consultation, they are examples of activities prevalent throughout the country.²⁶⁶

Poverty remains an issue directly associated with palm oil despite the World Bank Group's claims to the contrary.²⁶⁷ At the stakeholder consultations in Pontianak, Indonesia, stakeholders claimed that indigenous peoples are getting poorer due to the existence of oil palm plantations, and are even suffering from malnutrition.²⁶⁸ This is attributed to the loss of forest biosphere and traditional subsistence farming livelihoods. As a result, indigenous peoples are no longer able to provide food for themselves.²⁶⁹ Additionally, family incomes have decreased from 40-60% since the introduction of palm oil plantations into their communities.²⁷⁰ Any loans that indigenous peoples are able to receive as a result of the presence of palm oil conglomerates are both high-interest, and insufficient to offset the detrimental effects of palm oil production.²⁷¹ These assessments of the situation cast doubts as to the legitimacy and sustainability of the industry.

²⁵⁹ See *Woodhill Synthesis Report*, *supra* note 7 (setting out a five part framework: (1) analytical and preparatory work; (2) preparation of discussion paper; (3) multi-stakeholder consultations; (4) draft strategy and multi-stakeholder consultations; and (5) presentation of the final strategy).

²⁶⁰ *Id.*

²⁶¹ *Woodhill Report No. 4*, *supra* note 180, at 4.

²⁶² *Id.* at 10.

²⁶³ *Id.* at 4.

²⁶⁴ *Id.* at 7.

²⁶⁵ *Id.*

²⁶⁶ *Id.* Nor are forced removal concerns limited to Indonesia. For example, there is evidence that, under President Álvaro Uribe, Afro-Colombian people have experienced forced displacement and even violence due to their refusal to leave their ancestral lands. Jane Monahan, *Afro-Colombians Fight Biodiesel Producers*, BBC NEWS, Dec. 28, 2008, available at <http://news.bbc.co.uk/2/hi/business/7784117.stm>.

²⁶⁷ See *Draft Framework*, *supra* note 5, at 3.

²⁶⁸ *Woodhill Report No. 4*, *supra* note 180, at 10.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 9.

²⁷¹ *Id.*

On the other side of the spectrum at the consultations were governments and corporations. In Jakarta, the government did not address the issues of land tenure or human rights. Instead, it highlighted the need to focus on the positive in order to overcome the overly negative publicity the industry faces.²⁷² In general, the African and Latin American countries complained that the issues afflicting Indonesia are absent from their regions and thus, they implored the moratorium to be lifted.²⁷³ In these regions, smallholders are the majority and corporate plantations do not have the foothold they have in Indonesia. Corporate stakeholders did, touch on the issue of land tenure. They complained that the “imaginary” boundaries between villages and sub-districts lacked legitimacy because the boundaries were not produced via the “scientific method.”²⁷⁴ Furthermore, they complained that the land acquisition process is too slow and cumbersome—they want more land more quickly.²⁷⁵

The stakeholders, in general, believed that in order for standards to be taken seriously, there should be one set of standards—specifically, a reworked version of the Roundtable on Sustainable Palm Oil (“RSPO”).²⁷⁶ The civil society organizations emphasized the need for RSPO to become more credible by making certification more transparent and efficient.²⁷⁷ Various stakeholders argued that the World Bank Group should adopt the RSPO and in turn, should encourage national development banks to do the same.²⁷⁸ However, RSPO allows projects to be certified as sustainable by either an independent or a non-independent certification body, without denoting this fact. As a result, the current certification process for agribusiness projects often creates a false imprimatur that a project is socially and environmentally sustainable while allowing business as usual.

Based on these stakeholder consultations, the World Bank Group drafted the Framework for Engagement in the Palm Oil Sector (“Draft Framework”). The Draft Framework outlines four central themes that encompass the actions the Bank plans to take in order to achieve what it defines as sustainable and successful development in this sector:

- Policy and Regulatory Environment
- Mobilization of Sustainable Private Sector Investment
- Benefit Sharing with Smallholders and Communities
- Sustainable Codes of Practice²⁷⁹

²⁷² Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No. 5 (Jakarta, Indonesia)*, THE WORLD BANK GROUP 4 (2010), available at [http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations+in+Jakarta.+May6-7%2C2010/\\$FILE/Stakeholders+Consultations+Report+No5%2C+Jakarta.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations+in+Jakarta.+May6-7%2C2010/$FILE/Stakeholders+Consultations+Report+No5%2C+Jakarta.pdf) [hereinafter *Woodhill Report No. 5*].

²⁷³ *Woodhill Synthesis Report*, *supra* note 7, at 3.

²⁷⁴ *Woodhill Report No. 5*, *supra* note 272, at 5.

²⁷⁵ *Id.*

²⁷⁶ *Woodhill Synthesis Report*, *supra* note 7, at 4.

²⁷⁷ Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No 8 (Amsterdam, Netherlands)*, THE WORLD BANK GROUP 4 (2010), available at [http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations_Amsterdam/\\$FILE/Stakeholders+Consultations+Report+No8%2C+Amsterdam.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Summary+of+Consultations_Amsterdam/$FILE/Stakeholders+Consultations+Report+No8%2C+Amsterdam.pdf); Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No 4 (Costa Rica)*, THE WORLD BANK GROUP 4 (2010), available at [http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Report_Costa+Rica/\\$FILE/Stakeholders+Consultations+Report+No6%2C+Costa+Rica.pdf](http://www.ifc.org/ifcext/agriconsultation.nsf/AttachmentsByTitle/Report_Costa+Rica/$FILE/Stakeholders+Consultations+Report+No6%2C+Costa+Rica.pdf).

²⁷⁸ *Woodhill Synthesis Report*, *supra* note 7, at 5.

²⁷⁹ See Draft Framework, *supra* note 5, at 11.

The Draft Framework notes that indigenous peoples bear the brunt of most social and environmental problems in the sector.²⁸⁰ While this recognition is laudable, the Bank’s response to negative impacts from palm oil through the four themes in the Draft Framework will do little to address the agribusiness impacts on indigenous people analyzed throughout this report. Palm oil makes up only 15 percent of IFC agribusiness activity, whereas sugar is 17 percent, and “other food” is 22 percent.²⁸¹ While this fact alone shows that the Bank’s limited focus on palm oil makes the Framework insufficient to address agribusiness problems at the Bank, even if these four thematic action areas were applied to agribusiness Bank-wide, deficiencies in the approach would fail to address key issues.

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 fails to take 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—or any agribusiness lending—must include the recommendations in Section III.a., above.

The changes recommended above must be *implemented* before relying on IFC policy to justify palm oil lending, *or any agribusiness activity*. Without capacity building for environmental and social impact assessment and regulation, agribusiness investment under the guise of protection by the World Bank Group’s 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 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. 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.

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

²⁸⁰ *Id.* at 12.

²⁸¹ IFC AGRIBUSINESS OVERVIEW, *supra* note 2.

“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.

However, 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 above for bringing the World Bank Group’s practices into compliance with international law and standards.

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.²⁸²

Furthermore, projects that increase and improve roads, help producer organizations, and scale up operations are only useful 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 only ultimately serve 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,²⁸³ 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.

The Bank’s commitment to palm oil, and agribusiness generally, 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 seen throughout the Draft Framework. This reality must be examined as it is false in many areas where the Bank works. 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.

²⁸² See, e.g., *Woodhill Report No. 5*, *supra* note 272, at 12.

²⁸³ See, e.g., *id.* at 11; see also Taylor and Bending, *supra* note 131, at 3 (“Increasing competition over such land between investors, local communities and others carries high risks of conflict, as the recent clashes over resource concessions in indigenous territories in Peru have demonstrated.”).

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,²⁸⁴ 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 FPIC consent requirements). Furthermore, 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 efficient²⁸⁵ so that ‘greenwashing’ through RSPO does not occur in the future, as it did in the Wilmar case.²⁸⁶

The Implementation Approach to the Draft 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 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 FIs.

The Draft states that IFC will only invest in FI clients 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.”²⁸⁷ 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

²⁸⁴ ROUNDTABLE ON SUSTAINABLE PALM OIL, PRINCIPLES AND CRITERIA FOR SUSTAINABLE PALM OIL PRODUCTION 6-7 (2007).

²⁸⁵ Jim Woodhill, *World Bank Group Palm Oil Strategy Consultations: Stakeholder Consultation Report No 8 (Amsterdam, Netherlands)*, THE WORLD BANK GROUP 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).

²⁸⁶ RSPO CODE OF CONDUCT, *supra* note 66, 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.

²⁸⁷ Draft Framework, *supra* note 5, at 17.

clear and measurable development impacts which contribute to economic growth and poverty reduction.” As discussed above, lack of transparency and disclosure for FI and Advisory Services lending must be addressed to close the loophole in the Framework. For example, is the IFC’s “BSP Debt and Equity Financing” in Papua New Guinea,²⁸⁸ categorized as “FI”, in violation of the World Bank Group’s palm oil moratorium? There is no way to know.

The Draft Framework, as a window into the World Bank Group’s view of how its approach should change with respect to palm oil, is instructive as to its approach to agribusiness generally. Just as the Draft Framework made no real commitments to alter its approach in practice through sequencing, other initiatives within the Bank that pertain to agribusiness are similarly disappointing.

ii. *The ‘Farmland Report’ identifies the problem, but makes no commitments*

On September 7, 2010, the World Bank released a much-anticipated report titled *Rising Global Interest in Farmland, Can it Yield Sustainable and Equitable Benefits?*²⁸⁹ The answer offered in the report is ‘maybe.’ Of particular relevance to the issues addressed here are the *Farmland* report’s conclusion that there is a “broad agreement that an appropriate framework will, at a minimum, include the following elements: Rights recognition[,] Voluntary transfers[,] Technical and economic viability[,] Open and impartial processes[,] and] Environmental and social sustainability.”²⁹⁰

Many of the themes for reform discussed above in this report are echoed in the *Farmland* report. The critical difference is that the *Farmland* report stops short of recommending that the Bank stop agribusiness investment until the five elements highlighted in the ‘policy, legal, and institutional framework’ chapter of the report are implemented. Thus, there is implicit recognition by the Bank that agribusiness lending will continue harmful social and environmental impacts, including land grabbing.

IV. Conclusion and Recommendations: The Way Forward

As the World Bank’s IFC finalizes its revisions to the Sustainability Policy Framework, there is an opportunity to lead the entire World Bank Group in a change of course by making a policy decision to decline funding to agribusiness corporations until key changes are implemented.

This report demonstrates that the World Bank Group’s agribusiness practices—supported through grants, loans, investments and guarantees—are contributing to a system that undermines indigenous rights and harms traditional peoples. An underemphasized reality is that even where the Bank supports components of projects that are “sustainable” or contribute to “benefit sharing” on their face, they often contribute to a larger scheme that is antithetical to sustainability or poverty

²⁸⁸ See Summary of Proposed Investment, <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/e016dd3d413c21ab85257719005f4522?opendocument> (last visited Sept. 18, 2010).

²⁸⁹ FARMLAND REPORT, *supra* note 4.

²⁹⁰ *Id.* at 68.

alleviation for impacted communities. Often too, projects assume integrity in government programs, transparency, or local political or social capacity that does not exist.

For indigenous communities, for whom “land is life[,]”²⁹¹ the policy protections that the World Bank Group has used to justify this lending have proven insufficient to withstand the forces that generate land grabbing. Bank activities have caused the sometimes violent taking of land,²⁹² conversion of forests and sustenance gardens, food insecurity, environmental impacts that undermine community health, and other harm to indigenous and traditional livelihoods and culture.²⁹³

While the World Bank Group’s review of its strategy for the palm oil sector has been a positive start in some ways, the focus on palm oil is an artificially narrow and superficial look at the Bank’s involvement in agribusiness. The “negative environmental and social impacts,” including violations of “human rights” that the Bank itself has identified with regard to palm oil projects²⁹⁴ are felt in sectors such as cocoa, soybean, cotton, and sugarcane to a similar degree. The Bank’s Framework for Engagement in the Palm Oil Sector must not end with an agreement to follow the very same policies to which the World Bank Group is already committed. Similarly, the lessons presented in the World Bank’s own recent *Farmland* report must not be ignored.

The impetus for addressing palm oil must be recognized as requiring a review for *all* World Bank Group agribusiness subsectors. We first recommend that the World Bank Group cease lending in the agribusiness sector until major reforms in World Bank Group policy and practice are implemented. The trickle down theory of poverty alleviation—enriching corporations that will in turn make the people of the countries in which the investment occurs richer—is a fallacy that props up the World Bank Group’s current model. Decades of this practice and the Bank’s own research show that funding projects like trade facilities, points in a supply chain, producers, and other players in agribusiness makes the rich richer and the poor poorer unless legal and policy protections are first in place and the poor are directly involved in designing and operating the projects that supposedly benefit them. If World Bank Group agribusiness lending is to continue, it must address the failed premises of its current lending and impose preconditions on a resumption of agribusiness activity.

First, World Bank Group policy must be changed to ensure protection of people and the environment. This includes attention to classification of projects, improved analysis of and plans to address risks, where human rights impact assessment must be incorporated into policy, and assurance of strong development outcomes. Without a change in World Bank Group policy to make explicit that all standards apply equally to Financial Intermediaries and Advisory Services as they do to direct lending, this loophole representing the majority of IFC activity, will make all other reform efforts meaningless. Policy must also better incorporate its duty to respect indigenous peoples’ rights and other human rights so that the Bank is in compliance with its international law obligations. In particular, the World Bank Group must make a strong commitment to

²⁹¹ Cheng Hai Teoh, *Key Sustainability Issues in the Palm Oil Sector, A Discussion Paper for Multi-Stakeholders Consultations* (commissioned by the WORLD BANK GROUP) 34 (2010) (To indigenous people, “land is life”).

²⁹² See, e.g., Block, *supra* note 17; RAN AGRIBUSINESS IN THE RAINFOREST FACT SHEET *supra* note 5; Woodhill Report No. 4, *supra* note 180, at 7.

²⁹³ See generally, e.g., POWER HUNGRY, *supra* note 5.

²⁹⁴ See Draft Framework, *supra* note 5, at 3.

incorporating UNDRIP into its policy. As a final crucial policy change, the Bank must make a deeper commitment to the environmental sustainability of projects, which impact the lifeblood of indigenous communities, the health of their land and livelihoods.

Second, as the Bank's *Farmland Report* has discussed, agribusiness lending will continue to cause harm unless there is a verified regulatory environment in the host country where capacity and willingness to implement World Bank Group policy are ensured. The Bank's system must verify, using independent third-party information and information from project-affected people, that (1) land registration systems recognize traditional, community-based and indigenous land rights; (2) a political environment that allows indigenous and community groups to organize and assert their land rights; (3) prohibition on and credible sanctions for corporations, individuals, and state authorities that forcibly take land through threats or violence; (4) regulatory capacity to administer project funds in an open and transparent way and to oversee any agencies involved in project implementation; (5) a commitment to negotiate land transfers in good faith and in compliance with relevant laws, standards and norms; and (6) grievance mechanisms made available to project affected people that are fair, effective and transparent.

The time is ripe for this shift in World Bank Group policy and practice. After generations of experience with agribusiness and its impacts, the Bank must learn lessons from these cases and its own intense study of these issues, and shift course accordingly. International law, norms and standards, and basic ethics dictate no other option but dramatic change. Indigenous and traditional peoples will continue to be harmed by World Bank Group agribusiness practices, instead of benefiting from them, unless leadership is shown on this issue now.