



ASSESSMENT REPORT

**Regarding Community and Civil Society concerns of 3rd Complaint in relation to
Activities of the Wilmar Group of Companies in Indonesia**

July 2012

Office of the Compliance Advisor Ombudsman

*International Finance Corporation/
Multilateral Investment Guarantee Agency*

www.cao-ombudsman.org

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List of Acronyms

BRIMOB	Mobile Police Brigade
CAO	Office of the Compliance Advisor Ombudsman
CPO	Crude Palm Oil
CSO	Civil Society Organization
ESIA	Environmental and Social Impact Assessment
FPIC	Free Prior and Informed Consent
FPP	Forest Peoples Programme
HGU	Plantation Concession
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
PT AP	PT Asiatic Persada
RSPO	Roundtable on Sustainable Palm Oil
SAD	Suku Anak Dalam (An indigenous community group in Jambi Province)
SPI	Summary of Proposed Investment

1. Introduction

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group. Its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised in the complaint; (2) gather information on how relevant stakeholders see the situation; and (3) help stakeholders understand and determine whether a collaborative solution is possible through a process facilitated by CAO's Ombudsman, or whether the case should be dealt with through CAO Compliance.

This document is a summary of the views heard by the CAO team and an explanation of the next steps in CAO's process. This assessment report does not claim to present a comprehensive picture of all of the issues raised in the complaint or input received from relevant stakeholders. *The CAO does not make any judgment on the merits of the complaint.*

Annex 1 presents CAO's process steps in response to a complaint.

2. The Project

Operating in Asia, Eastern Europe, and Africa, the Wilmar Group is a large agribusiness conglomerate specializing in the production and trade of palm oil. Since 2003, IFC has made four investments in the Wilmar Group, two of them in the trading company based in Singapore and two in a palm oil refinery in the Ukraine.¹ As a vertically integrated company, the Wilmar Group sources approximately a third of its oil palm from its own plantation concessions, both wholly and majority-owned, which form part of its supply chain in Indonesia.

When CAO received this complaint in November 2011, IFC's two investments in Delta-Wilmar CIS, the palm oil refinery in Ukraine, were active. The first investment comprised a \$17.5 million loan to construct and operate the refinery. In 2008, IFC made a second investment of US\$45 million A loan to increase the refinery's capacity and related infrastructure at the plant, with a total project cost estimated at around \$235 million. IFC defined these as Environmental Category B projects.

Delta-Wilmar CIS was a 50:50 joint venture between Wilmar International Limited and Delta Exports Pte Limited. Delta Exports is a Singapore based bulk commodity trader specialized in the countries of the former Soviet Union. In 2008, Delta Wilmar merged with Nizhny Novgorod Fats & Oils Group ("NMGK") companies in Russia. As a result, Delta Wilmar is currently owned by Wilmar International (48%), Delta Exports (10%), and NMGK sponsors (42%) respectively. NMGK Group is one of the largest edible oil and fats producers in Russia.

¹ IFC project numbers 24644 and 26271

3. The Complaint

Coalition of complainants

On November 9, 2011, the Office of the Compliance Advisor Ombudsman (CAO) received a complaint from three local community groups – SAD 113, SAD Mat Ukup and Zainal Group/Sungai Beruang (all are subgroups of SAD Suku Batin Sembilan) supported by 17 local, national and international civil society organizations, including Forest Peoples Programme, SawitWatch, HuMA, Setara, Lembaga Gemawan, Save Our Borneo, among others.

History of complaints to CAO regarding Wilmar operations

This is the third complaint received by the CAO regarding IFC's investments in the Wilmar Group. The first complaint was submitted in July of 2007 and raised issues related to Wilmar operations in Sambas that were of concern to the relevant communities. It resulted in a mediated settlement by the CAO Ombudsman, as well as a compliance audit of IFC's handling of its investments in the Wilmar Group by the CAO Compliance function.² CAO continues to monitor the implementation of the agreement.

The second complaint, received by CAO in December 2008, resulted in CAO's Ombudsman team playing a mentoring role aimed at strengthening local mechanisms in three local dispute resolution processes already underway in Jambi and Pekanbaru, Indonesia.³ The process led to an agreement between the parties in Riau, while the processes in Jambi had not reached a satisfactory settlement at the time that CAO received this third complaint. The two SAD community groups involved in the Jambi process have re-filed their claims to the CAO in this third complaint and their concerns will be addressed through this process. CAO has now closed its Wilmar 2 complaint, and summarized its involvement in a conclusion report available on CAO's website at www.cao-ombudsman.org.

All three complaints mentioned concerns about a number of Wilmar's operations in Indonesia beyond the situation immediately experienced by the local community signatories.

Issues raised in the current complaint

The complaint letter raises specific social and environmental concerns regarding PT Asiatic Persada (PT AP) - a majority-owned Wilmar subsidiary which operates a palm oil plantation in Jambi, Indonesia. This complaint relates specifically to indigenous community groups residing in and around the PT AP concession in Jambi, and in broad terms identifies the following issues:

1. Forced evictions of approximately 83 community members by plantation personnel and BRIMOB, a mobile police brigade active in securing the plantations, accompanied by violence and destruction of community members' dwellings and personal property.

² Further details are available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76

³ Further details are available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=79

2. Unresolved land disputes involving customary lands of the Batin Sembilan peoples. The communities contend that these lands were acquired without their consent, and were cleared and planted without providing compensation.
3. In regards to the Jambi mediation process, attempts by the company to impose a settlement that is not in line with the original Memorandum of Understanding (MoU) signed by the parties and contrary to IFC's Performance Standards.

The complaint also articulates wider concerns regarding recurring disputes surrounding land acquisition that the complainants have identified in Wilmar's plantations and subsidiaries, and questions the effectiveness of the company in dealing with these problems in a systematic way.

In the complaint, the complainants request that the following issues be considered in the complaint process:

- Mediation of a negotiated settlement between the affected communities and PT AP / Wilmar, with the RSPO's newly formed Dispute Settlement Facility as an observer;
- An independent and participatory review of the Wilmar Group's oil palm operations as they relate to land acquisition and dispute resolution;
- Where other unresolved land conflicts are identified, a mediation of conflicts in these areas;
- Adoption of effective measures by the Wilmar Group to systematically address land conflicts in its palm oil concessions.

4. CAO Process and Assessment

CAO's eligibility decision

CAO declared the complaint eligible for further assessment on 17 November 2011, based on findings that:

- a. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
- b. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
- c. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

CAO's eligibility decision took into account that the operations of concern in the complaint are directly linked to IFC's investments in Delta-Wilmar CIS through its supply chain.

4.1 Assessment Activities

Assessment method

In carrying out its assessment, the CAO team conducted about 30 interviews, group meetings/discussions, and field trips to Jambi in December 2011 and January-February 2012. In preparation and during the field trips, CAO reviewed IFC project documents,

and met with a range of stakeholders, including complainants and community groups in general assemblies, the company, relevant provincial government representatives, and IFC's project team. A full list of the meetings is summarized in Table 1 as attached.

A first stakeholder meeting

On 29 November 2011, the complainants invited relevant stakeholders and the CAO to a kick off meeting in Jakarta that was attended by representatives of Wilmar International (10 persons), the complainants (8 persons), CAO (3 persons), RSPO (1 person), the Provincial Government of Jambi and District Government of Batanghari (4 persons), and a translator (1 person). At this first meeting, the parties (the complainants, Wilmar International, and the provincial and district governments) welcomed CAO's involvement in a dispute resolution capacity.

The parties had different expectations, however, about the exact role that CAO should play: the complainants and the company expressed their hope that CAO serve as mediator, while the Provincial Government and District Governments expected that CAO's facilitation services would be integrated into the various ongoing processes and conflict resolution teams. CAO clarified that it is part of the role of the assessment to explore the most suitable role for CAO, so that CAO's role will be acceptable to all parties.

Assessment visits to Jambi

The CAO team carried out three visits to Jambi during December and January. The first two visits were focused on learning about the issues in the complaint and the various affected groups and stakeholders. In the course of the first visit during 10-14 December 2011, CAO met with the complaint's signatories, affected community groups, PT AP, units of the Provincial Government of Jambi, units of the District Government of Batanghari, and units of the District Government of Muaro Jambi. The CAO team returned to Jambi during 27-31 December 2011 to meet again with affected community groups.

The third visit to Jambi during 16-20 January 2012 focused on gauging the most acceptable role for CAO in a dispute resolution process going forward. CAO met with affected community groups, PT AP, signatories, units of the Provincial Government of Jambi, and units of the District Government of Batanghari. The visit was concluded with a meeting organized by the CAO team, which presented preliminary findings of the case assessment and discussed options of CAO's roles in the conflict resolution.

4.2 Assessment Findings

Parties to the dispute

Five SAD groups were identified as affected communities in the complaint and chose to participate in CAO's assessment process:

1. Dusun Lamo – Pinang Tinggi affected community group.
2. Sungai Beruang community:
 - a. Sungai Beruang evicted group spreads in Jembatan Besi, Danau Minang, and Buayan Ilir.
 - b. Sungai Beruang Hamlet group.

3. Terawang community group.
4. KOPSAD / Farmer Group of Persada.

Local signatories play a very important role by providing support in the communication and coordination with the affected community groups.

Issues of concern

Issues of concern, as voiced in the context of the CAO assessment process, are summarized in Table 2 below.

Table 2: Issues of concern

Stakeholders	Main issue or concern of complaint
Dusun Lamo – Pinang Tinggi affected community group	<ul style="list-style-type: none"> • Land claims in Dusun Lamo – Pinang Tinggi
Evicted Group of Rukun Tetangga 13 (neighborhood 13) of Sungai Beruang Hamlet	<ul style="list-style-type: none"> • Compensation for dismantled houses due to eviction of households living on disputed land in PT AP concession area. • Return of land for certain families.
Sungai Beruang Hamlet affected community group	<ul style="list-style-type: none"> • Land claims in the PT AP concession area as an enclave for the Sungai Beruang community.
Terawang affected community group	<ul style="list-style-type: none"> • Claims that the PT AP plantation area enters the area of the Terawang Hamlet. • Demand that PT AP reconstruct concession border in keeping with the HGU (land use right) of PT AP.
KOPSAD / Persada Farmer Group	<ul style="list-style-type: none"> • Demands that PT AP surrender oil palm plantation land and settlement area land to the Persada farmer group, in keeping with the Tepian Ratu Agreement.
CSO Signatories	<ul style="list-style-type: none"> • That PT AP and Wilmar Group meet IFC's Performance Standards and RSPO Principles and Criteria, including implementation of FPIC. • Land disputes in Wilmar's larger operations and supply chain beyond the communities identified in this complaint.
PT AP and Wilmar	<ul style="list-style-type: none"> • To keep the concession area • The company is willing to pay compensation for land claims, as long as complainants have acceptable evidence.

5. CONCLUSION AND NEXT STEPS

5.1 Conducting Ombudsman Dispute Resolution Process

The community groups, PT AP and local government units all expressed a strong willingness to address and settle disputes through dialogue and negotiation.

The issues raised in this complaint are complex and involve a significant number of affected community groups, as well as other stakeholders. Based on discussions with key stakeholders, the CAO heard and understood that the scope for the mediated

dialogue will be issues of Land Acquisition and Involuntary Resettlement, Indigenous Peoples, and Cultural Heritage, as captured in IFC's Performance Standards 5, 7 and 8 respectively.

During the time of CAO's assessment, settlement processes were ongoing at the district and provincial government level. All parties agreed to a process in which CAO will work closely with both government levels to attempt to achieve a mediated solution to the parties' concerns. By agreement of the parties, mediation will be conducted by a Joint Mediation Team composed of CAO team members and staff of the relevant local government unit. This Joint Mediation Team will be supported by an Official Decree of the Governor of Jambi Province. The process of mediation started in March 2012.

5.2 Capacity Building

During assessment, the parties expressed the need to receive capacity building as part of strengthening their preparedness to engage in the mediation process. Capacity building activities can take the form of training of representatives about negotiation management, and include both indoor training and field assistance to the affected community group and PT AP. Capacity building activities will be open to team members from the local government and to local signatories.

Annex 1:

As per CAO's Operational Guidelines,⁴ the following steps are typically followed in response to a complaint that is received:

- Step 1: Acknowledgement of receipt of the complaint
- Step 2: Eligibility: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: Ombudsman assessment: Assessment of the situation and assisting the parties in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment period can take up to a maximum of 120 working days.
- Step 4: Facilitating settlement: If the parties are willing to engage in a CAO Ombudsman process, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected.
- OR
- Compliance Appraisal/Audit: If the complaint is transferred to CAO Compliance for a compliance review, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether the case merits a compliance audit of IFC's/MIGA's intervention in the project. The Compliance appraisal process can take up to a maximum of 45 working days.
- Step 5: Monitoring and follow-up
- Step 6: Conclusion/Case closure

⁴ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

Annex 2:

Table 1: Itinerary of Meetings and site visits, December 2011 – February 2012.

Date and Place	Party/Group/Audience
10 December 2011 Location: CAPPa Office	Setara, AGRA Jambi and other signatories. Number of participants: approx. 15 persons
11 December 2011 Location: Pinang Tinggi of SAD 113 Community Center	Meeting with Affected Community SAD 113 Groups Number of participants: approx. 50 persons
11 December 2011 Location: Hotel Grand Abadi, Jambi	Dinner Meeting with WILMAR and PT AP Number of participants: 15 persons
12 December 2011 Location: Sei Beruang	Meeting with Affected Community of Sei Beruang and Evicted Groups. Number of participants: 30 persons
12 December 2011 Location: Office of Chief of District of Batanghari	Meeting with Government of Batanghari District Number of participants: 15 persons
12 December 2011 Location: CAPPa Office	Discussion with Signatories Number of participants: 20 persons
13 December 2011 Location: Office of Governor of Jambi	Meeting with Government of Jambi Province Number of participants: 25 persons
13 December 2011 Location: Office of IFC Jakarta	Meeting with staff IFC representative office of Indonesia Number of participants: 5 persons
28 December 2011 Location: Office of Government of Jambi Province	Witnessing Meeting between PT AP and Evicted Group of Sei Beruang Number of participants: approx. 50 persons
28 December 2011 Location: Hotel Grand Abadi Jambi	Meeting with Mahyuddin Number of participants: 5 persons
28 December 2011 Location: Hotel Grand Abadi Jambi	Meeting with PRD and STN Number of participants: 5 persons
29 December 2011 Location: Sei Beruang Hamlet	Meeting with Affected Community of Sei Beruang Hamlet Number of participants: 15 persons
30 December 2011 Location: Tanah Menang Hamlet	Meeting with Tanah Menang Group Number of participants: 12 persons
17 January 2012 Location: Setara Office	Meeting with SAD Representatives Number of participants: 15 persons

18 January 2012 Location: PT AP Office	Meeting with PT AP Number of participants: 10 persons
18 January 2012 Location: Office of Chief of Batanghari District	Meeting with Government of Batanghari District Number of participants: 8 persons
19 January 2012 Location: Office of Governor of Jambi Province	Meeting with Government of Jambi Province Number of participants: 15 persons
19 January 2012 Location: Setara Office	Meeting with Signatories in Jambi Number of participants: 15 persons
20 January 2012 Location: Hotel Grand Abadi Jambi	Meeting with All Parties to Present Preliminary Assessment Result Number of participants: 55 persons
20 January 2012 Location: HuMA Office, Jakarta	Meeting with FPP. Number of participants: 4 persons.
26 January 2012 Location: Kedai Telapak Bogor	Coordination Meeting of CAO Team Number of participants: 3 persons
3 February 2012 Location: Terawang Hamlet	Meeting with Affected Community Terawang Group Number of participants: 75
4 February 2012 Location: Hotel Novita Jambi	Meeting with PT AP Number of participants: 6 persons
5 February 2012 Location: Penyerukan Hamlet	Meeting with Affected Community Pinang Tinggi Group Number of participants: 30 persons
5 February 2012 Location: Sei Beruang Hamlet	Meeting with Affected Community Sei Beruang Group Number of participants: 7 persons
6 February 2012 Location: Setara Office	Meeting with Signatories in Jambi Number of participants: 10 persons
11 February 2012 Location: HuMA office	Meeting with Signatories in Jakarta Number of participants: 3
14 February 2012 Location: Office of Governor of Jambi Province	Meeting of Joint Mediation Team Number of participants: 10 persons
15 February 2012 Location: Hotel Golden Harvest Jambi	Meeting with PT AP Number of participants: 5 persons
16 February 2012 Location: Hotel Golden Harvest Jambi	Meeting to Start Mediation Number of participants: 56 persons