



ASSESSMENT REPORT

**Regarding Community and Civil Society concerns of 2nd Complaint in relation to
Activities of the Wilmar Group of Companies in Indonesia**

October 2009

Office of the Compliance Advisor/Ombudsman

*International Finance Corporation/
Multilateral Investment Guarantee Agency*

www.cao-ombudsman.org

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LIST OF ACRONYMS

BACP	Biodiversity and Agricultural Commodities Program
CAO	Office of the Compliance Advisor/Ombudsman
CPO	Crude Palm Oil
CSO	Civil Society Organization
ESIA	Environmental and Social Impact Assessment
FOE	Friends of the Earth
GEF	Global Environment Facility
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
RSPO	Roundtable on Sustainable Palm Oil
SAD	Suku Anak Dalam (Indigenous community in Jambi Province)
SPI	Summary of Proposed Investment

1. INTRODUCTION

The Office of 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, and its mandate is to assist in addressing complaints from people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, the CAO's Ombudsman function responds to the complaint.

This document presents a summary of the assessment, and makes suggestions for next steps among the parties.

1.1 The complaint

On 19 December 2008, the CAO received a complaint from community groups represented by six civil society organizations: Forest Peoples Programme, SawitWatch, Setara, Lembaga Gemawan and Kontak Rakyat Borneo. The claimants raise social and environmental concerns which they believe are being caused by the on-going activities of the Wilmar group of companies, a client of IFC (Annex-1). Eligibility was determined on January 14, 2009.

This claim relates the supply chain impacts on communities in Indonesia as a result of a palm oil processing project in the Ukraine. This project was an investment approved by IFC's Board on 23rd October 2008. The complainants noted that IFC approved this project while the CAO's Ombudsman as well as Compliance processes were already underway in relation to earlier complaints relating to investments in the Wilmar Group¹.

Specifically, the complaint identified the following issues:

1. Social conflicts as a result of land clearance without appropriate community approval or completion of Environmental Impact Analysis (EIA) processes;
2. Adherence to national regulations/laws as well as to the certification protocols of the Roundtable on Sustainable Palm Oil;
3. Adherence to IFC's policies, procedures and due diligence requirements.

The claimants provide a detailed analysis of their concerns as well as cross-references to their previous complaints to the CAO. They list a number of companies in West Kalimantan, Central Kalimantan and Sumatra where they believe that local communities have experienced these impacts. In addition, the claimants make the following suggestions for outcomes that they would like to see as a result of the complaint:

¹ The first complaint was submitted on July 01, 2007 and resulted in a mediated settlement by the CAO Ombudsman as well as a compliance audit by the CAO Compliance function. Further details are available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76

- *“changes in the way IFC applies its investment guarantees and other support for companies in the palm oil supply chain;*
- *corrective action against IFC staff who have violated IFC procedures and standards;*
- *a review of IFC operational procedures to ensure it respects the rules of RSPO;*
- *an independent participatory review of the operations of Wilmar group companies in Indonesia;*
- *recommendations for reforms of practice;*
- *actions to ensure that Wilmar and IFC take remedial actions to mitigate or undo the harms detailed and compensate those whose livelihoods and environments have been irremediably harmed.”*

1.2 The Project

The Wilmar Group is a large agribusiness conglomerate specializing in the production and trade of palm oil, operating in Asia, eastern Europe and Africa. Since 2003, IFC has made four investments in the Wilmar Group.

Delta-Wilmar CIS, a palm oil refinery and shortening manufacturer and current IFC client² in Ukraine, will increase its capacity and invest in related infrastructure at its plant near the Yuzhny port in Odessa region. Delta-Wilmar CIS is wholly owned by Singapore based Delmar Pte Limited, which is a 50:50 joint venture between the main Project sponsors: Wilmar International Limited and Delta Exports Pte. Limited. Delta Export is a Singapore based bulk commodity trader specialized in the CIS countries. The total project cost is estimated at around \$235 million. The proposed IFC investment is a \$45 million A loan for IFC’s own account. The project is located in an industrial zone near the Black Sea Port of Yuzhny in Odessa region.

IFC had defined this as a Category B project.

2. CAO ASSESSMENT

The issues raised in this complaint had also been identified by the complainants in their first complaint to the CAO in July 2007. However, this 2nd complaint presented the argument that these issues were geographically wide-ranging, spread throughout the supply chain of the Delta Wilmar refinery, and affecting a number of communities in Indonesia in addition to those that had originally been identified in the first complaint. The new complaint identified a number of desired outcomes that included both systemic as well as specific items.

The CAO VP, under her own authority, instructed that the Delta Wilmar project (No 26271) be appraised for audit. That appraisal was initiated in early December 2008 and includes policy and procedural concerns raised in the complaint. The appraisal concluded that an audit of IFC was necessary.

² IFC project number 26271

2.1. Process of Assessment; Participants, Itinerary, and Follow Up

Given the large number of companies and communities listed in the complaint, the first step in the assessment process was to obtain confirmation from the signatories about specific concerns. Through questionnaires and telephone contact, the CAO sought to establish – for each location – the specific nature of the problem/concern, and the identity of the community members in each case. These questionnaires were sent to signatories and related participants (by email and phone communication) between February – May 2009. The following Table 1 shows action, responses, and follow up.

Table 1. Signatories/participants, CAO Action, Responses, and Follow Up

No.	Name/Signatory	Institutions	CAO Action	Responses	Follow up
1	Leily Khairnur	Lembaga Gemawan	Questionnaire, email, phone communication	Concern but limited responses.	No concrete feedback.
2	Adriani Zakaria	Kontak Rakyat Borneo	Questionnaire, email, phone communication	Concern.	Meeting; Table of information
3	Shaban Stiawan	WALHI West Kalimantan	Questionnaire, email, phone communication	Concern but limited responses.	No concrete feedback.
4	Nordin	Save Our Borneo	Questionnaire, email, phone communication	Concern but limited responses.	No concrete feedback.
5	Norman Jiwan	Sawit Watch	Questionnaire, email, phone communication	Concern.	Meetings and discussion
6	Edi Sutrisno (Gun)	Sawit Watch	Questionnaire, email, phone communication	Concern.	Meetings and discussion; Table of information
7	Agus Winarno Boyce	WALHI West Sumatera	Questionnaire, email, phone communication	Concern.	Brief information
8	Yuliusman	WALHI South Sumatera	Questionnaire, email, phone communication	Concern.	Brief information
9	Ahmad Zazalia	Scale Up, Riau	Questionnaire, email, phone communication	Concern.	Brief information; Focus Group Discussion (FGD)
10	Rukaiyah Roffiq	Setara, Jambi	Questionnaire, email, phone communication	Concern.	Brief information; Focus Group Discussion (FGD)

Concrete feedback was received from 6 signatories as shown in the following Table 2.

Table 2. Information received by the CAO from Signatories

No:	Signatories	Institution	Date of information received by CAO	Case of Province
1	Adri	Kontak Rakyat Borneo, West Kalimantan	9 March 2009.	West Kalimantan
2	Rikaiyah Roffiq	Setara, Jambi	10 March 2009	Jambi
3	Ahmad Zazalia	Scale Up, Riau	20 March 2009	Riau
4	Gun	Sawit Watch	22 March 2009	West Sumatra
5	Boyce	WALHI West Sumatera	6 April 2009.	
6	Yuliusman	WALHI South Sumatera	7 April 2009.	South Sumatra

CAO and some signatories/participant subsequently met through focus group discussions as follows.

Table 3. Itinerary of Meetings and Focus Group Discussions

No.	Meetings, Focus Group Discussions	Date
1	Meeting with Kontak Rakyat Borneo, in Bogor	February 7, 2009
2	Meeting with Sawith Watch, in Bogor	March 9, 2009
3	FGD in Jambi with SETARA, local CSOs and SAD community groups	March 19, 2009
4	FGD in Pekanbaru – Riau with Sclae-Up, local CSOs, and Pangean community group.	April 4, 2009
5	Meeting with Scale Up and Setara in Pekanbaru, Riau	April 13, 2009

In the focus group discussions, the participants included community groups and other related CSOs. However, in the cases in Jambi and Riau, there was greater representation from community members as shown in Table 4.

Table 4. Other Participants contributed in Jambi and Riau Cases.

No.	Name	Institutions	Regions
1	Kenegerian Pangean community group representative	Kenegerian Pangean community key persons	Riau
2	Local CSOs in Riau	Lestari Negeri, LBHI, IPPERPA, WWF Pekanbaru, Bunga Bangsa, KAR, Yayasan Kabut	Riau
3	SAD community groups representatives	Yamabu and Mat Ukup	Jambi
4	Local CSOs in Jambi	Warsi, WALHI Jambi, YLBHL, AMPHAL	Jambi

Due to the very limited responses from Kalimantan, on April 17, 2009, CAO sent a 2nd letter to signatories to request their participation and to provide further information on their claims but no additional information was received from the signatories.

2.2 Findings

In West Kalimantan Province, 8 Wilmar subsidiaries are identified in the complaint as having acquired land without community consent and implementing involuntary resettlement; opening forest land for plantations; causing degradation of biodiversity and natural resources; and impacting indigenous community cultural heritage. Based on CSO responses to the CAO's requests for information, CAO was not able to obtain any confirmation of these concerns at the time of writing this report.

In Central Kalimantan Province, 15 subsidiaries of PT PBB are identified in the complaint as undertaking land acquisition without community's consent and involuntary resettlement; opening forest land for plantations; causing degradation of biodiversity and natural resources; and impacting indigenous community cultural heritage. However, CAO was not able to obtain further confirmation from the claimants about which communities were impacted.

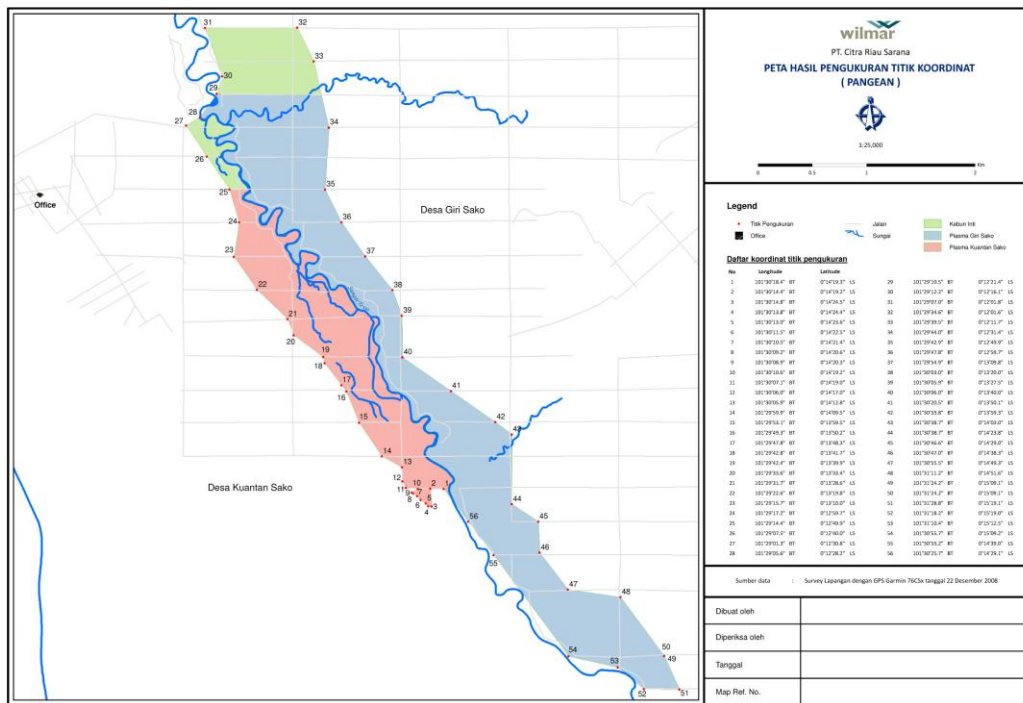
In Riau Province, 2 Wilmar subsidiaries are identified in the complaint as having similar concerns to those identified in Kalimantan. Based on information provided by a local CSO, *Scale Up*, only 1 Wilmar subsidiary, PT Cipta Riau Sarana (CRS), was confirmed as having concerns related to community consent for appropriation of land. This company is not listed in their December 2009 signatories letter.

Table 5. Wilmar's Subsidiaries in Riau Province.

No.	Companies Name	Area of Oil Palm Plantation	Refinery Capacity	Locations
1	Cipta Riau Sarana	Core: 1000ha. Smallholder: 6000 ha	2 refineries	Pangean District
2	Sinar Siak Dian Permai	Core: 1400ha		Siak and Pelalawan Districts
3	Siak Prima Sakti	Core: 40 ha	1 refinery, 45 tons/hour	Siak District
4	Murini Sam Sam and Murini Wood Industri	Core plantation, each of 3237 ha and 9473 ha	2 refineries in Dumai Zone Industry	Bengkalis District
5	Sinar Perdana Caraka	None	1 refinery, 45 tons/hour	Rohil District
6	Dharma Wungu Guna	Core: 4374 ha	1 refinery, 30 tons/hour	Bengkalis District
7	Bukit Kapur Reksa	None	4000 tone/day	Dumai Regency
8	Wilmar Bio-Energy			Dumai Regency
9	Karya Prajona Nelayan	500ha	Unknown	Kampar District
10	Sentana Adidaya Perkasa			Monopolize importing fertilizer

Source: Scale-Up, 2009.

In 2005, Wilmar took over PT CRS from a local company. It inherited a dispute involving claims from the Kenegerian Pangean community group over 583 hectares of land that has been converted to oil palm. There are overlapping claims between the company, the community and trans-migrants who were given small-holder plantations in the area in the 1980s. At present, there is an ongoing dispute resolution process between CRS and the Pangean community mediated by the CSO *Scale-up*.



Picture 1. Map of the Land disputed by Kenegerian Pangean Community and Wilmar's CRS Company in Riau Province (*Source: CRS Co, 2009*)

In Jambi, one of the Signatories to the CAO complaint raised specific concerns about a local dispute between a recently acquired Wilmar subsidiary in Jambi Province named AMC and local communities. AMC comprised a number of different oil palm companies including Asiatic Persada Co. which is an oil palm plantation and refinery. Its plantation land use rights cover some 20,000 hectares.

Presently there is an initiative to resolve land disputes between the Asiatic Persada Co and the SAD Sungai Bahar community group (Mat Ukup Sub-group and Yamabu group) involving the Setara Foundation as a facilitator.

In West Sumatra and South Sumatra, Friends of the Earth provided information to the CAO listing a number of plantations and communities where it believed that there are conflicts. CAO was not able to confirm these incidents at the time of completion of this report, but has notified Wilmar of this information.

Table 5. Wilmar subsidiaries listed in 2nd Complaint Letter to CAO versus Wilmar subsidiaries Reported by Signatories during 2nd Assessment.

Provinces	Wilmar subsidiaries listed in 2 nd Complaint Letter to CAO		Wilmar subsidiaries Reported by Signatories during 2 nd Assessment	
	Company Name	Complaints	Company Name	Complaints
Landak, West Kalimantan	<ul style="list-style-type: none"> • PT Agropalindo Sakti • PT Agro Nusa Investama • PT Pratama Prosentindo • PT Perkebunan Anak Negeri Pasaman • PT Indoresin Putra Mandiri • PT Daya Landak Plantation • PT Pelindo Sakti • PT Bumi Pratama Kathulistiwa 	<ul style="list-style-type: none"> • Land Acquisition and Involuntary Resettlement • Biodiversity Conservation and Sustainable Natural Resource Management • Indigenous Peoples and Cultural Heritage 	Sambas; <ul style="list-style-type: none"> • PT Agronusa Investama • PT Wilmar Sambas Plantation 	Compliance with the law of EIA
Seruwan, Central Kalimantan	<ul style="list-style-type: none"> • 15 subsidiaries of PT PPB 	<ul style="list-style-type: none"> • Indigenous Peoples and Cultural Heritage 	None	NA
Dumai, Riau	<ul style="list-style-type: none"> • PT Bukit Kaporeksa • PT Murini Samsam 		<ul style="list-style-type: none"> • PT Citra Riau Sarana 	<ul style="list-style-type: none"> • Land Acquisition and Involuntary Resettlement
Jambi	Not Available	No Complaints	<ul style="list-style-type: none"> • PT Asiatik Persada 	<ul style="list-style-type: none"> • Land Acquisition and Involuntary Resettlement • Indigenous Peoples and Cultural Heritage

2.3 Structural and systemic issues

The CAO recognizes that the issues raised by these cases are not unique to the locations identified in this complaint and reflect a broader, structural concern related to the relationship between people and land. Although there are some areas which have been more successful than others in navigating these concerns, the CAO's experience is that conflicts related to land are experienced widely within Indonesia. In part, these conflicts have arisen because in many cases land boundaries within and between communities are unclear. More significantly, it appears that the process and procedures for obtaining appropriate approvals for permitting palm oil plantations are not clear to either investor/operators or local community members. Two factors contribute to this situation:

1. lack of clarity between local, provincial and national government agencies for permitting land allocations for palm oil; and
2. lack of definition of the appropriate role of traditional land holders/land users in the permitting process.

This situation tends to increase the likelihood of conflicts within communities, but also between communities and companies. These conditions present structural challenges for private investors as well as communities, and make implementation of social and environmental performance standards difficult. Private sector operators have a responsibility to build their own capacity to address these issues in a constructive way. The RSPO offers a framework of support on a multi-sectoral basis, and Wilmar has begun to develop greater internal capacity for policy assurance, local benefit sharing and pro-active dispute resolution. In addition, an opportunity exists for the World Bank Group to assist the people of Indonesia to address these structural challenges through both its public as well as private sector operations by raising these issues on a systematic basis.

3. NEXT STEPS

During assessment, with help from local CSOs and community groups, CAO has confirmed that there are social disputes associated with two Wilmar companies in Sumatra. In one of these cases, in Jambi Province, a dialogue initiative has been developed between Wilmar's Asiatik Persada Co and SAD community groups. This initiative is assisted by local CSO Setara. The other case in Riau, Wilmar's Cipta Riau Sarana Co and the Pangean Community is in a negotiation process mediated by the local CSO Scale-Up.

With respect to this 2nd complaint raised by concerned CSOs, CAO recognizes that additional plantations and communities have been raised as areas where there may be social conflicts associated with palm oil plantations. However, CAO was not able to confirm these incidents at this time. As a next step, CAO will bring these unconfirmed cases to the attention of Wilmar and encourage both parties to clarify where outstanding conflicts/concerns remain.

Based on this assessment and the response by IFC to the audit commissioned by the CAO, our proposals in relation to each of the desired outcomes articulated in the complaint is as follows:

Desired Outcome	Suggested Action
1. Changes in the way that IFC applies its investment guarantees and other support for companies in the palm oil supply chain	Under direction of the President, IFC has announced a moratorium on new palm oil investments until IFC has prepared a strategy for investment in the sector that accommodates the risks and issues raised in these complaints – among other factors.
2. Corrective action against IFC staff who have violated IFC procedures and standards	CAO's focus is institutional accountability and its function is to promote enhanced social and environmental outcomes. CAO does not comment on individual staff members.
3. A review of IFC operational procedures to ensure they respect the rules of the RSPO	IFC has accepted that it will review its operational procedures with respect to the sector under the Performance Standards Review and this will be tracked by CAO.
4. An independent participatory review of the operations of Wilmar Group companies in Indonesia	Wilmar is seeking RSPO certification for sustainable palm oil production, which includes provision for participatory field reviews. CAO encourages this collaborative approach and is supportive of agreements between the parties to achieve this objective within the framework of RSPO.
5. Recommendations for reform of practice	IFC has announced that it will prepare a strategy for investment in the sector and reform practice once it has completed the Performance Standards Review. This will be tracked by CAO
6. Actions to ensure that Wilmar and IFC take remedial actions to mitigate or undo the harms detailed and compensate those whose livelihoods and environments have been irretrievably harmed	CAO will continue to work with the parties to seek appropriate acceptable approaches to achieve this outcome under the Ombudsman. Periodic progress reports will be made available by the parties and monitored by CAO.

In both the Jambi and Riau cases, the CAO has agreed with the parties that it will play the role of mentor and observer to support the process and outcomes. CAO will participate to support building capacity of the parties, particularly the CSO facilitators. The objective is to ensure that the experience and insights from the Sambas cases can be most effectively transferred and adopted by the parties in Sumatra. So far, CAO has been present at five dialog meetings in Pekanbaru – Riau Province. In Jambi CAO provided three days of capacity building for Setara, 113 SAD group, and Mat Ukup SAD group. CAO also acted as a mentor to each party to ensure the negotiations move closer to settlements.

With respect to the **structural and systemic** concerns raised by this complaint, the CAO encourages IFC to consider the following recommendations:

1. To assess/analyze existing regulations and procedures required for appropriation of land in Indonesia, and develop guidance for Sponsors to ensure that IFC's investments are in accordance with Indonesian laws, RSPO principles & criteria, and IFC's own Policy and Performance Standards;
2. To help build capacity among Sponsors for improved community relations, Free Prior Informed Consent (as part of RSPO), and enhanced local development benefit opportunities (e.g. Plasma smallholder schemes).
3. Together with IBRD, to assist the people of Indonesia to address these structural challenges by raising them with appropriate authorities in the public and private sectors.

CAO looks forwards to following up on these matters in its next reports.