



Resolving land disputes in the palm oil sector through collaborative mediation

CAO Ombudsman Intervention in Sambas, Indonesia – Wilmar Group Conclusion Report

October 2009

This document summarizes the Compliance Advisor/Ombudsman (CAO)'s response to a complaint regarding the Wilmar Group's oil palm plantation development in West Kalimantan, Indonesia. While the CAO's response to this complaint involved both CAO's conflict resolution function (Ombudsman) and its Compliance function, this conclusion report focuses on the Ombudsman response. Underlying documents are available on CAO's website: www.cao-ombudsman.org.

The Complaint

In July 2007, CAO received a complaint from community groups and civil society organizations about social and environmental harm they believed Wilmar was causing through their Indonesian oil palm plantations.

CAO accepts complaints from project-affected communities relating to environmental and social impacts of projects receiving financing from the International Finance Corporation (IFC) or the Multilateral Investment Guarantee Agency (MIGA). Wilmar Group is an IFC client.

The complaint raised concerns spanning a range of issues from land clearance of local peoples' customary lands without due process or broad community support, to concerns about the environmental impacts of the clearance of primary forests and areas of high conservation value, to concerns about IFC's compliance with its own operating procedures and due diligence requirements. The complaint also questioned whether all of the company's actions were legal.

Process/Approach

CAO first responded to the complaint by assessing the situation through separate

discussions with the involved parties – local communities and civil society organizations, including the complainants, company representatives, local government, academics, neighbors – with the aim to understand all parties' concerns and positions, and to make recommendations about how best to address concerns raised in the complaint. The feedback we received is summarized in the complaint's [preliminary stakeholder assessment](#).



CAO suggested dividing the issues of concern into three types, each of which would be handled differently:

- Concerns related to the company's own plantations and their impact on communities and the environment: Wilmar and community members

agreed to enter a dialogue process to resolve these concerns.

- Concerns related to IFC's adherence to its own policies and procedures were addressed in an [independent audit](#) by CAO Compliance.
- Concerns relating to wider environmental impacts and industry practices were to be addressed both through bi-lateral discussions between the company and the complainants, and through the existing Roundtable on Sustainable Palm Oil (RSPO) multi-stakeholder process. The government of Indonesia will need to be involved in addressing issues relating to land titling and local approvals processes.



The Mediation Process

CAO first worked to establish an atmosphere of trust. Discussions with both parties helped reveal the necessary parameters for a successful process. In this context, Wilmar agreed to a moratorium on further land clearance, a condition for dialogue requested by the complainants. The company's agreement helped to demonstrate its commitment to enter dialogue in good faith. Ground rules for the dialogue were agreed by both parties in late May 2008, and codified in a memorandum of understanding to begin negotiations, and in a more detailed Code of Conduct.

CAO further worked with the communities and the company to help the parties prepare for the mediation process – How did positions need to be prepared? Who needed to be at the table to ensure that

decisions would last and be supported by the larger group? - building the parties' capacity for representation and negotiation.

Once the mediation process was underway, the parties worked together to establish a map delineating the area under dispute. This participatory mapping exercise helped to establish a joint baseline on which further dialogue and negotiations were based, and demonstrated early on that the dialogue can lead to tangible agreements and results. Local government was involved as an important actor without whom some land disputes could not be settled, and dialogue results would not be able to be implemented.

Throughout the dialogue process, CAO mediated six rounds of negotiations. Alongside negotiations, CAO consulted with stakeholders and community groups, the company, and the signatories to the complaint to support and strengthen the process.



Outcome

In October and November 2008 respectively, over 1000 community members of Senujuh and Sajingan Kecil and the Wilmar Group entered agreements to settle disputes for 3170 hectares of land which contained the following provisions:

- The return of 1699 ha of community forest land;
- The company compensated households for land that had been appropriated and for losses they had suffered as a result of the company's land clearance;

- The company will provide community investment funds for collective benefits and access to development opportunities for the broader community.

In addition to these specific outcomes, Wilmar has also agreed to implement a revised approach to respond to social conflicts more widely, learning from this experience. CAO has helped parties in Riau and Jambi provinces in Sumatra as an observer and mentor, helping to build capacity in the country.

Implementation

A joint monitoring and evaluation team has been established to ensure implementation of these agreements, and the CAO Ombudsman remains engaged with the parties to help address concerns as they arise. At the request of Civil Society and others, the CAO has agreed to provide training and lesson-learning through workshops at RSPO and in Indonesia more widely.

Insights

This case illustrates that complex disputes involving corporations, communities, land and environmental impact can be resolved effectively through a collaborative approach. There are a number of key insights from this experience which we believe will be helpful to others:

1. Insight: Building capacity of the parties is an essential ingredient for success

At the outset of the dispute resolution process, both the company and the community claimants expressed similar concerns: that the other side was not sufficiently committed or empowered to make decisions on behalf of their groups. The company reacted to these concerns by ensuring relevant staff from the local, national and international levels were involved in the negotiations. Further, company staff at different levels of the firm had different incentives and priorities: the implications of success or failure of the dialogue process had strategic implications for the entire Wilmar Group beyond the local

company subsidiary, and the presence of relevant company staff helped bring this perspective to the dialogue.

The company was concerned that an agreement - once reached at the negotiation table - may not enjoy the backing of the larger community - i.e. that the representatives and NGOs may not have the consent of the community to negotiate on their behalf. Some investment in time and neutral facilitation was made to understand the existing traditional, elected and appointed leadership structure of the community. Based on this work, the representatives were helped to build their capacity for dialogue, share information effectively with the wider community, and create consensus around important decisions during the negotiations. A locally credible, experienced facilitator is a strong asset in this process and a key to building success.



2. Insight: Having an agreement in the form of an initial Memorandum of Understanding (MOU) or Ground Rules helps to increase predictability and clarify expectations

An initial agreement was reached on basic ground rules for the dialogue process. This provided a shared sense of purpose and made the dialogue more predictable because parties had an understanding of what they were trying to resolve, and how they would conduct themselves. The MOU created predictability in an otherwise uncertain, high risk, and controversial context.

The MOU established the roles and responsibilities of each party, the expectations for decisions making (in this case, by consensus rather than a vote) and what to do in the event of a disagreement or deadlock. The MOU also included rules for communication, disclosure, monitoring/follow-up and sharing information with wider constituents. Perhaps most importantly, there was a commitment by the company and community to maintain the process as the only avenue of dialogue. This commitment encouraged both parties to overcome deadlocks within the process rather than going outside of it when the discussions were difficult or broke down temporarily.

A further advantage of the MOU process is that by creating it, the parties could see - in a very practical way – that they could agree on something small that did not present high risks. This small step is an achievement that can be built on throughout the dialogue. The joint process for land-use mapping – which took both parties into the field to verify land boundaries together, was another small, practical, but equally important agreement which created momentum.

3. Insight: Systemic problems can begin to be addressed through local solutions

It was clear from the outset that the problem presented to the CAO in Sambas was not unique. It arose, at least in part, because of differences in the way that local people, local government, and the national government see their relationship with land,

and the way that access and use of land by communities is acknowledged and recognized by formal authorities. So a part of the problem lies with the complicated and sometimes unclear procedures required to obtain licenses to use land. By involving government representatives as Observers within the dialogue process, it was possible to deepen understanding of some of these underlying and structural causes of conflict.

The participation of regional and senior managers from Wilmar has promoted improvements at the corporate level so that the company is better equipped to resolve disputes on a more systematic basis. In addition, CAO raised these structural land issues to Management of both IBRD and the IFC to encourage a more systemic response that can assist communities, the government and investors to resolve this complex challenge more effectively.

Finally, this case sends a strong signal to companies and communities that practical and effective solutions can be found through a collaborative approach to resolving complex disputes. The willingness of both parties to set aside their typical adversarial positions and seek a joint solution together has yielded positive results, mutually agreed, and in a relatively short period of time.

Further information on the Wilmar case, including the CAO Compliance audit report, is available at www.cao-ombudsman.org