



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in Wings Group (#32208) in Indonesia**

November 2019

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and 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.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
PT SMU	PT Sayap Mas Utama

1. OVERVIEW

In November 2018, CAO received a complaint from AMAN Kaltim (Alliance of Indigenous Peoples of the Archipelago Kalimantan Timur), a local NGO, on behalf of community members living in Long Beluah and Long Lian, North Kalimantan, Indonesia (the “Complainants”). The complaint raises concerns regarding the environmental and social impacts of an oil palm plantation operated by PT Inti Selaras Perkasa (PT ISP). PT ISP together with PT Prima Tunas Kharisma and PT Sentosa Sukses Utama comprise Gawi Plantation (the “Company”) which is part of the Wings Group¹. The complaint raises concerns related to water pollution, implementation of a government-approved plasma scheme, and land clearing without permission and/or consultation.

CAO found the complaint eligible in February 2019. During CAO’s assessment of the complaint, the Company and the Complainants elected to address the issues raised through CAO’s Dispute Resolution function.

2. BACKGROUND

2.1 The Project

According to IFC’s November 2012 disclosure documents (See Footnote 1), the Wings Group was undertaking a US\$176 million project to: (i) expand its beverage product lines under PT Tirta Alam Segar (PT TAS), (ii) expand fruit-flavored beverage in plastic cups under PT Murni Alam Segar (PT MAS), (iii) commission a green-field coffee mix production under PT Harum Alam Segar (PT HAS), and (iv) increase the capacity of its existing detergent business under PT Sayap Mas Utama (PT SMU). The proposed IFC financing is a loan package of up to US\$88 million (US\$44 million A-Loan and US\$44 million of syndicated B-loan) to those four entities of the Wings Group².

The complaint pertains to an oil palm plantation in North Kalimantan operated by PT ISP, which is part of Gawi Plantations, a company of the Wings Group. PT ISP is not directly or indirectly financed by the IFC. CAO accepted the complaint on the basis that PT SMU, an IFC client, sources refined palm oil derivatives (olechemicals) from third-party refineries who source a portion of their palm oil from PT ISP. In May 2019, IFC estimated that PT SMU can be considered to source up to 1.6 percent of its raw materials from Gawi Plantation. IFC also estimated that between 0.4-2.6 percent of fresh fruit bunch production from Gawi Plantation, enters PT SMU’s supply chain. IFC considers that because PT ISP is not an IFC client and the supply chain linkages between PT ISP and PT SMU are so tenuous, any complaint about PT ISP is not eligible for CAO review.

2.2 The Complaint

The November 2018 complaint was filed by community members living in North Kalimantan, Indonesia, with the support of AMAN Kaltim, a local NGO. The complaint raises concerns about water pollution, failure to adequately implement the government-approved “plasma scheme”, failure to build a church and continued clearing of community land by the Company without consultation. More information about the complaint is available below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The assessment aims to obtain a better understanding of the issues and concerns raised by the Complainants by gathering information from different stakeholders, without making a judgment on the merits of the complaint. The assessment also seeks to establish which CAO process the Complainants and the Company would like to pursue, the Dispute Resolution process or the

¹ According to IFC, the Wings Group refers to a group of companies owned by two Indonesian families, Katuari and Sutanto. See IFC Summary of Investment Information, project number 32208, Available at <http://bit.ly/2XF6LxW>

² According to IFC, the “Wings Group” is not an actual legal or holding company entity. The various entities owned by the Katuari and Sutanto families are owned by various individual members of these two families in varying amounts, with each entity being a distinct entity with no overall corporate holding structure.

Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and/or in-person meetings with the Complainants, the NGO supporting them, the Company, the IFC project team and with the Bupati of Kabupaten Bulungan (head of the Regency, which is the local government).

This document briefly summarizes the views heard by the CAO team from the parties and describes the next steps, based on the decisions taken by the Complainants and the Company.

3.2 Summary of Views

3.2.1 Complainants' Perspective

The CAO team met with approximately 20 Complainants from Long Beluah and Long Lian villages who stated that they represent a larger group of Complainants made up of community members from the two villages. The Complainants concerns can be grouped into three categories:

1. water pollution;
2. a failure to implement the plasma scheme; and
3. a failure to build a church and encroachment by the Company's operations on the indigenous forest.

1. Water pollution

The Complainants claim that the Company is polluting the water springs that they use for drinking purposes. They stated that the fertilizers and pesticides used by the Company in the plantations run into the water springs when it rains and pollute the water. The Complainants also allege that the Company is dumping palm oil fruit and skins at the bank of the river. These fall into the river, producing an oily layer in the water.

The Complainants stated that they believe the water is polluted because currently, some community members experience rashes and itchiness from using the water. They worry that in the long run the impacts may be dire.

2. Failure to implement the plasma scheme

The Complainants claim that the Company enticed them to sell their land at a low price by offering them an opportunity to participate in the plasma scheme. They explained that, in Long Beluah, 240 people sold their land to the Company for the project. However, only 40 of the 240 are beneficiaries of the plasma scheme. Furthermore, they claim that, of the 40 people who are beneficiaries of the plasma scheme, some are not residents of Long Beluah and should not be benefiting from the scheme.

They stated that even the 40 beneficiaries of the plasma scheme do not know the location of the land allocated for the plasma scheme and have no information about plasma.

3. Failure to build a church and encroachment on the indigenous forest

The Complainants explained that, in 2007, the Company agreed to build a church for them. It was agreed that the community would provide the building material and the company would provide the labor. However, the Company did not comply with the agreement. In the end, the Complainants provided both the building material and labor to build the church.

The Complainants also complained that, when the Company first arrived, they offered to buy land parcels from villagers. In total, the Company acquired 106 hectares of land, of which 49 hectares was part of the tropical forest. They also stated that the Company continues to clear the forest beyond the 49 hectares, without consultation or compensation. The Complainants explained that they are indigenous people and the forest is an important part of their lives and part of their ancestral legacy.

3.2.2 Company's Perspective

The Company alleges the following in relation to the specific concerns raised by the Complainants.

1. Water pollution

The Company stated that they received the license to operate the plantation in 2007, started land clearing in 2008, and planting in 2009. In 2013, most of the area was bearing fruits and the company started to send the oil palm fruit to a mill owned by another company and located more than 150 km away. However, there was no road access or proper bridges to transport the fruit from the plantation to the mill and the Company had to use the river. The Company went on to explain that the palm oil fruit was loaded onto the boat using a crane and assume the Complainants saw the bunches of palm oil fruit at the river bank waiting to be loaded onto the boat and thought the Company had dumped the fruit there. The Company also explained that, if some fruit slips into the river, they clean it up and that they conduct a regular clean up.

The Company addressed the issue of pollution of the water sources by explaining that the plantation is very far from the water sources. Therefore, fertilizer or pesticides cannot be running into the water sources from the plantation. The Company also stated that they conduct tests on the water every six months and submit the results to the Environmental Services, a government agency. There is no indication of pollution in the water.

2. Failure to implement the plasma scheme

The Company explained that the plasma scheme is a government-regulated program and that it has carried out its obligation to facilitate the development of plasma plantations for the local community in accordance with the prevailing laws and regulations. The Company explained that there are currently four cooperatives that operate in partnership with the Company to manage plasma plantations in the area. Long Beluah Village is part of one of the cooperatives. They went on to explain that the cooperatives are established by agreement with the local community and that the board of representatives of the cooperative is also appointed by the local community through a consultative process.

The Company explained that they have no role to play in the selection of the plasma beneficiaries. This is done by the cooperative in consultation with the community. Once the beneficiaries are selected, the names are registered at the district government, and after verification by a relevant local government agency, the Head of Regency issues a decree with the names of the plasma smallholders, known as Decree on Beneficiary Candidates and Location Candidates.

The Company informed the CAO that it has explained to the local community the functioning of the plasma plantation development program that will be implemented in partnership with the community cooperatives.

3. Failure to build a church and encroachment on indigenous forest

The Company explained that even though they were not yet profitable in 2011, they allocated funds to assist the community in building places of worship, including a church for Long Lian village. The Company indicated that they covered almost all expenses during the process of church-building. They added that they hired a contractor from the local community with the capacity to build the church and that the timber used to build the church, was procured from the community as stated in the Work Agreement between the Company and the building contractor.

With regards to encroachment on the indigenous forest, the Company stated that they received approval to clear the land and open a plantation from the presiding Village Chief and Indigenous Leader, as proven by documents signed by parties with authority over that land. They have not cleared any more land than what was approved.

4. NEXT STEPS

During CAO's assessment process, the Complainants and the Company indicated an interest in addressing the issues raised in the complaint through a voluntary dialogue process convened by CAO's Dispute Resolution function. CAO will facilitate the process, including assisting the parties in preparing for dialogue, agreeing on ground rules, and working together in a collaborative way to try and reach a resolution of the issues raised in the complaint and summarized in this assessment report.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, CAO dispute resolution specialists conduct an initial assessment. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the Complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,³ 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: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types 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 dispute resolution process, in a way that is acceptable to the parties affected.⁴

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

³ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁴ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.