



OMBUDSMAN CONCLUSION REPORT – WILMAR 2

This report summarizes the CAO Ombudsman process in relation to a second complaint received by the CAO regarding IFC's investments in the Wilmar Group.

IFC'S INVESTMENTS

The Wilmar Group is a large agribusiness conglomerate specializing in the production and trade of palm oil and operating in Asia, Eastern Europe, and Africa. 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. As a vertically integrated company, the Wilmar Group sources much of its oil palm from its own plantation concessions, both wholly and majority-owned, in Indonesia.

When CAO received this complaint in December 2008, IFC had two active investments in Delta-Wilmar CIS, comprising \$62.5 million in loans to construct and operate a 1500 metric ton CPO refinery, increase its capacity and invest in related infrastructure in Odessa. Delta-Wilmar CIS is a palm oil refinery and shortening manufacturer, and is wholly owned by Singapore-based Delmar Pte Limited—a 50:50 joint venture between Wilmar International Limited and Delta Exports Pte Limited. Delta Exports is a bulk commodity trader based in Singapore.

THE COMPLAINT

This second complaint to the CAO regarding Wilmar Group's operations in Indonesia was filed by community groups represented by six civil society organizations (CSOs): Forest Peoples Programme, SawitWatch, Setara, Lembaga Gemawan and Kontak Rakyat Borneo. The claimants raised social and environmental concerns which they believed were caused by the on-going activities of the Wilmar Group in Indonesia. Their claims include social conflicts as a result of land clearance

without appropriate community approval or completion of Environmental Impact Assessments (EIA), and non-adherences to national legislation, IFC's Performance Standards, and certification protocols of the Roundtable on Sustainable Palm Oil (RSPO), of which Wilmar is a member. The complainants listed a number of companies belonging to the Wilmar Group in West Kalimantan, Central Kalimantan and Sumatra, where they believe local communities have experienced these impacts.

This is the second of three complaints made to the CAO regarding the Wilmar Group's operations in Indonesia. Information regarding all three complaints is available on CAO's website at www.cao-ombudsman.org.



SAD 113 group members in Jambi (Photo: Setara Jambi)

CAO PROCESS

CAO's assessment

The CAO's first response to complaints from affected communities is an assessment of the situation carried out by its dispute resolution team. Given the large number of companies and communities listed in the complaint, the first step in CAO's assessment process was to obtain

confirmation from the signatories about specific concerns. Through interviews and questionnaires, the CAO sought to establish the specific nature of the problem/concern for each location, and the identity of the community members.

CAO received concrete feedback from six signatories and followed up through several focus group discussions that included community groups and other related CSOs. Through this methodology, CAO, with help from CSOs and community groups, identified disputes associated with two Wilmar companies in Sumatra.

CAO recognizes that additional plantations and communities were identified in the complaint. However, after communication with the signatories and visits to the field, the CAO team was not able to identify specific communities to engage in a dispute resolution process.

Of the two disputes in question, one was located in Riau Province and the other in Jambi Province. In the case of Riau, the CAO found that Wilmar's Cipta Riau Sarana (CRS) company and the Pangean community were engaged in a negotiation process mediated by the local CSO Scale-Up.

In Jambi Province, a dialogue initiative had been developed between Wilmar's Asiatic Persada (PT AP) and the SAD (Suku Anak Dalam - indigenous community) community groups. Here, the parties were being assisted in their engagement by local CSO, Setara.

CAO's role as mentor

In both the Jambi and Riau cases, the CAO team suggested to the parties that it would play the role of mentor and observer with the aim of supporting the processes that were already underway, including any resulting outcomes.



Setara Jambi played an important role in encouraging dispute settlement between SAD 113 and PT AP through mediation from 2010-2011

CAO's role was partly defined by its desire to strengthen local mechanisms and local solutions, and to avoid creating parallel processes that would duplicate or replace the efforts of local actors. The CAO also recognized that the parties in each dispute had requested the CSOs to lead the dialogue process prior to making a complaint to the CAO.

CAO's aim was to help build the capacity of the various actors, particularly the CSO facilitators, and to ensure that the experience and insights from the Sambas cases in CAO's first complaint regarding Wilmar could be transferred and adopted most effectively in these new processes by the parties in Sumatra. CAO also acted as a mentor to each party to support the dialogue processes.

DIALOGUE PROCESS

Riau

The dispute between Pangean community groups and CRS in Pekanbaru, Riau, was mediated by the local NGO Scale-Up, and involved 583 hectares (ha) of land in the two villages of Giri Sako and Kuantan Sako.

The CAO team was present at five dialogue meetings after which the community group and the company reached a provisional settlement. A portion of the disputed land remains unresolved as a result of

differences involving local and national government. The company has granted 147.5 ha of planted land to the Pangean community group. This land is already covered by a productive oil palm plantation which is three to seven years old and free from claims.

In addition, the community and company created a framework for mutual benefit collaboration. The company buys oil palm fruit from "Perisai Lestari (PL)", a Pangean community smallholder cooperation unit. The monthly transaction was about 195 tons of oil palm. Scale-Up, the District Government, Law Aid Institute of Pekanbaru, and the CAO have been monitoring these agreements.

Physically, Perisai Lestari has received a total of 145.7 ha of land from CRS, which was formally surrendered by CRS in the presence of a notary in October 2010.



Wilmar Cipta Riau Sarana General Manager, Low Kim Seng (right), hands over a bundle of plantation land certificates to the head of Perisai Lestari Cooperative, Ismed, at the notary office in Pekanbaru – Riau surrendering 145.7 ha to the community as agreed (Photo: Syafrizal, Wilmar CRS, 2010)

During a monitoring trip in April 2012, the CAO conducted three separate meetings with Scale Up and local signatories, Perisai Lestari (the Pangean community cooperation unit) and CRS. CAO found that Perisai Lestari is facing technical problems regarding smallholder plantation management. It was discussed during the meeting that the group can seek support

from the District Plantation Agency in the form of a community empowerment program.

In compliance with the Memorandum of Agreement (MoA) between the Pangean Community and CRS, all parties agreed during respective meetings of the April 2012 monitoring trip that CRS has fulfilled its obligation in accordance with the agreement. Scale Up, the local signatories, the representatives of the Pangean Community, CRS, and the CAO concluded that the case will now be closed.

Jambi

The disputes between Asiatic Persada (PT AP) and community groups in Jambi were mediated by a local NGO, Setara, at the request of the parties. They relate to two separate community groups, SAD Mat Ukup and SAD 113, and involve approximately 154 ha and 3,750 ha of disputed land, respectively.

Prior to the launch of the dialogue process, CAO provided three days of capacity building for Setara, the CSO facilitating the process, as well as for the SAD Mat Ukup group, and SAD 113 group, the two community groups that were parties to the conflict.

SAD Mat Ukup

Two negotiation meetings were facilitated by Setara between PT AP and the SAD Mat Ukup group. After the second meeting, the community and PT AP made a bilateral agreement outside of the formal Setara-led process with the following terms:

- The company would enclave 151 ha of land for the community's use. Details surrounding this agreement would be stipulated at a later date;
- Regarding 2600 ha that the community claim as remote farmlands, the community agreed to join into a partnership with the company in a 1000 ha area outside the concession to be shared with other SAD groups.

The Mat Ukup group withdrew from the agreement in October 2011, citing the lack of agreement on subsequent details, particularly around land ownership and competing land claims in the 1000 ha area.

The SAD Mat Ukup group then referred their case to a Jambi Province government team to facilitate a PT AP-SAD dispute settlement at the provincial level.

The community group also decided to sign a third complaint to the CAO regarding Wilmar's operations. As a result, the ongoing concerns of the Mat Ukup community are being addressed as part of CAO's response to the third complaint.



Some of SAD households stay inside the PT AP concession area in Jambi to demonstrate their claim to the land. Photo: Setara Jambi.

SAD 113

Ten negotiation meetings were held between PT AP and the SAD 113 group, also facilitated by Setara from March 2009 to September 2011. Some progress was made, including through participatory land mapping. In an intermediate agreement of March 15, 2011, the parties agreed to enclave 240 ha of land and 7 graveyards for the community. The community further laid claim to about 3,500 ha of land, over which the negotiations reached a deadlock.

In the course of the negotiations, the community groups, especially the Mat Ukup group, revised their claim to 1000 ha of partnership plantation land, but an impasse

was reached over how much land each group would manage, and whether this 1000 ha option offered by the company would be for one specific group, or shared among a number of SAD communities. Despite considerable investment of time and resources by all parties, a resolution of this issue was not reached.

As a result of the deadlock, some members of the SAD 113 group reached out to external parties to represent the community in the facilitation being led by the provincial government. The community group also decided to join the third complaint to the CAO. The SAD 113 case is therefore being handled under CAO's response to the third complaint.

In response to this third complaint, the CAO now works with provincial government units in a Joint Mediation Team.

OUTCOMES

The mediation of the Riau case led to agreement between the parties in June 2010. In October 2010, the company surrendered 145.7 ha of land covered with three to seven year old oil palms to substitute the land disputed by community.



30 percent of the oil palm plantation area of Perisai Lestari has to cover overhead costs and maintenance of the remaining 70 percent in need of productivity improvement (In Pangean - Riau, April 2012).

The Perisai Lestasi cooperation faces technical problems in managing their

smallholder oil palm plantation. In April 2012, the cooperative staff reported an almost 70 percent drop in plantation productivity to the CAO team. The remaining 30 percent now needs to cover overhead costs as well as maintenance of the less productive plantation land. This, in turn, has led to a lower monthly share of revenues for the community cooperative members. Presently, the members of the cooperative are debating whether to continue cultivation or sell the land to a third party.

The two cases in Jambi are ongoing disputes that are now being handled directly by a CAO mediation team, and dialogue is underway. In these cases, it is too early to assess outcomes at this stage.

As the agreement in Riau has been fully implemented, and because the ongoing concerns of the communities in Jambi are being addressed through CAO's response to the third Wilmar complaint, CAO is closing the second Wilmar complaint.

LESSONS AND INSIGHTS

The challenges of a mentoring role

The CAO believes in the importance of strengthening local processes and mechanisms for resolving conflict, rather than replacing local efforts. It is sustainable local mechanisms that will continue to serve communities and companies in resolving problems as they arise long after a CAO intervention. This was the rationale for CAO's role as a mentor and support to local agents leading the dispute resolution processes in Riau and Jambi.

CAO's role as mentor and advisor yielded results in the case of Riau. In Jambi, however, this approach was not as successful. By not acting as mediator, the

CAO ultimately relinquished stewardship of the process. As a result, CAO was unable to provide the same kind of input and assistance to the process, especially as challenges arose in the negotiations.

Structural and systemic issues

The CAO recognizes that situations in which companies and communities are in conflict over land—often with a legacy of years of disputes and conflicting land claims—are not typically unique to the locations identified in a complaint and reflect broader, structural issues related to land administration and management.

While there are similarities between different land conflicts, solutions will often be highly "situation specific". Government entities have an important role to play, both in clarifying conflicting claims to land and codifying mutually acceptable solutions when they have been reached by the parties concerned.

The CAO believes in the value of private sector operators building their own capacity to address these structural issues, and addressing conflicts as they arise proactively and constructively in their communities of influence.

At the time of writing, the dispute resolution process in Jambi involving five communities and Wilmar subsidiary PT AP is ongoing. CAO expects to be able to learn and reflect on further lessons from this process once it is completed.

The signed agreements and other documentation relevant to the case are available on the CAO website – www.cao-ombudsman.org