



FINAL OMBUDSMAN ASSESSMENT REPORT

**Complaint from Communities in Kalimantan and Civil Society in relation to
activities of the Wilmar Group of Companies**

March 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
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, complaints are responded to by the CAO's Ombudsman function.

This document is the final assessment report relating to issues raised in a complaint submitted by local communities and civil society organizations in relation to IFC's participation in the Wilmar Group of companies in the palm oil sector in Indonesia.

1.1 The complaint

On 18 July 2007, the CAO received a complaint from community groups and civil society organizations raising concerns of social and environmental harm which they believe is being caused by the on-going activities of the Wilmar group of companies, a client of IFC.

The complainants reference three IFC investments (IFC Project Nos: 20348, 24644, 25532) in companies of the Wilmar Group (aka Wilmar Holdings Pte Ltd) made between 2004 and 2007, as well as a grant from the Global Environmental Facility (GEF). The Wilmar Group is a large corporate conglomerate, composed of many companies with operations in Indonesia, Malaysia, China, India, the Ukraine, and African countries.

None of the IFC investments/projects in Wilmar Group companies are for the exploitation of any particular Wilmar Group oil palm plantations in Indonesia, nor are the investments in any Wilmar Group companies that directly manage oil palm plantations. However, all three of the projects' Summary of Proposed Investment (SPIs) acknowledge that the Wilmar Group has oil palm plantations in Indonesia. The SPIs for IFC's 2nd and 3rd investments in the Wilmar Group state that the operations of the Wilmar Group's Indonesian plantations were reviewed as part of the initial environmental and social screening.

The Wilmar Group has managed oil palm plantations on the island of Sumatra since 1991, in the provinces of West Sumatra, South Sumatra and Riau. Wilmar Group acquisitions of oil palm plantations on the island of Kalimantan date to 1980. The Wilmar Group is currently expanding its operations in West Kalimantan.¹

Wilmar International's website provides a map of their operating locations (including plantations, mills, and refineries): <http://www.wilmar-international.com/>.

The full complaint is available on the internet and discussed fully in the CAO's Assessment report dated November 2007. The complainants raise a number of concerns, and the CAO obtained agreements from the parties to group them into three different topic areas. The rationale for this categorization was:

¹ "Policy, practice, pride and prejudice: Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)." July 2007. Friends of the Earth Netherlands, Lembaga Gemawan and KONTAK Rakyat Borneo.

1. concerns where Wilmar's own plantations impact communities and the environment negatively – mainly in the Sambas region;
2. more systemic concerns relating to the adequacy of EIAs; government permitting processes and local approvals; and the use of fire to clear land;
3. concerns where IFC's due diligence and application of policies have had adverse impacts on communities and the environment.

The detailed issues and their aggregation within each topic area – as described by the complaint signatories – are shown in the table below.

Issues raised by complainants	Topic
Clearance of primary forests by Wilmar	1
Take over by Wilmar of indigenous peoples' customary lands without due process	1
Failure by Wilmar to carry out free, prior and informed consultations with indigenous peoples leading to broad community support	1
Failure by Wilmar to negotiate with communities or abide by negotiated agreements	1
Failure by Wilmar to establish agreed areas of smallholdings	1
Illegal use of fire by Wilmar to clear lands	2
Clearance of areas of high conservation value by Wilmar	2
Social conflicts triggering repressive actions by Wilmar companies and security forces	2
Failure by Wilmar to carry out or wait for approval of legally required environmental impact assessments	2
Clearance by Wilmar of tropical peat and forests without legally required permits	2
Wrong classification by IFC of project as Category 'C' not Category 'A'	3
IFC did not follow the IFC's newly adopted E&S Review Procedures	3
IFC did not give due consideration of IFC's newly adopted Performance Standards PS1 - PS8	3
IFC did not adhere to the IFC's Information Disclosure policy	3
IFC did not assess / detect Wilmar's non-compliance with several Performance Standards	3
IFC wrongly noted on its website that Wilmar was compliant with RSPO standards	Already addressed

2. CAO Assessment

There is agreement between all of the parties on the process for addressing both Topic 1 as well as Topic 3 issues. These agreements are as follows:

Topic 1: concerns where Wilmar's own plantations impact communities and the environment negatively – mainly in the Sambas region.

The CAO initiated and managed an intensive dialogue process to address the concerns of community groups in Sambas living in the vicinity of two Wilmar

plantations. Based on the dialogue process, disputes between communities in Sambas and Wilmar have now been resolved. Settlement agreements relating to compensation and land have been formalized and are posted on the CAO's website.

A full conclusion report, including the process of achieving these settlement agreements in being prepared by the CAO in collaboration with the parties.

Topic 3: concerns where IFC's due diligence and application of policies have had adverse impacts on communities and the environment.

In relation to procedural and policy concerns, including due diligence on the part of IFC and its appraisal processes, a compliance audit has been commissioned and is currently underway. The Terms of Reference for that audit are available on the CAOs website.

Based on these agreements, this assessment report focuses on the issues raised in Topic 2.

Topic 2: more systemic concerns relating to the adequacy of EIAs; government permitting processes and local approvals; and the use of fire to clear land.

The Signatories have presented their concerns that the social and environmental issues identified in Sambas, as well as additional issues, are prevalent throughout Wilmar's supply chain and represented in many communities in Indonesia. As examples, they cite lack of adequate EIAs, failure to obtain necessary and timely permits, and continuing social conflicts in other areas.

During the Ombudsman process, the CAO has sought opportunities to address these more systemic concerns together with Wilmar and the Signatories, whilst acknowledging two considerations:

- a) the role of existing multi-sector industry bodies such as the Roundtable on Sustainable Palm Oil (RSPO).
- b) that the approach taken is broad in nature and does not itemize specific concerns in identified communities.

Specific developments are summarized below.

1. Concerns related to the use of fire to clear land

Wilmar has stated that it does not promote or set fire on its properties, but has accepted the CAO's recommendation in its Assessment report to have a meeting with civil society organizations (and others if necessary) to improve understanding of this issue. There is a recognized need to find opportunities to improve management systems and provide credible external assurance to all parties of how to monitor and respond effectively to the incidence of fire.

Civil society organizations and Wilmar have both indicated their willingness to meet to resolve this concern and the CAO has encouraged them to take the initiative to continue their bilateral engagement.

2. Systemic concerns about the clearance of high value conservation forest (HCVF) areas.

Wilmar has acknowledged that some land clearance has occurred without appropriate EIAs in West Kalimantan. As a result it has announced a moratorium on

all new plantation development in its estates until appropriate EIAs are completed. In addition, in Wilmar's response to the RSPO grievance panel dated February 4, 2008, it has proposed:

- i. for areas with potential high conservation value, all new land development shall cease until a full assessment has been completed and management plans taking into consideration the results of these assessments have been developed;
- ii. inclusion of RSPO Principles and Criteria in Wilmar's revised EIA standards
- iii. selection of accredited EIA consultants that provide confidence that they will practice due diligence in their assessments
- iv. only areas without high conservation value confirmed through participatory engagement of stakeholders will be considered for development.
- v. engage third party and even civil society organizations to monitor the management of identified high conservation value areas
- vi. forming partnerships with environmental and social organizations who are members of RSPO to conduct HCVF assessments and social impact studies in all new developments in West Kalimantan and elsewhere

CAO's understanding is that Wilmar, together with IFC and the Zoological Society of London has proposed to support RSPO through the Biodiversity and Agricultural Commodities Program (BACP) with the objective of testing and replicating application of biodiversity standards via the RSPO's Technical Committee on Biodiversity.

CAO recommends appropriate monitoring and reporting of implementation of these activities through RSPO and will review the status of these issues at the time of the release of the CAO Compliance Audit.

3. Institutional concerns related to permitting and the role of local regulatory authorities

There continue to be concerns about the role of local regulating authorities in granting permits to Wilmar and other operators to clear land prior to completion of appropriate due diligence and community approvals. It is the responsibility of the operator to assure itself that it has all necessary permits and has completed all due diligence prior to land clearance. However, the situation is complicated by the fact that different levels of government may have given contradictory directives to operators as to what regulations and procedures are necessary. There is further lack of clarity about how to obtain local community-level approvals for the occupation of land.

These issues apply directly to Wilmar, but they are common to the sector as a whole and affect Wilmar's suppliers as well as other operators. There is an opportunity to clarify this situation which should create benefits for both existing forest communities as well as responsible companies. However, because they are also dependent on the role of regulators and local government, effective resolution on these issues will need constructive engagement with these stakeholders as well.

The Ombudsman has recommended that IFC and IBRD in Indonesia take initiative to seek opportunities for constructive change within the sector, involving the government and local regulators as appropriate. IFC's office in Jakarta has indicated its interest in developing this initiative under its Advisory Services program, as part of a broader intervention in CPO. IFC acknowledges the challenges in working to reform the licensing procedures of local governments, as well as the value of engaging with civil society and corporate stakeholders in addressing these

challenges. CAO encourages further collaboration by the Signatories together with IFC and IBRD to pursue this objective.

4. Social conflicts and concerns relating to Wilmar's suppliers

The Topic 2 community concerns relate not only to Wilmar, but also to the impact of Wilmar's suppliers. Initially, Signatories to the complaint had asked that Wilmar stop purchasing crude palm oil (CPO) from DutaPalma. The activities of DutaPalma are seen as having the same negative impacts on communities as Wilmar's operations. Wilmar is seen as a major and influential purchaser from DutaPalma.

Wilmar has met with some of the complaint signatories and community leaders in a number of different fora in order to discuss appropriate actions that can be taken to influence Wilmar's suppliers. Wilmar believes that the RSPO process, which involves many stakeholders in an initiative that promotes adherence to specific Principles and Criteria together with the development of audit protocols, is the most appropriate way to resolve these critical concerns. Wilmar is working within the RSPO to obtain accreditation for its supply chain on a phased basis and has welcomed the involvement of Signatories and other members of civil society in this process.

CAO encourages continued engagement between the parties through the RSPO as well as on a bilateral basis. CAO will review the status of these issues at the time of the release of the CAO Compliance Audit.

3. Conclusions

Although the issues raised in this complaint are complex, there are specific and positive suggestions for initiatives that have been proposed in the course of the CAO's work with Wilmar, IFC and the community groups. Based on the progress being made in each of these complaint issues, and particularly the goodwill that has been generated through the settlement of the community disputes in Sambas, the CAO believes that Wilmar and the Signatories are in a strong position to pursue a bilateral process of dialogue, using the RSPO as appropriate, for the remaining 'Topic 2' concerns. CAO encourages IFC's proposed Advisory project to also provide an opportunity for continued engagement with civil society and the sector for addressing these issues. The CAO strongly encourages stakeholders to continue this dialogue process and achieve better understanding of appropriate actions to fully resolve issues as they emerge.

Clearly it is important to all of the parties to track progress and assure implementation. The CAO will remain diligent in monitoring progress and welcomes direct feedback from the parties as implementation proceeds. CAO's suggestion is to use the timing of the CAO Compliance Audit as an appropriate time for a progress review.

With respect to those issues within Topic 2 that may relate to IFC's due diligence on these projects, the CAO has requested its Compliance function to conduct an appraisal in accordance with the requirements of its Operational Guidelines to ensure that all issues within the complaint are addressed appropriately. The Compliance appraisal will be made available on the CAO's website.