

**Dispute Resolution Conclusion Report
Regarding Complaint Received in Relation to IFC’s Investment in PT SMU
(IFC #32208) in Indonesia, October 2022**

SUMMARY

In November 2018, CAO received a complaint from two communities (Long Beluah and Long Lian – the “complainants”) in North Kalimantan, Indonesia supported by the Alliance of Indigenous Peoples of the Archipelago Kalimantan Timur (AMAN Kaltim), a local nongovernmental organization (NGO). The complaint raised 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 Plantations (the “company”).

CAO found the complaint eligible¹ for assessment in February 2019 on the basis of supply chain links between PT ISP and PT SMU, an IFC client. During the assessment process, the complainants and company expressed their desire to participate in a dispute resolution process, which commenced in November 2019.

The process faced significant delays due to lockdowns related to the COVID-19 pandemic. The two affected communities were unable to participate in meetings with CAO due to a lack of access to the internet and other communication platforms.

In January 2022, the company and Long Lian agreed to terminate the dispute resolution process due to the extended delays and in March 2022, the company and Long Beluah also terminated the process due to disagreement regarding community representation in the mediation process. The CAO mediation team conducted a case closure visit to Long Beluah and Long Lian in September 2022.

With the consent of the complainants, the complaint is being transferred to CAO’s Compliance function for appraisal, in accordance with CAO’s Policy.²

This Conclusion Report documents the assessment and the dispute resolution process, and offers some reflections and lessons learned from the process.

¹ CAO eligibility criteria: <https://www.cao-ombudsman.org/how-we-work/intake-assessment>

² The CAO Policy is available here:

<https://documents1.worldbank.org/curated/en/889191625065397617/pdf/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf>

BACKGROUND

The Project

According to IFC project disclosures,³ a group of companies owned by the Katuari and Sutanto families of Indonesia, known informally as the Wings Group, was undertaking a US\$176 million project to: (1) expand beverage product lines under PT Tirta Alam Segar (PT TAS), (2) expand the production of fruit-flavored beverages in plastic cups under PT Murni Alam Segar (PT MAS), (3) commission greenfield coffee mix production under PT Harum Alam Segar (PT HAS), and (4) increase the capacity of an existing detergent business under PT Sayap Mas Utama (PT SMU). The proposed IFC financing was a loan package of up to \$88 million (\$44 million A-Loan and \$44 million syndicated B-loan) to those four entities.

The complaint pertained to an oil palm plantation in North Kalimantan operated by PT ISP. PT ISP is part of Gawi Plantations, which also forms part of the informal 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 (oleochemicals) from third-party refineries that source a portion of their palm oil from PT ISP. In May 2019, IFC estimated that PT SMU sources up to 1.6 percent of its raw materials from Gawi Plantations, and 0.4–2.6 percent of fresh fruit bunch production from Gawi Plantations enters PT SMU’s supply chain. IFC contested CAO’s eligibility decision on the basis that PT ISP was not an IFC client and the supply chain linkages between PT ISP and PT SMU were tenuous.

The Complaint

The November 2018 complaint was filed by two communities in North Kalimantan: the Community Group that Demands for Their Rights from Long Beluah (Long Beluah) and the Indigenous Peoples of Long Lian (Long Lian) (the “complainants”) with the support of AMAN Kaltim, a local NGO. The complaint raised concerns about water pollution, failure to adequately implement the plasma scheme⁴, failure to pay for construction of a church,⁵ and continued clearing of community land by the company without consultation.

CAO Assessment

³ For each proposed investment or advisory services project, IFC discloses relevant project information, environmental and social implications, and expected development impact on its website, www.ifc.org/disclosure.

⁴ Plasma scheme is a plantation partnership that is mutually beneficial based on respect, interdependency, etc., (Art. 57 (1) to facilitate smallholder plantations, where plantation companies or those who possess plantation licenses allocate at least 20% of its total area for smallholders (Art. 58 (1)) through credit, benefit-sharing, or other financing mechanism according to the legislation. Obligation to facilitate community plantation shall be carried out at the latest 3 years since business license is obtained and reported to the national and subnational governments. Available at <http://pkgppkl.menlhk.go.id/v0/en/undang-undang-no-39-tahun-2014-tentang-perkebunan/>

⁵According to the Complainants this was based on a prior agreement in 2010 between the community and GAWI. GAWI allegedly agreed to construct a church for the community as part of compensation for the land acquisition by the company. The church was constructed. However, the community alleges that they bore the costs of construction by providing free labor.

In February 2019, CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainants, gather information on the views of different stakeholders, and determine whether the complainants and the IFC project sponsor (the “parties”) would like to pursue a dispute resolution process facilitated by CAO, or prefer the complaint to be handled by CAO’s Compliance function for appraisal of IFC’s performance.

A CAO assessment typically involves a field visit to meet with the parties and other relevant stakeholders to better understand the situation.

Between May and August 2019, CAO conducted field visits to Indonesia to discuss options for addressing the complaint with the relevant parties. CAO met with members of the two affected communities and representatives of the company. CAO also met with other stakeholders, including the local government of Bulungan Regency and various NGOs relevant to the complaint.

During CAO’s assessment of the complaint, the parties decided to address the issues through CAO’s Dispute Resolution function and CAO published its assessment report documenting this outcome in November 2019.

Dispute Resolution Process

Preparation for dialogue

CAO convened meetings that included company representatives, members of the Long Beluah and Long Lian communities, government officials (Bupati Office), and the NGO supporting the Complainants, AMAN Kaltim.

Between August and October 2019, CAO convened capacity-building sessions and the first three joint meetings while finalizing the assessment report. This was done to fast track the process at the request of the parties. The capacity-building sessions included training on conflict resolution, communication, and the CAO process. The CAO team continued to provide ongoing capacity building to the parties throughout the process.

Dialogue process

The parties agreed to conduct four joint meetings in the mediation process.

CAO convened the first joint meeting in September 2019. Two CAO mediators were assigned to the case. One connected virtually, while the other attended in person together with the CAO interpreter. During this meeting, the parties agreed on the ground rules and the framework for mediation. The Long Lian community appointed seven representatives and the Long Beluah community appointed eight representatives to participate in the dispute resolution process on behalf of the communities.

The second joint meeting was convened in October 2019. During this meeting, the parties identified issues that required further action and resolution. They also discussed other concerns embedded in the original complaint, including failure to pay for a church to be built, encroachment by the company’s operations on the indigenous forest, and the company’s

acquisition of communal land without consent. The communities also requested the company to protect important sites and not encroach on sacred and burial sites. The parties agreed to conduct a joint fact-finding process on ancestral burial sites and traditional sacred sites to ensure that the company avoided encroaching on these sites. The joint fact-finding process was conducted after the October 2019 meeting; however, the issue was not settled as the parties interpreted the results of the joint fact-finding process differently.

The third joint meeting was held in November 2019. The parties continued to discuss the issues addressed in the complaint. During the second and third joint meetings, CAO worked with the parties to build trust between them and create a space for them to share their different perspectives.

Following the joint meetings, community meetings were held in Long Beluah and Long Lian in January 2020.

After COVID-19-related travel restrictions came into effect in March 2020, the dispute resolution process slowed down significantly. As a result, CAO was unable to convene the fourth and final joint meeting.

As an alternative to in-person meetings, CAO shifted to an online dispute resolution model. However, the complainants did not have access to the internet and other communication platforms.

Despite the challenging circumstances, CAO tried to maintain bilateral communication with the parties to keep the dispute resolution process moving forward. Long Lian was severely impacted by the lack of connectivity and CAO could not make contact with the community for over 10 months. The CAO mediators communicated with Long Beluah via telephone and text messages whenever possible. CAO learned of updates on the situation and dynamics on the ground from this communication with community representatives. CAO was also unable to meet with the company due to the travel restrictions but maintained contact online.

As a result of these efforts, CAO was able to draft a settlement agreement between the company and the Long Beluah community and facilitated bilateral consultations on the agreement to move the process forward. The CAO mediator communicated with the community representatives via text message and phone when possible.

However, due to the inaccessibility of the Long Lian community who did not have access to phones or text messages, their part of the complaint and mediation process with the company was put on hold between March 2020 and December 2021.

In December 2021, Indonesia lifted the COVID-related restrictions and CAO was able to convene the fourth joint meeting. The complainants were able to travel to Tanjung Selor to a hotel with internet and conference facilities to participate in the joint meeting. Before the joint session, CAO conducted bilateral meetings with each party to review their positions and prepare them for the joint sessions. During these joint sessions, the company and the complainants discussed outstanding issues, which included encroachment on indigenous forests, the plasma scheme, and the contents of the draft agreement.

The company and the Long Lian community did not agree on any issues raised in the complaint. During the joint session, Long Lian requested CAO to close the case, because no progress had been made. The representatives also requested additional time to decide whether they would give consent to transfer the case to CAO's Compliance function.

The company and the Long Beluah community could not reach a consensus on many issues included in the draft settlement agreement. They were initially able to make positive progress toward agreement on all issues except the plasma scheme. However, they did not agree on sharing information from the joint mapping exercise undertaken in 2012, which indicates who gave land to the company for the plasma scheme and how much land was given by each person. Consensus was reached on issues relating to water pollution and the relationship with the community. The session between Long Beluah and the company was adjourned to a future time to finalize the outstanding issues.

Following the December 2021 joint sessions, both communities informed CAO that the company had made them a cash offer, which the company stated was for development programs and to bring other benefits to both communities. The communities informed CAO that the company had stated that the offer was made on the condition that the communities accept it in full and as final settlement of the CAO complaint. This offer was made outside of the CAO process and without CAO's knowledge.

In January 2022, a CAO mediator travelled to meet with the communities in person. The purpose of the trip was to follow up on the joint meetings, discuss the outcomes of the dispute resolution process, and address the issue of the cash compensation offered by the company to the complainants.

During this trip, the CAO mediator was informed that the Chief of the village and other formal leaders of Long Lian community, who were not part of the community representation in the dispute resolution process, had accepted the company's cash offer. However, some community members were not satisfied with this settlement, as the village Chief had allegedly not disclosed or consulted with the community members prior to accepting the offer. Some representatives of the Long Lian Complainants wrote a letter to CAO requesting the case to be transferred to CAO's Compliance function. CAO also received a letter from the village Chief on behalf of the larger community informing CAO about the handover of the cash and stating that the problems raised in the complaint had been resolved and that the CAO case should be closed.

The village Chief and other administrative leaders of Long Beluah accepted the cash offer. The representatives of the complainants from Long Beluah indicated that acceptance of the cash offer did not represent them, because the village Chief was not part of the mediation process and did not represent the complainants. They indicated their desire to continue negotiating with the company. However, the Company stated that it was only willing to continue mediation with Long Beluah if the village Chief represented the complainants from Long Beluah. The complainants rejected this proposal and requested the complaint to be transferred to CAO's Compliance function.

In September 2022, the CAO mediators and interpreter conducted a case closure visit to Long Beluah and Long Lian. The meetings with complainants and other community members were deemed necessary to provide closure of the dispute resolution and to discuss the transfer of the case to the compliance function of CAO. The mediation team also discussed the monetary compensation made by GAWI to the Long Beluah and Long Lian village administrations. The CAO team also met with the representatives of AMAN Kaltim, the local NGO that supported the complainants. The complainants and the NGO shared that while the dispute resolution process ended without settlement, the process provided an opportunity for all parties, especially the communities, to learn about dispute resolution mechanisms, the importance of keeping data, information and documentation, and the need to be well organized as a community.



1 CAO team with Long Lian community representatives



2 CAO team meeting with the Long Beluah representatives

CHALLENGES

The case presented several challenges and learning opportunities, including the following:

Delays Due to COVID-Related Restrictions

Due to the COVID-19 lockdowns and World Bank Group travel restrictions, the mediation process faced significant delays. The restrictions made it impossible for CAO's mediators to travel to meet the parties and to convene face-to-face meetings between March 2020 and November 2021. Due to local travel restrictions, the complainants were unable to travel to the nearest town, Tanjung Selor, to get internet access that would allow them to participate in CAO online meetings. CAO made efforts to secure satellite phones to give to the complainants, but this approach was not feasible, because it required access to electricity, which was not easily accessible to the complainants.

The delays and the inability to conduct in-person meetings severely weakened the dispute resolution process, especially with regard to maintaining trust between the parties, exploring solutions, and planning for continued engagement. The delays in the process and lack of in-person meetings contributed to the stagnation of the mediation process and the parties becoming entrenched in their positions.

Problems with Access to the Internet and Online Communication Platforms

While the company had access to the internet and online platforms, the complainants did not. Only after COVID-related restrictions were lifted were the representatives from the Long Beluah and Long Lian communities able to travel to Tanjung Selor to use the hotel facilities and participate in CAO meetings. However, not all representatives were able to travel and stay overnight in Tanjung Selor which presented an ongoing challenge impacting the cohesiveness and momentum of the dispute resolution process. Occasionally, the CAO mediator and complainants also had difficulty connecting by telephone and text message because of limited network coverage. This hampered the ongoing communication between the CAO team and the complainants.

Limitations of Online Dispute Resolution

Although CAO made efforts to workshop the draft settlement agreement between the company and Long Beluah community through bilateral discussions, the process was inefficient and challenging. Although some progress was made toward drafting the settlement terms between the parties, it was challenging to close final gaps related to one contentious clause. This could possibly have been resolved if the mediation had continued in-person with ample time to discuss the settlement clauses and work through any disagreements. Some of the disagreements may also have been resolved if CAO had been able to build sustained trust and good faith between the parties and ensure adherence to the ground rules in the mediation process.

Issues with Representation

There were some challenges in the Long Beluah process regarding representation. The community representatives were identified in the ground rules for the mediation process and participated in the process under the authority assigned to them by the larger community of each village. However, other authority figures in the Long Beluah community, who were not part of the mediation process such as the village Chief, stepped in to resolve the issues with the company outside the CAO process.

CONCLUSION AND NEXT STEPS

Despite the parties' efforts to resolve the issues raised in the complaint, no agreement was ultimately reached. Accordingly, the case will be transferred to CAO's Compliance function at the complainants' request and in accordance with CAO's policy. CAO will conduct a compliance appraisal to determine whether an investigation of IFC's environmental and social performance is merited in relation to the issues raised in the complaint, or whether to close the case.

All documentation relevant to this case is available on CAO's website at www.cao-ombudsman.org.

See Annex A for more information on the CAO process.

ANNEX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO dispute resolution specialists. The purpose of a CAO 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 the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,⁶ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgment** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).
- Step 3: **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 90 business days, with possibility of extension for a maximum of 30 additional business days if after the 90-business day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree.
- 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.⁷

OR

Compliance Appraisal/Investigation: If the Parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The

⁶ For more details on the role and work of CAO, please refer to the full IFC/MIGA Independent Accountability Mechanism (CAO) Policy.

⁷ 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 concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one Complainant must provide explicit consent for the transfer unless CAO is aware of Threats and Reprisals concerns. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days, with the possibility of extending 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of non-compliance and related harm. Third, in cases where non-compliance and related harm are found, CAO will monitor the effective implementation of the action plan.

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

Step 6: **Conclusion/Case Closure**