

DISPUTE RESOLUTION CONCLUSION REPORT – WILMAR 3

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

SUMMARY

Since 2007, the Compliance Advisor Ombudsman (CAO) has been involved in mediating several disputes between different Wilmar subsidiaries in Indonesia and communities affected by their operations. CAO accepted a third complaint from affected communities and a coalition of NGOs in November 2011, where land disputes were again at the heart of the conflict. By agreement between the parties, CAO convened a mediated dialogue between PT Asiatic Persada (PT AP), a fully owned Wilmar subsidiary, and several local communities starting in March 2012. The mediated dialogue made significant progress, particularly for the Pinang Tinggi community, and reached several interim agreements to the satisfaction of all parties. In April 2013, Wilmar International sold PT AP, and in late September 2013, the new owners chose to withdraw from the mediation. CAO encouraged the parties to continue the dialogue and to honor the agreements that had already been achieved. However, PT AP showed no willingness to engage on these issues. In December 2013, after the end of the CAO process, some of the communities were evicted from their homes. This report summarizes the mediation process, interim outcomes and lessons learned from CAO's perspective.

The Complaint

In November 2011, CAO received a complaint from three local community groups – SAD 113, SAD Mat Ukup and Zainal Group/Sungai Beruang (all are subgroups of SAD Suku Batin Sembilan) supported by 17 local, national, and international civil society organizations, including Forest Peoples Programme,

SawitWatch, HuMA, Setara, Lembaga Gemawan, Save Our Borneo, among others. The complaint relates to unresolved land disputes between local indigenous communities residing in Jambi, and PT Asiatic Persada (PT AP), at the time a fully owned subsidiary of Wilmar that owns and operates palm oil plantations.



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

All the indigenous communities reside in and around PT AP's concession area, which was granted in 1987, and which the community groups contend was granted without properly recognizing their claim to the land, and the fact that it was their place of residence and source of livelihood. PT AP changed ownership several times, with Wilmar acquiring the company in 2006.

The complaint raised the following issues of concern: forced evictions of some community members, improper take-over and use of land by PT AP, and non-compliance with past agreements as well as IFC's Performance Standards

Two previous complaints concerning Wilmar Group operations in Kalimantan and

Sumatra had been filed with CAO by affected communities in July 2007 and December 2008, respectively. Information regarding all three complaints is available on CAO's website at www.cao-ombudsman.org.

IFC's Investment

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, the International Finance Corporation (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 in Indonesia.

When CAO received this complaint in November 2011, IFC had two active investments in Delta-Wilmar CIS, a palm oil refinery and shortening manufacturer in the Ukraine. As of July 2013, the Wilmar Group had pre-paid its loans to IFC, and IFC had no active projects with the Group.

CAO PROCESS

CAO's Assessment

CAO's first response to complaints from affected communities is an assessment of the situation carried out by its dispute resolution team. Through the assessment process, five SAD groups were identified as affected communities in the complaint and chose to participate in CAO's assessment process:

1. Pinang Tinggi affected community group
2. Two sub-sets of the Sungai Beruang community:
 - i. Sungai Beruang evicted group spread in Jembatan Besi, Danau Minang, and Buayan Ilir
 - ii. Sungai Beruang Hamlet group
3. Terawang community group
4. KOPSAD/Farmer Group of Persada

All five community groups, as well as Wilmar's subsidiary PT AP, and local government units expressed a willingness to address disputes through dialogue and mediation. During the time of CAO's assessment, settlement processes were ongoing at the district and provincial level. All parties agreed to a process in which CAO would work closely with government toward a mediated solution to the parties' concerns. By agreement of the parties, mediation was conducted by a Joint Mediation Team (Jomet) composed of CAO mediators and local government staff. Jomet was supported by an Official Decree of the Governor of Jambi Province.

Dialogue Process

The mediation process started in March 2012 under a Memorandum of Understanding and a Code of Conduct agreed by all the parties. This was preceded by a round of pre-mediation meetings to discuss conditions for dialogue. Out of these meetings, the parties came to several early agreements and agreed to abide by them before and during the mediation, such as a moratorium on unilateral actions, reduced presence of security forces, communities refraining from collecting fruit or occupying additional land in the concession area, and a negotiated agreement to compensate the evicted group. In keeping with confidentiality considerations, CAO quotes agreements in this document that are available in the public domain in some form.

Separate dispute resolution processes were initiated for each of the five community groups, with the first rounds of mediations being held in April 2012. Capacity building was also provided by Setara, a local NGO, and by CAO, in the early phases of mediation to community and company negotiators alike to equip them with mediation and negotiation skills to participate constructively in the process. Throughout the process, the communities have had support from CSOs accompanying them.

1. Pinang Tinggi

The first mediation meeting resulted in the parties agreeing to conduct an assessment that would determine the location and size of the disputed land in question and develop options for resolution.

While this was being completed, the District Government of Batanghari issued a letter requesting that several community groups leave the concession area, the Pinang Tinggi among them. Joint efforts by the Joint Mediation Team, Jomet, and the parties managed to grant an exclusion for the Pinang Tinggi group, as their dispute was being addressed through mediation.

As a next step, the parties agreed to participate in a joint mapping exercise, and put forward their respective documentation surrounding the land, for review and verification by Jomet. This process resulted in the parties identifying 1028 hectares of land under dispute, divided into three parcels, which are discussed in Box 1.

Box 1: Mediation Agreements Pinang Tinggi

Pre-mediation agreement:

- The communities harvest and sell the fruit on 400 hectares (ha) to the company at an agreed price. The parties agreed that this agreement is valid while the mediation is on-going, with the aim of finding a permanent arrangement in the future.

Interim Agreements:

- There is disagreement over whether the company already compensated the community for the 610 ha. The parties agreed that the relevant documentation needs to be reviewed, discussed and agreed. Two proposals were put forward: (a) 20 percent returned to the community to be rented by PT AP, or (b) 500 ha returned to the community, with 110 ha for PT AP to be put into a partnership scheme.
- The company agrees that 258 ha have

not been compensated and will be returned to the community. The community will then rent them back to the company, which will engage the community members in harvesting the plants.

- The parties agreed to cooperate on addressing the issue of 160 ha being occupied by small holders.

Status:

- No final settlement could be reached before the termination of the mediation. In the second week of December 2013, the Pinang Tinggi were evicted from their lands.



Jomet team with the Pinang Tinggi group of representatives and observers

2. i) Sungai Beruang Evicted Group

During the pre-mediation process, the parties agreed to address the eviction issue through a compensation payment by PT AP to 83 evicted families. The mediation was then focused on the compensation amount for lands owned by two leaders of the community. The first step to address this issue was to set up a Joint Fact Finding Team that would collect and review documentation about the land, in order to map it and discuss settlement. The fact finding produced agreement on the location and the size of area (approximately 150 ha) to be negotiated for compensation payment from PT AP (see Box 2).

**Box 2: Mediation Agreements
Sungai Beruang Evicted Group**

Pre-mediation agreement:

- Compensation payment to 83 evicted families by PT AP.

Interim Agreements:

- Return of 123.5 ha and 35 ha to respective families.
- PT AP would then purchase the land from the families. The price of land was yet to be agreed.

Status:

- The land was returned, and a clear boundary was demarcated with a fence.
- The parties have not reached an agreement in land process. The two respective families expressed willingness to continue negotiation about price of the land.
- Formal closure of the agreement pending.

ii) Sungai Beruang Hamlet

The mediation process resulted in an early agreement to map out and settle the location and size of two cemeteries of Sungai Beruang Hamlet. Both parties also agreed to maintain the status quo and refrain from any land clearing or plantation development within Sungai Beruang area. The parties sought information from the relevant government agency to clarify and settle the status of land being claimed by Dusun 4 Sungai Beruang. The interim agreements are summarized in Box 3.

**Box 3: Mediation Agreements
Sungai Beruang Hamlet**

Interim agreement:

- PT AP agreed to recognize and respect the existence, extent and location of two cemeteries.
- The parties agreed to a plan to establish coordinates of the disputed boundaries. After a mapping exercise, the parties agreed on the findings, including identification of overhanging areas and conservation areas.
- Parties agreed on a plan for mapping land

use, and verifying land compensation, as well as a plan to collect data on the people living on the land.

Status:

- Field data was collected by the community, and they expressed their willingness to continue into negotiation.

3. Terawang

A first round of mediation was held in April 2012, and a second meeting to discuss pre-conditions to mediation was set up. However, the second meeting was postponed due to divisions among the community leadership. The process was also beset by unilateral actions taken by the parties outside of the mediation process. Ultimately, no consensus could be found around the pre-conditions, and Jomet terminated the mediation in April 2013.

4. KOPSAD/Tani Persada

Soon after the mediation process was launched, issues of representation within the community group became apparent, and in the first mediation round, the parties agreed to temporarily halt the process to allow the community to be better prepared to conduct negotiations.

In the interim period, the parties also took unilateral actions outside the mediation process, and no consensus for mediation could be found. Jomet therefore terminated the mediation in February 2013.

Additional community groups with land claims that overlap PT AP's concession

In addition to the five groups that were identified through the assessment process, two other groups affected by PT AP's operations with unresolved land claims came forward with an interest in joining the mediation.

Mat Ukup

The Mat Ukup community group is also based in Jambi, in the area of the PT AP

concession. The community was one of those identified in the Wilmar 2 case, and at the time of receipt of the complaint by CAO a mediation facilitated by the local NGO Setara was underway. Rather than duplicating efforts, CAO became involved in an advisory and mentoring capacity to the parties and mediators. Whilst in mediation, the Mat Ukup group decided to settle with the company outside the mediation, in a partnership with other groups and 1000 ha of land. The mediation therefore came to an end. However, the Mat Ukup group became unsatisfied with the arrangement and sought to reopen the direct dialogue with PT AP through the CAO process for Wilmar 3.

This group chose not to join the mediation process at its start. After the mediation had yielded some interim agreements for other groups, this group approached Jomet to gauge whether Jomet was willing to facilitate their engagement with PT AP also. After discussion, the Mat Ukup group agreed to seek facilitation by the Government of Batanghari.

Padang Salak

Another affected group with land claims in the concession area, the Padang Salak, also expressed an interest in joining the mediation once the process had started. With the mediation already underway for the other groups, Jomet put this on hold until more progress had been made, and trust been built, in the active mediations.

Termination of the Dialogue Process

In April 2013, Wilmar International sold its stake in PT AP. Several dialogue meetings had taken place between PT AP and different community groups at this stage, and some interim agreements had been achieved. This sale put all mediations temporarily on hold as PT AP's new management requested time to get familiarized with the process. In late September 2013, PT AP informed Jomet of their decision to withdraw from the CAO/Jomet-convened mediation, opting to

follow a process led by an integrated government team.

This withdrawal by PT AP meant that Jomet no longer had the necessary mandate from all parties to mediate the dispute. CAO spent the next months trying to engage with the parties to seek to exit from its engagement in Jambi in a responsible way. Throughout this time, CAO encouraged all parties to honor, and to build on the agreements reached to date. A closure meeting, at which achievements reached to date were to be acknowledged and the process formally closed, did not take place as PT AP failed to respond to CAO's letters regarding the closure meeting.

Recent Events

In December 2013, community groups with land claims competing with PT AP's concession area were forcefully evicted from their homes. CAO received information that homes have been dismantled and the area has been cleared, reportedly by a combination of police, military and the company's security forces.

Next Steps

CAO continues to believe that mediated dialogue is a way of addressing the land disputes between the communities and PT AP, and hopes that a non-violent approach to resolve the conflict can be found. Mediated processes can help address the root causes of a dispute and help establish lasting cooperative relationships between a company and the affected communities to mutual benefit.

As a result of the mediation process ending, and in keeping with CAO's Operational Guidelines, CAO is closing the case through its Dispute Resolution function and the case will be transferred to CAO Compliance for appraisal of IFC's environmental and social performance. The CAO Compliance audit triggered by the first Wilmar complaint and full details regarding its findings can be found on CAO's website.



CAO team, parties, and observers discuss a map during the joint mapping exercise

Observations

This dispute resolution process proved to be highly complex and challenging throughout, and yields a number of lessons and insights.

Does good faith engagement in mediation include a commitment of the parties to stay in the process?

Dispute resolution processes depend on the voluntary and good faith participation of the parties. The Wilmar 3 dispute resolution process started with all parties' written commitment to the principles and objectives of the mediation. This framework for good faith engagement between the parties achieved early agreements and outcomes that laid the groundwork for settling various land claims.

This process experienced many challenges, and the CAO team assessed the parties' commitment to mediation and good faith engagement in early 2012, at a time when the pace of progress in the dialogue had significantly slowed. It ultimately came to a halt when Wilmar International sold PT AP as the new owners decided to withdraw from the mediation process. The new owners were not contractually linked to the World Bank Group, nor were they members of the Roundtable of Sustainable Palm Oil (RSPO), which requires its members to resolve disputes in order to achieve plantation certification. Once PT AP pulled

out of the process, the mediation came to an end, regardless of the commitment of the other parties and CAO.

What is the duty of a responsible company vis-à-vis the communities affected by its operations?

In early December 2013, Wilmar International publicly committed to halt deforestation, not only in its own plantations but also on the lands of its palm oil suppliers. This is an important commitment, and, if implemented successfully, has the potential to have far reaching impact.

Unfortunately in Jambi, Wilmar's sale of PT AP has had direct and indirect adverse consequences for the affected communities. Interim agreements that were reached through mediation are not being honored, and communities with previously acknowledged land claims are being evicted from their land. This raises questions for CAO about the ethical responsibility of the company in discharging assets to a new owner in the midst of a sensitive mediation process, with no contingency plan provided for affected communities.

Wilmar International concluded its involvement with the World Bank Group when it pre-paid all outstanding loans to IFC in July 2013.

What are the limits of CAO's mandate when changes in company ownership occur?

Once CAO has found a complaint eligible, it does not automatically lose its mandate to engage in a dispute when the company concludes its contractual relationship with IFC. However, in order to continue with the mediation process, CAO requires an ongoing commitment from the parties to participate in the process. Instead of renewing its commitment to dialogue, PT AP ultimately withdrew from the process in late September 2013.

At this point, CAO and Jomet no longer had a mandate from all relevant parties to mediate the dispute. CAO continued to engage with the parties with the aim of ensuring a responsible conclusion to the process. Specifically, CAO encouraged the parties to continue to seek resolution to their concerns through dialogue, and to honor the interim agreements reached through mediation. However, PT AP did not agree to a closure meeting, at which these aims might have been discussed by the parties.

What is the best way to assist parties in dispute in a shifting environment of land claims?

The three Wilmar complaints were all characterized by complex land mapping and titling processes, and a long history of overlapping land claims. While this presents a typical challenge in land disputes, the case of Wilmar 3 was further complicated by a changing situation on the ground, in which new and different groups of people moved into the area and laid claim to land.



CAO with community and PT AP representatives carrying out collaborative land mapping

Often, such movements would occur independently of the mediation process and the agreements being reached, thereby making implementation of those agreements uncertain when confronted with this state of flux on the ground.

The changing landscape of land claims also meant that the communities engaged in the

dispute resolution process had to handle conflict with other community groups. This was sometimes resolved by engaging with groups and entities outside the mediation, often through lengthy negotiations, although at other times, these dynamics proved to be an obstacle to agreement and implementation.

Is government participation in mediation teams advantageous for the process?

The government plays an important role in many disputes, and this is particularly true when a dispute relates to land, with government's role in land use mapping, land management, and granting of concessions. Several layers of government were identified as important early in the Wilmar 3 process, building on CAO's experiences in the previous Wilmar cases. In Wilmar 3, CAO utilised a joint mediation model (Jomet) with a mediation team that was composed of CAO mediators whose focus was on facilitating and mediating discussions, and government representatives who convened the process, and brought local knowledge and authority.

One of the advantages of the model was the added legitimacy the local government brought to the process, which gave participants more incentive to participate and follow through. Government representatives also brought internal knowledge of land issues in Jambi, which helped Jomet and the parties assimilate, review and discuss complicated questions around land.

The joint mediation model also had the advantage of allowing the government representatives in Jomet to engage intimately in a mediation process, and interact with communities and the company. This experience is expected to help strengthen government agencies' conflict resolution capacities.

Given the political nature of government, and also its inherent authority, Jomet had to

be careful to keep within its mediation mandate, and not stray into an adjudication role that would not serve a dispute resolution process.

It is also possible that government's participation in Jomet may have given parties and observers the incorrect impression that the mediation team played the role of a "power broker".. A mediator's authority is derived from the parties, who bestow a mandate on the mediator voluntarily. The voluntary nature of this engagement, and the fact that agreements entered into are also voluntarily, ultimately makes agreements more sustainable. When the parties do not voluntarily engage, the mediator does not have a mandate and can do little to influence events.

What challenges were faced regarding communication?

The Wilmar 3 complaint was signed by many local, national, and international civil society organizations (CSOs) that were supporting the complainant communities, and who had varying degrees of proximity to the field and the mediation process.

At the start of the process, the parties agreed on the number of CSO representatives that would be present in the mediation sessions. While the CAO team focused their efforts primarily on the main parties, ensuring communication to the wider network of CSOs while running separate mediation processes became a challenge.

Attempts were made by the CAO team to ensure better communication, and CSOs raised further concerns along the way. During 2013, when the process was stalled after the sale of PT AP, CAO and the CSOs agreed on the need to address communication challenges in the next joint meeting of the parties. As the mediation was never restarted, there was no opportunity to do so.

Conclusions and Lessons

CAO has learned a great deal from its experience in Jambi through the second and third Wilmar complaints). Lessons from the Wilmar 2 process were summarized in the case conclusion report available on CAO's website. The engagement in Wilmar 3 equally yields valuable lessons:

- It is necessary to make further efforts to involve the parties to address issues of **shifting land claims and in-migration** jointly through the mediation process.
- Sometimes, as external conditions change, a conflict may **no longer be resolved through mediation**, no matter the effort and commitment of the mediators; and mediators cannot force the good faith participation of any party.
- **Involvement of government** representatives in the mediation team, despite the advantages this can bring, presents challenges – particularly in how external actors perceive government authority over parties, which is not necessarily aligned with the neutral role of a mediator required in a dispute resolution process.
- **Communication protocols** need to be much clearer from the outset when dealing with a diverse and large group of parties and complainants, not only to those participating in the dialogue process, but also those outside it.

A criticism of CAO by the CSOs involved in the Wilmar cases has been CAO's focus on specific communities rather than on systemic issues in Wilmar's operations and supply chain. While CAO derives its mandate from affected communities, it is not impossible in principle to engage with a company at a strategic level to discuss systemic challenges affecting its entire operations through CAO's dispute resolution processes. Through CAO's engagement with the Wilmar 3 complaint, this dialogue was started with Wilmar International, but ultimately did not come to fruition. As a

result, the concerns about systemic issues – land disputes in different Wilmar operations and in its supply chain in Indonesia and beyond – have not been addressed through this process.

CAO acknowledges that there is still much work left to be done to address many of the issues raised by affected communities. In the context of CAO's experiences with company-community disputes globally, CAO hopes that this experience of a mediation process being discontinued mid-way, and its interim agreements disregarded, does not discourage communities in Indonesia and beyond from engaging in similar processes. Despite obvious challenges, such processes can often prove to be transformative for the parties involved.

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