NON-JUDICIAL REDRESS MECHANISMS REPORT SERIES **8**

Wilmar and Palm Oil Grievances

The Promise and Pitfalls of Problem Solving

Dr Samantha Balaton-Chrimes
DEAKIN UNIVERSITY
Dr Kate Macdonald
UNIVERSITY OF MELBOURNE

Corporate Accountability Research

About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

The Non-Judicial Human Rights Redress Mechanisms Project is an academic research collaboration between the University of Melbourne, Monash University, the University of Newcastle, RMIT University, Deakin University and the University of Essex. The project was funded by the Australian Research Council with support provided by a number of non-government organisations, including CORE Coalition UK, HomeWorkers Worldwide, Oxfam Australia and ActionAid Australia. Principal researchers on the team include Dr Samantha Balaton-Chrimes, Dr Tim Connor, Dr Annie Delaney, Prof Fiona Haines, Dr Kate Macdonald, Dr Shelley Marshall, May Miller-Dawkins and Sarah Rennie. The project was coordinated by Dr Kate Macdonald and Dr Shelley Marshall. The reports represent independent scholarly contributions to the relevant debates. The views expressed are those of the authors and not necessarily those of the organisations that provided support.

This report was authored by Samantha Balaton-Chrimes and Kate Macdonald.

We acknowledge the invaluable input of all participants in this research for their generosity of time and spirit. We also acknowledge invaluable research assistance provided by Christine Pepah and Anne Faithfull.

Correspondence concerning this report should be directed to Samantha Balaton-Chrimes (sam.b@deakin.edu.au)

info@corporateaccountabilityresearch.net
https://twitter.com/caresearch_au
corporateaccountabilityresearch.net

Acronyms

AMAN	Aliansi Masyarakat Adat Nusantara (Alliance of Indigenous Peoples' of the Archipelago)
AGRA	Aliansi Gerakan Reformasi Agraria (Alliance for Agrarian Movement Reform)
ASEAN	Association of Southeast Asian Nations
BPN	Badan Pertanahan Nasional (National Lands Agency)
BRIMOB	Mobile Police Brigade
CAO	Compliance Advisor Ombudsman
CAPPA	Jambi-based NGO
CIFOR	Centre for International Forestry Research
CPO	crude palm oil
DFID	Department for International Development
DKN	Dewan Kehutanan Nasional (National Forestry Council)
DPD	Dewan Perwakilan Daerah (Regional Representative Council)
ELSAM	The Institute for Policy Research and Advocacy
FPIC	Free Prior and Informed Consent
FPP	Forest Peoples' Programme
FSPI	Federasi Serikat Petani Indonesia (Federation of Peasant Unions of Indonesia)
GAPKI	Indonesian Palm Oil Association
HCV	High Conservation Value
HGU	Hak Guna Usaha (Cultivation Right Title or Business Usage Permit)
HuMA	Association for Community and Ecology-Based Land Reform
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation
IFI	international financial institution
IMF	International Monetary Fund
ISPO	Indonesian Sustainable Palm Oil Association
Komnas HAM	Komisi Nasional Hak Asasi Manusia (Indonesian Human Rights Commission)
KOPSAD	Kooperasi Suku Anak Dalam (Cooperative of Suku Anak Dalam)
MIGA	Multilateral Investment Guarantee Agency
MNC	Multinational Corporation
MoU	Memorandum of Understanding
NGO	non-governmental organization

OECD	Organisation for Economic Cooperation and Development
PRD	Partai Rakyat Demokratik (Peoples' Democratic Party)
PT ANI	PT Agro Nusa Investama
PT AP	PT Asiatic Persada
PT BDU	PT Bangun Desa Utama
PT CRS	PT Cipta Riau Sarana
PT SAM	PT Sentosa Asih Makmur
PT WSP	PT Wilmar Sambas Plantation Co
REDD	Reduction of Emissions from Deforestation and Degradation
RSPO	Roundtable on Sustainable Palm Oil
SAD	Suku Anak Dalam or Batin Sembilan
SPI	Serikat Petani Indonesia (Indonesian Peasant Union)
STN	Serikat Tani Nasional (National Farmers' Union)
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
YLBHL	Environmental Legal Aid Foundation

Lists of figures, tables and boxes

List of Tables

List of Boxes

Executive Summary

This report outlines a number of complaints made to transnational, non-judicial grievance processes about human rights concerns pertaining to palm oil giant Wilmar in Indonesia, situating them within a broader landscape of remedy mechanisms.

The palm oil sector holds the promise of economic growth, employment and development, but is also widely acknowledged as entailing significant social and economic risks. Human rights concerns in the sector relate to the displacement and dispossession of indigenous people and local communities from their lands as the sector rapidly expands and plantations are established in frontier areas; and the social and economic rights of smallholders and landless labourers who often work in conditions that entrench rather than alleviate their poverty.

Wilmar is one of the world's biggest palm oil companies and has been the target of complaints to the Office of the Compliance Advisor Ombudsman (CAO) for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) (henceforth referred to as 'CAO'), and the Roundtable on Sustainable Palm Oil (RSPO), among other local non-judicial mechanisms. These complaints centre around human rights issues associated with violations of land rights of indigenous people and local communities, and to a lesser extent with transformation of livelihoods to smallholding 'plasma' arrangements, and violence and intimidation when protesting against companies.

The complaints

The CAO is the recourse mechanism for projects supported by the IFC and MIGA. The CAO has three separate functions:

Ombudsman/Dispute Resolution: a problem-solving / dispute resolution function – working with affected communities or workers and the relevant company

Compliance: conducts audits/investigations of IFC / MIGA's own decision making

Advisor: provides advice to the IFC and MIGA about their policies in relation to environmental and social sustainability based on lessons learnt from handling cases.

The CAO is available to receive complaints regarding any project in which IFC or MIGA have financial involvement, including via supply chains. Any individual, group or representative may make a complaint, provided they can demonstrate a connection to affected people.

The CAO received three complaints about Wilmar between 2007 and 2011 from a consortium of local, national and international non-governmental organisations (NGOs) on behalf of communities in dispute with Wilmar over land rights. The compliance arm of the CAO conducted an audit, released in 2009, that found the IFC was not compliant with the IFC Performance Standards in its financial support of Wilmar. This led to a moratorium on palm oil investment in the entire World Bank Group, and the development of a World Bank Group strategy for investment in palm

oil in 2011 (which had hitherto been non-existent); procedural improvements in the handling of applications for financial support in the sector; and the establishment of an IFC Advisory Services program to support social and environmental improvements in the sector in Indonesia. A second investigation of IFC was conducted and released in May 2016 that found further failures in IFC's compliance with respect to a 2010 disbursement to Wilmar, despite the findings of the 2009 audit. To our knowledge, the IFC has not made a palm oil investment since 2011.

The ombudsman arm of the CAO facilitated mediations in three sites: Sambas, Riau and Jambi.[1] In Sambas and Riau, community groups reached agreements with the Wilmar subsidiary plantations that involved land sharing and the establishment of 'plasma' smallholding arrangements, where communities establish cooperatives that manage the land and sell the palm fruit to the company. In all these cases, years after the agreements were implemented community groups complain that they are unable to make a living from these arrangements as they lack the technical (agricultural and management) expertise to make the land sufficiently productive, and they are now in debt. In Jambi, after more than two years of negotiations in which the Wilmar subsidiary was widely accuses of failing to engage meaningfully in the process, Wilmar sold the subsidiary and the new owners declined to take up the CAO's offer to continue the mediation.

The RSPO is a voluntary, multi-stakeholder organisation, the main focus of which is standard-setting and certification of sustainable palm oil production. The RSPO includes representatives from seven sectors of the palm oil industry: oil palm growers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs, and social or developmental NGOs. It is the pre-eminent organisation working towards social and environmental sustainability in the sector globally. The pervasive presence of disputes in the sector has meant that development of a complaints system has become an important element of the RSPO's overall regulatory system.

Though a number of complaints have been made about Wilmar to RSPO, two were studied for this research, both of which were made by the same community groups and civil society supporters engaged in the CAO process: one was in Jambi, one in Sambas. The RSPO complaints system was in nascent form at the time of these complaints, and so the RSPO deferred to the CAO processes for handling these complaints, and participated as an observer for learning purposes. Though it did not handle the grievances directly, the RSPO contributed to the cases by providing a forum in which affected parties could come together (e.g. communities, civil society groups and Wilmar executives at RSPO meetings); increasing community leverage over Wilmar, as the company had to be seen to be responsive to protect its reputation in the market; and taking up some of the systemic problems underlying the grievances in its working groups (e.g. free, prior and informed consent).

The effects of the complaints

In relation to individual remedy in the particular grievances, the CAO (and RSPO-supported) processes had mixed outcomes:

[1] In Riau the CAO supported a pre-existing mediation by local NGO Scale-Up.

Cover: Ecological damage in Jambi, Indonesia. *Source: Greenpeace*

- The CAO-facilitated agreements in the Sambas and Riau cases were not so much complete remedies of the human rights harms of aggrieved communities as compromises between, on the one hand, the communities' claims to land rights and demand for some livelihood and, on the other, the companies' claims to legal land rights and the right to earn a return on investment for planted areas. Furthermore, the difficulties in effectively implementing the agreements rendered the outcomes ineffective in terms of addressing the underlying grievances related to landlessness and poverty.

- In Jambi, despite the best efforts of largely well-respected mediators, the mediation processes failed to deliver any tangible outcomes.

- To our knowledge, any direct effects on existing human rights issues in any other plantations either in Wilmar's supply chain, or directly owned by Wilmar as a direct result of the complaint process of the CAO or RSPO were dependent on ongoing and site/community specific complaint making, and were by no means guaranteed.

The complaints processes did, however, have other noteworthy effects, including:

- Wilmar has broadened and strengthened its institutional commitment to human rights issues, for example by partnering with The Forest Trust on a 'No Deforestation, No Exploitation and No Development on Peat' policy, and through the establishment of a company-level grievance mechanism. However, the concrete impact of these commitments on human rights outcomes in plantations remains unclear.

- The IFC and broader World Bank Group have significantly strengthened their processes for engagement in the sector and have a much greater awareness of its social and environmental risks. The IFC has also established development support to address some of the key issues in the sector via its Advisory Services, however the impact of this work also remains unclear and the findings of the 2016 compliance investigation suggest challenges in making these changes meaningful within the IFC.

Factors influencing the effects of the processes

The Wilmar case to the CAO and RSPO generates four key overall lessons about the difference that transnational, non-judicial human rights mechanisms can make in cases of human rights grievances.

Firstly, problem solving as a mode of addressing human rights grievances can have some value in its remedial flexibility, for example by providing livelihoods, but it should not be conflated with human rights remedy. It does not hold human rights as minimum standards in agreements and is better understood as a bargaining process.

Secondly, though some solutions can be provided in problem-solving cases, this case suggests those solutions can easily fall short of remedying the human rights harm, or positioning the affected community complainants to enjoy a secure livelihood, land rights and culture. There is potential to improve human rights compliance in problem-solving processes, and some changes in CAO operations could address this issue.

Thirdly, if this problem-solving is deemed the best possible avenue for addressing human rights issues, for pragmatic reasons, balancing of power between parties is crucial and was inadequate in the CAO processes in this study. Some more significant changes in CAO's approach could start to address this issue.

Finally, there is some potential for non-judicial mechanisms to link local cases to systemic issues and advance systemic change in the country and the sector. However, this potential is highly contingent on relationships between all stakeholders, including particularly government, and on the willingness of a mechanism to use those relationships to advocate for more programmatic responses to key issues.

Implications for mechanisms and their users

Implications for grievance mechanisms:

Grievance mechanisms based on problem-solving (such as the CAO and RSPO), that come to resolutions via negotiated agreements rather than audit and compliance with minimum standards, must continue to work towards managing public perception of their function so that they are not seen as human rights mechanisms. Currently both the CAO and RSPO do present themselves primarily as dispute resolution mechanisms. However, many community groups and civil society organisation continue to approach these mechanisms as human rights mechanisms, and so the need for more communication and expectation management on this front persists.

More consideration needs to be given to minimum standards for 'solutions' or 'agreements' so they comply with human rights norms. Mechanisms might consider introducing human rights standards as starting points for negotiations, and compliance checks on agreements to ensure they meet both the organisation's own standards (e.g. IFC Performance Standards) and human rights norms. Similarly, more attention is needed to the long-term implementation of such agreements, and support for communities to make good use of them. In the Wilmar case this did not take place, but the CAO has provided this kind of support in other cases more recently and should do so more often.

More investment is required to equalise both capacity and leverage of parties to balance power between parties. In the problem solving processes undertaken in this case, the CAO was committed to both impartiality and to balancing power between parties in dispute resolution to facilitate fair outcomes. However, competing interpretations of impartiality influenced the CAO's operational decisions with respect to capacity and leverage. Impartiality can be interpreted variously as 'having no position', 'being outside the dispute', 'being free from bias' or being 'fair', meaning ensuring no undue advantage or disadvantage to either party. In the Wilmar case, the CAO ombudsman function privileged interpretations that relate to being 'outside' the dispute, while also trying to attend to interpretations that emphasise fairness and a freedom from bias or disadvantage. The imperative to keep the company engaged – an inherent part of the logic of a problem-solving approach – meant that approaches to capacity building and leverage erred on the side of 'being outside the dispute' and efforts to address power imbalances fell short.

In this case, more effort to build capacity and leverage for communities was required, as companies already enjoyed significant advantages.

- In relation to capacity, grievance mechanisms should consider providing more direct capacity building for communities, and/or support and resources for civil society groups to conduct this difficult work.

- In relation to leverage, though many of the structural disadvantages communities face against businesses cannot be directly resolved, steps can be taken to mitigate this imbalance in leverage in problem solving processes. Some possibilities for doing this include using standards and forms of evidence that favour communities to mitigate the current privileging of companies in legal and scientific standards and forms of evidence forms of evidence; mitigating the vulnerability of communities by providing for their livelihood during problem-solving process and taking all possible steps to ensure their safety; supporting communities to continually deal with internal disagreement and conflict so it cannot be used to divide them; allowing community and civil society mobilisation if the company is not meaningfully engaging in the process; and having NGOs to co-represent communities under certain circumstances.

Mechanisms should continue to invest, as the CAO and RSPO already do to an extent, in building local relationships. A combination of formalised structures for these relationships, and informal networks, is required for their effectiveness. Investment in these structures, including the informal ones (such as travel) is necessary. Particular attention and investment is required

to support local NGOs to support local communities to use individual cases to advance broader change in their own national contexts.

Where mechanisms have relationships with development organisations that can contribute to addressing underlying drivers of human rights harms, they should use those relationships to advance broader projects, such as the IFC Advisory Program on palm oil.

Implications for users of grievance mechanisms:

Any decision to take a grievance to a problem-solving mechanism must take into account that it cannot guarantee rights-compliance, and consideration should be given to whether or not it is the right choice if human rights fulfilment without bargaining is the objective.

Community groups and their supporters should be proactive in any negotiations to propose minimum standards that are more likely to protect their rights, and to propose a compliance check on any agreements. Communities and their supporters should also try to 'build in' to any agreements long-term support for their implementation, and the possibility of renegotiation if the underlying grievances and/or human rights issues are not adequately resolved by the agreement.

One of the most important roles civil society organisations can play is in the building of capacity for communities to make a complaint, navigate it, and then make use of any agreements through an implementation phase. Currently, this burden falls on local NGOs. Civil society organisations with more resources, and donors should consider providing resource support for this critical work. It is appropriate, however, that local NGOs with close relationships with communities continue to play the role of primary support for communities to ensure relationships of trust, understanding and legitimacy.

Strategic consideration needs to be given to ways to equalise leverage within negotiation processes. Learning from the experiences of groups that have gone through mediation is critical here. Some civil society groups may consider building expertise in this area and providing training and tactical support to community groups in negotiations. Groups might consider explicitly raising imbalances of leverage in early negotiation discussions to work towards a more level playing field.

It is important to maintain community and civil society networks that already exist, and strengthen them. Strong networks can facilitate greater learning and advice-sharing between communities engaged in grievances, and greater use of individual cases to advance bigger issues where appropriate.

Table of Contents

Introduction

The palm oil sector holds the promise of economic growth, employment and development, but is also widely acknowledged as entailing significant social and economic risks. Human rights concerns in the sector relate to the displacement and dispossession of indigenous people and local communities from their lands as the sector rapidly expands and plantations are established in frontier areas; and the social and economic rights of smallholders and landless labourers who often work in conditions that entrench rather than alleviate their poverty.

Wilmar is one of the world's biggest palm oil companies and has been the target of complaints to the CAO and RSPO, among other non-judicial mechanisms. These complaints have related primarily to land rights, and associated pressures on culture and livelihoods.

This report outlines these complaint processes, situating them within a broader landscape of remedy mechanisms. The report analyses their achievements with respect to provision of remedy for human rights harms. The final part of the report provides an analysis of the various factors that affected the functioning of the non-judicial mechanisms. This analysis provides important lessons about the risks and possibilities of using non-judicial mechanisms, and the conditions required for their effectiveness.

Palm fruit, from which the oil is extracted. *Photo: Samatha Balaton-Chrimes*

Table 1: Summary of the Wilmar case

Mechanisms/ claim making strategies	• CAO for IFC/MIGA • RSPO • Komnas Ham (Indonesian Human Rights Commission) • Administrative (governmental) complaints channels at local and national level • Domestic judicial avenues • Domestic and transnational political mobilisation
Human rights issues	• Inadequate protection of land rights and indigenous rights • Transformation of livelihoods from forest-based subsistence to cash economy • Violence and intimidation

Companies	• Wilmar and its subsidiaries.
	• Specific mediations took place between local communities and the following Wilmar subsidiaries:
	  • PT Asiatic Persada (PT AP) in Batanghari Regency, Jambi Province, Sumatra
	  • PT Cipta Riau Sarana (PT CRS) in Riau
	  • PT Agronusa Investama (PT ANI) and PT Wilmar Sambas Plantation (PT WSP) Co., both in Sambas, West Kalimantan

Affected people	A large number of communities affected by Wilmar's operations have brought complaints through the mechanisms listed above. Our analysis focuses on company-community mediations facilitated by the CAO ombudsman team in three locations: in Jambi (Sumatra), Riau (Sumatra) and Sambas (West Kalimantan). Our community-level research focuses on the communities participating in the mediations in Jambi .
Business activity	Wilmar is one of the world's largest processors and producers of palm oil and one of the largest plantation companies in Indonesia. The complaints examined in this case relate to land-use practices of the company's palm oil plantations in Indonesia.

Methodology

This report is part of a series based on the findings of a three-year Australian Research Council Linkage Project analysing the effectiveness of non-judicial redress mechanisms in responding to human rights concerns in which transnational business activity is involved. We adopt a broad definition of non-judicial grievance mechanisms, namely, those that are mandated to receive complaints, but are not empowered to produce legally binding adjudications.

Research has sought to shed light on the range of factors that contribute to greater or lesser effectiveness and legitimacy in the functioning of transnational grievance-handling systems. A key objective of the project is to develop recommendations regarding how non-judicial forms of redress can better support communities who are adversely impacted by business operations to access justice and have their human rights respected. These recommendations are primarily aimed at those who participate in these mechanisms, including businesses, affected communities and civil society organisations, as well as staff and other members or stakeholders of grievance-handling mechanisms themselves.

Field research for the project as a whole has focused on human rights grievances in the garment and footwear, agribusiness and extractives sectors, with case studies for each sector drawn from two jurisdictions: India and Indonesia. 10 case study reports, of which this is one, examine specific human rights grievances experienced by communities and workers and the strategies employed in their attempts to gain redress in the context of these specific sectors and regulatory environments. Five mechanism reports in this series have been developed to provide a better understanding of the effectiveness of individual non-judicial human rights mechanisms governing transnational business. In addition to these individual case-study and mechanism reports, the project's overall findings are presented in four cross-cutting reports which provide broader comparative analyses across the various case studies we examined.

This case study is the companion to two other reports in this series, *The Complaints System of the Roundtable on Sustainable Palm Oil (RSPO)* and *The Compliance Advisor Ombudsman for IFC/MIGA: Evaluating Potential for Human Rights Remedy*, both of which explore in detail the non-judicial grievance mechanisms used in this Wilmar case (*link*).

Wilmar was selected as a case study for a number of reasons. Wilmar has been one of the most significant cases in the region to go through a CAO process, with three complaints and a compliance process that had significant effects within World Bank Group policy. This proved to be a complex and protracted case, and involved significant interactions with another grievance handling mechanism that we also analyse as part of this series of reports: the RSPO. Focusing on this case thus also enables us to analyse interactions between mechanisms, and to study the dynamics of dispute management as they evolve over time.

This report's findings are based on extensive primary and secondary source research including field visits to the Indonesian Province of Jambi, and over 60 interviews and focus groups with over 130 people, including members of affected communities, the company Wilmar and its subsidiaries, civil society organisations, local government, the CAO and the RSPO. In addition, information is drawn from relevant secondary research, including online media articles, civil society organisations and company websites.

The scope of our research on this case is limited in several ways. Firstly, it is important to recognise that this individual case cannot be interpreted as representative of the diverse array of cases handled by the CAO. This is particularly so given that this series of disputes involving Wilmar lasted for many years, and the CAO's Operational Guidelines and practices have evolved during this time. Nonetheless, our detailed investigation of this case can shed useful light on the processes and mechanisms through which the CAO operated at the time of our research, generating , generating insights and questions of wider significance.

Secondly, the field research for this report was primarily conducted between 2011 and 2013, and the analysis applies primarily to this period (and therefore to the CAO's operations under its 2007 operational guidelines), though we do comment on developments since then where possible and appropriate. In particular, a number of complaints were made about Wilmar to the RSPO after this time, but we do not analyse these cases, not only because they took place after our data collection, but also because the CAO is the primary focus of our study.

Thirdly, the geographic scope of our research on this case was focussed in Jambi as this was the only case that had an ongoing mediation at the time of the research. The time and resources required to conduct research with communities also restricted our capacity to conduct detailed research with affected communities in Sambas and Riau. In Sambas, we conducted research in the regional capital, Pontianak, where we met with government, business and civil society actors involved in the CAO mediation. Our analysis of Riau is more limited, based on secondary research only.

Fourthly, unfortunately our research does not adequately represent the views of women, particularly at the community level. This is due to a combination of limited resources and the existing gender dynamics among our research participants. Women are not directly involved in the community leadership groups we interviewed, and it was difficult for us, with limited time and resources, to find other ways to gather the views of women at the community level. Notably, business and government participants in this research were also predominantly men, as it was mostly men who occupied the positions relevant to the study. In-depth research into the experiences of women with non-judicial redress procedures stands out as one of the most important areas in need of urgent future research.

Finally, though our research involved interviews, sometimes multiple interviews, with all the major stakeholders in the broad Wilmar complaint, our research with affected communities was more limited by resource and accessibility issues. As this report will make clear, the conflicts between communities and Wilmar subsidiaries have been lengthy, and in some cases acrimonious and even violent. Making contact with communities is dependent on logistical access, and ethical conduct of research with communities is dependent upon their willingness and ability to host us as researchers in the remote parts of the plantation where they live. We elected to concentrate our resources in meeting affected community groups in the Jambi case, where the mediation was ongoing and where some community groups were willing to participate in the research and host us. Not all community groups were willing to meet with us, and this should also be noted, though we did meet with the two community groups still engaged in a mediation at the time of the research.

Some quotations and sources of information have been kept confidential at the request of the research participants.

Background

Palm oil in Indonesia

Oil palm was first introduced as a plantation to crop to Indonesia by the Dutch colonial administration, and both the large plantation and smallholder parts of the sector have gone through various changes since that time (Jiwan 2012, pp.51-2). Large plantations were originally operated primarily by European companies that converted rubber plantations to palm after rubber prices dropped in the 1960s (Teoh 2010, p.6). While the Sukarno government (1945-1968) promoted nationalised state-owned development in the sector, under Soeharto (1968 to 1998), private plantations were more heavily promoted, in particular by offering concessions to his cronies and bringing in labour through *transmigrasi* (transmigration programs), where people were moved from more populated islands of the archipelago to less populated ones in need of labour (Jiwan 2012, p.52).

Smallholder schemes were developed with significant government support from the mid-1970s (Teoh 2010, p.6). The first scheme, from 1978 to 2001, entailed the provision of 2ha of 'plasma' plots per transmigrant family, situated around a corporate-owned 'nucleus estate' where the processing mill was also situated (Teoh 2010, p.9; Zen et al 2008, p.2). The second scheme, introduced in 1995 and eventually taking over the first scheme, operated on a similar partnership model but with more flexibility in land tenure arrangements (Teoh 2010, p.9; Zen et al 2008, p.2). Both schemes operate on the principle that the company puts up the capital and provides processing facilities, buying from the smallholders. Though one aim of these schemes was poverty reduction, they have also been criticised as sometimes unproductive debt traps (Zen et al 2008; Pye 2010).

The World Bank Group played a historically important role in the development of the oil palm sector in Indonesia, with the World Bank funding seven projects to the tune of $USD 500.6 million since 1965 to support smallholders and the development of new, large plantations (Teoh 2010, p.11). Since the 1970s, the IFC has also supported the private component of the sector, initially among smallholders, from the 1990s focused on large plantations, and from the mid 2000s also including supply chains (Teoh 2010, p.12). However, until recently, the World Bank Group had no formal strategy for its approach to the sector.

Since 2000 and the early Reformasi period, Indonesia has seen an exponential increase in palm oil plantations, clearing land at a rate of 600 000 ha per year (Colchester 2011, p.2) into 'frontier' regions that require the opening up of new land via deforestation through logging or illegal fires. This rapid expansion is driven by increasing demand for cheap edible vegetable oils and to a lesser extent biofuels (Teoh 2010, p.5). Oil palm has a much higher yield per acre than other vegetable oils such as soya, rapeseed, coconut or sunflower, and requires less processing, making it more affordable to produce and for end users (Teoh 2010, p.7). Increasingly, palm oil is also used for non-edible products such as soaps (Teoh 2010, p.7). The 2003 European Union target for renewable energy has driven increased demand for palm-oil based biofuels (Pye 2010), but edible oils remain the primary driver of expansion in the sector. Major importers of palm oil include Europe, China, Pakistan and India, and Indonesia is also a significant consumer of its own product (Colchester 2011, p.1; Teoh 2010, p.5), while Unilever is the world's single biggest buyer (Teoh 2010,

Wilmar plantation supply track, Sumatra. *Photo: Samatha Balaton-Chrimes*

p.21). Indonesia and Malaysia together produce 85% of palm oil (Teoh 2010, p.5), but Indonesia is expected to expand its sector more significantly and faster than Malaysia over coming years, having more available land and therefore being better situation to respond to the increase in demand that is expected to continue with global population growth (Teoh 2010, p.10).

Today, palm oil is hugely significant to the Indonesian economy, and a key part of its plans for future growth (Jiwan 2009 in Teoh 2010, p.10; Zen et al 2008, p.1). In 2013, state, private companies and smallholders accounted for 6.9%, 49% and 44.1% respectively of the total areas under cultivation (Potter 2015, p.12). Of the large plantations that constitute approximately half the sector, foreign ownership is significant - the International Monetary Fund's (IMF) support for Indonesia after the Asian Financial Crisis triggered economic liberalisation and greatly expanded foreign investment and ownership in the sector (Casson 2000, p.7). In particular, Malaysian companies play a big role in the large plantations opening up land (Colchester 2011, p.2). Investors include European banks that have historically backed the sector, and now Islamic banks in the Middle East, and financiers from India and China (Colchester 2011, p.2). Value-add processing further up the supply chain also takes place predominantly outside Indonesia (Teoh 2010, p.8). Nonetheless, despite high levels of foreign ownership, investment and value-add outside the country, the sector remains a key part of the Indonesian economy.

Palm oil is seen by the government and the sector as integral to the nation's development. As the sector has low levels of mechanisation and is labour intensive, it is a key employer, providing employment for roughly 3 million people (Teoh 2010, p.9), and it is a key export earner, earning USD7.9 billion in 2007 (Teoh 2010, p.8). Overtly pro-industry reports such as World Growth (2011) argue that the economic activity created by oil palm cultivation and in particular the employment opportunities translate into poverty reduction. For instance, Susila (2004) uses

measures of poverty incidence, rates of credit repayment and Gini coefficient in two palm oil growing communities to argue that the aggregate impact of palm oil cultivation has been positive. Others have suggested the growth of the sector has enhanced government capacity in key areas such as land reform, though this has taken place much more in Malaysia than Indonesia (Teoh 2010, p.9) where land governance remains problematic.

However, the benefits and burdens of palm oil are unevenly distributed between the different categories of stakeholders: smallholders, labourers, indigenous and other local communities, and corporations (Obidzinski et al 2012; Friends of the Earth et al 2008; Pye 2010). Where the latter can readily gain significant profits (see summary of Wilmar below), benefits for smallholders and labourers are much more contingent. Smallholders stand to benefit from higher returns on land and labour compared with alternative activities, but in practice that is dependent on district authorities establishing and enforcing pro-poor regulation, as well as technical assistance in management and agricultural practices (Feintrenie et al. 2010; Rist et al. 2010; Teoh 2010, p.13; Zen et al 2008). Landless labourers can find work, but it is characterised by low wages and weak and insecure labour rights standards (Sinaga 2013; Jiwan 2012, pp.70-72). Indigenous and other local communities bear the greatest burden in the sector, facing displacement and land loss, without any guarantee of future access to the benefits of palm oil. These groups have mixed responses to the sector, sometimes wanting improved conditions of access to it and its benefits, and sometimes resisting the expansion of the sector.

The oil palm industry has also been subject to intense criticism for its environmental impacts. As expansion of oil palm in Indonesia requires deforestation, it triggers a number of damaging secondary effects, including the destruction of ecosystems and wildlife habitat, massive carbon emission upon burning forests and peat, loss of water sources and water pollution, soil erosion, bushfires, widespread use of agrochemicals and pollution by mill waste (Jiwan 2012, pp.59-65; Obidzinski et al 2012). Most centrally for the purposes of this report, the industry has been widely criticised for its negative impact in relation to dispossession of local communities of their lands and insufficient benefit sharing, increasing land prices and land scarcity (Obidzinski et al 2012) which have led to hundreds of land conflicts across the country. This issue is explored in more detail below.

Wilmar's activities

Wilmar is one of a handful of global "mega-plantation companies" (Teoh 2010, p.6) and is the largest refiner and trader of edible oils in the world and one of the largest plantation owners, and therefore has been a strategic target of activism aimed to improve environmental and social standards in the sector, or outright anti-palm oil activism. Its business model is one of vertical integration, from production to processing and distribution, which allows greater control over access to cheap raw product. The company controls oil palm operations in China, India, Indonesia, Malaysia plus a number of other countries in Asia, Europe and Africa, and has a total workforce of about 92,000 people (Wilmar International 2016c).

Approximately 70% of its 238,287 hectares (ha) of *planted* area is located in Indonesia, and it also has an additional 31,66ha of plasma plantation in the country, where smallholders produce fruit for Wilmar purchase (Wilmar 2016d). The company also holds a land bank for future palm development that far exceeds the land it has planted (Milieudefensie et al 2007). Despite a sig-

nificant drop in value in 2012 when palm oil prices slumped, Wilmar's market capitalisation is close to US$15 billion (Y-Charts 2016) and it is ranked 252 on the Fortune Global 500 list (Fortune 500 2016).

The company was founded in 1991 as a private oil trading company owned by its current CEO Kuok Khoon Hong, and Indonesian businessman Martua Sitorus, both on the Forbes list of billionaires (Forbes 2016). The Kuoc arm of the company is recognised by civil society actors as more progressive on social and environmental issues than the Sitoras arm of the company, leading to different standards and approaches in the various plantations managed by the different arms.[2]

The Wilmar Group comprises numerous subsidiary and associate companies (Wilmar International 2016b), including those engaged in the human rights processes explored in this report: PT AP in Batanghari Regency, Jambi Province, Sumatra; PT CRS in Riau and PT ANI and PT WSP Co., both in Sambas, West Kalimantan.

Like all palm oil companies, Wilmar has access to finance in private markets. Other than Kuok and Sitorus, its major shareholders include Kuok's uncle Robert Kuok, and the major US-based food trading and processing company Archer Daniels Midland. Shareholdings cover just over 35% of its assets, while over 50% is financed by loans from numerous banks led by HSBC, Mitsubishi UF, Sumitomo Mitsui, Overseas Chinese Banking Corporation, BNB Paribas and the Commonwealth Bank of Australia (van Gelder et al 2015, p.18).

The company has also enjoyed support from the IFC over many years. The IFC has made four investments in Wilmar since 2003; two in the Singapore trading company, and two in a refinery in the Ukraine. The decision by the CAO that that the refinery investment, which was the only active IFC investment in Wilmar at the time of the third CAO complaint (see below), justified involvement in Wilmar's activity in Indonesia was significant in its close examination of IFC's social and environmental responsibilities in relation to supply chains. Wilmar pre-paid its loans to the IFC in July 2013.

Human rights issues and context

Historical context

The oil palm sector plays an important role in the Indonesian economy, but has also been criticised for its negative social and environmental impacts. Like other land-based sectors, including the extractives industry, the oil palm sector is deeply imbricated in the politics of land distribution and tenure, and indigenous peoples' struggles for recognition and land rights in the archipelago. As such, human rights issues relation to land, social and economic rights, and freedom from violence translate into widespread conflicts over land, such that human rights issues are now often approached in the sector as conflicts or 'disputes'. The rapid expansion of the sector that is expected to continue over coming decades is exacerbating these problems.

[2] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.

Trucks operating in the palm oil plantation areas of Jambi province, Indonesia. *Photo: Samantha Balaton-Chrimes*

Under Soeharto, from the 1970s to 1998, the establishment of private plantations was encouraged and facilitated through often legally dubious land transfers to individuals and companies with close links to government. Large tracts of forest land were cleared either by logging (legal and illegal) or illegal fires, with only vague and poorly enforced regulations to facilitate consultation with indigenous communities living in forests (Zen et al 2008, p.5; Friends of the Earth 2008). Licencing and other regulations were not always properly implemented. The legal framework for land has consistently been interpreted as favouring 'national interest' over local concerns (Colchester 2011, p.8).

At the same time, two patterns of population movement emerged that would have lasting consequences for land rights and access. Firstly, indigenous people were integrated into 'mainstream' culture by being moved permanently to villages and transitioned away from nomadic or semi-nomadic forest-based ways of life. This meant that indigenous groups were moved away from their traditional lands, allowing other interests to declare tracts of forest-land vacant. Secondly, as mentioned above, the Indonesian government orchestrated a nation-wide 'transmigration' program to decongest the heavily populated island of Java and relocate families to less populated islands, like Sumatra and Kalimantan. This program also served to provide labour to the host regions, particularly in palm oil, and granted transmigrants smallholdings on land considered by indigenous people to be their own. Nearly five decades later, indigenous and transmigrant populations have become intertwined through inter-marriage, establishment of new villages and communities, and shared labour and investment in smallholder oil palm cultivations. One participant in this research, talking about his own community, explained "for me, [the differences]

between outsider and [Suku Anak] Dalam [indigenous] people aren't important for me. The important thing is that the person is already in my community, it means already part of Suku Anak Dalam, this is my community, the person is the citizen of Republic of Indonesia. That's my thinking."[3] The lived experiences of these mixed communities significantly complicate discourses and practices of both indigenous and agrarian rights, as some communities experience more conflict between indigenous people and transmigrants than others (Beckert et al 2014).

Since the Reformasi period, post-1998, communities and civil society groups supporting them have increasingly sought to address the many human rights issues facing indigenous people and small farmers (indigenous and transmigrant).[4] One approach has been that of the national peasant movement, which has sought to address weak land tenure security, challenges in improving productivity, and difficulties with debt, that have led to the economic marginalisation of small farmers. This movement has its origins in the pre-Soeharto period, and re-emerged after the return to democracy, with its earliest and most concrete expression in the 1998 formation of the Federation of Peasant Unions of Indonesia (*Federasi Serikat Petani Indonesia*, FSPI, later just SPI). This movement has targeted its efforts at government reform, and is known for its direct action occupations of plantations and government protests. It primarily directs its attention at areas already planted with palm, and the improvement of conditions for farmers in those areas (Pye 2010).

A second, sometimes competing approach has been that taken by the national indigenous peoples movement, led by national NGO AMAN (*Aliansi Masyarakat Adat Nusantara* – Alliance of Indigenous Peoples of the Archipelago), who have sought, firstly, recognition of indigenous peoples' existence by the Indonesian government, and, secondly, legislative protection of indigenous peoples' rights, particularly to land (Li 2000). In the oil palm sector, this movement has focused primarily on forested areas being opened up for palm plantation, rather than already planted areas. AMAN and its supporters are critical of, the loss of customary tenure and common land that has meant the loss of a sustainable 'safety net' and livelihood that sustains poor, indigenous people, and the loss of sacred connection to land, place and culture (see also Friends of the Earth 2008). Supporters of the indigenous rights movement argue that replacement of forests by oil palm monocultures diminishes the potential for income diversification and renders communities dependent for their livelihoods on the potentially unreliable oil palm industry. A representative of Komnas HAM explained "what happens to the people when they lose their land? Not only the land, but after that they will lose their culture, they will lose other rights, for example education, health. Sometimes they lose rights to housing. This is the impact of the conflict between corporations and then local people, or indigenous people."[5]

Land and indigenous peoples rights

At the time of this research, recognition of indigenous peoples as such, and of their rights, including over land, were in a state of flux in Indonesia and rights codified in international law, including to free, prior and informed consent (FPIC), were not well instituted in national law

[3] Interview with Pak Ronni and community elders, Sungai Beruang, Jambi, 18 Feb 2013.
[4] Environmental civil society groups have also actively collaborated with both agrarian and indigenous organisations and movements, sometimes serving as an important issue on which they can find common ground (Pye 2010).
[5] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

or practice. The concept of indigeneity is a relatively recent one in the archipelago, and in practice rural communities who may never have thought of themselves in this way before can come to identify as indigenous both because they fit the criteria (temporal priority, a long attachment to land) and because of its benefits in terms of establishing legitimate claims (Li 2000). This is not to say that communities are being merely strategic, but rather that the concept of indigeneity is not necessarily a stable one in non-settler postcolonies (Kingsbury 1998), and is in the process of being 'worked out' in Indonesia (Li 2000, 2001). As such, debates about community land rights in general often merge with debates about indigenous land rights specifically.

Various terms are used in Indonesia that could denote indigeneity, including *masyarakat adat* (people governed by custom, a term commonly used as a self-identifier) and *komunitas terpencil* (isolated communities, a term more commonly used by government in a quite narrow sense) (Colchester 2011, p.3). Colchester estimates that between 60 and 110 million rural people fall into the category of 'indigenous', and roughly 60% of the nation's land is practically governed under custom rather than formal land tenure (Colchester 2011, p.3). As such, defining who is and isn't indigenous is a messy business, and so discussion about indigenous rights can potentially encompass very large portions of the rural population.

After independence, the Indonesian government actively sought to integrate indigenous peoples into 'mainstream' ways of life through education, employment and permanent resettlement (Colchester 2011, p.6). The 1979 Desa Law also weakened indigenous rights, as it led to the 'villagisation' of rural life in Indonesia, following the customary Javanese model, and undermined or co-opted other forms of customary governance.[6] In relation to land, though the constitution upholds customary law, it also upholds the state's rights over all natural resources, and it is the latter commitment that has taken effect in key pieces of land legislation. The Basic Agrarian Law (No. 5/1960) treats customary land rights (*hak ulayat*) as only 'weak usufructuary rights on State land', and the Forestry Law (No. 41/1999) defines customary forest (*hutan adat*) as state forest, which by the same law cannot have rights attached (Colchester 2011, p.7). Though the Forestry Law includes a classification of 'forest burdened with rights', there is no agreement on what this means and it has not led to indigenous land rights protections.

Licencing regulations also function in ways that disadvantage local communities and indigenous people. Preliminary concessions allow corporations to acquire land, and they can commence business with a Business Usage Permit (*Hak Guna Usaha*, HGU) once 51% of the proposed land is in their hands, returning it not to communities but to the state when the licence expires (Colcehster 2011, p.9). Regulations for consultation (known as 'socialisation') and impact assessments in such processes are vague and weakly enforced (Zen et al 2008). According to a government official interviewed for this research, consultation is poorly regulated such that "the socialisation is sweet, but tastes bitter" as communities are not properly equipped to assess what is on offer, and the offer is not always clear. Communities affected by these processes often wind up in plasma arrangements that can lead not to poverty reduction, but to debt and dependence (Colchester 2011, p.9). Though enforcement of regulations is better than it was under Soeharto, companies that were licenced during that time without strong social and environmental assess-

[6] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.

ment or consultation continue to operate, and the rapid expansion of palm oil into frontier areas makes the strengthening of these regulations a matter of urgency.

The Indonesian government and Indonesian law and policy are now deeply ambiguous when it comes to indigenous people and their rights. For example, though the nation has endorsed the UN Declaration on the Rights of Indigenous Peoples, the official stance of some government ministries is that there are no indigenous people in Indonesia, or that *all* Indonesians (except ethnic Chinese) are indigenous and so no special rights apply (International Work Group for Indigenous Affairs 2016). One of the most significant sources of resistance to indigenous land rights comes from the Ministry of Forestry (Pye 2010, p.857). Currently, approximately 70% of Indonesia is classified as forest-land under control of the Ministry of Forestry, and 30% is classified state land under the control of *Badan Pertanahan Nasional* (National Lands Agency, BPN). Historically, the majority of forest land was declared as such by the Minister, which has made the Ministry of Forestry very powerful in Indonesian land politics.[7]

However, there are also pockets of governmental authority that are more progressive (publicly or otherwise) on the recognition of indigenous people and their rights, and a number of legislative and policy initiatives are in progress to advance these. At the time of this research, a number of Bills on indigenous rights, proposed by various parties and addressing recognition, local government and land tenure, were under consideration by parliament. Some technical opportunities also exist to protect land rights, such as the titling of land rights (*hak ulayat*) on state land (controlled by BPN) but these have so far not been implemented in any meaningful way (Colchester 2011, p.7). BPN has shown some willingness to work towards finding ways to issue communal title, including through a Memorandum of Understanding (MoU) with AMAN on the registration of indigenous lands, and a ministerial regulation on Communal Land Rights, but progress on implementing this regulation has been slow.[8]

A 2013 decision by the Indonesian Constitutional Court regarding the 1999 Forestry Law may be the most significant shift in this area and has the potential to strengthen land rights for indigenous and customary communities. Decision Number 35/PUU-X/2012 appears to curtail the state's (specifically the Ministry of Forestry's) ability to unilaterally exercise control over forested lands by affording formal recognition of indigenous forests as a separate category. This ruling separates customary forests from their previous classification as State forests. Indonesia's 1999 Forestry Law previously stated that "customary forests are state forests located in the areas of custom-based communities". The Constitutional Court's ruling deletes the word "state" from that sentence, thereby revising the Law so that customary forests are no longer considered state forests (UNORCID 2013; Down to Earth 2013). The extent and effects of the implementation of this law remain to be seen.[9]

Currently, whether they identify as indigenous or not, communities disputing corporate land ownership find themselves faced with a further challenge in that both regulation and law regarding land can often be inconsistent in letter and application between different levels of gov-

---

[7] During the early 2000s, the Ministry of Forestry, when it was more progressive than it is currently, established a National Advisory Council (DKN) with indigenous, academic, industry, NGO and government stakeholders. This desk has emerged as a respected authority on issues of forest land since that time, but has not so far led to major change in law.
[8] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.
[9] We are grateful to Sarah Rennie for research assistance on this constitutional court decision.

ernment, from district to regional and national, and between different government departments. The lack of legal protection for communally owned or used land applies both to indigenous and non-indigenous communities, and played an important role in the Wilmar land conflicts. It is widely agreed that significant land reform from the highest to the lowest levels must be part of the solution to these problems.

Livelihood transformations

For indigenous peoples, who constitute many but not all of the communities affected by palm oil, the result of land acquisition, whether recent or historical, forced or voluntary, has been a transformation from traditional forest-based livelihoods to plantation-dependent livelihoods. Particular incidents of land acquisition form part of longer stories of integration (sometimes assimilation) of indigenous peoples into the dominant culture, entailing changes in religion, cultural practices, way of life and engagement in the capitalist economy. One participant in the research described that "in 2003 the community return to occupy this location [after forced settlement elsewhere] and started to learn how to plant and farming like transmigrants. So we started to learn how to plant palm for living. So the community learn to live permanent."[10] These communities find themselves both caught between and creatively juggling attachments to custom and customary land, and the benefits of a settled lifestyle in a cash economy (e.g. see Stead forthcoming). In some cases, affected families, or even whole communities, are in favour of this transformation, but in other cases they are not, or most commonly they may feel ambivalent about it, seeing it as the most pragmatic option despite its disadvantages. Whether community members ultimately see this transformation as in their best interests and as engendering improvements in their wellbeing is a contested question without a singular answer.

Some affected communities and some of their supporters saw oil palm as an opportunity, seeking a share in its wealth (Institute for Policy Analysis of Conflict 2014 p 9). A functioning partnership (plasma arrangement) with a palm oil company, where communities have some rights to land and harvest fruit to sell to the company, can provide access to a reasonably steady cash income which can lead to incorporation into the cash economy and access to its benefits, such as credit (Zen et al 2008). In cases where land has already been transformed to palm plantation, this is readily perceived as a better option than landlessness and poverty.

However, some NGO workers interviewed for this study who work closely with communities worried that the transformation ultimately amounts to a violation of indigenous peoples' rights to live as their culture dictates.[11] In addition, employment in or partnership with a palm oil plantation can lead to high levels of dependency of communities on the palm oil processor to buy their fruit at a decent price, and the lack of diversity in alternative income options poses a further risk to their livelihood. Furthermore, the palm plantations radically alter the ecological environment and diminish or destroy other resources formerly available to supplement any cash income, such as forest-based foods or medicines. Once communities agree to a plasma arrangement, their options for making stronger claims for the return of their land are diminished, further closing down their opportunities to create a different kind of life.

---

[10] Pak Musa, in Interview with Pak Ronni and community elders, Sungai Beruang, Jambi, 18 Feb 2013.

[11] Ade Ipang Ahmed, AGRA (Aliansi Gerakan Reformasi Agraria (Alliance for Agrarian Movement Reform)) Jambi, in NGO participatory research workshop Jambi, 22 February 2013; Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

Trucks operating in the palm oil plantation areas of Jambi province, Indonesia. *Photo: Samantha Balaton-Chrimes*

Violence and intimidation

The deeper-seated problems facing people affected by the oil palm sector can be exacerbated by patterns of violence and intimidation by state and non-state actors who can be deployed to 'protect' palm oil plantations from people who 'occupy' them (usually returning to their indigenous lands to lay claim to them) or harvest fruit that is legally considered the property of the company. As another analyst put it, "the arrests [for theft of oil palm in Jambi] involve company security guards working together with local police, reinforcing a widely held perception that the police effectively act as an extension of the company. When the 'thieves' face beating or extortion after arrest, as not infrequently happens, the sense of anger deepens." (Institute for Policy Analysis of Conflict 2014). This was a particular problem in the Jambi case, explored below.

Seeking remedy

This section provides a descriptive account of the complaints made about Wilmar to non-judicial mechanisms, primarily the CAO and the RSPO. As one community complainant explained, by the time the affected communities complained to the CAO "we already tried everything, from the lowest level, to heads of regions, the Governor, up to the president, organisations, up to Unilever, regarding the products. Already tried everything, international media..." [12] To understand the impact of the transnational, non-judicial processes, it is therefore also essential to provide an account of the other avenues for remedy available to communities, their use (if any), and their impact on the cases.

[12] Interview with Pak Zainal Abidin, legal advisor to Bidin, Jambi, 21 February 2013.

Table 2: Avenues available to pursue remedy

Mechanism	Use	Impact
CAO	Three complaints about Wilmar's operations across Indonesia	Mediated agreements at two sites (Sambas and Riau), one failed set of mediations (in Jambi) Findings of IFC non-compliance with its Performance Standards, subsequent moratorium on palm oil investment, followed by a new World Bank framework for palm oil investment.
RSPO	Informal communications and formal complaints	Deferred to CAO processes
Company level grievance mechanisms	None – no company level grievance mechanisms available at time of research	n/a
Komnas HAM	Multiple formal complaints	Some attempts to hold dialogue but no agreement implemented
Domestic administrative processes	Multiple complaints and a number of government-facilitated negotiations leading to at least one agreement (in Jambi)	Agreement for land deal reached but not implemented (in Jambi)
Domestic judicial processes	No use – too disadvantageous for communities in these cases	n/a
Domestic and transnational political mobilisation	Alliances between local, national and international NGOs leading to local, national and international demonstrations and campaigning, including targeting investors and buyers	Indirect impact on incentivising participation by Wilmar in problem solving processes

IFC Compliance Advisor Ombudsman

The CAO is the recourse mechanism for projects supported by the IFC and MIGA. The CAO has three separate functions:

Ombudsman/ Dispute Resolution: a problem-solving / dispute resolution function – working with affected communities or workers and the relevant company[13]

Compliance: conducts audits / investigations of IFC or MIGA's own decision making[14]

Advisor: provides advice to the IFC and MIGA about their policies in relation to environmental and social sustainability based on lessons learnt from handling cases.

The CAO accepts complaints in any form, and any language, and assesses eligibility based on IFC / MIGA involvement in the relevant project, the presence of social or environmental risks, and some link to affected communities. If eligible, further **assessment** takes place to determine feasibility of resolving problems, and this can involve field visits. Dispute resolution experts will talk with all stakeholders and determine amenability to **dispute resolution**. If everyone is amenable, the dispute resolution team facilitates a process. Various kinds of processes can be used, but this usually takes place through mediation, and sometimes involves fact-finding.[15] The CAO monitors the case until any agreement is implemented. This can take anywhere from months to years.

If parties are not amenable to problem solving, if problem solving fails, or if there are additional concerns about IFC or MIGA's involvement even after an agreement has been reached between stakeholders, a case is transferred to **compliance**. The compliance team, consisting of CAO and external consultants, will investigate IFC / MIGA's processes in relation to compliance with IFC Performance Standards and other policies (see Box 1 below) using desk based research and field trips, and issue a report to IFC / MIGA. It is up to IFC / MIGA how they respond. The CAO will monitor until compliance is achieved. Compliance appraisals can also be triggered by the CAO Vice President, IFC/MIGA senior management, or the World Bank President if they receive information of concern. There is no possibility of a compliance investigation of the private sector actor with IFC or any other standards, unless that is agreed to by all parties as part of a dispute resolution process.

---

[13] The name of this function changed from 'Ombudsman' to 'Dispute Resolution' in the 2013 CAO Operational Guidelines. Where we use the term 'Ombudsman' in this report, it refers to operations that took place under the preceding 2007 Operational Guidelines. Where the use of the term is not specific to any particular case, the term 'dispute resolution' is used to reflect current terminology. We also use the term 'problem solving' to refer broadly to the kinds of processes offered by this function across all iterations of the Operational Guidelines.

[14] The term 'audit' was used prior to the 2013 CAO Operational Guidelines, where it changed to 'investigation'. Where we use the term 'audit' in this report, it refers to operations that took place under the preceding 2007 Operational Guidelines. Where we use the term 'investigation', it refers to formal operations that took place under the 2013 CAO Operational Guidelines. Where the use of the term is not specific to any particular case, the term 'investigation' is used to reflect current terminology.

[15] CAO is theoretically open to other modes of problem solving, but these are the most common.

The **advisory** function is currently triggered at the discretion of the CAO Vice President in response to a request from the IFC / MIGA or the President of the World Bank Group, or as part of regular CAO work. The decision to conduct an advisory project is determined by the extent to which an issue reflects systemic social and environmental issues arising from the CAO caseload. Most advisory work to date has been triggered internally, rather than by IFC, MIGA or World Bank management. At the time of this research, advisory teams were assembled for particular tasks, e.g. to provide input into review of IFC Performance Standards, or IFC Extractive Industries Review (CAO 2003, 2010).[16] Since then, two permanent advisory staff have been appointed, and the CAO continues to draw on the expertise of consultants for this purpose.

Box 1: The IFC Performance Standards

The IFC and MIGA are required to conduct due diligence on all potential clients to ensure they adhere to the IFC Performance Standards. The standards are among the most detailed and comprehensive in the financing sector, and formed the basis of the Equator Principles, which are the pre-eminent voluntary social and environmental standard for private sector financing. The CAO compliance function investigates compliance with these standards (and any other applicable policies), and they can be relevant to dispute resolution processes if all parties in a problem-solving process agree to use them, for example as minimum standards for an agreement, however they do not have to and often, in practice, do not play a significant role in ombudsman processes.

The standards include:

1: Assessment and Management of Environmental and Social Risks and Impacts

2: Labor and Working Conditions

3: Resource Efficiency and Pollution Prevention

4: Community Health, Safety, and Security

5: Land Acquisition and Involuntary Resettlement

6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

7: Indigenous Peoples

8: Cultural Heritage

[16] For other advisory reports, see http://www.cao-ombudsman.org/howwework/advisor/

The Wilmar complaints

The CAO has handled three complaints in relation to Wilmar's operations. The first two complaints, in 2007 and 2008, requested intervention in all Wilmar's operations. Complainants alleged a range of social and environmental abuses, and non-compliance with national legislation, IFC's Performance Standards, and certification protocols of the RSPO, of which Wilmar is a member. The emphasis in these two complaints was on irregular acquisition and use of land, and forced evictions. The third complaint was regarding a particular incident of evictions and violent attack on community members in Jambi in 2011.

The complaints were made by an alliance of national and international NGOs including international NGO Forest Peoples' Programme (FPP), and the Indonesian national organisation Sawit-Watch (Palm Oil Watch) who played key roles in coordinating the complaint. The CAO found the broad-based approach to the complaint – that they requested intervention across Wilmar's operations[17] - problematic because it did not provide a clear link to specific and identifiable group(s) of locally affected people. Given its mandate to first conduct an assessment of the possibilities for problem solving, (and the possible need for a compliance audit), the ombudsman team conducted an assessment that involved visiting Wilmar in Singapore, and various sites in West Kalimantan. Various sites in West Kalimantan where the NGO complainants identified two community groups that were linked to the grievances raised in the complaint. The ombudsman staff were able to confirm that these community groups and the relevant Wilmar subsidiaries were amenable to problem-solving, and this is how the mediation sites were determined (CAO 2007). Upon receiving the second complaint, which listed 25 specific subsidiary plantations, the Ombudsman team made efforts to contact communities or their local representatives in all the named plantations, but received very little response. One community group in Riau was amenable to problem solving, while one new site in Jambi emerged as also interested (CAO 2009f).

[17] The first complaint made no mention of specific sites, while the second complaint listed 25 subsidiaries in Indonesia.

Table 3: Summary of CAO complaints regarding Wilmar

	Wilmar 1	Wilmar 2	Wilmar 3
Date	18 July 2007	1 December 2008	9 November 2011
Accused	Wilmar (general, but mainly focussed on West Kalimantan)	Wilmar (25 subsidiaries)(CAO 2009c)	Wilmar & PT AP
Complaint signatories	FPP & 18 other local and international NGOs	FPP, SawitWatch, Setara, Lembaga Gemawan and Kontak Rakyat Borneo	FPP & 19 other local and international NGOs
Main grievances	Widespread violations of IFC Performance Standards and RSPO protocols, particularly improper and illegal land clearances that are environmentally problematic and violate indigenous rights to FPIC, and led to major social conflicts (FPP 2007).	Widespread violations of IFC Performance Standards and RSPO protocols and national law, particularly improper and illegal land clearances that are environmentally problematic and violate indigenous rights to FPIC, and led to major social conflicts (CAO 2009c, 2009f).[18]	August 2011 violence against communities and destruction of housing in Jambi
Remedy sought	Investigation; adjudication of compliance with performance standards and RSPO protocols; and remedial actions (FPP 2007)	Changes to internal IFC procedures; an independent, participatory review of all Wilmar's operations; recommendations for reforms of practice; remedial actions for affected communities (including compensation) (CAO 2009c)	Not explicitly stated in complaint, but see complaint 2, of which this is an extension.
Outcome	1) 1) Mediated agreements in Senujuh and Sajingan Kecil villages in Sambas, West Kalimantan. 2) Compliance Audit that revealed major non-compliances and led to World Bank Group Palm Oil Framework	1) Mediated agreement in Riau, Sumatra. 2) Mediations in Jambi, Sumatra which failed when Wilmar sold PT AP (its subsidiary).	1) Ombudsman process already underway (see complaint 2) 2) CAO Vice President personally demanded a compliance audit of Delta-Wilmar, released in May 2016, revealing further non-compliances by IFC. This case is still being monitored at the time of writing.[19]

[18] This complaint was triggered by IFC's decision, in October 2008, to support Delta-Wilmar CIS – a refinery in the Ukraine – even though both ombudsman and compliance processes were ongoing at that time.

[19] This process was started under the 2007 Guidelines and finalized under the 2013 Guidelines, so the terms 'audit' and 'investigation' are both used in our description of this part of the process.

Process and outcomes

The CAO is characterised by a highly localised, flexible and responsive approach targeted at problem-solving wherever that is possible. This approach, combined with the multiple complaints, meant the CAO 'process' was divided into different components: two compliance audits of the IFC, and Ombudsman processes at three different sites: Jambi, Sambas and Riau. The Jambi and Sambas problem-solving processes in turn entailed multiple mediations with different community groups.

Compliance and advisory processes

Unusually for the CAO, this complaint was referred to the compliance team at the same time as the Ombudsman team was working on it. The compliance team conducted an appraisal that raised concerns about supply chain due diligence, and approved an audit in September 2008. The IFC responded that they had no formal leverage over supply chains in this case (referring to the Ukrainian refinery), but the CAO upheld the need for an audit on the basis that no formal leverage is not a sufficient justification for the preclusion of the IFC Performance Standards (CAO 2008a). In December the CAO Vice-President expanded the terms of reference for the compliance process to include a fourth investment in Wilmar, the Delta-Wilmar CIS investment, made in October 2008, while the compliance process was already underway (CAO 2009a).

The final audit report, in June 2009 concluded that IFC did not meet the requirements of its own Performance Standards in its trade facility investment, and in its Delta-Wilmar investment. It was concluded that the IFC failed to assess the supply chain of Wilmar as required by the Performance Standards (CAO 2009e). The report also argued that 'the adoption of a narrow interpretation of the investment impacts – in full knowledge of the broader implications – is inconsistent with IFC's asserted role, a mandate of reducing poverty and improving lives and commitment to sustainable development' (CAO 2009e). The narrow approach to assessing Wilmar investments was attributed by the CAO to 'commercial pressures' (CAO 2013c).

This led to a moratorium on palm oil investment applied to the entire World Bank Group, a review by the institution of its involvement in the sector, and a subsequent new framework for the World Bank Group's investment in palm oil. In April 2010 a draft palm oil strategy was released by IFC for comment. The CAO was an observer in this consultation process, and then provided additional non-public feedback on a draft of the new Framework for the for the IFC's investments in the sector.[20] The final strategy was released in April 2011 (and the moratorium lifted), stating that attention must be paid to (i) the careful selection of the clients depending on their ability to address environmental and social issues, (ii) land acquisition being in compliance with local regulations, (iii) biodiversity conservation, (iv) profit sharing with local communities and (v) the need to focus on the food and agribusiness supply chain.

This process led to a change in the IFC procedure for processing all single commodity trade finance (CAO 2016b), and more specific changes in palm oil. In addition to the new investment framework, the CAO has also noted that the IFC has also developed a more collaborative approach to implementation of the framework, which entails greater stakeholder engagement,

[20] Interview with CAO staff, Skype, 16 January 2013.

more guidance for staff who screen and assess investment applications to encourage more attention to the issues raised in the audit report, and greater monitoring and evaluation (CAO 2013c). IFC also established an Advisory Services Program in Indonesia that includes engagement with RSPO, and three thematic advisory projects, covering benefit sharing, smallholder strengthening, and demonstration of the operational benefits of sustainable practices (CAO 2013c).[21] At the time of writing the IFC website shows two Advisory projects underway relating to palm oil in Indonesia, but the 'development results' of these projects, intended to provide quantitative indicators of amounts spent, and number of people reached by these activities were 'not available' (IFC 2016a, 2016b). In April 2013 the CAO found that "the IFC's commitments and actions constitute a substantial approach to addressing the conclusions reached in the CAO Audit Report" and consequently closed the compliance part of this case (CAO 2013c).

The CAO Vice President ordered a second compliance audit in response to the 2011 complaint, and noting that a disbursement of US$47.5million had been made to Delta-Wilmar (the Ukrainian refinery) in 2010, after the 2009 compliance audit and in the period about which the complaints about Wilmar had been made. This was released in May 2016. This investigation also found failings in IFC's compliance with its own standards and policies in its January 2010 disbursement. These included failing to assure itself of adequate supply chain due diligence on Wilmar's part initially, failing to rectify this problem during the life of the loan, and shortcomings in the conduct of a study commissioned by IFC about social and environmental risks in Wilmar's supply chain. The report notes in particular that the IFC did not take into account the information that had emerged at this time, through the previous compliance process, about supply chain risks; did not believe IFC was required to take action with respect to supply chain requirements in this case, despite the 2009 audit findings; and that working with Wilmar to have the company *voluntarily* address environmental and social risks was not sufficient to address these issues. It also notes that the study commissioned by IFC should have entailed consultation with affected communities, but did not (CAO 2016a). Overall, the report suggests that supply chain issues in palm oil were still not being adequately addressed by the IFC in 2010. The IFC responded that the various changes made to IFC process after the 2009 audit and with the new Framework were sufficient to address the issues raised in this report (IFC 2016c), but the CAO continues to monitor the case, indicating it is not satisfied that this response is sufficient. This seems to conflict with the findings of the 2013 CAO report that found that the institutional changes arising from the 2009 audit were adequate, and suggests the CAO remains concerned about IFC's practices with respect to social and environmental risks in palm oil supply chains.

---

[21] Advisory services entail the provision of IFC's "technical and financing knowledge, expertise, and tools" to private sector actors to create markets, unlock financial opportunities and strengthen the *development impact* of private sector activity. See http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/Solutions/Products+and+Services/Advisory. Part of the IFC's work in palm oil comes under the Biodiversity and Agricultural Commodities Program, formed in 2005 and operated in conjunction with RSPO in the palm oil component of the program. The program works with "producers, traders and purchasers, and financial institutions" to "create an enabling environment that generates incentives for greater supply, demand, and financing of biodiversity-friendly agricultural commodities" in palm oil, cocoa and soy. See http://www.ifc.org/wps/wcm/connect/RegProjects_Ext_Content/IFC_External_Corporate_Site/BACP/Commodities/Palm+Oil/ for further information.

Ombudsman processes

Alongside this activity, the ombudsman team conducted various assessments and three sites were identified where mediated problem-solving processes would be undertaken. Though 25 sites were identified in the (second) complaint as demonstrating violations of the IFC Performance Standards, no other sites had the conditions for a problem solving process, namely parties that were willing to engage.

Table 4: CAO Mediations

Location	Community/ies	Mediation arrangement	Agreements
Jambi	Six community groups of Suku Anak Dalam / Batin Sembilan indigenous people	Initially, via local NGO Setara with CAO as observer and mentor; later via joint mediation team ('Jomed') comprising CAO mediators and local and provincial government	None. Four community groups withdrew, and two community groups found their negotiations ceased when Wilmar sold PT Asiatic Persada.
Riau	Kenegerian Pangean	Local NGO ScaleUp as mediators, with CAO as observer and mentor	Mediated agreements reached and implemented but with some challenges
Sambas, West Kalimantan	Senujuh & Sejingan Kecil villages	CAO mediators	Mediated agreements reached and implemented but with some challenges

Table 4 above provides a summary of each of the ombudsman processes. Our data collection for this research focused primarily on the multiple community groups in the PT AP plantation in Jambi, all of which belong to the Batin Sembilan indigenous group (also known as Suku Anak Dalam or SAD). At the time of this research, mediations were ongoing. We also conducted more limited research with civil society groups, companies and government working with the two villages of Senujuh and Sajingan Kecil in Sambas, West Kalimantan. Due to access difficulties, we were unable to conduct direct research regarding the affected communities or their supporters or the plantation in Riau province. In what follows, we provide brief accounts of the problem solving processes and outcomes in Riau and Sambas, and a more detailed analysis of the processes in Jambi.

In response to the second Wilmar complaint, in early 2009 the ombudsman team conducted assessments in a number of plantations and identified an indigenous community (people of Nagari Pangean) in the Sumatran province of Riau as being willing to engage in a problem-solving process with Wilmar subsidiary PT CRS to resolve a long-running land dispute. A local NGO ScaleUp was already conducting a mediation, and the CAO supported this mediation until the parties reached an agreement over the course of five dialogue meetings (CAO 2012a; Afrizal 2015). The agreement entailed the handing over to the community of 147.5ha of land planted with mature, productive palm, in the form of plasma, and this took place in October

2010 (CAO 2012a). The case was closed by the CAO after a monitoring visit in April 2012 when it was concluded by all parties that the company had met its obligations under the agreement. However, it was noted that technical problems with the capacity of the community to run the plasma remained, such that they had experienced a 70% drop in productivity and were struggling to stretch the remaining 30% to cover operational costs and provide profit for the community members (CAO 2012a). It was agreed by all parties that the cooperative should seek assistance from the government (the District Plantation Agency) to develop capacity in smallholder cooperative management. Unlike the process in Sambas, this agreement – which was not led by the CAO - did not include a monitoring provision. [22]

Sambas, West Kalimantan: Senujuh and Sajingan Kecil

In July 2007, a group of NGOs issued the first Wilmar complaint to the CAO arguing that "[i]n West Kalimantan the Wilmar companies PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation and Agro Nusa Investama have commenced clearing indigenous peoples' lands in Sambas District without following the proper land acquisition procedures, and without properly informing and consulting local communities about the plantation project" (FPP et al 2007). This complaint was made on the basis of three investigations (Milieudefensie et al 2007) conducted by local NGO Gemawan, who had a long-standing relationship with the affected communities working on other issues, national NGO SawitWatch, and international NGOs FPP, Rainforest Action Network and AIDEnvironment. These groups all first discussed these cases together at the 2006 Singapore RSPO meeting.[23] This combination of groups, ranging from those with close relationships with affected communities to those with significant high-level knowledge and experience with the IFC, was key to facilitating a problem solving process in this case.

In response to this complaint, the ombudsman assessment team visited and found communities were concerned that powerful corporations were taking away their land and livelihood, and acting illegally. (CAO 2007). Based on past experiences of non-implementation of agreements, communities were sceptical about the prospects of dialogue (CAO 2007), and concerned about the levels of support the company had from government. Supporting civil society organisations confirmed that the Bupati (district head) was supportive of the company, but some local politicians from parliament were willing to put pressure on the Bupati to address this case (though they could not formally compel action). The CAO complaint and the support from those local politicians, who accompanied the ombudsman team on the assessment visit, reportedly shifted the company's attitude toward the community from being one of authority (as they had support from the Bupati), to one of being willing to talk with the communities.[24] Two community groups agreed to engage in a problem-solving process with the plantations: Senujuh village with PT

[22] Interview with CAO staff, Skype, 16 January 2013.
[23] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[24] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

WSP, and Sajingan Kecil with PT ANI,[25] though these were only two of a number of communities in conflict with Wilmar subsidiaries (Milieudefensie et al 2007, p.45). A third village decided not to proceed because they didn't feel strong in their case.[26] Agreements were made to mediate, which included Wilmar subsidiaries agreeing not to do any work in the contested areas, other than watering seedlings, while negotiations were ongoing (CAO 2007).

Mediation process

After establishing a Memorandum of Understanding (MoU) for the negotiations, a code of conduct, and participatory mapping (CAO 2009b), three negotiation meetings were held in the Senujuh mediation (CAO 2009b, pp. 2-3), and five in the Sajingan Kecil mediation (CAO 2008c). The two community groups had different representation arrangements in the negotiations. Though it is against usual CAO practice and the company initially objected, the Sajingan Kecil community gave a mandate to one of the Gemawan staff to be an official representative in the negotiation team. The Senujuh community elected to have Gemawan as monitors.[27] Other observers were also part of the process, including FPP, SawitWatch, Jeremy Goon and Simon Siburat from Wilmar head office in Singapore, and government officials from the district land and plantation departments and investment agency. As observers, these people were only allowed to speak with the consent of both parties.[28] Not all observers attended all meetings.

[25] At the same time, a complaint was also being made about these Sambas plantations to the RSPO by Friends of the Earth Netherlands (Milieudefensie et al 2007), which also included complaints about Dutch financing banks Rabo and ABN Amro (Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013).
[26] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[27] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[28] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

Table 5: Sambas Mediation Outcomes

Dispute	Disputed area	Initial community demand	Final agreement
Senujuh and PT WSP	231.4ha comprised of: • Area planted (130.54ha) • Area cleared but not planted (86.039ha) • Road and drainage (14.8ha) (CAO 2008b)	Some land returned Compensation Remedial action Plasma scheme[29]	30ha of planted land to community as plasma, with company assistance for first 5 years; community to repay establishment costs 100.54ha of planted land to remain with the company for the coming 35-55 years. For this 100.54ha, compensation of 300,000IDR per ha. 86ha of land that was cleared, but not planted, to be returned to the community Commitment on the part of the company not to clear any further land identified as community land in participatory mapping. PT WSP to help organise a conference between Senujuh and PT. Sentosa Asih Makmur (SAM) over another disputed area Apology for clearing without the community's consent (CAO 2008b)
Sajingan Kecil and PT ANI	• 1493ha, comprised of: • Forest covered land (327 ha) • Oil palm planted land (763 ha) • Cleared land not planted (403ha). (CAO 2008c)	• Forest area remain forested • Rental payments for the planted area from the company for the 35 year licence period • Plasma arrangement for the 403ha of cleared but not planted land, which could not be planted with any other crop • A village development budget from the company.[30]	PT ANI will not extend its plantation inside the Sajingan Kecil hamlet (Semanga village) Forest land to be returned to the community, and reforestation by the company of any forest area found to be deforested in re-mapping process 403ha of cleared but not planted land to become plasma for community to grow, harvest and sell palm fruit, to be managed by the company for first 5 years, the costs of which are to be repaid by the community after that with company assisting community to obtain credit for this purpose 763ha of planted land to remain with the company for 35 years, with compensation paid to the community of 300000Rupiah per ha Any future handover of the plantation to another company must be approved by the community Cash support for community development of IDR4000000 per year for five years In-kind support for community development (e.g. oil palm plantation management) according to community needs Participatory re-mapping to determine final boundaries for above agreement. (CAO 2008c)

[29] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013. It should be noted that the entire community was not initially in agreement with these goals, as a minority wanted all the land back in their control.
[30] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

Agreements

Agreements were reached for both community groups in October 2008. The CAO announced that together, these processes settled disputes for 3170ha of land, returning 1699ha to communities, and provided for compensation and benefit sharing in the longer term for community development (CAO 2009b, pp. 2-3). Table 5 outlines each community's initial demands and the final agreement reached.

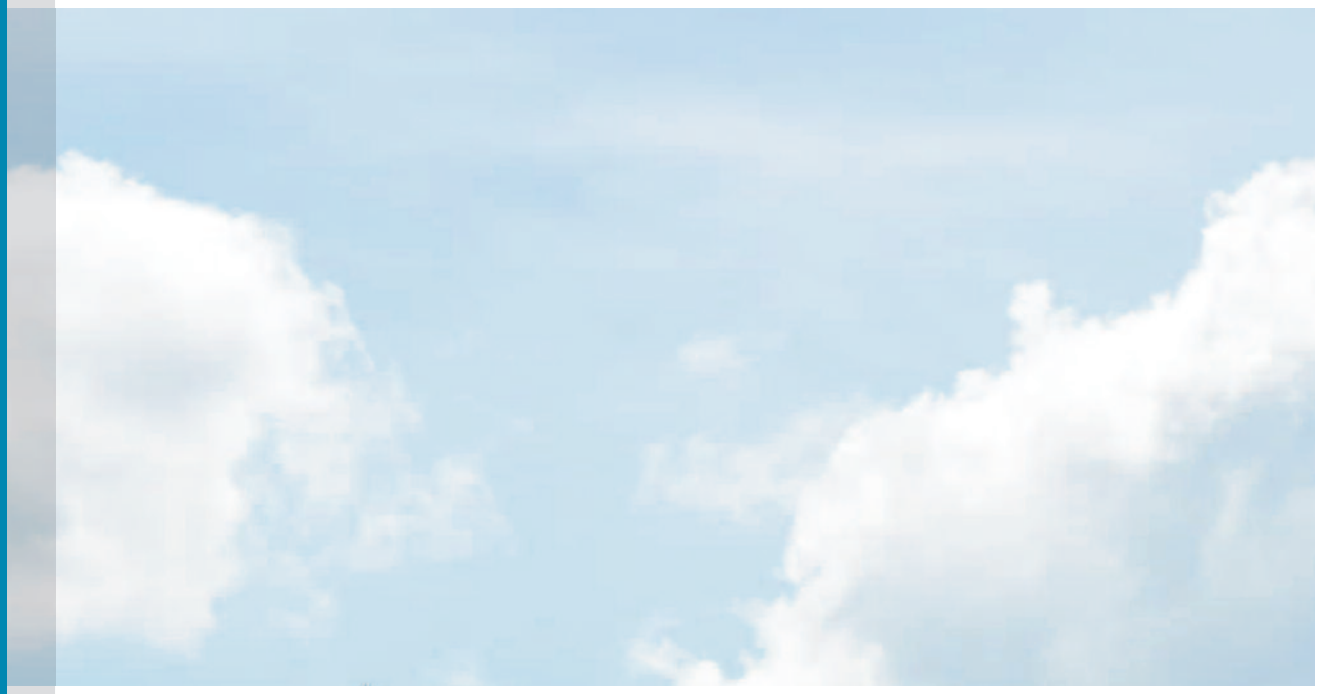
Both communities were reportedly happy with the agreements, but supporting NGO Gemawan remained cautious of being overly celebratory about the outcome, warning, "I always said this was the rice becoming the porridge, it cannot be changed, […] the company already cleared the areas. So this is why Gemawan also strengthened the community who rejected the palm oil, because they can manage their land, whatever they want to plant, they don't just depend on Sawit or Palm Oil […] because we don't eat sawit [palm], we eat rice, vegetables and so on." [31] Problems emerged in the implementation of both agreements.

A single monitoring and evaluation team was agreed to cover both communities (CAO 2009d). This team was comprised of relevant government agencies (e.g. lands, plantations and forestry) and NGOs, as well as Washington-based CAO staff (CAO 2008c). It operated by regular meetings – every quarter or 'as needs' (CAO 2008c) – and was mandated to monitor the agreements, and refer any other issues that arise to relevant bodies (CAO 2009d). 'Internal monitoring' was also meant to take place monthly within each party (CAO 2008c, 2009d). The ethos of this team was also officially one of problem solving, described in an interview with the CAO as being analogous to a marriage: it's not that there won't be any problems, but rather that all parties commit to resolving them constructively as they arise. [32] The team worked with government to advance government facilitation of agreements, and if new issues arose outside of the agreement the team was to seek to document those issues for all sides (CAO 2009d). Publicly available monitoring and evaluation reports document that some early progress was made towards all aspects of the agreements, and compensation was paid, but other problems persisted and took a few years to be resolved. The ultimate outcome was not entirely successful in addressing problems of landlessness and poverty.

In Senujuh, in part because the area of contested land was small, the agreement that was reached with the company did not adequately provide for the needs of the villagers.[33] Furthermore, the land had to be managed collectively as plasma, which was hampered by lack of funding and capacity difficulties in the legal formation and management of the cooperative (CAO 2009d, pp.6-9). There were also problems with the compensation payment being paid to the village head, and community members not receiving their share.[34] In other words, problems with internal community cohesion and capacity prevented the Senujuh community from making full use of the arrangement to remedy the acquisition of their land and subsequent livelihood challenges. Nonetheless, the monitoring and evaluation team deemed the agreement was 'being implemented' and concluded its monitoring (CAO 2014, p.1).

---

[31] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[32] Interview with CAO staff, Skype, 12 March 2013
[33] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[34] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.



In Sajingan Kecil, the company's fulfilment of its obligations regarding reforestation was slow (CAO 2009d). The reforestation part of the agreement was subject to ongoing contestation for a number of years.[35] At times there were disagreements between the company and community over what to plant, as the community wanted to plant rubber, aloe and other crops to diversify their income, but the company objected.[36] A competing land claim also stalled the company's action on reforestation (CAO 2013b). Eventually, after six years, in mid-2014 the parties came to an agreement for the company to give the community cash compensation for reforestation, which the communties subsequently decided to spend on distributions to families, a mosque, and the operational costs of the village instead of reforestation (CAO 2014). Like Senujuh, Sajingan Kecil also faced difficulties with implementing plasma. As the company was trying to access a government subsidy for plasma, they were forced (by condition of the subsidy scheme) to have the plasma managed by a single group, which left community members feeling excluded from meaningful management of their plasma. As an NGO supporter explained, "So in this context, because the people already agreed with this scheme, and they didn't understand the details of the scheme, so now they protest, and feel that they have just had their names put as members of the cooperative but then they don't really manage it. They just get the report from the company, the company made the report. So the cooperative doesn't know what happens. So they feel cheated."[37] A 2011 monitoring visit also noted that the plasma was not being well-maintained (CAO 2011). In addition, the road in Sajingan Kecil was in bad conditions, leading to transport accidents and delays.[38]

---

[35] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[36] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[37] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[38] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013. Palm fruit needs to be processed within 48 hours, so delays in transportation can lead directly to loss of income.

In both communities there was also a more fundamental problem with the provision of land title. An observer from FPP explained "In a meeting two months later to publicly announce the agreement, the Provincial Plantations Section of the Agriculture Ministry said the agreement was not valid because the Indonesian government doesn't recognise community lands, so they can't compel the company to. This person wasn't in the mediation. Perhaps the NGOs or CAO should have invited him – maybe it was an error not to identify all the appropriate people to invite." [39] As a result of having no legal title, communities found themselves unable to access the private credit needed to develop the land, though this option would also have been precluded had there been a communal title, as banks require individual titles to verify the collateral. [40]

In responding to these various challenges in Sajingan Kecil, the monitoring and evaluation team continued meeting over a period of six years. During this time, the team would notify parties of any failures to act and give them three months to respond, and 'remind' but not 'push' government if something was their responsibility (CAO 2009d). The team continued to meet until all the provisions of the agreement had been implemented. After offering to have a formalised close-out process to reflect on the process but receiving insufficient interest in the idea, the CAO closed the case in June 2014 (CAO 2014). However, more fundamental problems of community capacity to make use of their agreement persist.

Jambi: PT Asiatic Persada and the Batin Sembilan people / SAD

In Jambi, the ombudsman assessment team found a complex group of communities of indigenous Batin Sembilan or SAD people in conflict with the Wilmar subsidiary PT AP, and the local NGO Setara already engaged in two mediations between two community groups and the company. Initially the CAO supported the ongoing mediation, and when it failed it began its own.

Background to the situation

PT Asiatic Persada

At the time of this research, PT AP was a subsidiary of Wilmar, which owned 51% of PT AP until December 2013, when it sold it. PT Asiatic Mas Corporation has retained 49% since the company was formed (Colchester et al 2011, p.12). The company holds a HGU for 20,000ha across the Batanghari and Muara Jambi districts of Jambi province, originally issued in 1987 to a previous owner of the company. The company is managed by local management with oversight from the Singapore Wilmar offices, in particular the Sitoras arm of the company, criticised by civil society as being significantly less progressive on environmental and social issues than the Kuoc arm.

Affected communities: Batin Sembilan / SAD

Suku Anak Dalam translates as 'tribes of the interior' and is a vague moniker applied liberally to indigenous people of Jambi's forests. Batin Sembilan, or 'people from the nine rivers' is the more traditional name for these communities. Prior to Dutch colonisation these peoples "lived

---

[39] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.
[40] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

from rotational farming, hunting, fishing and gathering and from the trade in resins, dyes, valuable woods and medicines from the forest" and "had their own polities and bounded territories and paid tribute to the chiefs of these kingdoms [regional trading kingdoms, Malayu and later Srivijaya of the 7th to 13th centuries]" (Colchester et al 2011, p.5). During the colonial period there were some protections of their land rights, but these were extinguished at independence, as they were for other indigenous people in Indonesia (Colchester et al 2011, p.5). Historically, the land disputed in this case "included smallholder rubber plots, fields used for shifting cultivation, residential areas, gravesites and secondary forest, all of which the claimants and their families considered customary land, in use by their families for generations" (Institute for Policy Analysis of Conflict, 2014, p.1).

Under Soeharto, transmigrants were introduced to the area in large numbers to provide labour for the emerging oil palm sector, and were often given small plasma landholdings around corporate 'nucleus' estates on land that belonged, in customary terms, to the Batin Sembilan (Colchester et al 2011, pp.12-14). Other lands were distributed to private sector actors –loggers and oil palm and cocoa plantations - without the consent of the Batin Sembilan (Colchester et al 2011, p.5). From the 1970s onwards, the Batin Sembilan integrated into settled villages and adopted a more 'mainstream' Indonesian way of life, including through tapping rubber, which had the effect of distancing them from the previously vast forest areas in which they would practice nomadic cultivation and to which they have ancestral and cultural connections (Colchester et al 2011, p.9). Some members of the Batin Sembilan communities have returned to their lands in what is now palm oil plantation owned by PT AP, in order to stake a claim to the land, while others maintain they have valid claims but live in the villages they were moved to or, like many Indonesians, move around depending on where they can find work, including to cities. Some groups have partnered with transmigrants, who have easier access to land, seed and expertise for planting, to form shared small palm farms, and many have also intermarried. The pressure to identify who is 'real' or 'pure' SAD for the purposes of mediations, and who is not, has been a source of anxiety and tension in some of these community groups.

Conditions in the SAD villages differ. In Pinang Tinggi village, community members live in self-constructed one or two room structures of timber on stilts, about three hours' drive into the plantation, on roads that become inaccessible in the rain. They have generator electricity for a few hours each evening. They have no access to running water, and limited logistical possibilities for children's education. One community member involved in mediation said, "the company accuses us of trespassing when we were on our own land," and so it is difficult to establish permanent structures. By contrast, in Sungai Beruang, there is a solid structured school and housing for teachers, as well as more houses constructed of solid, durable materials, some running water and electricity.[41] At the time of this research, the community groups differed in the permanence of their dwellings and residence within the plantation, and their use of the palm fruit, some having arrangements with the company where they can harvest them and others not.

[41] It was reported by some interviewees that this difference is attributable to a dispute about the boundaries of local administrative units of Muara Jambi and Batangahiri (regencies), with the two different regencies 'competing' for official control over this territory so they can enjoy the tax revenue from the oil palm.

History and human rights issues

An understanding of the complex legal and political history of the PT AP plantation is necessary in order to understand the relative positions of the company and community in this grievance process. In 1987, the original 35-year HGU for planting palm over 20,000ha was issued to a company called PT Bangun Desa Utama (PT BDU). This area lay within a much larger concession they held for logging. PT BDU was owned at that time by Asiatic Mas Corporation, in turned owned by Andi Senangsyah who had close military connections. A further 7250ha adjacent to the main plantation was purchased by subsidiaries of PT BDU, Jamer Tulen and MPS, in order to evade a 20000ha per company limit (Institute for Policy Analysis of Conflict 2014, p6). Some officials believe there was a clear 3550ha under cultivation by communities that belonged to the Batin Sembilan people that should have been enclaved from the HGU from the beginning (Institute for Policy Analysis of Conflict 2014, p.1). Concerns were also raised in our research by both government and civil society actors that the planting of palm did not comply with licencing requirements. The violations of procedure in relation to the size of the plantations and the timing of planting of palm have led national and international NGOs to question the legality of the plantation on the basis that certain conditions were not adhered to (Colchester et al 2011, p.13), although this could be as much due to changes and inconsistencies in procedure as to 'foul play' (Institute for Policy Analysis of Conflict 2014).

Different portions of the 27250ha are considered ancestral land by different sub-groups of the Batin Sembilan, but most of the community was residing at the time of the permits in the village established for them by the government, enabling the area to be declared vacant and not burdened by any pre-existing land rights. Indonesia was governed by the Soeharto dictatorship at the time, and communities were either unaware of the issuing of the licences, or unable to express their objections to them out of fear of reprisals and a lack of experience in knowing how to make any such objections. Only in the late 1990s and early 2000s, when certain parts of the PT AP HGU area were being planted, did some of the indigenous groups return, concerned that their land had been taken from them. From their perspective, their movement to government-facilitated villages did not amount to a relinquishment of their land rights.

In 2000, the majority share of the company changed hands, bought out by the UK Department for International Development's (DFID) Commonwealth Development Corporation and Pacific Rim. It changed hands again when purchased by Cargill in early 2006, and then Wilmar in later 2006 (Colchester et al 2011).

Since Wilmar's majority ownership of the company, the dispute between community groups and the company has remained unresolved, and multiple open conflicts and multiple efforts at negotiating an arrangement have taken place. The return of some community groups to what they believe to be their land, and their harvesting of palm fruit to sell to middlemen, has been interpreted by the company as illegal occupation and theft. The company sometimes tolerated it, but sometimes didn't, in which case it would bring in police and BRIMOB (the Mobile Police Brigade) to "enforce security" (FPP 2011). In one particular incident in August 2011, which led

to the third CAO complaint, according to civil society investigations, BRIMOB and PT AP evicted 83 families from their homes and demolished houses, testimony claiming without warning, firing guns south of the concession area (FPP 2011).[42] These conflicts have repeatedly triggered community and civil society protests at the district and provincial governments.

At the same time, there have been repeated attempts by some community groups (not always the same ones) to strike agreements with the company for various combinations of enclaved land, cash compensation, and/or plasma arrangements, but none of these were implemented. These include:

- a 2004/5 agreement made by CDC and Pacific Rim for return of a clearly marked 350ha of land and compensation for an additional 650ha (this offer was withdrawn when Wilmar bought the company) (Institute for Policy Analysis of Conflict, 2014: p 5; Colchester et al 2011, p.34).
- a 2010/11 agreement brokered by local government for a 1000ha joint venture outside the plantation, involving some community groups (Colchester et al 2011, p.5; PT. TÜV Rheinland Indonesia 2011).
- a 2012 agreement with the company to return 3,550ha of the contested area, subject to re-measurement, brokered by Partai Rakyat Demokratik (Peoples' Democratic Party, PRD) and peasant unions with the support of provincial parliament (Institute for Policy Analysis of Conflict 2014, p.2).

Among people interviewed for this research, there were varying accounts of the failure of these arrangements, ranging from the company's refusal to hand over the land, to the lack of community capacity to manage the plasma arrangement, or to pay the debt of the establishment of the palm; to underlying disagreement about the location of the land (the 2010/11 deal was outside the HGU and was meant to be inside on land with ancestral connections); to doubts about the security of the tenure and legality of oil palm licencing in the proposed location; to the inability or unwillingness of the district government to do an inventory on who is 'real SAD'. Notably, in these negotiations the company did not accept the legitimacy of the indigenous peoples land claims as a point of departure for negotiations (Colchester et al 2011, p.5; PT. TÜV Rheinland Indonesia 2011, Annex 4, p.19).

CAO Processes in Jambi

In Jambi, initially the CAO assessment was that their efforts would be most effective in supporting a pre-existing and ongoing mediation process between affected communities and PT AP facilitated by Setara, a local NGO with connections to national and international environmental and social NGOs. They specialise in supporting smallholders.

This Setara mediation began in 2009 with pre-mediation meetings where parties got to understand each-other better, and worked towards aligning their understandings of the problem. The formal mediation started in 2010 and went through many rounds of negotiation, but broke down in 2011. In this time, the community operated as two groups: SAD113 community group

[42] See below section on the RSPO complaint for more on this incident and Wilmar's response.

Mosque at Sungai Beruang. *Photo: Samantha Balaton-Chrimes*

reached an agreement on the return of 241ha of land and 7 graveyards, but 3500ha remained in dispute; Mat Ukup community group reached an agreement *outside* the mediation process (the 2010/11 agreement discussed above) and withdrew from the process (CAO 2012a). During this time, the CAO supported the Setara mediation as observer and mentor until the negotiations broke down. For example, the CAO resourced an experienced and well-respected Indonesian mediator to attend meetings to provide advice.

When the Setara mediation failed, the CAO, with the agreement and support of all parties and Setara, brought in its own experienced mediators. This was also the point at which a partnership developed between these CAO mediators, and a group of provincial and district government representatives from relevant departments, decided on the basis of their technical relevance (e.g. from the lands, plantation or forestry departments) and previous engagement in the dispute. The mediation team came to be referred to as 'Jomed' – the 'Joint Mediation' team. There was great optimism in affected communities about this arrangement, so much so that one community leader named a child born at this time Jomed.

In the first year of the process, in 2011, parties spent time gathering information to establish the objects and subjects of mediation. Due to the diversity of affected communities within the plantation, eight separate community groups were identified. Two community groups refused to participate at this stage, one for reasons that are unclear (Padang Salak) and one out of an anti-World Bank stance consistent with with that of its primary civil society supporters, the left-wing, peasant-based PRD (Tanah Menang). Table 6 below outlines the different community groups and mediations.

Table 6: Jambi Mediations

Community group	Mediation status	Outcome
Tanah Menang	Did not participate	Refused to participate in CAO process because they are anti-World Bank
Padang Salak	Did not participate	Did not participate in CAO process initially, but tried to join later. No outcome after Wilmar sold PT AP.
SAD Mat Ukup	Community informally withdrew early	The community could not agree on representatives and so were unable to commence mediation.
Terawang	Community informally withdrew early	The community was unable to overcome internal divisions and forced to cease the CAO process.
KOPSAD (Kooperasi of Suku Anak Dalam)	Community informally withdrew early	Community was unable to adequately formulate its claim and informally withdrew.
Bidin	Community informally withdrew	An agreement was reached on compensation, but due to internal divisions with the family (this is a very small group, more like a family than a community), were unable to finalise the agreement.
Sungai Beruang	Pursued until Wilmar sold PT AP	Tentative agreement on preservation of cemetery, and agreement on a joint land survey, but negotiations stalled when community was unable to finalise a list of land recipients. This process collapsed when Wilmar sold PT AP.
Pinang Tinggi	Pursued until Wilmar sold PT AP	Tentative agreement was reached involving compensation for some land, which PT AP paid but which the community dispute they paid to the wrong people, and rent for a planted portion of land until the HGU expires. Some land remained in dispute. This agreement collapsed when Wilmar sold PT AP.

For the remaining six groups, mediation processes were established, each with their own objects of dispute (areas of land, harvesting rights and so on), subjects or parties (community members registered as participants in the mediation) and representatives. For those community groups that began the process, the first stage was the establishment of preconditions for mediation, such as the formal acceptance of communities as legally living in the plantation, or an agreement that families can harvest and sell palm fruit for the duration of the mediation process, or be employed by PT AP to earn an income.[43]

Negotiations then began in 2012. Three of these mediations (Terawang, Mat Ukup and KOP-SAD) failed in the early phases as communities were unable to overcome challenges associated with internal organisation. For the three communities that persisted, their mediations ran for nearly 2 years, involving more than 5 rounds of negotiation between parties, most of which were preceded and followed by meetings between each party and the mediators. One of these communities, Bidin, reached an agreement but it wasn't implemented due to internal divisions in the community and the community informally withdrew from the process. The CAO's approach to these withdrawals was to check in to see if there is anything that could bring them back into the process, but ultimately to let them make their own decision, as all ombudsman processes are voluntary. They hoped the remaining mediations might lead to agreements that would set good examples and draw these groups back in to the process. [44]

The remaining two mediations (Sungai Beruang and Pinang Tinggi) ultimately failed when Wilmar sold the subsidiary. The CAO closed the last of the Wilmar cases in December 2013 with a report that is damning of Wilmar's conduct in the Jambi process (CAO 2013a). The details of the running of these processes are explored in more detail below.

Mediation procedures

Mediations were governed by strict rules of participation and representation as agreed by all parties during the preconditions stage. Though each set of preconditions is unique, the general pattern was that each party was represented by officially nominated representatives, and only they were able to speak for the party, and only at the invitation of the mediator. The strongest and most unified community groups, such as Pinang Tinggi, had arrangements whereby their chosen representatives would formally convene meetings both before and after each negotiation, which would be attended by representatives of family groups, and information and decision-making would filter up and down in this manner.

At the agreement of all parties, some formally agreed observers were allowed to attend, and these included communities' NGO supporters, RSPO staff who were learning about the process, various government officials, and occasionally other parties, such as the Washington CAO staff when they were visiting. These observers were permitted to provide advice to parties during breaks, provide input on technical matters (for example RSPO might do this on palm oil best practice, or government on regulations), and otherwise speak if all parties agreed. The various

---

[43] This was a particularly important precondition, as the provision of livelihood meant some groups could endure lengthy negotiations, whereas in cases where this precondition was not established, the lack of livelihood granted the company undue leverage over communities in negotiations, as the costs of continuing in mediation were higher for such communities.

[44] Interview with CAO staff, Skype, 12 March 2013.

community groups were supported by one or more NGOs throughout the process, sometimes changing between supporters or bringing new ones in. The NGO supporters had various kinds of relationships with these communities. The strongest supporters, such as Setara, had relationships over many years and were well-respected by both communities, mediators and the company, and would support communities with many aspects of the process, such as by acting as observers, providing outside advice to communities, providing capacity building training for representatives to strengthen their negotiation skills, and resourcing participatory mapping and other required activities. Others were less well-respected and there were (unverified) rumours of their financial interests in the outcomes of one or more of the mediations, though groups of this kind had little sustained engagement in the CAO processes.

The role of government officials in the Jomed model was unusual in CAO experience. As so many government actors at the district and provincial levels had already been involved in negotiations (such as the Batanghari agreement), and some government officials had expressed a desire to be involved in the mediation, when the communities and company invited the CAO to be part of the process including government in the mediation team was a way for the CAO to meet the interests and expectations of all parties. Though approximately eight government representatives were engaged at different times, only two of these, from the forestry and plantation offices, attended regularly. By all accounts, these two were experienced and committed public servants interested in learning mediation skills from the CAO, and developing problem solving processes that could be applied in other cases. As well as being privy to all the information pertaining to the case, as co-mediators, and learning from the more experienced CAO mediators, these two government representatives sometimes played a more active role in the mediation, engaging in discussion with parties when they were stalled in negotiations, referred to as 'caucusing', helping them to formulate goals among themselves, and visiting the field with the CAO mediators to work through anxieties and misunderstandings among community groups at key points in the mediation process, or to address allegations of violations of the preconditions. Though they rarely played an active role in chairing discussions, they were hopeful they would be able to in future mediations in other cases.

The sale of PT Asiatic Persada

In April 2013, very shortly after we conducted the field research for this case, Wilmar sold its majority share of PT AP to Prima Fortune International Ltd and PT Agro Mandiri Semesta, neither of which have financial links to the IFC/MIGA or are members of the RSPO. Wilmar justified the sale by stating "after much deliberation, we decided to sell PT Asiatic due to the difficult social conditions there, which led to an untenable situation for the Group" (Institute for Policy Analysis of Conflict 2014, p.15). This sale came as an extremely significant disappointment to the community groups of Pinang Tinggi and Sungai Beruang, who were still engaged in mediation after more than two years of negotiating. It was a tumultuous period for these communities, their NGO supporters and the CAO as they all tried to navigate this unusual situation.

The CAO, despite the formal cutting of financial ties to the IFC, offered to continue the mediations if all parties were willing. The ombudsman team invested significant effort in trying to maintain communication with all parties at this time, and to fully explain to the new PT AP owners how the mediations might work and what the ombudsman process can offer. After six months the company formally advised the CAO that they were choosing to engage in the dispute

through a government led process, and declined to pursue the CAO mediations. The CAO ombudsman team in Washington and Indonesia were deeply disappointed by this outcome, despite NGO criticisms that they could not force the continuation of the process. They held a 'close-out' meeting in the field where they explained to the communities the situation and tried to 'salvage' as much progress as possible, but ultimately, as one CAO staff member explained, "Our mandate is very limited now – only to closing out – we want to do that responsibly and help the communities." [45]

Wilmar, for its part, 'encouraged' the new owners to continue with the CAO process, but through the sale had relinquished any possibility of mandating or even influencing this engagement. The communities have since taken their struggle in other directions, with many groups joining PRD and SPI (the Indonesian Peasants Union) in occupations and district, regency and national level demonstrations. There have been multiple episodes of violent confrontation on the plantation and at these demonstrations, and multiple evictions of Batin Sembilan people from the plantation (Institute for Policy Analysis of Conflict 2014).

Roundtable on Sustainable Palm Oil (RSPO)

The RSPO is a voluntary, multi-stakeholder organisation, the main focus of which is standard-setting and certification of sustainable palm oil production. The RSPO includes representatives from seven sectors of the palm oil industry: oil palm growers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs, and social or developmental NGOs. It is the pre-eminent organisation working towards social and environmental sustainability in the sector globally. The pervasive presence of disputes in the sector has meant that development of a complaints system has become an important element of the RSPO's overall regulatory system.

The central decision making body within the Complaints System is the Complaints Panel. This panel currently serves as a kind of last resort or appeal mechanism if other resolution processes involving dialogue between members have failed, as well as handling broader complaints against the RSPO itself. Another important channel of dispute resolution within the RSPO, which can be used in the first instance before resorting to the Panel, is the Dispute Settlement Facility, which provides a framework for facilitating dialogue and mediated negotiations between parties. Complaints regarding certification processes are referred in the first instance to the relevant accreditation or certification body. A separate pathway also exists to deal with alleged non-compliance with RSPO provisions relating to land clearance without prior High Conservation Value assessment, or adherence to Procedures for New Plantings.

Wilmar has been an ordinary full member of the RSPO since 2005. Wilmar's membership in the RSPO enables workers or other affected communities to make formal complaints to the RSPO about the company. At least six formal complaints have been made to RSPO about Wilmar, two of which intersected with CAO complaints and were studied in depth as part of this research project.

[45] Interview with CAO staff, Skype, 24 October 2013.

Wilmar in Sambas, West Kalimantan

In July 2007 a complaint was brought by Friends of the Earth Netherlands, KONTAK Borneo and Lembaga Gemawan (the latter two organisations being local Indonesian NGOs) against Wilmar International Ltd (Milieudefensie et al 2007). This complaint was filed with the RSPO during the early stages of a dispute between communities and Wilmar in Sambas, West Kalimantan, and alongside the complaint to the CAO described above. At this time, the RSPO's grievance handling system was still at an embryonic stage of its own development. This complaint instigated a series of written communications back and forth between the complainants and Wilmar, but before any substantive actions were taken, the CAO ombudsman team responded to the parallel complaint they received, and the RSPO deferred to the CAO process, itself taking only an observer role.

Wilmar in Jambi, Sumatra

The RSPO also had some involvement in providing a forum for early stages of dialogue between parties involved in the dispute in Jambi. This took place informally during the earlier phases of the dispute starting in 2008, and again in a more formal capacity after a second complaint about Wilmar was filed to the RSPO in relation to the Jambi case in February 2011. This complaint was filed by FPP against PT AP for its alleged infringement of RSPO Principle 2 (land dispute). Later that year, without any substantive response from the RSPO to the February complaint, in August, there was a major incident in the plantation involving violence and evictions, which led to the 'Wilmar 3' complaint to the CAO described above (FPP 2011). At this time, NGOs appealed to Wilmar to cease operations in the area and remove BRIMOB. Wilmar responded by claiming that this case (the violence) was unrelated to the land dispute, and contracted RSPO accredited assessor TÜV Rheinland to review the situation (PT. TÜV Rheinland Indonesia 2011). The TÜV Rheinland review supported PT AP's account of the situation, including the illegality of the communities' presence in the area and the justification of the destruction of their homes, a finding that was contested by NGOs (Colchester et al 2011). However, the report also concluded that the land dispute needed to be resolved before the company can be certified by RSPO.

According to the RSPO Principles and Criteria, companies *can* remain certified as long as they are *attempting* to resolve any land disputes. One of the requirements of certification of companies with multiple operating units is that they have no land conflicts within any of their operations (RSPO n.d.), and their certification can be suspended if they do (RSPO 2016a, Paragraph 4.2.4). In practice, however, it is not clearly defined what level or type of conflict would trigger such sanctions, and the prevailing interpretation seems to be that this only applies to 'significant' forms of conflict, for example where sustained protests are occurring, or where a complaint "has erupted and been brought to the RSPO grievance panel" or "so long as it isn't massive and blown out of proportion protests." [46]

In this case, rather than face the possibility of suspension, Wilmar made the voluntary decision to pause the process of requesting new certifications in relation to PT AP and other locations.[47] As described by Simon Siburat, the Group sustainability Controller in Wilmar's Corporate Social

---

[46] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

Responsibility Department: "RSPO didn't ask us to stop certification there, but we voluntarily did it. In August 2011 we paused the certification process until we had sorted it out. We also paused other certifications we were going for. …To maintain integrity of the RSPO we didn't want to have an issue and still be going for certification, so this was our decision".[48] The failure to invoke this sanction in the Wilmar Jambi case generated some contention, with NGOs such as FPP arguing that it should have been applied (Colchester, et al, 2011, p.56). However, Wilmar has suggested that it would be impossible to ensure no conflict in any of their operations, and that this provision needs to be interpreted loosely in order to be practical.[49]

As in Sambas, the RSPO deferred to the already ongoing CAO mediation process in Jambi, playing an observer role and learning from the CAO mediators. According to a mediation insider in this case, the RSPO observers spoke little, other than to occasionally offer technical advice. In addition, the RSPO published information on its website about the process of the CAO mediations, contributing an additional form of public communication about the dispute at certain points in time (though this information was removed from the website before the case had been concluded).[50] Upon the sale of PT AP in 2013, RSPO's mandate over this case ceased.

Other Wilmar complaints

A third complaint about a Wilmar operation in West Kalimantan is also worth explaining in brief further detail. In 2012, FPP, SawitWatch and Gemawan, all signatories to the first RSPO complaint about Wilmar subsidiary PT ANI, and active participants in the CAO processes in Sambas, supported new communities to bring complaints under the RSPO's New Planting Procedure, which led to a negotiated agreement ensuring FPIC over land transfer for planting of palm (RSPO 2016f). One NGO involved in this process suggested that the relative success with which disputing parties were able to negotiate an agreed settlement in this case regarding distributions of land between the company and communities may have been due in part to Wilmar's prior experience of dealing with land disputes in which the RSPO played some role (however minimal), as well as other grievance handling processes.[51] This complaint falls outside the scope of this research as it did not engage the CAO, which was the focus of our study.

Other complaints have been made to the RSPO about Wilmar's operations in West Sumatra (RSPO 2016b), East Kalimantan (RSPO 2016c) and Nigeria (RSPO 2016d).

RSPO's contribution to human rights fulfilment

The cases explored in most depth for our study – Jambi, and also Sambas – did not go through the full RSPO grievance process. However, the RSPO was involved in the process in three key ways.

---

[47] Under the RSPO system, a company is not certified as a whole. Each plantation is individually certified.

[48] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

[49] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

[50] Interview with Eric Wakker, AIDEnvironment, Bogor, February 2013.

[51] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

Firstly, as a multi-stakeholder forum, the RSPO provided a forum in which parties, including communities who are sometimes supported to attend RSPO forums by NGOs, can come into contact and exercise varying degrees of leverage over each-other to advance the resolution of a dispute by other means, such as the CAO. For example, members of the Pinang Tinggi community in Jambi met Simon Siburat of Wilmar, at a RSPO forum and Siburat was subsequently able to compel PT AP to cooperate (to a degree) with the CAO problem solving process. The Sambas CAO process was also kick-started by an NGO-meeting held in Singapore on the sidelines of the RSPO meeting. One civil society actor argued, about the Jambi case, that "[a]s a member of RSPO Setara's voice is heard on that level more – this is the advantage of being a member."

However, it must also be noted that presence of community members and local NGOs who support them is contingent on funding and therefore inconsistent. This means that some fortuitous encounters take place, but they are not systematically planned for or resourced, and as a consequence many communities miss out on these opportunities. Our research suggests that the RSPO is at its most effective when bringing key actors together who are genuinely concerned to address the problems raised in grievances, but that this is very contingent on getting the right people in the right place at the right time, and is not a function of the systematic operation of the Roundtable. One NGO worker interviewed for this research also reported that these interactions can work against communities as well, as they also facilitate business to business and business to government networks that may not share pro-community objectives. [52]

Secondly, the RSPO contributed to dispute resolution processes by bringing together various actors in the sector and shining a spotlight on business activity. One of the people associated with the Jambi mediations argued that the engagement of RSPO in the mediation, even as observers, had the effect of applying further pressure on Wilmar to be seen to be responsive in the eyes of investors and the international business community. However, ultimately Wilmar was more widely accused of showing bad faith in the Jambi negotiations, than good (see below), so it is difficult to sustain this position with an overall assessment of that case. This strategy may have been more successful in the Sambas cases. One NGO involved in this case explained that, at one point in the negotiations, a corporate representative holding a very senior RSPO position at the time, held informal conversations with the NGOs at an RSPO meeting in order to get information to pressure Wilmar to pressure its subsidiaries to follow through on the resolution of those cases. [53]

Thirdly, the RSPO occupies a unique position in its capacity to advance solutions to systemic problems in the palm oil sector, such as land disputes. This was recognised, for example, when the CAO encouraged Wilmar to address two aspects of the complaints made against it through the RSPO: Social conflict and Wilmar's suppliers, and the preservation of High Conservation Values (HCV) areas (CAO 2009c). For example, one community leader in Jambi opined that "RSPO I think is the right forum to convey the aspiration from the community" in relation to sustainability of the sector.

Despite these possibilities, overall, a very wide range of stakeholders interviewed for this case, with the exception of RSPO-member business actors, were generally sceptical about both the willingness and the capacity of RSPO to effectively engage in land disputes. Some went so far

[52] Interview with Eric Wakker, AIDEnvironment, Bogor, 25th February 2013.
[53] Interview with Eric Wakker, AIDEnvironment, Bogor, 25th February 2013.

as to suggest that the RSPO is corrupt and overly influenced by business and pro-palm oil arms of governments in Indonesia and Malaysia,[54] while at the same time some high level business actors made the opposite assessment, that the RSPO is anti-business and too much under the influence of NGOs.

Alternative options

The significance of the CAO and RSPO complaints in these cases is in part a consequence of the significant shortcomings of other redress mechanisms for protecting human rights. This section outlines these mechanisms and their role in the Wilmar case.

Company level grievance mechanisms

Consistent with the UN Guiding Principles, several people we spoke with for this research, including Komnas HAM, suggested that it would be beneficial for companies to be pressured (e.g. through the RSPO) to establish company level grievance mechanisms, as a first recourse in the case of disputes. However, at the time of this research neither the subsidiaries nor Wilmar head office had formal company-level grievance mechanisms in place. One was established in January 2015 (Wilmar 2016a).[55]

Given the nature of the human rights concerns raised in the complaints of this study, and consistent with the broader findings of this research project, it is doubtful that a company-level grievance mechanism could adequately respond to human rights grievances relating to land rights, as these constitute a fundamental conflict of rights between those possessed by communities on the basis of heritage, and those possessed by the company on the basis of licences.[56] Furthermore, the grievance process established by Wilmar in 2015 has a strong emphasis on 'verification', which risks privileging the company in relation to land disputes (see below on evidence in mediations for further analysis on this point).

Komnas Ham (Indonesian Human Rights Commission)

Indonesia's National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, usually known as Komnas HAM) has four functions: investigation; mediation; education and research. Though a government body, it enjoys a high level of independence from executive authority as its budget comes from Parliament, which also determines a shortlist of commissioners for selection of 11 by the President. The secretariat is comprised of 200 staff, including administrators, mediators and investigators, who are part of the public service based mainly in Jakarta, but with 6 provincial offices.[57] As an instrument of Indonesia's formal commitment to uphold human rights, Komnas HAM has been supportive of a broader agenda of human rights reform, as demonstrated by its involvement in the Association of Southeast Asian Nations (ASEAN) Human Rights Dialogues and the Bali Declaration on Human Rights and Agribusiness in Southeast Asia.

---

[54] Interview with Eric Wakker, AIDEnvironment, Bogor, 25th February 2013.
[55] As this was after the period of data collection for this research, we did not evaluate this mechanism.
[56] For example, PT Weda Bay Nickel operated an exceptionally well-developed company-level grievance mechanism, but even it was unable to adequately manage the complaints about land acquisition in that case. See PT Weda Bay Nickel report in this series.
[57] Interview with Pak Nur Kholis, Vice chair person for External Affairs at Komnas Ham, 21 September 2012.

Komnas HAM receives 5000-6000 cases per year from both groups and individuals. Around the time of the Wilmar case, in 2010, 1100 of these complaints were about corporations, second only to police complaints (1503). Most corporate complaints concerned land and labour. Cases are prioritised based on how strong they are, the severity of the harm and the number of people affected. Within the significant constraints of its limited resources, Komnas HAM then offers investigation (desk based or field) or mediation, with the decision resting primarily with the complainants, but also involving the company and relevant government bodies. If the case is very remote, sometimes only desk-based work can be conducted. Upon completion of an investigation, recommendation letters are sent to the company and local and central governments.[58]

Mediations are becoming an increasingly core part of Komnas HAM's work, as one commissioner described them as being more cost-effective and effective than other possible complaint handling activities. Mediations, usually lasting a few days, can be conducted in a neutral location near to the site of the complaint, or in Jakarta, depending on cost. The role of government officials in these mediations varies. Sometimes they may initiate the request for mediation, whereas in other cases their issuing of licences is part of the problem, in which case they are invited to participate in mediations as a party but not an authority. Where agreement is reached Komnas HAM takes responsibility for implementation (though it remains unclear how effective this is, given their limited resources), and/or the parties can agree to have the agreement made legally binding and court enforceable.[59]

Komnas HAM mediations, while successful in some cases, suffer from significant constraints. Komnas HAM commissioners reported to us that government and corporations are more experienced than complainants in bureaucratic forms of engagement such as mediation, and have legal resources at their disposal to support them, so Komnas HAM prefers if the communities are supported by NGOs to help balance power in mediations. [60] However, one such NGO expressed the view that Komnas HAM does not adequately balance power between companies and communities. Komnas HAM also reported that mediation is especially difficult in land cases because it so hard to find common ground. Where no agreement is reached the case is referred to parliament, at which time Komnas Ham has no further mandate to pursue the problem and it usually remains unresolved.[61]

Furthermore, Komnas HAM lacks resources and has difficulty having other government agencies respond to its recommendations systematically,[62] except in a very limited set of cases where recommendations have achieved a high public profile. Komnas Ham has indicated that it also often finds it difficult to deal with transnational companies, compared with Indonesian companies, because it is harder for Komnas HAM Commissioners to directly access high level management in the accused companies to instigate informal or formal dialogue. [63] Even where such dialogue can be established, Komnas Ham has very little leverage over these companies.

---

[58] Interview with Pak Nur Kholis, Vice chair person for External Affairs at Komnas Ham, 21 September 2012.
[59] Interview with Pak Nur Kholis, Vice chair person for External Affairs at Komnas Ham, 21 September 2012.
[60] Interview with Pak Nur Kholis, Vice chair person for External Affairs at Komnas Ham, 21 September 2012
[61] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.
[62] Pak Nur Kholis reported that most government agencies have a response rate of around 10 , with the police being the most responsive at around 50 .
[63] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

The institution's shortcomings with respect to the provision of remedy are thus attributable to its lack of resource and leverage vis-à-vis companies and government, despite a strong orientation toward rights protections.

Complaints about Wilmar

A number of complaints have been made to Komnas HAM about Wilmar. For example, in Jambi, separate complaints relating to different community groups were made over many years by *Serikat Tani Nasional* (the National Farmers' Union, STN) and PRD about PT AP, the Wilmar subsidiary (Institute for Policy Analysis of Conflict, 2014), at least one of which resulted in a mediation. [64] Though we were unable to systematically locate documentation regarding all of these complaints, none of the complaints have, to our knowledge, led to remedy of any human rights harms or resolution of any disputes.

A Komnas HAM official interviewed for this research reported that, in mediations led by Komnas HAM, PT AP often sent delegates to mediations who lacked the authority to make decisions, that their commitment to a mediation process was very weak, that the company lacked knowledge of and respect for human rights, especially economic, social and cultural rights, and that the company used local government and police to protect themselves from the communities' claims. He further explained "I got a response letter, or response directly by the company that they already have a licence from the Governor, that is enough, they have land, they pay tax, I employ 1000 people. This is a very common response. And the local government they said that this whole process is based on law, there is no mistake on law process. This is the common response. And the people's response is of course quite different. Their land is occupied by the government and Asiatic." [65] This lack of meaningful engagement in a mediation process, and deferral to the authority of existing licences is consistent with the company's behaviour in the CAO mediations.

Administrative (governmental) complaints channels at local and national level

A number of Indonesian government agencies have their own arrangements for handling issues related to human rights in the oil palm industry. In both the Jambi and Sambas Wilmar plantations, multiple community groups had made multiple efforts over many years to engage some or all of the administrative grievance channels available to them. In cases such as these, often communities will get no response, face lengthy delays or inefficient processes, and then they will try other options. Often multiple efforts may be in process simultaneously, with little or no coordination among either government or civil society actors (Institute for Policy Analysis of Conflict, 2014: pp.24-5). Often the bodies most engaged in solving a conflict lack enforcement authority (Institute for Policy Analysis of Conflict, 2014: pp. 24-5), and so even when agreements are reached, they may be made but not be implemented, as happened in the Jambi case described above. Government channels also face some of the more fundamental constraints faced by the judicial system (see below), in particular in relation to land tenure. Experienced community supporters interviewed for this research reported that government always takes a legalistic ap-

[64] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012
[65] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

proach to land disputes that is incapable of addressing their root causes or providing remedy other than cash compensation.

The administrative avenues of most relevance to the Wilmar case are *ad hoc* conflict resolution processes at the district and provincial level, BPN and Forestry conflict desks, and parliament.

District and provincial level ad hoc conflict resolution

According to interviews with provincial officials, there is no standard way each province organises its handling of conflicts between businesses and communities. Instead, each district and province coordinates conflict resolution processes predominantly on an ad hoc basis. Sometimes there are specialised people in relevant departments (such as Business Disturbance in the Jambi plantation department, or the Plantation Monitoring and Assistance Team, coordinated by the Bupati of Sambas) and sometimes people might handle conflict as part of a broader role. The various officials who take up or get brought into processes may or may not specialise in conflict resolution. Most offices that become involved tend to have some form of connection with the licencing or administration of plantations, so departments typically involved would include BPN, Forestry and Plantations. Decisions on who takes the lead in any given team tend to also be very ad hoc and contingent on who got what information when about the case. The preference is to coordinate teams at the lowest possible level – the district if possible – and escalate only as the conflict escalates or if it is a cross-district landholding. Tasks of these teams often include conducting 'inventory' of residents, including possibly the determination of their indigenous status, and land surveys. They can mediate or adjudicate, or do some combination of both, but these district and provincial bodies can only give recommendations to the central Forestry Ministry or BPN about how to resolve the land issue – only central Ministries have the authority to implement agreements or adjudicate decisions.

The utility of these ad hoc processes and therefore the community and NGO decisions about which to engage depends significantly on contingent factors of the skill and commitment of the personnel, and their political interest in a given conflict. For example, in Sambas the Bupati was closely aligned with the plantation management, whereas there were parliamentarians in the local parliament that were more sympathetic with the community, and the Plantations department was regarded by civil society as lacking in initiative and dysfunctional.[66] It is generally difficult for mediation processes at the local administrative level to offer independent mediation, because of the government's implication in most disputes as a direct (or at least indirect) party to the issues being disputed. Some of the agreements reached over the years in Jambi were brokered by arrangements of this kind, but none had been implemented at the time of our research.

BPN (National Lands Agency) Land conflict desk & Ministry of Forestry Land Conflict Desk

National conflict desks are housed in both BPN and the Ministry of Forestry. To activate a case, a Minister appoints dedicated staff to deal with specific cases.[67] These desks are under-resourced, and therefore only able to take up a small number of cases brought to them. Our research suggests that political considerations sometimes play a role in decisions about which cases are to be taken

---

[66] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[67] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.

up and investigated/mediated. These considerations are sometimes also influenced by the degree of media and popular attention surrounding a case. Even when cases are taken up, the desks were criticised by some government insiders we interviewed as slow in the bureaucratic implementation of any recommendations, and because they can only make recommendations to the Minister who makes any final decisions. National conflict desks have limited types of redress available to them. In some cases they can enclave certain areas of land from a concession, or offer compensation to communities as a best case scenario. None of the participants in this research had made serious efforts to engage either of these desks in their disputes.[68]

Parliamentary bodies

In both Jambi and Sambas, there were sections of community groups who took their grievances to politicians holding elected office in the Dewan Perwakilan Daerah (Regional Representative Council, DPD). In Sambas, supporting NGOs reported that the support of these parliamentarians was important in convincing the company to engage in the CAO process.[69] In Jambi, this avenue was taken up more by a section of the SAD community who reject the legitimacy of the World Bank Group and prefer to pursue domestic avenues. These groups are supported by the peasant unions and PRD. In 2012, PRD and peasant union demonstrations led to an agreement with the company to return 3,550ha of the contested area, subject to remeasurement, but at the time of our research PT AP was yet to pay for the remeasurement (Institute for Policy Analysis of Conflict 2014, p.2). This avenue can therefore act to increase leverage to pursue other avenues, but cannot in and of itself remedy a human rights grievance, particularly related to land.

Other channels

A range of other possible channels are available to people with human rights grievances, including the ombudsman of the Republic of Indonesia (who could receive complaints about other government bodies), and bodies such as Komnas Perempuan (The Women's Commission). However, none of these bodies emerged as significant in these cases, despite some complaints made by various small community groups to them at different times, without substantial outcome.

Domestic judicial avenues

Within the national legal system, District Courts are empowered to hear civil law claims, notably concerning land law. Above the District Courts sit the High Courts which can hear appeals, and above them the Supreme Court is the final court of cassation. Administrative Courts handle complaints regarding official procedure in making decisions such as the granting of licences. The court system suffers from a number of shortcomings in its ability to help communities involved in disputes with oil palm companies that led *all* participants in our research, including business, to conclude that judicial procedures are a "dead end" for communities.

The legal system has many gaps concerning *adat* (customary) right to land as described earlier in this report. The law privileges private land titling and currently does not unambiguously recognise customary or collective rights to land. Indigenous communities lack the documentation re-

---

[68] The Ministry of Environment has a similar, more robust function, discussed in more depth in the Reduction of Emissions from Deforestation and Degradation (REDD) report in this report series. It did not arise in our research as an avenue people considered for palm oil disputes.

quired to make a legal claim to land and would therefore almost universally be disadvantaged under the law. Companies will always hold the upper hand, as explained by one NGO: "In the Indonesian context MNCs [multi-national corporations] always stand back on the legal argument- we have a permit from government, we are legal here, we have not made legal abuses against legal regulations in Indonesia. Always they hide behind the legal argumentation." Furthermore, because customary claims compete with the corporate licences, it is not always in the government's interest for customary claims to be granted, as this could open government up to being countersued by the corporation for flawed licences, and so the law acts as another source of government-company shared interest.

Another factor dissuading communities from taking a legal route is that the 'status quo' would be maintained throughout any legal process, which could be many years. This means that the company's land licences trump community rights to occupy or use the land, rendering their residence there or, for example, their harvesting of fruit, illegal. Logistical challenges are a further factor to consider. Costs are prohibitive, and it can take up to 10 years to finalise a case, during which time communities must make a living. Communities must also raise the funds for legal representation and other associated costs, such as land surveys, which is unfeasible for most dispossessed people.

In the unlikely event that a community had the documentation to support a claim, the logistical support to pursue a case, and could endure the lengthy period of hearing a case to its conclusion, the remedies available through the courts are limited. One villager explained the zero sum outcome: "In Pinang Tinggi's saying, winner becomes coal, loser becomes ashes." Other participants in the research commented that compensation – the only available remedy – does not address the more fundamental issue of landlessness and dispossession that drives grievances in the first place, even if a successful outcome is achieved.

These impediments are compounded by a lack of capacity, corruption and a culture of being friendly to business within the judicial system, together with Indonesia's weak culture of legal compliance, and the fact that disputes tend to be settled informally rather than through the legal system. According to one source, only about a third of all oil palm plantations in Indonesia produce palm oil with a HGU. In theory at least, issuance of a permit of this kind requires that all 'legitimate' land conflicts in a given location have been resolved (Milieudefensie et al 2007, p.69). Yet it appears that companies often begin production on land before this final permit has been approved with the full knowledge and consent of local level government officials (and police) (see for example Milieudefensie et al 2007, p.72).

As one interviewee put it, "The courts are not trusted by local people –they are seen as an extension of the company and the government." In this context, communities see it as a pointless option. One lawyer explained, "we are against the rich people. Do you understand what I mean? [..] Not only the judge, they can even buy the building."[70]

From the perspective of communities, the law is therefore the worst of both worlds: the fact that they lack solid legal grounds to defend their land claims plays against them should they try to use legal channels, but on the other hand they are not able to invoke the weak legal grounds of company land claims to assert their position, because of the generally weak culture

---

[69] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[70] Interview with Pak Zainal Abidin, legal advisor to Bidin, Jambi, 21 February 2013.

of legal compliance and rule of law characterising local land management practices, together with close political alliances between companies and local level government decision makers. As one expert put it, "The history of plantations and land use rights in Indonesia and Malaysia show that even since the Dutch occupation, the role of the state and rule of law are very powerful in all of this – the law is seen as the solution for many plantations, but for many people it is seen as part of the problem." [71]

One lawyer suggested that criminal cases arising from episodes of violence or intimidation are more promising than the civil cases relating to land, but we were not aware of any pertaining to the Wilmar case.

Domestic and transnational political mobilisation

Given the significant drawbacks of administrative and judicial systems, and the weaknesses of Komnas HAM, affected communities have also made significant use of domestic and international political mobilisation to publicise their grievances and seek redress through indirect means of public, government or investor pressure. A number of people interviewed for this research felt that mobilisation and public protest added an important form of pressure to other processes. One community member reported that "if there is no clash, no big issue, friction with company, the government will not respond." Compared to individual problem-solving processes, these protests are also more amenable to explicit linking of specific disputes with systemic issues in the sector, such as land disputes, and this is a further source of their appeal for civil society activists, particularly the very vocal farmers' unions working on food sovereignty, land reform and agrarian reform.

Local and national mobilisation and conflict

In Jambi, mobilisation in the form of land occupations, protests on-site and at district offices and at provincial offices has been a feature of the conflict since its early days. Some of these actions have been taken by community groups who chose not to engage in the transnational CAO or RSPO complaints processes. At other times they have been a reaction to the failure of those or other processes aimed at resolving the conflict, especially government-led ones (Institute for Policy Analysis of Conflict, 2014).

As described above, different community groups have aligned themselves with different broader causes and civil society organisations at different times, so these protests have been variously about agrarian reform and indigenous rights, as well as the particular claims of different groups, though the agrarian agenda, under the guidance of PRD and STN, has been strongest in this space.[72] Also as describe above, one of these protests at the Provincial parliament led to an agreement to re-measure 3550ha of land within the HGU in preparation for its transfer back to communities, but his has not yet happened. This reflects a general pattern of the effects of protests, which have often led to shows of support or agreements that did not lead to concrete change.

---

[71] Interview with Dr Piers Gillespie, Agribusiness and smallholder consultant, Jakarta, 22nd Feb 2013.
[72] For a detailed account of some of these mobilisations, see Institute for Policy Analysis of Conflict (2014, pp.13-15).

National mobilisation

Some national level protests have been in direct support of particular community groups and their land claims, however most national-level efforts have instead targeted government to advance relevant legal and policy reforms, or Wilmar as a whole to address the issues in all its plantations in Indonesia.

The national NGO SawitWatch is key in this space, bringing together a range of other NGOs that work on issues related to the sector. A SawitWatch staff member at the time of this research explained that the organisation led a 'non-formal solidarity alliance and network' dealing with complaints and problem solving processes, and saw its role in this network as working towards more effective and transparent connecting of issues and networking of resources, but acknowledged that improvements in communication and coordination would be helpful.[73] Most civil society organisations working on palm oil are connected with SawitWatch more or less closely. SawitWatch's activities have centred around networking, research and lobbying.

The Forest Trust is another important actor in national-level efforts to address Wilmar's human rights record in its plantations across the country. As a consultancy, rather than an NGO (they describe themselves as 'between an NGO and a company'), The Forest Trust work with Wilmar to support its policy committing to "No Deforestation, No Exploitation and No Development on Peat" (The Forest Trust 2016), and on their company-level grievance mechanism in a collaborative rather than adversarial way.

International mobilisation

Like national efforts, international efforts have sought to support particular grievance cases by drawing attention to them at the international level, but with a view to also using these cases to advance more systematic change within Wilmar, and across the sector.

Efforts have been made to carry out investigations and write public reports on company practices in particular sites and more broadly (e.g. Milieudefensie et al 2007; Colchester et al 2011); to identify banks and investors behind Wilmar and communicate to them Wilmar's implication in land conflicts, forest fires, and other problematic social and environmental practices (e.g. Wakker 2000); and to engage in Wilmar via RSPO (as described above). At times, these efforts targeting Wilmar have been formally coordinated. An international WilmarWatch network was coordinated by SawitWatch, where international NGO AIDEnvironment focused on the internal workings of the company, and FPP on the market, buyers and IFC. This group engaged Dutch banks such as ABN Amro and Rabo to exercise leverage over Wilmar, in which they were invested (Wakker 2000). These NGOs were also important in supporting local NGOs handle grievance process, for example, in investigations in both Sambas and Jambi that supported the CAO and RSPO complaints, as described above. An NGO worker in Sambas explained "We tried to solve the problem in the ground with the support from the international campaign. It

[73] Email communication with Norman Jiwan, (now former) SawitWatch staff who dealt with the CAO-Wilmar and RSPO cases, 11 February 2103.

is closely related between local and international – it is globalisation in this sense . . . or what happened in international level will impact the local people, so that is why we want to tell them about that. If you invest your money in that bad company, it is similar with that you also kill the people in the field. Or if you try to consume the bad resource of palm oil, you are part of this destruction of our forest and grabbing our land. So we want to tell them about that." [74]

Other NGOs less formally connected to this network have also engaged in international campaigning against Wilmar in ways directly connected to the disputes dealt with in this report. The most prominent example in this case was when Perkumpulan Hijau, a local NGO in Jambi who work closely with some PT AP-affected communities, with assistance from German NGO Robin Wood, took a family from the plantation to Germany to lobby Unilever to either stop buying Wilmar's palm oil, or exercise its leverage over the company to return land and compensate families for their displacement and dispossession. Justifying the choice of target, one NGO worker explained "[w]e're fully aware that in the EU there is a law that regulates the raw material being consumed by the people there, and we used that law as the opportunity to put pressure on Unilever buying CPO [crude palm oil] from Wilmar. Wilmar's no. 1 buyer of CPO is Unliever. The solution isn't coming from voluntary action alone – you need to put pressure to get the solution. And the pressure is not only at the local level. It needs to be broader, national and international." [75] They also attempted to leverage Unliever's commitment to sustainable palm oil by evoking the RSPO principles and criteria and their alleged violation in this Unilever supplier. One activist told us "I told them that the CPO has the blood of Anak Dalam.[…] the CPO has blood in it, blood of poor people, people in need. Rights that are forcefully taken away, with tears, cries, blood, etc. so it's a dirty product." [76] The family and supporting NGOs protested in front of the Unilever office and received media coverage that got the company's attention. According to some participants in this research, while this was happening, PT AP visited some of the community groups with donations of basic supplies and used pictures of this donation to alleviate Unliever's concerns about displacement in the plantation. Unilever wrote to Wilmar to express its concerns about the issues raised on this visit, and the NGO that coordinated this visit was of the view that this trip helped apply pressure to PT AP to participate in the CAO process. However, they were also critical that Unilever deferred to the CAO and RSPO processes "for legitimating any issue," particularly when some community groups had refused the CAO process. [77]

Collectively, these activities have served to increase the attention to the case of the affected communities, and increased pressure on Wilmar to take problem-solving processes seriously, but it is not clear that this increased attention has had any direct impact on the resolution of their grievances, particularly in Jambi, where they remain unresolved.

---

[74] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[75] Ade Ipang Ahmad, AGRA Jambi, in NGO research workshop in Jambi, 22 February 2013.
[76] Interview with Pak Zainal Abidin, legal advisor to Bidin, Jambi, 21 February 2013.
[77] Ade Ipang Ahmad from AGRA Jambi, NGO research workshop in Jambi, 22 February 2013.

Mixed outcomes

The initial complaints made to the CAO that form the starting point for this research, were made with respect to all of Wilmar's operations in Indonesia, and with a view to ratcheting up human rights fulfilment in the sector more broadly, including by influencing the RSPO and the IFC. Throughout the CAO process, and in conjunction with the various other avenues for remedy with which it intersected, the 'Wilmar case' came to be predominantly about a handful of particular plantations. This section outlines the mixed outcomes at these various levels.

Within Wilmar

In relation to individual remedy in Wilmar subsidiary plantations:

- The CAO-facilitated agreements in the Sambas and Riau cases were not so much complete remedies of the human rights harms of aggrieved communities, as compromises between, on the one hand, the communities' claims to indigenous land rights and demand for some livelihood and, on the other, the companies' claims to legal land rights and the right to earn a return on investment for planted areas. Furthermore, the difficulties in effectively implementing the agreements rendered the outcomes ineffective in terms of addressing the underlying grievances related to landlessness and poverty.
- In Jambi, despite the best efforts of largely well-respected mediators, the mediation processes failed to deliver any tangible outcome.
- To our knowledge, any direct effects on existing human rights issues in any other plantations either in Wilmar's supply chain, or directly owned by Wilmar as a direct result of the complaint process of the CAO or RSPO were dependent on ongoing site and community specific complaint making (such as the RSPO complaint made in 2012), and were by no means guaranteed.

Wilmar as a whole has demonstrated a mixed response to pressure to remedy violations of indigenous and community land rights, the grievances that lie at the heart of the CAO and RSPO complaints. The divisions within the company, described above, have resulted in some subsidiaries (PT WSP and PT ANI in Sambas, and PT CRS in Riau) taking seriously their obligations on this front and both providing some degree of remedy and pledging not to convert any further land without going through appropriate consent processes. However, the sale of PT AP and the absence of any other community level engagement in any other plantation, suggest that this serious approach to the issue of land rights is severely limited within the company. The agreements in Sambas and Riau, even with their significant shortcomings, seem to be the exception, rather than the rule.

Instead, Wilmar has sought to address other problems raised in the complaints - namely HCV area policy, fire clearing, and permits, licencing and local authorities – through the RSPO (CAO 2009b). This suggests that complaint processes can have an indirect effect on propelling a company towards incremental change in internal processes broadly related to social and environmental processes, but it is easy for a company to generate internal processes that may not have 'on-the-ground' effects for communities, and to manoeuvre that attention towards issues that

are more readily resolvable and therefore less threatening, for example fire clearing, which the company simply claims it does not do (Wilmar 2016e). Though the CAO officially concluded that "[t]he participation of regional and senior managers from Wilmar has promoted improvements at the corporate level so that the company is better equipped to resolve disputes on a more systematic basis," (CAO 2009d) many insiders in this case felt that the company had not changed in any meaningful way.

Within the IFC

The findings by the CAO compliance function that IFC was not compliant with its own standards led to The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector affirms the comparative benefits of palm oil compared to other crops, and the possibility of development in the sector *without* inherent trade-offs regarding indigenous rights, and deforestation and associated greenhouse gas emissions. It nevertheless calls for greater safeguards to enhance the development outcomes and mitigate the risks of the industry (World Bank and IFC 2011).

Regarding the World Bank Palm Oil strategy, NGOs remain very cautiously optimistic. FPP, for example, endorses the emphasis on strengthening vetting procedures within the World Bank Group, and on strengthening institutional frameworks and processes to ensure free, prior and informed consent, and better conflict resolution. However, FPP also notes that the World Bank Group may be experiencing difficulties in meeting these standards as its investment in the sector has dropped significantly since 2011, and though the World Bank Group initially imagined the framework could be adopted in other commodity sectors, this has not happened (FPP 2013). At the time of writing, no IFC investments in palm oil had been made since the introduction of the Framework.

Within the palm oil sector in Indonesia

As a direct result of the complaints, the CAO recommended that IFC and the International Bank for Reconstruction and Development (IBRD) in Indonesia work on issues related to government permits and licencing and engage government regulators (CAO 2009b), and the IFC has started to address some of these issues through its Advisory Program, as described above. However, as also described above, the practical impacts of this program remain unclear.

The Wilmar complaints have been followed closely by the RSPO, in particular by those involved in the development of its grievance handling process, who observed the CAO mediations, and those civil society organisations monitoring the case, such as SawitWatch and FPP. The RSPO has established working groups on High Conservation Value areas and Human Rights, the latter of which focuses on FPIC, and these do seem to have contributed to learning in the private sector, however the impacts 'on the ground' also remain unclear (see the RSPO report in this series, and McCarthy 2012).

Most concerning is that the Indonesian government and the Indonesian palm oil business association, (GAPKI), distanced themselves from the RSPO and from international NGOs to seek to self-govern in terms of social and environmental sustainability. The Indonesian government established the Indonesian Sustainable Palm Oil (ISPO) initiative, which certifies companies based on compliance with domestic laws (see also the RSPO report in this series). Given the

weak legal framework for supporting customary land rights, ISPO does not appear well positioned to address the human rights issues raised in this report. The withdrawal of these key actors from international processes, claiming sovereignty and a superior market position risks weakening the leverage of the RSPO over systemic change in the Indonesian palm oil sector.

Factors influencing access to remedy

This section seeks to explain the mixed nature of the outcomes of this case with reference to the various features of the design, operation and interactions of the various remedy avenues pursued and available in this case. The section is organised thematically, but includes more descriptive and narrative detail regarding the processes under study.

Access

The ease of complaint lodgement with the CAO (complaints can be made in any language, in any way, even 'on the back of an envelope'), and the CAO's broad interpretation of IFC Performance Standards (they will respond to any social or environmental issue of any kind) make the CAO highly accessible, relative to many other transnational mechanisms (such as the Organisation for Economic Cooperation and Development (OECD) National Contact Points). The ombudsman assessment visits to the field have the advantage of making the problem-solving process available to any communities that are willing and ready to engage.

The disadvantage of a problem-solving process, and this applies to all mechanisms that use it, is that it requires a community that, firstly, has the networks to be aware of the mechanisms as options, and secondly, the logistical support to pursue them, for example through the provision of information about the grievance. In the Wilmar case, the initial complaint concerned all of Wilmar's plantations, but only three sites were identified where locally affected people were willing to participate in the complaint. In some cases this may have been because they didn't want to or because there was no serious conflict, but given the widespread nature of land conflicts in the sector it is highly likely that there were other cases were communities may have, given the right circumstances, wanted to take part in such a process, but couldn't because they lacked the intermediary and logistical support.

LESSON: The provision of active support for civil society, including resources for travel, fact-finding and building and maintaining relationships, would be required to address barriers to access.

Mediation

Mediation is emerging as a significant trend in natural resource conflict resolution around the world, and particularly in Indonesia as Komnas HAM, and civil society actors eagerly seek to improve their skills in company-community mediation.[78] These lessons are focused around the

[78] For example see the Impartial Mediators Network (www.imenetwork.org)

Ecological destruction in Jambi province, Indonesia. *Source: Greenpeace*

central risk of mediation: power imbalances between companies and communities may not be sufficiently addressed for the process to be fair and generate sustainable outcomes consistent with human rights norms.

This section draws out lessons regarding mediation: its strengths, weaknesses, and the conditions required for it to work effectively.

Cultural resonance of the process

As a form of dispute resolution, mediation resonates with many customary processes in Indonesia that are cooperative, rather than adversarial, and so has potential to be very effective. One community member involved in mediation explained to us that as indigenous people "we settle this by sitting together. [That way] it's resolved up to the after life. […] No matter how big the conflict is, as long as it is resolved through sitting together. […]Because of custom, because we realise this is the best for resolving conflict." This may go some way towards explaining the significant uptake of mediation among civil society organisations in Indonesia, as a way of dealing with land disputes in particular. For example, Scaleup, the NGO in the Riau CAO case, works to expand the use of mediation to address company-community conflicts in Indonesia.

However, as well as there being great variation in customary forms of conflict resolution across the thousands of different indigenous communities in Indonesia, there are also some important

general differences between such customary or *adat* processes, and the processes engaged in by facilitators from CAO or other formal organisations. Some experts explained that typically *adat* mediators are not paid, and are chosen for their known integrity, and more people are included in many (albeit not all) customary mediation processes, not just representatives.

The higher level of formality and more exclusive participation that characterised this CAO process, and government mediation processes, privileges the company over the community: corporate actors are more skilled, experienced and comfortable with high levels of formality (though they may also be inexperienced in mediating with communities), and they are less vulnerable to internal fracture and conflict than communities. Some civil society groups with expertise in company-community mediation argued for more localised, if hybrid forms of mediation that can better take into account and reflect the custom of the community concerned.

LESSON: Consideration should be given to ways in which mediation processes can be made more inclusive and more resonant with local cultural norms.

Intra-community conflict

Of the ten community groups engaged in disputes with Wilmar subsidiaries across Jambi and Sambas, only three of them (Pinang Tinggi, Sungai Beruang and Sajingan Kecil) were able to maintain agreement on goals and process throughout the period of problem solving. Though Senujuh was able to get an agreement, it wasn't without internal divisions, and in Jambi all the other community groups were so troubled by internal disagreement that they were unable to proceed with mediation. It is very common for community groups to be divided this way, challenged as they are by the lived experiences of poverty and dispossession that drove the grievance in the first place. Nonetheless, the expectation of the company and the mediators is that community groups will unite and come to the table with a single set of agreed-upon goals. Simon Siburat told us that "To me regardless of what it is [the design of the problem solving process] it doesn't make a difference- the only thing making a difference is the community – if they are clear and know what they want, then it is not an issue. But if the community is conflicted among them, that is difficult."[79]

This expectation is unrealistic when we consider the history and living conditions of the communities. One major issue in this case was the expectation of homogeneity and 'purity' in terms of indigenous identity. As explained earlier, the history of the Jambi region is one of not only indigenous agro-forestry, but also one of transmigration, with transmigrant communities and indigenous communities living together, intermarrying and cooperating on palm plantations over the last few decades. As a consequence of this history, some of the community groups themselves were not concerned with identifying 'pure' SAD. In particular one leader in Sungai Beruang, felt that "[e]very community would like to live, right? All communities have the same rights to love in their country, right? Moreover, these people helped to develop Suku Anak Dalam [through assistance with palm plantation]. But the company seems not to like that. If

[79] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

it's Suku Anak Dalam, so it's *only* Suku Anak Dalam. But if it's only Suku Anak Dalam there will be no development because we can't do modern farming, we can't. That's one of the current issues. That's why our mediation is dragging quite long."[80]

However, the company was committed to only engaging with 'real' SAD. A Wilmar representative commented that "[m]ost customary rights people when they claim the land don't have documentation, make claims about ancestors, but [there are] no DNA studies about who really came from there" and argued that the government should be responsible for properly identifying claimants.[81] The history of forced settlement that moved the SAD away from the HGU area was not taken into account by the company as a plausible explanation for the community groups' absence from the site over a number of years. The company exhibited a general scepticism about the authenticity of indigenous identity and connection to land, at the same time as they use authenticity as the primary criterion for approaching a claim as legitimate.

Also in-keeping with the complex history of migration and settlement in the area, the Jambi case entailed multiple layered and often competing claims to different areas of land. Again, Simon Siburat explained "[PT] AP is much harder because the communities have multi layered claims over the land, conflicting with each other, so this is the biggest problem we have there. So you can't get a resolution because you can't agree to something."[82] An NGO worker with a strong relationship with the communities in the PT AP concession explained the origins of some of these competing claims: "historically a piece of land, say 100ha belongs to 1, 2, 3, 4, 5 men and they divide it verbally to their children. Then the family expands. Maybe at the time it is being divided the child was not there, so there is disagreement about whose it is, and also families expanding, so this is an open issue. Also there is no written proof that it is being divided to which person and how big the area is." The indigenous practice of marking territory by nature (the big durian tree on the south side, for example), rather than in alignment with government-village maps further complicates land claims. The expectation that these internal community disputes will be easily resolved in preparation for a dispute with the company is as unrealistic as the expectation that it will be possible to determine and only negotiate with 'pure SAD'.

Further to these quite fundamental problems, there are also sources of disagreement which are common in community groups. One is agreement on overall goals and strategy. As already noted, in Senujuh there were disagreements over whether to negotiate and take a plasma scheme, or demand full restitution of lands.[83] In Jambi some community groups were divided on whether to accept cash compensation, and how much. Some individuals and families are better-positioned than others to withstand lengthy negotiations, while others have more urgent basic needs that would compel them to accept compensation earlier. Community groups also face disagreements over leadership, sometimes associated with people positioning themselves as leaders for personal gain, but also at times more legitimate leadership disputes arise that

---

[80] Pak Musa, in Interview with Pak Ronni and community elders, Sungai Beruang, Jambi, 18 Feb 2013.
[81] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.
[82] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.
[83] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

relate to family connections, leadership skills, and historical community dynamics. These kinds of divisions were evident in almost all the case studied in this research project (for example see reports on Weda Bay and POSCO).

Unfortunately, there was a widespread perception that PT AP not only blamed community divisions for the failure of most of the mediations, but actively sought to exploit these kinds of divisions within the community to avoid settling and land deals. This led at least one community group to take the strategy that "whatever our internal secret, don't leak it to other people."

In problem-solving processes, some consideration could be given to ways in which internal community disputes might be worked through prior to company-community negotiations as a way of positioning the communities better in subsequent negotiations with the company. The time and resources to do this should not be underestimated. Though the CAO process entailed a year of identifying subject groups for sub-negotiations, this did not prove to be sufficient for most of these groups to engage in mediation in Jambi.

Any such process should also establish an ongoing method for managing decision-making and disagreement within the community during and after the negotiation process, particularly during periods of implementation when the realities of land agreements will become apparent for community members. Pinang Tinggi, the strongest of all the community groups in the PT AP negotiations, had a particularly strong system for this, whereby the community was established into 21 groups, each of which would send a representative to all pre and post-negotiation gatherings. In the event of disagreement, a vote would take place and the majority would win, but effort would be made to reach an understanding with those who were outvoted, and to re-establish community unity: "Means for them to comeback with us. It's not hard. Why? We here are the descendants of Sungai Bahar, we are one blood and flesh. So it's not difficult to give understandings to these brothers." The energy and effort required on the part of the negotiating team and community leaders for this to be successful should also not be underestimated. Partnering between stronger and weaker community groups was suggested as one way to strengthen the weaker ones, as they learn strategies for dealing with their challenges. Support for such processes, and ongoing NGO support of them, would be a worthwhile expenditure for civil society, companies and grievance mechanisms.

LESSON: Grievance mechanisms and civil society groups need to resource and provide strong support for communities to continually manage internal communications and decision-making. It is unrealistic and disadvantageous for communities when grievance mechanisms expect high levels of ongoing community cohesion.

Equalising capacity

Our research overwhelmingly suggested that companies far outweigh communities in their capacity to engage in problem solving processes in ways that benefit them. One of the primary conditions required for effective and fair mediation is equality of parties, but almost all participants in this research agreed this equality is lacking. One explained "when there is a mediation – it assumes that the company and affected people are equal. But they can talk and agree on anything […] this is actually the hole of the mechanism because how can you expect that the people are equal to the company?" [84] Specifically in relation to the mediation process, this inequality manifests in many ways. Our research in this case raised specific capacity deficits among communities that make participation and effective negotiating more difficult for them:

- Educational levels and associated capacity to gather, interpret and use *technical* information (including things such as evidence-based timelines and maps). Communities relied very heavily on NGOs such as Setara, Gemawan, SawitWatch and FPP for this support.
- Access to and capacity to interpret and use *economic and financial information* related to agreements. For example, the Senujuh and Sajingan Kecil communities might have made different or more robust agreements had they fully understood the challenges that lay ahead in relation to plasma and cooperative management.
- Skills and experience to understand and navigate negotiation sessions. One community representative in Jambi explained experiences of "bad reception" between what the mediators say and how the community hear it, and another reported that they often get "emotionally carried away. Maybe because we don't have education level as high as theirs." Another observer relayed a situation where the community had asked for assistance in responding to a question but were denied, and as a result, the response they were forced to give was weak and easily rebuffed by the company, though a stronger response was available to them.
- Access to information about what other forms of leverage they may be able to deploy.
- Access to information about what other communities' have been able to achieve in comparable situations, and how it might be replicated. For example, the risks of plasma arrangements and the particular supports that need to be put in place to make them productive and profitable would have been useful in Riau and Sambas.
- Logistics and basic resources, such as mobile phones, credit for mobile phones, cars and petrol, and access to email and internet. For example one participant in this research lost his cell phone in a river and couldn't afford a replacement, which exacerbated the difficulties in communication with mediators already caused by poor reception in the plantation where he lives.

[84] Interview with Ade Ipang Ahmad from AGRA Jambi, Jambi, 18 September 2012.

- Capacity to manage internal disagreements and divisions within communities over which procedures to pursue, strategies for engagement, goals, and representation arrangements (see above).

The CAO mediators in this case provided capacity building workshops and ongoing consultations with both parties – the company and the community – to address the capacity deficits pertaining to the process of mediation. Community members made good use of these services and reflected favourably on them, expressing that they felt that they did contribute to enhancing their capacity to engage effectively in mediations. However, these efforts alone were not enough for the community groups in Jambi to be able to effectively combat the negotiation strategy of PT AP. The CAO acknowledges that capacity differentials between communities and companies can be significant and can impact upon mediations in ways that exacerbate power imbalances. However, in this case, the CAO mediators were sensitive to perceptions of impartiality from the company, and so largely reliant on NGOs to address the greater needs of communities in this respect.

A number of civil society organisations in Jambi therefore took on the role of building capacity for communities, training in aspects of mediation such as what mediation is, expectations about how long it takes, negotiating technique (constructing demands, how to convey information and views, division of roles, both formal and informal, 'high and low tones'), how to anticipate traps, how to understand legal terms that the company will use, communication techniques to avoid acrimony, how to debate and drive direction of conversation, how to organise a group, participatory mapping to determine the object, negotiation strategy, organisation (such discussing in advance the next meetings' agenda to anticipate possible directions of discussion), how to make use of breaks, how to set and manage expectations, and how to evaluate past performance and see what could be done better next time. Other NGOs focused on capacity building in supporting areas, such as building awareness of community rights under law, the structure of government and legal complaints systems and the nature of licencing and other relevant legal frameworks.

Despite these significant efforts on the part of the CAO and CSOs, these activities were not sufficient to position communities to make the best possible demands for their interests, in the best possible ways. This is reflected in the failure of any of the community groups in Jambi to reach a satisfactory agreement (though this is also partly attributable to other factors raised in this report), and in the significant shortcomings of the agreements reached in Sambas with respect to redressing irregular land acquisitions and providing for ongoing livelihoods (see below for more on this point).

In part, addressing these persistent capacity deficits would have required simply *more* capacity building. The heavy reliance on NGOs to fulfil this task was problematic in the sense that the local NGOs in Jambi and Sambas were not heavily resourced, and, though some were skilled and experienced in mediations, they did not have the level of skill and experience of, for example, the CAO mediators. In part, addressing these deficits might also have been dealt with (in Jambi, at least) through more attention from CAO mediators directed at communities. The sensitivity to the need to be perceived as impartial by the company limited opportunities to target communities in this way.

LESSON: More capacity building is required for communities than companies to achieve a fair negotiation. Mechanisms and other donors should consider providing or resourcing this capacity building, and civil society organisations should continue to build expertise in this area.

Equalising leverage

The overall context of the complaints by communities about companies is one of unequal leverage, which relates to structural sources of bargaining power. In these cases, perhaps the most significant form of leverage the company held over the community was its superior legal rights to land, which reflect the underlying limitation in Indonesian land law regarding community and indigenous land rights, described above. Corporate land rights can be used to avoid making a commitment about land restitution. As one Wilmar representative explained, "[t]he trouble with the community is that they always think that the company can solve every problem, but we have one hand behind our backs. It's not just about money and resources, [it's also about] recognising customary rights. The company has no rights to do that, the government has to do that through a process."[85] These legal rights, in other words, enable a deferral of responsibility to the government for significant changes in land use and ownership, which they can use as leverage to encourage an agreement for something else. In terms of community claims in this context, even community members admit "it's easy to spot gaps." The relative strength of company land rights also means that the status quo – their use of the land for palm plantations – is often the default scenario during the negotiation process, unless negotiated otherwise (see below on preconditions). In other words, the weak legal position of communities with respect to land weakens their bargaining capacity and leaves them open to elite manipulation (Zen et al 2008, p.5).

Companies' leverage is further increased by the fact that the land acquisition in all the cases considered here is a *fait accompli*. This leads to a relative weakness of the community firstly, in that their only option is to find a compromise and they cannot feasibly demand full restitution of land, and secondly in that their day to day subsistence is under threat, given their status as illegal occupants of land they used to consider their own, and they have greater incentive to accept a deal that is not in their best interests, because of the urgency of their immediate needs.

Companies also enjoy the advantage of holding relatively more unified goals than communities and uncontested hierarchies of authority. Though the CAO argues that "[b]oth sides are heterogenous,"[86] and the divisions in the Wilmar group demonstrate that some elements of a company may be more sympathetic to human rights issues than others, their overall profit objective acts as a solid and consistent anchor. By contrast, communities are, naturally, more heterogenous in their aspirations and their decision-making under difficult conditions (as described above).

Communities are not without their own sources of leverage, though they struggle to compete with those that privilege companies. Efforts to pressure companies that parallel mediations emerged in this research as the most significant form of leverage available to communities.[87] The CAO has a strong preference for confidentiality and avoiding parallel processes as they see it as undermining the collaborative problem-solving efforts, which it can do. For example, the Batanghari district government mediated deal took place outside the Setara process was partly responsible for the collapse of that process. The CAO's objection to outside-proceedings applies equally to companies and communities. However, civil society and community groups who

---

[85] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.
[86] Interview with CAO staff, 24 October 2013.
[87] In cases where company-community disputes entail commodity traders, communities can enjoy leverage in the form of stalling until price drops in commodity markets. However, this was not a feature of this case.

participated in this research felt this left them at a significant disadvantage as it resulted in the sacrifice of their most significant source of leverage, leaving the company still strong in their many sources. For example, some Jambi-based NGOs felt that the engagement of Unilever and RSPO was crucial to pushing PT AP to address the issues in Jambi,[88] and other NGOs felt the attention to the Wilmar case meant that it "quickly became a real cause celebre for many NGOs, so it was really important to be seen to be following appropriate processes." [89]

There are some other factors that can also augment the leverage of one side or the other, depending on how they are used. One factor is the jurisdiction of the mechanism. In the PT AP case, this was used as leverage for the company, who were able to remove themselves from the jurisdiction of the CAO to cease the problem solving process. However, while there was a relationship with the IFC, this gave the communities leverage to begin a problem solving process that wouldn't otherwise be available. This leverage is thus malleable and can work in multiple ways.

Another factor that can augment leverage on either side is the use of other standards. To an extent, the communities can use these to hold companies accountable for their business operations. For example, establishing the recognition of legitimate customary land ownership and the principle of free, prior and informed consent as a starting point for negotiations can have the effect of increasing community leverage in negotiations. This was part of some of the Wilmar negotiations in this study, and was able to be used when, early in negotiations, Wilmar's legal team started advancing an argument based on the legality of their land acquisition. After an appeal to the CAO, the company was required to shift its position and the remaining negotiations went ahead on the assumption of legitimacy of community land ownership. In the view of one participant, this meant that "[o]nce the company accepted that was the basis for the negotiation … the negotiation proceeded better than just 'you know you've got a problem, you need to talk.'"[90]

However, this case also provides a counter-example where the use of (weakly enforced) other standards, in this case RSPO standards, worked against the community. In this case, Wilmar used the RSPO as leverage, as Simon Siburat explained, "[m]y response was there are about 30 companies operating there, 3 or 4 approximately are RSPO members, the rest are not. And if you are saying it is a biodiversity hotspot, and you think these RSPO members pull out, fine, then another three or four non RSPO members will come in, and you think they will do a better job?" [91] Furthermore, a deference to the notion of 'continuous improvements' can make accountability for meeting such standards very slow.

Overall, our research suggests that CAO mediations need to do more to find ways to mitigate the imbalance in leverage between companies and communities in order to adequately level the playing field for negotiations and work towards rights-compliance. If impartiality is understood as not providing or permitting unfair advantage to one party over another, it can permit interventions in imbalances of leverage. Some actions that might be helpful in this respect include:

---

[88] Interview with Ade Ipang Ahmad from AGRA Jambi, Jambi, 18 September 2012.
[89] Interview with Dr Piers Gillespie, Agribusiness and smallholder consultant, Jakarta, 22nd Feb 2013.
[90] Interview with Marcus Colchester, Forest Peoples' Programme, Moreton in Marsh (UK), 25 July 2012.
[91] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

- Training for communities specifically on the issue of leverage, and how to use their leverage options to their advantage. This could be part of broader capacity building efforts, addressed above. It could entail activities such as participatory power analyses of supply chains, markets and regulatory systems so that communities can better identify their own position within these broader structures, and possible leverage points.
- Setting some points of departure for mediation that mitigate historical and structural disadvantage, for example agreeing that indigenous communities have the right to FPIC, and where that right was violated, however long ago, actions can be taken to remedy it. This can have a subtle normative effect on negotiations, as described above.
- In cases where land law privileges the company, engaging government and legal experts who are sympathetic to the problem solving effort to find creative but legal ways to enforce agreements that might favour the community. These may include voluntarily entering legally binding contracts that commit both parties to enforceable undertakings regarding land sharing. Careful consideration should be given to the long-term effects of these agreements, and they should not make it more difficult for communities to make stronger land claims in the future should changes in land law make that possible.
- Setting appropriate preconditions to position communities more securely during the process, and reduce their incentives to take weak deals (see below on preconditions)
- Supporting communities to find ways to work through internal disagreement to mitigate the risk of 'divide and rule' tactics

LESSON: To achieve a fair negotiation, mechanisms need to be willing to take steps to equalise leverage between parties.

Role of supporting NGOs

NGO support for communities is undoubtedly an absolutely critical factor for engagement in grievance processes. One of the key findings of this research is that NGOs must continue to have a role in problem-solving processes at the individual case level, and in translating these lessons to higher levels. NGOs perform a range of functions that no other group – government, business or impartial grievance mechanism – is willing to perform, and problem-solving processes would not function without NGO support in these ways. These include acting as intermediaries between communities and large organisations to kick-start and sustain grievance processes; capacity building; consolidating communities; assisting in gathering evidence to support community claims; and assisting in implementation and monitoring of agreements.

However, this work is not without very significant challenges, and the precise nature of the role of NGOs in these processes emerged as contentious in this research. The CAO and government actors had mixed responses to the work of NGOs in the problem-solving processes, depending on the NGO and its activities; while private sector actors were often critical of NGOs. NGO workers, for their part, had many lessons they wanted to impart as a result of their engagement in these processes. In what follows we explore the key challenges and sources of contention from these various perspectives.

LESSON: NGOs must continue to have a role in problem-solving processes at the individual case level, and in translating these lessons to higher levels

Representation and negotiating support

For the CAO ombudsman function, it is vitally important that communities' views are represented as directly as possible, and so CAO ombudsman processes make all efforts to ensure that communities speak for themselves wherever possible. One CAO staff member explained "our guiding philosophy is to make sure that wherever possible we hear from the affected community and we address their needs. […] the question is not about who is not to be in our negotiation space – it's who we need as a minimum in that space, and for us that's affected community representatives."[92] The CAO also sees the ombudsman process as offering a further beneficial outcome in the strengthening of the community to speak for itself with the company should any other issues arise in future, and this can only be achieved if they speak for themselves in mediations (CAO 2012b, p.21). This approach was also seen by the CAO as strengthening the buy-in to the agreements and thereby enhancing the sustainability of outcomes, as opposed to agreements that are made on behalf of communities (CAO 2009d).

Wilmar also expressed a preference for community self-representation, but because they found the approach of some NGOs frustrating. A Wilmar representative cited an example relating to mediations where"[d]uring the break, the NGO can come and talk to the community and say 'the value should be higher,' rather than saying 'why don't you strike a compromise?"[93] The general issue of concern about NGO behaviours in mediations is explored in more depth in the CAO report.

In Jambi and Sambas, all the community groups except one (Sajingan Kecil) were self-representing in their mediations. Each group had to appoint their own community representatives and provide evidence of their mandate to the mediators. Pinang Tinggi community group in Jambi, as explained above, had a particularly robust method for community decision-making. When they chose their representative team, a customary community meeting took place and selected people were then mandated to make decisions in the negotiation which will not harm the community." After each round of negotiations, the negotiating team would call a meeting with other family leaders (each 'leader' representing between 10 and 20 families, totalling 253 families) where decisions made were communicated downwards, and then leaders would take that message back to their communities, with kinship ties ensuring nobody was excluded from the information. At the same time, these family leaders communicated the aspirations and desires of their families upwards to the negotiating team. However, few other communities had systems this robust, and most other communities found this process difficult, such that three of the other Jambi community groups had to withdraw from the process at least in part because

[92] Interview with CAO staff, CAO Office, Washington DC, 20 June 2012.
[93] Interview with Simon Siburat, Group sustainability Controller, Corporate Social Responsibility Department at Wilmar International, 20 February 2013.

they couldn't agree on representatives (as described above), one directly for this reason. This model of representation, like any other, is dependent on relationships of trust to work effectively. As described above (under intra-community conflict), relationships of trust within communities can be as complex as relationships between communities and outsiders.

In practice, whether directly represented by NGOs or not, every community group engaged in mediation was dependent on forms of negotiating support from NGOs. These included:

- Documentation of customary community practices to add to evidence available to support their claims.
- Spending time living in the communities to raise their awareness of their rights, to help them understand the nature of the licences, and other laws and regulations.
- Consultation with communities about the substance and wording of formal complaints (e.g. to CAO and RSPO), which were drafted by international NGOs
- Keeping in mind the bigger picture effects of agreements and alerting communities to them (one example given was that if one community agrees to a housing and relocation deal, it risks legitimising wider displacements of other communities that might be ongoing)

The many capacity difficulties communities face in engaging in mediation led some community groups and almost all the NGOs involved in this research to agree that NGO representation is often crucial for equalising power in mediations. Though they all agreed that community self-sufficiency is the ideal, they were sceptical that many communities had this capacity, and worried about the disadvantage they face without representative help. One community supporter described it as "naïve" in most cases to think that communities have enough capacity for this ideal to be realised in practice. One mediation insider argued that "they should be balanced in the discussion. So the ability of the community in voicing out their interest should be equal with the company voicing out theirs. So that is why the community should have parties to assist," such that without that assistance, the mediation would 'collapse' or 'crumble'. Komnas HAM mediators agreed.[94]

In the one case where community representation by an NGO took place, in Sajingan Kecil, a representative of the NGO, Gemawan, explained the decision as follows: "Although we already said also we could be the wise guy [observer / provide advice], but they said this is not enough we have to put one of our people there. Also in the process of negotiation, people are eager to pass the process of negotiation to Gemawan because of the work we do – they have trust to us, because of the work with civic education we were doing with them before. It was not spontaneously they passed it, we already had a social trust relation with the community." [95] To our knowledge, there were not more complications with this case than any other. In fact, it is one of only three community groups across all of Wilmar who reached an agreement that was fully implemented.

---

[94] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.
[95] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

The overall findings of our research suggest that NGOs can, under the right circumstances, play an important role in balancing power *within* mediations. Though it is vital for both legitimacy and effectiveness that communities always retain decision-making power, the practices of mediation described in this report show that decision-making is only one part of a more complex set of practices associated with mediation. Without more robust capacity building prior to the mediations, expecting communities to learn to speak for themselves 'on the job', so to speak, while engaged in a high-stakes mediation, is problematic from the perspective of fairness and power relations. Furthermore, while there are risks in bringing outsider NGOs in to represent community groups, risks of poor representation and manipulation exist also within community groups. This is evident, for example, in the lack of women in representation arrangements in this case. Any representing NGOs must have long-term, close relationships with the community, have their trust, and hold their best interests as central to their work. The efforts the CAO mediators already make to determine the legitimacy of community representatives could be applied in equal measure to NGOs, and the mediators could retain their right to reject NGO or community representatives if they cannot prove a mandate from the people they represent. There must also be a commitment on all sides to continue to value community-led decision-making, and work towards self-representation, but flexibility to work with existing conditions.

LESSON: NGO representation can be fraught with legitimacy risks, but these risks also exist when communities self-represent. A flexible approach that emphasises the importance of legitimate connections to communities, the ideal of self-representation, and a commitment to community capacity building, but still permits NGO-representation in mediations under these circumstances.

Preconditions

Each of the CAO mediations in this case began with the establishment of subject and object of negotiation, a code of conduct, and a a Memorandum of Understanding (MoU) that outlines preconditions for the process that cannot be violated by either party.[96] These preconditions were negotiated by both parties and so they varied from case to case. Our research found that certain preconditions can have the effect of advantaging or disadvantaging either the company or community. The following section outlines these lessons. As outlined above, our research suggests much more could be done in the establishment of preconditions to equalise capacity and leverage between the parties.

Preconditions that **protected the livelihood** of communities during the lengthy mediation process were *absolutely critical* in strengthening them to persist with mediation until they reach an agreement they are genuinely happy with, but these were not consistent across all agreements. Mediation fatigue is exacerbated by poor living conditions. Provisions for livelihood should be considered in all precondition-negotiations as a matter of protocol.

Confidentiality provisions can restrict possibilities for parallel campaigning, and therefore can restrict the leverage of communities within mediations. Though a commitment to not going outside the process is important for its success, in the absence of other measures to balance leverage, confidentiality provisions should be approached with caution by communities.

---

[96] Note that not all CAO dispute resolution processes involve preconditions.

Any **standard** can be used in the mediation if all parties agree (e.g. RSPO or IFC standards, or human rights instruments). Using domestic law as the only standard, in cases such as Indonesia where land laws disadvantage communities, will disadvantage communities in mediations also. Consideration should be given to proactively bringing in standards that can mitigate that, such using FPIC as a point of departure.

Similarly, any forms of **evidence** can also be used, should all parties agree. Legal evidence disadvantaged communities in these cases, and the company used this to strengthen its position. In establishing pre-conditions, consideration should be given to independent fact-finding, establishing methods to agree on disputed evidence (such as maps), and use of 'alternative' forms of evidence that demonstrate indigenous knowledges in particular, such as anthropological studies or community maps (not only 'participatory maps' which entail participation of both company and community). Agreement should also be made on who will resource new evidence, as these costs cannot be met by most communities.

Lastly, capacity building is needed at this particular stage of the process to ensure all parties fully **understand** what they are committing to before preconditions are finalised. Our research found evidence that, though they felt they had equal participation in their writing, the community side of the mediations (including some supporting NGOs) did not always fully understand the preconditions they had agreed to and their implications.

LESSON: Mediation preconditions are an important opportunity to balance power between companies and communities. Attention should be paid to ensuring livelihood provision for communities during negotiations, implications of any confidentiality agreements, inclusion of any voluntary standards (such as human rights instruments), guidelines around acceptable forms of evidence, and ensuring that all parties fully understand the nature and implications of all preconditions.

Skilled and experienced mediators

All the CAO mediators are selected on the basis of considerable training and experience, specifically in company-community mediation, which is different in nature from government-company or company-company mediations, in which many professional mediators specialise. The resources committed to using such skilled staff for such lengthy periods of time are considerable. The mediators were widely respected by all sides of the negotiations in all sites. The CAO staff in Washington were particularly proud of their Indonesian mediators. Though participants in the Jambi-mediations were frustrated with the outcome of that process and with some aspects of the mediation, almost all participants in our research felt that the skill, experience and temperament of the mediators was crucial to the process.

LESSON: Mediators should be selected for their skill, experience, qualifications and temperament, and should be a priority in resourcing.

Company behaviours

The Jambi case illuminated the limits of voluntary dialogue when a company a) exhibits unethical behaviour, b) fails to engage meaningfully in the mediation process, and c) abandons its engagement.

Firstly, the willingness of PT AP to behave unethically is perhaps best demonstrated by a formal World Bank Sanctions Board procedure that was initiated when the CAO reported to the World Bank Group that the company had offered the Chair of the Jomed team money in exchange for a map that was relevant to the mediations. Though the Sanctions Board came to the view that it had no jurisdiction over the case (World Bank Group Sanctions Board 2015), the decision by the CAO to raise it at this level suggests it was of significant concern to the problem-solving process. There may have been even more dubious activities at play in this process as well. We heard multiple allegations of efforts by Wilmar or PT AP to offer communities cash compensation or land outside of the formal mediation process, though these could not be verified. By all accounts, PT AP was not a company committed to high standards of business conduct.

Secondly, PT AP exhibited a lack of commitment to *engage meaningfully* in the mediation process throughout the two years of negotiations. By this, we mean that our research provided strong evidence that the company failed to demonstrate a willingness to compromise, and an effort to reach an agreement. Many of the people interviewed who had insight into these processes or participated in them directly attested to this. One community group recognised that "it is impossible if we request 10 that we get 10, we aware of that. It's called mediation, bargaining", but PT Asiatic Persada "maintain their ego. 100 is 100." Multiple negotiation teams independently reported to us that the company would use the tactic of having to confer with their head office before proceeding, even though the CAO always tries to ensure that negotiating teams have the mandate to make decisions so they can avoid this problem.

As alluded to repeatedly above, different individuals and subsidiaries within the Wilmar group demonstrated differing levels of commitment to the various mediation processes. The Kuok arm of the company, which oversees the West Kalimantan plantations, is known to be socially and environmentally progressive, and willing to meaningfully engage in initiatives such as the RSPO or the CAO mediations. However the Sitorus arm, which controlled PT Asiatic Persada in Jambi, is generally considered resistant to change on social and environmental issues. Those close to the mediations speculate that these differences in the company's commitment to engage meaningfully in the mediation process explain the differing outcomes of the Jambi as opposed to Sambas cases. This stands out as important lesson regarding engaging with company actors who are genuinely committed to the process.

This unwillingness to engage meaningfully with the process had the effect of maintaining the imbalance in negotiating power between the company and community groups, as described above. Whereas communities rely on the possibility of exit or alternative avenues as their only significant source of leverage in bargaining processes, PT AP enjoyed a number of other sources of leverage (as described above) and yet still lacked a commitment to the process. In Jambi communities and their supporters became frustrated with the neutrality of the mediators in the face of PT AP's lack of meaningful engagement in the process (Rofiq & Hidayat 2013). However, ultimately the process is voluntary and the limitations of this are clearly evident in this case.

Thirdly and finally, despite some efforts on the part of Singapore head office to apply pressure on its subsidiary to cooperate (as they did in Sambas also[97]), ultimately Wilmar also demonstrated

[97] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

a lack of commitment to the process when the decision was made to sell the subsidiary. The CAO's conclusion report on the Jambi mediations was extremely critical of this decision (CAO 2013a, p. 6). Looking back on interviews conducted in Jambi in February 2012 (the company was sold in April), it was clear at that time that the company was stalling negotiations. For example, one community leader said at the time ""there is indication of attempts between government and Asiatic Persada to influence or cancel the mediation which currently ongoing. That's my guess." Though the CAO offered to continue the mediation, upon the sale of the subsidiary its leverage was extinguished and the process became entirely dependent on the good will of the new owners, who opted not to continue the process. This represents a very significant but unavoidable limitation of voluntary processes embedded in financing organisations, particularly in sectors where markets are structured such that companies are not financially dependent on any particular organisation but can seek finance from private actors with less rigorous social and environmental standards, and/or weak enforcement. In other words, where companies face no or negligible negative consequences from evading rights processes, they can do so.

For the CAO, Wilmar and PT AP's behaviour in the Jambi mediations is an example of a lack of good faith, meaning a commitment to stay in the process as the only avenue of dialogue, and an investment in the process and commitment to its outcomes (CAO 2009b). However, describing a commitment to the process as 'good faith' has the unintended perverse effect of locking not only companies, but also community groups into processes that may not be working in their best interests. For communities, the stakes of this 'locking in' are higher than they are for companies. Companies already occupy positions of greater leverage and capacity, and what they stand to lose through a mediation process is typically much less consequential for them. In contrast, communities stand to lose in ways more significant to them, such as the loss of land, or the 'bargaining away' of some rights. In addition, communities are positioned with less leverage and capacity, and so it is more understandable, from their perspective, that under certain circumstances they might elect to leave a process, and it seems problematic to describe such a decision as bad faith. It is, therefore, more appropriate to avoid the language of 'good faith' altogether, and instead describe PT AP's behaviour as exploiting power imbalances to serve their own interests.

LESSONS: Identifying high-level company personnel who are genuinely committed to social and environmental progress and seek their engagement in the process can improve company behaviour in mediation processes. When this fails, companies without a serious commitment to human rights can readily evade their responsibilities in this respect.

Government involvement in mediations

Involvement in mediation by government bureaucrats from a range of relevant offices was seen by all stakeholders in this research as essential for a range of reasons. It was seen to enhance bureaucratic authority, legitimacy and legality (CAO 2012a, p.5) such that both the company and the community wanted government involvement. A villager in Jambi said "Whatever happens if we have a problem, we have to inform to the government." Because government is responsible for licencing and its consequences, by being involved in these process they can better monitor company behaviour with respect to licencing and associated regulations, during and after an agreement. They can also facilitate technical matters, such as land measurement, determination of subject populations, and compensation payments, both providing advice during discussions and implementing agreements. In the longer term, this engagement was also of

Sungai Beruang. *Photo: Samantha Balaton-Chrimes*

benefit in that government officials in departments such as land and forestry can deepen their understanding of the underlying, structural causes of conflict related to "differences in the way that local people, local government, and the national government see their relationship with land, and the way that access and use of land by communities is acknowledged and recognised by formal authorities" (CAO 2009b).

In practice, government engagement in mediation took place in multiple different ways. In Sambas, village, district and provincial officials were observers, however upon announcing the agreements it seemed perhaps the right people had not been invited, as there were legal problems in implementing them (see above).[98] In Sambas, as in Jambi, engaging 'the right' government officials, whatever their role, was seen by all parties as crucial. Officials needed to be distanced from companies, interested in advancing community wellbeing (broadly conceived), committed to the rule of law, and willing and able to invest time in the process. Communities wanted to ensure that government officials sympathetic to them would be involved and the influence of government officials close to the company would be mitigated. [99]

In Jambi, government officials were involved in mediation in a much more intimate way than any other CAO experience to date via the Jomed arrangement, described above. Though the sale of PT AP meant there is no way to assess the impact of Jomed on the overall outcomes in the Jambi case, all parties regarded it as a largely successful model, albeit one that would be difficult to repli-

[98] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.
[99] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.

cate. CAO staff explained that "[i]nvolving an additional actor, such as local government, makes a process more complex." [100] Identifying the right people was agreed by all stakeholders as absolutely key, and very difficult. CAO staff said you need bureaucrats who are oriented by a vision, and aware of their responsibilities, and this is rare.[101] Other more practical problems also presented themselves: time management is difficult for government officials (and mediations are very time consuming), who face various pressures that make it difficult for them to be patient and neutral.

The multiple demands placed on government, and their historical involvement in cases, sometimes in the fine details of licencing, as well as their commitment to uphold land laws and other government policies, led some observers to conclude that government are part of the problem, more than the solution. One observer explained "You can't separate the role that local government plays in promoting oil palm development in Indonesia – that role influences everything they do. So it is then hard for them to be a neutral objective bystander in mediating oil palm conflicts – the strength of the pro palm narrative really underpins the role of the government."[102] Under these circumstances, some argued it would be best to limit the role of government to technical matters only. Others, including the CAO, see this as a reason to involve them, in order to contribute to longer term change (CAO 2009b). Our research suggests that the success of either strategy will depend on the particular people involved, and on utilising an understanding of positions of individuals and alliances or other political or administrative groupings within government. Working with local groups who understand the political dynamics of a local region, and the personalities in government, is helpful in identifying these people.

LESSON: Government involvement in mediation at some level is important to ensure legality and regulatory compliance. If the 'right' government officials can be identified (those with distance from companies, a commitment to the process and to human rights, and time to invest), and their engagement can be sensitively handled, government can play an even stronger role in mediations and benefit from the learning process. Caution is needed to ensure that government engagement does not distort the human rights orientation of a mediation by introducing other interests, in this case a pro-palm agenda and/or historical connections to companies and licencing processes.

Remedies

Our research revealed significant shortcomings in the kinds of remedies provided through the Wilmar CAO mediations. As the CAO itself agrees, problem-solving processes may not be useful in cases where communities are asking 'whether' a project should go ahead, rather than 'how'. [103] A number of NGOs interviewed for this research were critical that the underlying causes of land-related human rights issues cannot be addressed through these processes.

Instead, in practice, remedies were limited to agreements to augment communities' livelihoods predominantly through plasma arrangements where the communities become dependent on growing and harvesting palm fruit to sell to the company. One NGO interpreted this outcome in Sambas as of mixed value. On the one hand, the involuntary transformation from a forest to

---

[100] Interview with CAO staff, Skype, 16 January 2013.
[101] Interview with CAO staff, Jambi, 21 Feb 2013.
[102] Interview with Dr Piers Gillespie, Agribusiness and smallholder consultant, Jakarta, 22nd Feb 2013.
[103] Interview with CAO staff, Skype, 16 January 2013.

an agribusiness lifestyle is problematic, but on the other hand, it was the most any community had ever been able to achieve in such a dispute.

Others were more optimistic about a palm oil livelihood. In Jambi, one villager was very clear: "We would like plasma. […] As we see in other places, the plasma is running well […], transmigrants [run plasma effectively]. It's good. […] it runs. That's why we would like to request for plasma. The issue with plasma, as we saw in transmigrants, we saw that people pay for instalment/credit. So we are willing to pay that. We think that PT. Asiatic will not incur loss and us as well. […] So, beneficial for both. That's all." Many community groups in the PT AP dispute shared this view (Institute for Policy Analysis of Conflict, 2014, p.9).

However, our research suggested this optimism diminished very significantly after the implementation of plasma agreements, as took place in Sambas. Both communities in Sambas experienced severe technical challenges in forming and managing the cooperatives for plasma, as well as in managing the land and planting. As well as the technical challenges that exceeded the skills of the communities in these cases, there is the more fundamental problem that plasma is an inherently dependent arrangement, and often places communities in significant debt. Arrangements to use cleared but not planted land to diversify cultivation were theoretically possible, but not implemented in these cases. In cases where there is no unplanted land, this is not possible. Cash compensation, though also desirable for many communities, also runs out, leaving communities (who often lack the skills to manage large amounts of money) without a livelihood. Long-term support to establish the required skills and capacities to manage plasma, and possibilities for diversified planting and otherwise diversified income-streams might have improved these outcomes.

LESSONS: Problem-solving is not suitable for communities who do not want a project to go ahead, or who want land restitution in cases where acquisition has already occurred. Agreements reached through problem-solving need to be very carefully considered to ensure that communities have a realistic chance of making agreements work for them.

Sustainability of remedies: implementation and monitoring

Where agreements were made in this case they consisted of varying combinations of cash compensation for planted land, return of unplanted land (forested or cleared), and plasma arrangements. Though compensation was paid and land formally returned, communities in every case had significant problems making use of the agreements to make a livelihood and meet their needs, as described above. These problems related to the formation and management of cooperatives, the management of planting, and the management of infrastructure such as roads. One Sajingan Kecil community member, years after the agreement, stated "[w]e did get our smallholdings along with a business deal to repay the costs of land clearance and planting, but then the company provided no follow up. The roads have not been maintained, we can't get the palm fruits to the mill and we are just left with unpayable debts" (FPP 2015). In Riau community groups are struggling so much they are considering selling the land they spent so much time and energy claiming back (CAO 2012a). These challenges are consistent with those facing other smallholders in the sector, where productivity and access to markets require technical assistance (Teoh 2010, p.38).

The CAO does not have a uniform approach to monitoring and evaluation, but rather seeks to agree on a monitoring process as part of the mediated agreement. The emphasis is not on the technical provisions, but on the relationship that is built. In Sambas, this approach led to a monitoring and evaluation team that operated over six years, as described above (see Sambas CAO process). However, despite the problem-solving orientation of the CAO process, the team took a technical approach whereby they closed the case once the formalities of the agreement were achieved, despite the evidence of significant ongoing problems facing communities. This points to significant shortcomings both in the formulation of agreements (that should be more attentive to provisions that can assist in the transition to a plasma livelihood), and the failure of the monitoring teams, in the Sambas example at least, to live up to the philosophy of problem solving that the CAO aspires to.

Civil society groups supporting communities in Sambas made some practical suggestions for improvement to monitoring, including more active leadership and involvement from the CAO mediators rather than government, more field visits, and a clearer delineation of roles and responsibilities. The overall findings on the lack of improvement in the lives of aggrieved communities also suggests that a monitoring approach that left open possibilities of ongoing renegotiation of agreements to address ongoing problems, in line with CAO philosophy, would be necessary for agreements to become more meaningful for communities.

LESSON: Monitoring and evaluation processes are an important opportunity to ensure that agreements work out as intended. Where livelihoods are at stake, initial agreements and monitoring arrangements should include long-term supports to ensure these livelihoods are fully established stabilised before the agreement is considered implemented and the case closed. For the CAO, this means its commitment to staying engaged until the initial grievances are fully addressed needs to be interpreted more liberally, and cases should not be closed when agreements are technically implemented but significant problems persist.

Problem solving as an approach to human rights grievance

The processes at play in the Wilmar case are based on a problem-solving model of conflict resolution, rather than a more traditional adjudicatory model of rights remedy or restitution. This means that, rather than starting from a position of rights as inalienable, these processes seek to achieve the best possible outcome under the circumstances. The process rejects an adversarial approach and instead encourages cooperation (in process) and mutually beneficial 'remedy' (in outcomes), or a "win-win."[104] Though anchored in human rights principles, as expressed in the formal standards of the relevant organisations (the IFC Performance Standards and the RSPO Principles & Criteria), these processes are, in practice, more pragmatic than principled. The rationale behind this approach is that it is more likely to lead, in 'real life' terms, to agreements that will meet the needs of the aggrieved, and it will build cooperative relationships between parties to increase the likelihood that future problems can be solved in similar ways.

From the CAO's perspective, as one CAO staff member explained it, for NGOs in particular, but also often for companies, this is asking parties who might be more comfortable in an ad-

[104] Interview with CAO staff, Skype, 12 March 2013.

versarial mindset to "walk a very new terrain and that takes people out of their comfort zone and then takes trust in the CAO."[105] However, though it may be the most promising route from a pragmatic perspective, a problem-solving approach to human rights grievances raises a broad range of very challenging questions both about how it might, in practice, do more, procedurally, to uphold rights in contexts of significant power imbalances, and, even if that occurs, how such an approach aligns with the concept of rights. The following analysis explores the various dimensions of these two questions raised by this case.

Balancing power

The need to balance power between two parties that are extremely unequal is paramount for problem-solving cases to lead to human rights remedy, and even then it is a necessary but not sufficient condition. Our analysis above outlines various aspects of the problem-solving operations that could do more to balance power between parties. Almost all of the key lessons from this case speak back to this fundamental issue, and to the tensions between balancing power and being impartial that the CAO grapples with.

The CAO is committed to both impartiality and to balancing power between parties in dispute resolution to facilitate fair outcomes. However, competing interpretations of impartiality influence the CAO's operational decisions. Impartiality can be interpreted variously as 'having no position', 'being outside the dispute', 'being free from bias' or being 'fair', meaning ensuring no undue advantage or disadvantage to either party. In the Wilmar case, the CAO dispute resolution function privileged interpretations that relate to being 'outside' the dispute, while also trying to attend to interpretations that emphasise fairness and a freedom from bias or disadvantage. The imperative to keep companies engaged (especially PT AP) – an inherent part of the logic of a problem-solving approach – meant that approaches to capacity building and leverage erred on the side of 'being outside the dispute' and efforts to address power imbalances fell short.

LESSON: Power imbalances between companies and communities make problem-solving processes problematic in the absence of appropriate interventions in capacity and leverage. Interpreting impartiality predominantly as requiring being 'outside the dispute' limits the impacts that can be made via an alternative interpretation of impartiality as requiring a levelling of the playing field.

Rights or solutions?

Even if a better balance of power between parties could be achieved in a problem-solving process, this approach to human rights grievances raises very challenging questions about the nature of human rights remedy. The CAO is proud of its remedial flexibility – anything is possible so long as all parties agree. Compared to judicial remedies, problem solving processes do offer more solutions that can potentially go further to address the human rights issues at stake in these grievances, particularly related to livelihood. This research suggests that, though the remedial flexibility is greater than a judicial avenue, we should be wary of problem solving as a

[105] Interview with CAO staff, Washington DC, 20 June 2012.

route to human rights remedy. Not only do the agreements in this case fall short of remedying the grievances related to land, culture and livelihood, but they raise significant questions about the concept of rights.

Though adjudicatory processes cannot always provide adequate remedy, they do maintain rights as inalienable in theory,[106] whereas problem-solving processes about human rights grievances, as explored in the Wilmar case, do not do this. One NGO staff member put it this way: "Still, the mechanism and the process can solve the problem in the sense of making an agreement but in our analysis this is not a solution because an agreement cannot hide the rights of people, even if they agree to move to another place, it doesn't solve the problem of protecting indigenous people's rights."[107] Instead of addressing rights as an inalienable minimum standard, problem-solving processes take a more pragmatic look at what is possible, rather than what is 'right'. A Komnas HAM commissioner explained "[m]ediation is not so much a process for achieving redress or remedy, as it is a process for bargaining."[108] Some community supporters noted, with disappointment, that even communities themselves can sometimes abandon their rights claims once compensation is received. Given the compromise required through problem-solving processes, one community advocate argued "[m]ediation is like a temporary medicine that we can use to survive within the current system."

The CAO clarified that, though they are very often perceived this way by people making claims to them, they "do remedy, but we're not a human rights instrument." [109] For some complainants, such as those who are satisfied with compensation, this may be sufficient. Nonetheless, there are some important implications of this tension worth highlighting:

Firstly, the distinction between rights remedy and problem solving should be maintained in the way the CAO communicates it work, so as not to water-down the concept of rights as inalienable. It is inaccurate to consider the problem-solving process of the CAO as rights remedy, as the CAO itself acknowledges. Though problem-solving processes have potential benefits, we should be wary of the erosion of the concepts of rights as inalienable that may occur should problem-solving processes become the 'gold standard' of human rights remedy.

Secondly, in considering the trade-offs between an approach that maintains rights as inalienable afforded by the law (though even this does not apply in this case in Indonesia), and remedial flexibility offered by a problem-solving process, communities and their supporters should be attentive to the shortcomings of both. In other words, where the law does provide rights protections, it makes stronger statements about rights as inalienable, and does not compromise on demanding rights fulfilment. The law's weaknesses are that not all rights enshrined in international law are enshrined in domestic law; law enforcement can be weak; and even when a judgment is made that a rights violation has occurred, the available penalties for the perpetrator(s) may not remedy the violation. Problem-solving is more capable of delivering meaningful remedies for aggrieved communities, but it does so by way of side-stepping adjudications on whether

---

[106] The weaknesses of law in addressing rights are outlined above. The distinction here is, therefore, more a conceptual than a pragmatic one, but it does speak to ongoing debates about judicial versus non-judicial approaches to human rights remedy.
[107] Interview with Ade Ipang Ahmad from AGRA Jambi, Jambi, 18 September 2012
[108] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

or not rights have been violated. This means rights violations may not be acknowledged or condemned, and solutions might be presented as if 'the problem' is solved, when in fact aspects of rights violations continue or have not been remedied.

This is an important finding for civil society groups trying to decide whether to advocate for stronger laws, or spend resources engaging in problem-solving processes. Though Indonesian law currently does not protect the rights at stake in these cases, the shortcomings of problem-solving processes suggest that efforts to strengthen the law should not be abandoned.

Thirdly, problem-solving processes may consider some practical ways in which they can work towards greater rights compliance, for example by establishing in preconditions a clearly articulated set of human rights standards as a minimum requirement for any mediated agreement (as would be done with legal compliance).

LESSON: Problem solving should not be misinterpreted as a form of human rights remedy, and other avenues for advancing rights should continue to be pursued by civil society.

Different ways of life

Another consequence of the problem solving approach to human rights grievances is that, in practice, it has the effect of strengthening the dominant development model at the expense of any possibility of a radically different approach to development, or different way of life. By engaging in a collaborative problem solving process with companies, indigenous communities are agreeing to a potential solution that can be beneficial to the company in at least some way. In situations such as the cases here, where the palm oil plantations have already taken over indigenous lands, it's clear why this is seen as the best possible option. However, the effects on indigenous ways of life are significant. As one activist argued "the system is already destroyed, because there is no space for them [indigenous people] to implement their values – it's more individual than community. So when capacity building is conducted for indigenous people, it sometimes destroys their principles. It's for them to understand what their value is. But the capacity building is very pragmatic – how to proceed in mediation. They become pragmatists."[110] The same does not seem to apply in reverse, as companies may allow some provisions of significance to indigenous people, such as the preservation of ancestral graveyards, but their overall modus operandi and company objectives do not have to change.

LESSON: Problem-solving processes embedded in International Financial Institutions (IFIs) are not well equipped to support alternative ways of life, such as those of many indigenous people, as they also work to support the IFI's approach to development.

Legitimacy

A number of left-wing civil society organisations in Indonesia question the legitimacy of the CAO, or RSPO, to be involved in these grievance cases. Walhi (Indonesian Friends of the Earth), for example, has long held an anti-World Bank and IFI stance and argues that the CAO cannot

---

[109] Interview with CAO staff, Skype, 24 October 2013.
[110] Interview with Ade Ipang Ahmad from AGRA Jambi, Jambi, 18 September 2012.
[111] Walhi did use the CAO for the first and, it declared, last time to object to land acquisition and environmental damage in the case of PT Weda Bay Nickel, another case studies in this research project.

claim independence or credibility because it is too imbricated in the IFC's investments.[111] Some civil society groups argued that the CAO functions more to deflect attention from human rights problems associated with the IFC / MIGA and/or its clients, and to maintain the World Bank Group's image and relationships, than it does to provide remedy for human rights harms. At least one community in Jambi, Tanah Menang, refused the CAO process from the beginning out of an anti-World Bank stance.

The implication of this is that there are community groups who fall through the cracks if they have ethical or ideological objections to the major international organisations that offer non-judicial remedy. In this case those community groups allied themselves with left-wing political parties and farmers' unions and pursued domestic avenues of remedy, but with little success.

LESSONS: Not all community groups see transnational grievance mechanisms as legitimate, and alternative avenues for human rights remedy will need to be pursued for these groups.

Systemic change

The campaign against Wilmar has always been, for FPP and SawitWatch, the main NGOs that coordinated it, a campaign to achieve social and environmental change across the company's entire operations and across the sector as a whole. As such, the mediated agreements (or lack thereof) in Sambas, Riau and Jambi are only part of the story in this case. The CAO argues that "[s[ystemic problems can begin to be addressed through local solutions" (CAO 2009b), but achieving both individual solution and systemic change remains very challenging. Linking the local and systemic also presents stakeholders with very challenging dilemmas about the trade-offs between the urgent (the needs of a particular community) and the important (broader change), as agreements at the local level risk reducing the impetus to push for a more permanent change. Many NGOs in this case were critical that not enough is being done by the RSPO, IFC or Wilmar to address the underlying, structural problems that led to the grievances addressed in these cases, namely the patterns of land dispossession and impoverishment of indigenous and other local communities (not to mention the environmental issues) that present in the sector.

The underlying, structural factors that contribute to human rights harms are complex and there is no easy fix, as those working in the sector have long understood. This makes the translation of lessons from individual cases to the sector as a whole very challenging. While individual solutions can be brokered at very small scales, the role that transnational mechanisms can play in the historical, cultural, political and market conditions that enable human rights harms is less clear. The analysis that follows about the possibilities for transnational grievance mechanisms to contribute to greater human rights fulfilment beyond individual cases is situated against this backdrop of complexity. In the following sections we explore the lessons from this case for systemic change on both human rights issues in the sector and capacity to handle grievance, at the broader levels of the sector, the company and the IFC. The emphasis here is on the lessons that emerged from connecting individual cases to broader issues. It is not intended to be a systematic analysis of broad issues in the sector.

Grievance mechanisms

Transnational grievance mechanisms are, by their mandate, oriented towards addressing individual cases, but nonetheless demonstrate potential to help address bigger picture human rights issues in the sectors in which they work. In what follows, we identify the lessons from this case for transnational non-judicial grievance mechanisms about contributing to systemic change.

Constraints on working systemically

One of the most significant limitations on grievance mechanisms' capacity to work systemically is their mandate. Some of these limitations relate to the cases that mechanisms can take on. On the one hand, the Wilmar case was an important case for the CAO in that it confirmed that the CAO was able to act on complaints related to the IFC's supply chain responsibilities, and not only direct investments.[112] None of the investments in Wilmar at the time of any of the complaints were directly in plantations. This case set an important precedent on the relatively broad scope in which the mechanism is mandated to work.

However, on the other hand, the leverage of both the CAO and the RSPO mechanisms is inherently limited because they are essentially voluntary organisations, the RSPO explicitly so, and the CAO by virtue of its jurisdiction being limited to cases in which the IFC or MIGA is financially involved. This case has seen key actors reject the authority of these organisations by voluntarily removing themselves: the Indonesian government withdrew from RSPO, while Wilmar sold PT AP and, not long after, prepaid its loans to the IFC (CAO 2013a: p.2). It is no longer possible for a complaint to be made about Wilmar through the CAO. The CAO is aware of these limitations, and progressive in its approach to mitigating them as much as possible, for example by being willing to continue the ombudsman process in Jambi after the sale of PT AP. However, the possibilities for more informal leverage on the part of a grievance mechanism are limited by its role in the financing of a company or a market. The CAO's influence over systemic issues requiring changes to Indonesian government policy is importantly constrained by the IFC's limited market share in the Indonesian palm oil sector, as we saw in the formation of ISPO and its attitude towards foreign intervention (see RSPO report).

Another constraint is the mandate of a mechanism to go beyond an individual complaint. The CAO has methods for systemic change within its own organisation (IFC/MIGA) built into its design through the advisory function, which takes lessons from the ombudsman and compliance cases as a whole (not focusing on any particular one) and prepares reports on relevant issues. However, the work of this function has been limited. To date it has conducted only seven studies, related predominantly to internal procedural issues, and more recently to a few bigger

---

[112] Though the CAO maintains this is merely a matter of procedure, accountability for human rights issues in supply chains remains a controversial issue in other accountability mechanisms, making this point significant in the context of this research project.

[113] See http://www.cao-ombudsman.org/howwework/advisor/ for advisory cases.

issues, including (after the completion of the research for this project) a study on land in 2015, which highlights the Wilmar case.[113] The land report focuses on common challenges arising in land cases, and tools the CAO uses to address them, many of which are explored in our study. Its orientation is toward educating stakeholders about likely challenges in dispute resolution, as this is seen as the core work of the CAO. The CAO has recently expanded the staffing of its advisory function so it is reasonable to expect its work will expand over coming years.

In relation to broader issues in a sector or a country, however, the CAO's mandate is more limited. One CAO staff member explained,

> *"It's tricky. We definitely have this happening repeatedly – an NGO come with a specific concern maybe attached to a particular complaint, but not at the heart of things for the local community, but it's still an issue. It might be sector wide, or company wide. … So we try to be as responsive as we can with the tools of our office."*[114]

Thus, though there is a willingness to take up opportunities for systemic change when they arise,[115] there is a general concern to avoid 'mission creep' and limit the CAO's function to individual cases, and the advisory function to issues relating to the IFC/MIGA and to dispute resolution.

A further tension in the CAO's mandate is related to its position with the IFC/MIGA, whose objective is to support the private sector to engage in activities that lead to economic growth and development. Some people interviewed for this research interpreted this as an inherent conflict of interest, for it positions the CAO as fundamentally supportive of business and unwilling to challenge governments. However, the CAO disputes the view that they are unconditionally supportive of business, but rather the CAO seeks to make business better. They see themselves as ensuring the integrity of the institution, rather than supporting problem business sectors. Nonetheless, none of the tools of the CAO are well equipped to deal with radical disagreements that seek cessation of business activity.

LESSON: Grievance mechanisms will always be constrained by their mandate and their own leverage over corporations, which can be connected to financing (CAO) or membership (RSPO).

Possibilities for working systemically

Despite these formal constraints on the mandate and scope of mechanisms like the CAO, our research suggested there were possibilities for grievance mechanisms of this kind to work more systematically than they currently do. Some of this work is already being done, but could be enhanced or expanded.

The efforts of the two major mechanisms in this report – the CAO and the RSPO – demonstrated something of a division of of labour in this case, whereby the CAO handled the individual cases because of its superior resourcing and expertise in dispute resolution, while the RSPO sought to address the systemic issues because of its reach across business and government in

---

[114] Interview with CAO staff, Skype, 12 March 2013.
[115] The CAO's 'flagship' case in this respect is in Nicaragua. See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=82 for more information.

the sector. This is a sensible way to address the complexities of individual and systemic change in palm oil, as it ensures an efficient use of resources, and targeted use of the different forms of leverage and legitimacy each organisation enjoys.

However, this approach is contingent upon relationships of not only shared learning, but also accountability between the two organisations and with other stakeholders. Our research found that without relationships of this kind, capacity to influence companies to enhance human rights compliance or remedy was constrained. In order to address some of the contingency and therefore vulnerability of this arrangement, a number of actions could be taken by the CAO, RSPO and other stakeholders to strengthen their influence.

Between the CAO and RSPO, this could mean each holding the other to account for commitments made in relation to specific grievances. In the Wilmar case, the RSPO in particular has been slow in advancing human rights compliance among its member companies. This is problematic, given the CAO response to structural issues raised in the Wilmar complaints was, in part, to defer to the RSPO to make progress on those issues. To our knowledge, the IFC and the CAO have done little to question or support the pace or efficacy of the RSPO. The IFC could consider taking a more active role in RSPO efforts on human rights, and using its position in RSPO as an Ordinary Member to more frequently raise this issue in RSPO forums.

Both the CAO and the RSPO, as grievance mechanisms, have established some more systematic and formal relationships with major development organisations who do have the mandate and the resources to address systemic issues raised in complaints, such as land reform, including as they apply to working with governments. The IFC's Advisory Program on palm oil in Indonesia, mentioned above, is one example, and examples from the RSPO are outlined in the RSPO report in this report series. These kinds of actions are to be encouraged as a method of addressing complex, structural issues without exceeding the mandate of the grievance mechanism.

Closer, informal working relationships among networks that already exist between mechanisms, business, government and civil society in the sector, may also enhance the possibilities for systemic change. Workshops, coffee breaks, conversations, conferences, reports and other forms of lesson-dissemination are most effective when networks are strong. Some such activities already take place in the sector, particularly within the RSPO. For example, the CAO mediators attended an RSPO meeting to highlight some of the sector-wide issues they were encountering in their conflict management (CAO 2009b).[116] More activities of this kind will be important not only for the dissemination of information and learning, but also to develop meaningful relationships of accountability between stakeholders, and in particular the fostering of relationships with government bureaucrats and politicians who can lead the necessary policy and legislative change in Indonesia.

LESSON: Relationships between grievance mechanisms and other organisations, particularly development organisations, can enhance the translation of lessons from individual cases to work towards broader human rights fulfilment, without exceeding the mandate of the mechanisms.

---

[116] Interview with CAO staff, Skype, 12 March 2013.

Host governments

Whether they are seen as the solution or the problem, governments remain critical for any effort at systemic change, either bureaucrats, because of their role in enforcement, implementation and reform of relevant laws and regulations, or parliaments, because of their role in changing laws. Transnational mechanisms were always intended to be supplementary to national judicial systems, rather than replacements.

Our primary finding here is that working through grievance mechanisms, with government, for for change in the ways that were effective, depended on identifying and building relationships with progressive bureaucrats and politicians, and then finding ways in which to translate those activities across government as a whole, in the face of some resistance. Our research found significant variation in the capacity and willingness of government actors in different ministries and at different levels, to engage in long-term change, and a lack of coordination and consistency between the different arms of government that deal with human rights issues, especially land. The Ministry of Forestry, for example, as it was staffed at the time of our research, was widely perceived as quite powerful and resistant to change, while BPN was more interested in dialogue with civil society on the land issue.[117] Overall, however, we found a pattern whereby those most progressive on social change in the palm oil sector were in the minority.

One of the most significant sources of resistance to change is the combination of national sovereignty discourses and the relative strength of Indonesia in the palm oil market, which position the government as being able to reject suggestions or efforts from outsiders. This has been most concretely expressed in the formation of the ISPO program in 2011, formed by the Indonesian government out of frustration with what it perceived as NGO and retailer domination of the RSPO. The establishment of this body enables palm oil producers to make claims about sustainability without being held to the higher social and environmental standards associated with major development banks, including IFC.[118]

Host governments' role in using transnational grievance processes to foster broader improvements in human rights standards in the private sector can also be made more difficult by the often close relationships between business and government. These can range from legitimate relationships or even formal public-private partnerships formed to advance economic growth, to more questionable relationships of patronage or even corruption. [119] A human rights commissioner from Komnas HAM went so far as to say that "in Indonesia the state is almost controlled by the corporation. It's dangerous!" [120] Where these relationships exist, both government and private actors stand to benefit from maintaining the status quo, in this case because it is more expedient and profitable for them to use land for palm production than return it to communities, and a rise in indigenous or community land claims is seen as a threat to the sector's productive capacity. (The exception to this is when local politicians can support communities over companies either out of genuine commitment or in order to shore up votes).

On a more positive note, the processing of grievances within Indonesia through transnational mechanisms can have the effect of more broadly strengthening domestic rights systems. At the micro-level, the involvement of government actors in mediations enhances local capacity for

---

[117] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012. A government task-force on REDD was also perceived by civil society to be more progressive because it was staffed with specialists and housed directly in the Office of the President. See the REDD report in this series.

[118] See the RSPO report for further analysis on the role of ISPO.

[119] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

[120] Interview with Pak Nur Kholis, Vice chairperson for External Affairs at Komnas Ham, 21 September 2012.

this kind of problem-solving process, as we saw in Jambi. Also at the local level, this kind of process and the attention it has received was seen by some as an opportunity to change the culture of company-community dispute resolution in Indonesia, and to work towards the establishment of more effective and more permanent bodies capable of handling company-community human rights disputes, and effectively coordinate the relevant government departments in the process (Institute for Policy Analysis of Conflict, 2014, p.27).

LESSONS: Progressive bureaucrats and politicians are critical for successful engagement between governments and grievance processes in ways that can work towards systemic change on key issues. Engagement of this kind can also strengthen domestic rights systems via lesson learning.

The private sector

Translating lessons from individual cases handled by transnational, non-judicial mechanisms to lead to broader improvement in human rights outcomes in the private sector is made difficult by the structural conditions of the palm oil sector. Domestic companies are largely not engaged in any of the sector-wide human rights initiatives and received little attention from national and international NGOs, who lack leverage to make campaigning against them effective. Not only this, but, as described above, GAPKI and ISPO have also signalled a withdrawal from international efforts to bring about human rights change, and a retreat to much lower standards of human rights compliance in palm oil businesses. RSPO remains, for predominantly transnational companies, the preeminent initiative for human rights improvements, but it now has little reach beyond them.

The Wilmar cases, combined with the more general NGO campaigning in the palm oil sector, have been considerably more successful in bringing about improvements in development banks' financing of the private sector. This is expressed most concretely in the World Bank Group Palm Oil Framework. However, the IFC has not made any palm oil investments since the instigation of the Framework. This points to the difficult balancing act in development finance between ratcheting up social and environmental standards, and maintaining engagement with the sector. The latter appears to have two dimensions in this case: on the one hand, private actors may be avoiding the IFC and turning to 'easier' financiers because of the IFC's higher standards, while on the other hand the IFC may be struggling to identify palm oil companies capable of meeting their standards.

A certain amount of industry-wide social pressure to meet higher standards exists via the RSPO, in which the 'mega-companies' of the sector, including Wilmar, want to be seen as leaders. However, despite their many initiatives, evidence of improvements in human rights standards on the ground does not suggest the RSPO is having a major impact in this respect, and the most significant impacts are limited to very slow forms of learning (McCarthy 2012).

Overall, then, our research suggests that achieving systemic change among business actors as a result of individual grievances is incredibly difficult. When market conditions are such that companies are able to evade voluntary accountability processes, and government has weak regulation of these companies, there is little other leverage available through which individual grievances can contribute to triggering improvements in human rights fulfilment across the sector.

LESSON: Market conditions play an important role in determining the possible effects of grievances and associated efforts at more systemic change. In the case of palm oil, these conditions are such that private sector actors seem to be readily able to evade higher standards, or meet them only very slowly.

Civil society

The civil society networks that have directly supported communities in their complaints against the company and/or sought to use these cases to campaign against Wilmar are vast. They span from district level organisations, to provincial and national, and beyond to Germany, the UK, and USA. These networks also reflect a diverse set of agendas, from securing livelihoods and supporting aspirations of local people (particularly Gemawan, ScaleUp, CAPPA, Setara, and Perkumpulan Hijau), to indigenous rights (AMAN, FPP), environmental preservation (Walhi), agrarian reform (peasants' unions) and corporate accountability (The Forest Trust). Though these agendas often intersect and overlap, they also diverge, as do the specifics of the goals of different groups working on the same issues. There are also varying degrees of coordination between them, some working in relative isolation, others with loose forms of coordination, and others more formally coordinated, such as through the former WilmarWatch network.

Civil society groups are at the forefront of the effort to link the local (individual grievance cases) and the systemic (advancing broader human rights fulfilment), arguably playing the most important role in this balancing act, as they are least restricted in their mandates, which are generally self-defined. This means civil society groups have significant opportunity, but also face significant risk in the many challenges associated with marrying local and systemic work. In what follows, we identify the lessons from this case for civil society groups about using individual cases to advance human rights fulfilment more broadly.

Challenges working on systemic change

NGOs face a difficult tension when using transnational non-judicial grievance mechanisms as they often seek to balance the needs of communities with pursuing an agenda for broader change. Companies, governments and the CAO have all been critical of the ways in which NGOs can sometimes exploit local communities in order to pursue a broader agenda. This is a risk, and a serious ethical problem when it occurs, though our research found that the NGOs supporting communities in this case, especially Setara and Gemawan, did put the community's aspirations and decision-making ahead of their broader agenda.

In many respects, it is entirely appropriate that NGOs have the 'big picture' in mind when working with particular communities. NGOs often have broader experiences with other communities that have alerted them to the risks of certain outcomes (e.g. palm oil partnerships). NGOs also have a unique breadth of experience (or can draw on networks with such experience) that give them insight into the strengths and weaknesses of different avenues available to communities to address a grievance, and this can be of real value. Many NGOs also see their mandate to be concerned about trends, for example in land management, and their long-term effects. Communities, on the other hand, though trepidatious about these risks (and it would be misleading to suggest they were wholeheartedly enthusiastic about plasma arrangements), are faced with the daily experience of precarity that fosters hopefulness about promised prosperity. This may lead to tensions between the community's immediate goals, as defined by them, and the outcomes or strategies NGOs might advocate for communities. Again, we did not find, in this case, that the NGOs involved most directly in the CAO complaint were at odds with the communities they worked with. Nonetheless, finding ways to manage the tensions between these two roles is an ongoing project, and the most reflective NGOs are acutely aware of the challenges this

project entails, though of course there is variation in this. Conversations about these tensions are common in NGO circles, but understandably they tend to stay behind closed doors, lest they be used against them by companies or grievance mechanisms seeking to isolate them from problem solving processes, or discredit them in their campaigning.

LESSON: A reflective approach to the tensions between individual communities' ambitions, and NGOs' broader agendas is necessary to mitigate the risk of not working in the best interests of communities.

Possibilities for working on systemic change

Campaigning for change

Transnational non-judicial grievance mechanisms can play a valuable role in broader agendas for human rights fulfilment, and the Wilmar case demonstrates this in at least two ways.

Firstly, the Jambi and Sambas cases were used by international NGO FPP in their broader company and sector targeted campaigns for improved human rights standards, particularly in relation to FPIC (FPP 2016). Though market conditions differ from one commodity to another, wherever international investors or buyers are key players in a sector, there is potential to leverage them, especially if they are aligned with a voluntary standard, such as the IFC Performance Standards and/or the RSPO. As one NGO actor described it, "[t]he voluntary schemes allow NGOs to break up the government-industry nexus of almost self-regulation, where industry has so much influence over government that it practically writes its own laws. Using the international market allows a way in to this nexus." [121] Some saw this kind of pressure as the only way to make multi-stakeholder initiatives like the RSPO, or any other form of voluntary regulation, effective,[122] and the only way to achieve change in the face of apathetic governments. [123] The use of the individual grievance cases in this way depended upon civil society coalitions that coordinated themselves in ways that play to each group's strengths, mandate and scope to push for broader change. This involved a distribution of labour where local NGOs Setara and Gemawan were pivotal in working with communities and channelling information about their case upwards, national NGO SawitWatch played a linking role between them and FPP, and FPP applied consistent pressure on Wilmar and the IFC. Though the company has not demonstrated the level of change FPP desire, the consistency of this pressure has played a role in incentivising Wilmar's engagement in problem-solving processes, as well as its (albeit limited) development of more systematic and comprehensive approaches to human rights issues, such as in its work on RSPO working groups.

Secondly, these cases were used to strengthen 'best-practice' international standards in the sector, most notably achieved in improvements in IFC/MIGA processes. By raising these issues as particular grievances, they strategically triggered CAO processes that led to the new palm oil framework, to strengthened screening processes within the IFC that take better account of the down-stream human rights impacts in the sector, and the advisory programs. Once these standards have been established, then they can be used both through direct dialogue with companies and IFC, and in the context of public campaigns, as a further source of leverage.

---

[121] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.
[122] Interview with Eric Wakker, AIDEnvironment, Bogor, 25th February 2013.
[123] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th Feb 2013.
[124] Interview with Laili Khairnur, Muhammad Lutharif for anong and Citra Suryanovika, Gemawan, in Pontianak, 15th

Together, these efforts ensure that the agreements at the local level, often cast as 'successes' by the CAO or RSPO, don't become an acceptable standard when there is still more improvement to be made, and cannot be misused by business, government or mechanisms to portray the sector or companies as having adequately addressed problems.

LESSON: When civil society alliances include a variety of organisations, each working to their strength, and stretching from community-level groups to international NGOs, they can use individual cases to trigger broader change by sustaining high-level campaigning.

Advising on remedy avenues

Another opportunity for civil society groups to use transnational, non-judicial grievance mechanisms to contribute to broader human rights fulfilment is to provide advice for communities affected by palm oil about how these mechanisms work, what can be achieved with them, the risks of using them, and how they fit within broader systems of remedy. NGOs, particularly national and international ones, have unique experiences in using various avenues, and in combining them, and this expertise could be useful for communities in decision-making. This proposition is explored in more detail in another report in this series on the role of NGOs in supporting complaint making.

Networking to disseminate lessons learned

In this case, the groups engaged in mediation did talk to each-other, [124] but did not learn from each-others' experiences in significant depth, even though their mediations arose from the same complaint. Learning could have taken place in relation to many aspects of the process, including preconditions for mediation, strategies, anticipation of the gruelling nature of the process, ways to handle conflict within groups, what remedies to pursue, and understanding of Wilmar's strategy (though this may vary between subsidiaries). As one NGO worker involved in the complaint admitted, "I don't think the NGOs have done as good a job as they could have in translating lessons from Kalimantan to Sumatra in the CAO cases." [125] Civil society networks could do more to link groups in meaningful ways to ensure translation of lessons from one case to the next, both for the benefit of individual communities and for the ratcheting up of procedures and outcomes. Currently, much of this network seems to be contingent on attendance at conferences or RSPO meetings, or funding for travel for particular purposes. Those seeking to provide resources for NGOs might consider funding this kind of work.

LESSON: Greater communication between civil society networks could enhance translation of lessons learned from one case to another. This requires resources and could be a constructive avenue for donor funding.

Building capacity to scale-up complaint making

Given the shortcomings of the CAO and RSPO as grievance mechanisms in this case, it is not our suggestion that they should necessarily always be used. However, where informed decisions are made to pursue these avenues, it is not possible to overestimate the importance of organising capacity *among civil society groups supporting communities at the local level* for the achievement, enhancement, replication and sustainability of better human-rights outcomes across the sector. If grievance mechanisms are to have broad, sector-wide effects on human-rights outcomes

through the scaling-up and replication of case-specific problem-solving processes, significantly greater capacity is needed at the local level.

For example, the CAO was not able to take up ombudsman processes across all Wilmar's plantations because there was poor communication from the different *local* NGOs who were signatories to the complaint, and the ombudsman assessment team was not able to identify communities willing to engage in a process. On the other hand, where there were resourced and experienced NGOs with long-term relationships with communities, and they were connected to national and international NGOs with resources, they were able to do the very difficult but absolutely crucial work of, firstly, making communities aware of their options and engaging them in decision making about complaint making, then consolidating communities and supporting them through the lengthy and fatiguing mediation processes in Sambas and Jambi. For example, in Jambi the FPP, HuMA and SawitWatch investigation into the 2011 violence was vital for making the third CAO complaint and driving the Jambi mediations along.

The CAO, IFC/MIGA and RSPO may consider engaging in more capacity building and outreach to address this problem, but civil society organisations must also prioritise this work, and donors should seriously consider funding it. A representative from SawitWatch, commenting on the lack of up-scaling of dispute resolution in relation to Wilmar, admitted it was difficult to find the resources to sustain advocacy over multiple cases.[126]

LESSON: The broad use of grievance mechanisms to address human rights issues across the sector is highly dependent on civil society support, especially at the local level, and coordination on lessons learned and decision-making regarding possible avenues. This requires resources and could be a constructive avenue for donor funding.

Enhancing capacity for effective systemic change

Our research also generated a number of lessons about the *conditions under which* civil society can best work towards systemic change, conceived of as broader human rights fulfilment, while building on individual cases. The two key factors that led to better use of individual cases to enhance systemic outcomes are coordination of actors, and enhanced communication.

Though there were significant challenges involved in coordinating and communicating across such expansive networks, the benefits of the shared resources, varied areas of expertise and multiple points of leverage were crucial in influencing the small steps Wilmar has taken to address human rights concerns. The international NGOs were instrumental in identifying corporate information, including regarding IFC financing of Wilmar, identifying available avenues for redress and assessing their value, arranging meetings at RSPO conferences, navigating the CAO process, applying sustained pressure at these high levels, and resourcing key activities such as fact-finding investigations in Sambas and Jambi. National NGOs, especially SawitWatch,

---

Feb 2013.

[125] Interview with Patrick Anderson, Forest Peoples' Program, Jakarta, 4 September 2012.

[126] Email communication with Norman Jiwan, (now former) SawitWatch staff who dealt with the CAO-Wilmar and RSPO cases, 11 February 2103.

played a crucial role in advising on the broad issues in the sector, identifying opportunities for domestic pressure, including through legislative lobbying (though this remains a challenging area), and acting as a go-between to connect local and international supporters. Local NGOs (predominantly at provincial level), played key roles in organising communities, educating them about the complaint mechanisms, and supporting them through mediation processes. Some local NGOs were not involved in mediations, but played other supporting roles, including providing humanitarian assistance in crises, lobbying local government to maintain an interest in the case, and strategising about and accessing national and international forums for campaigning, for example the farmers' unions campaigns in Jakarta, or Perkumpulan Hijau's tour of Germany to campaign against Unilever with one of the families from Jambi. Other, more radical NGOs, such as Walhi, maintained their position outside of efforts that work with companies, in order to maintain that source of leverage, and do things the 'insiders' (RSPO members) can't or are prohibited from doing, such as campaigning against company RSPO members. These kinds of complementary strategies are often practiced organically rather than formally.

Though the arrangements in this case – formal and informal – worked reasonably effectively, our research suggested that more deliberate efforts to coordinate could lead to better outcomes both at the individual case level, and in terms of systemic change. These deliberate efforts need not be formalised, and there are many advantages of keeping them informal, including flexibility and a capacity to more credibly adopt different positions in relation to other actors (e.g. as Walhi does). It is our assessment that a lack of sustained and deliberate coordination at various points throughout the Wilmar cases meant some opportunities were lost, most commonly at the national level, to influence policy change by drawing on the information and agreements coming out of the individual grievance processes in Jambi, Sambas and Riau.

LESSONS: Coordination among civil society actors and effective upward and downward communication are essential to make good use of the opportunities provided by individual cases to trigger systemic change.

Conclusions: What difference do non-judicial grievance mechanisms make?

The Wilmar case to the CAO and RSPO generates four key overall lessons about the difference that transnational, non-judicial human rights mechanisms can make in cases of human rights grievances.

Firstly, **problem solving** as a mode of addressing human rights grievances can have some value in its remedial flexibility, for example by providing livelihoods, but it should not be conflated with human rights remedy. It does not hold human rights as minimum standards in agreements and is better understood as a bargaining process.

The practical implications for this for problem-solving mechanisms are that they must continue to work towards managing public perception of their function so that they are not seen as human rights mechanisms. Currently both the CAO and RSPO do present themselves primarily as dispute resolution mechanisms. Many community groups and civil society organisation continue to approach these mechanisms as human rights mechanisms, and so the need for more communication and expectation management on this front persists. For civil society and communities, the implications are that any decision to take a grievance to a problem-solving mechanism must take this into account, and consideration given to whether or not it is the right choice if human rights fulfilment without bargaining is the objective.

Secondly, though some **solutions** can be provided in problem-solving cases, this case suggests those solutions can easily **fall short of remedying the human rights harm** or positioning the community complainants to enjoy a secure livelihood and culture. There is potential to improve human rights compliance in problem-solving processes, and some changes in CAO operations could address this issue.

The practical implications of this for problem-solving mechanisms are that more consideration needs to be given to minimum standards for 'solutions' or 'agreements' so they meet this goal. Mechanisms might consider introducing human rights standards as starting points for negotiations, and compliance checks on agreements to ensure they meet both the organisation's own standards (e.g. IFC Performance Standards) and human rights norms. Similarly, more attention is needed to the long-term implementation of such agreements, and support for communities to make good use of them. In the Wilmar case this did not take place, but the CAO has provided this kind of support in other cases and should do so more often.

For civil society and communities, the implications are that groups should be proactive in any negotiations to propose minimum standards that are more likely to protect their rights, and to propose a compliance check on any agreements. Communities and their supporters should also try to 'build in' to any agreements long-term support for their implementation, and the possibility of renegotiation if the underlying grievances and/or human rights issues are not adequately resolved by the agreement.

Thirdly, if this problem-solving is deemed the best possible avenue for addressing human rights issues, for pragmatic reasons, **balancing of power** between parties is crucial and is currently inadequate in CAO processes. Some more significant changes in CAO's approach could start to address this issue.

The practical implications for this for problem-solving mechanisms are that more investment is required to equalise both **capacity** and **leverage** of parties. This requires an interpretation of **impartiality** that privileges the need to ensure no disadvantage, over an interpretation that privileges remaining 'outside a dispute' (though the cooperative logic of problem-solving makes this inherently difficult as it potentially alienates companies). In most cases of company-community conflict, an interpretation of impartiality that emphasises power balancing would then require more effort to build capacity and leverage for communities, as companies already enjoy significant advantages. In relation to capacity, grievance mechanisms should consider providing more direct capacity building for communities, and/or support and resources for civil society groups to conduct this difficult work. In relation to leverage, though many of the structural disadvantages communities face against businesses cannot be directly resolved, steps can be taken to mitigate this imbalance in leverage in problem solving processes. Some possibilities for doing this include using standards and forms of evidence that favour communities to mitigate the current privileging of companies in legal and scientific forms of evidence; mitigating the vulnerability of communities by providing for their livelihood during problem-solving process and taking all possible steps to ensure their safety; supporting communities to continually deal with internal disagreement and conflict so it cannot be used to divide them; allowing community and civil society mobilisation if the company is not meaningfully engaging in the process; and allowing NGOs to represent communities under certain circumstances.

For civil society and communities, the implications are twofold. Firstly, one of the most important roles civil society organisations can play is in the building of capacity for communities to make a complaint, navigate it, and then make use of any agreements through an implementation phase. Currently, this burden falls on local NGOs. Civil society organisations with more resources, and donors should consider providing resource support for this critical work (for example as FPP did when supporting a fact-finding mission in Jambi). It is appropriate, however, that local NGOs with close relationships with communities play this role of primary support for communities to ensure relationships of trust, understanding and legitimacy. Secondly, strategic consideration needs to be given to ways to equalise leverage within negotiation processes. Learning from the experiences of groups have gone through mediation is critical here. Some civil society groups may consider building expertise in this area and providing training and tactical support to community groups in negotiations. Groups might consider raising imbalances of leverage explicitly in early negotiation discussions to work towards a more level playing field.

Finally, there is some potential for non-judicial mechanisms to **link local cases to systemic issues** and advance systemic change in the country and the sector. However, this potential is highly contingent on relationships between all stakeholders, including particularly government, and on the willingness of a mechanism to use those relationships to advocate for more programmatic responses to key issues.

The practical implications for this for problem-solving mechanisms are twofold. Firstly, mechanisms should continue to invest, as the CAO and RSPO already do to an extent, in building

local relationships. A combination of formalised structures for these relationships, and informal networks, is required for their effectiveness. Investment in these structures, including the informal ones (such as travel) is necessary. Particular attention and investment is required to support local NGOs to support local communities to use individual cases to advance broader change in their own national contexts. Secondly, where mechanisms have relationships with development organisations that can contribute to addressing underlying drivers of human rights harms, they should use those relationships to advance broader projects, such as the IFC Advisory Program on palm oil.

For civil society and communities, the implications are that it is important to maintain the networks that already exist and strengthen them. Strong networks can facilitate greater learning and advice-sharing between communities engaged in grievances, and greater use of individual cases to advance bigger issues where appropriate.

References

Afrizal. (2015). Third-Party Intervention in Terminating Oil Palm Plantation Conflicts in Indonesia: A Structural Analysis. *SOJOURN: Journal of Social Issues in Southeast Asia, 30*(1), 141-172.

Beckert, B., Dittrich, C., & Adiwibowo, S. (2014). Contested land: An analysis of multi-layered conflicts in Jambi province, Sumatra, Indonesia. *ASEAS – Austrian Journal of South-East Asian Studies, 7*(1), 75-92.

CAO (2003) Extracting Sustainable Advantage? A review of how sustainability issues have been dealt with in recent IFC & MIGA extractive industries projects. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2007) *Preliminary Stakeholder Assessment: Regarding Community and Civil Society concerns in relation to activities of the Wilmar Group of Companies*. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2008a) *Appraisal Report - Wilmar Group Indonesia / Case of Forest Peoples Programme.* Report, Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2008b) Memorandum of Agreement – Conflict Resolution and Land Utilization between Community Members of Senujuh Village and Wilmar Sambas Plantation Co., 15 October 2008.

CAO (2008c) Memorandum of Agreement Co-Management of Land Utilization Between Sajingan Kecil Hamlet Community and Agronusa Investama Co., November 24 2008. Available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76. Last accessed 1 August 2016.

CAO (2009a) *Appraisal report III "fourth investment"*, 12 March, 2009. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2009b) *Resolving land disputes in the palm oil sector through collaborative mediation: CAO Ombudsman Intervention in Sambas, Indonesia – Wilmar Group, Conclusion Report*. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2009c) *Final Ombudsman Assessment Report: Complaint from Communities in Kalimantan and Civil Society in relation to activities of the Wilmar Group of Companies.* Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2009d) *Notes of the Meeting of the Monitoring and Evaluation Team for Implementation of the Agreement between WSP Co and the community of Senujuh and ANI Co and the community of Sajingan Kecil, held in Pontianak on December 12 2009*, Available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76. Last accessed 1 August 2016.

CAO (2009e) *Audit Report*. 19 June 2009. IFC Compliance Advisor Ombudsman, Washington D.C.

CAO (2009f), *Assessment Report: Regarding Community and Civil Society concerns of 2nd Complaint in relation to Activities of the Wilmar Group of Companies in Indonesia*, Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2010) *Advisory Note: Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information.* Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2011) Resume of Results of Field Monitoring and Evaluation of the Agreement between PT ANI and Sajingan Kecil Community, Sambas, West Kalimantan, 30 July 2011. Available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76. Last accessed 1 August 2016.

CAO (2012) *Ombudsman Conclusion Report Wilmar 2*. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2012b) Compliance Advisor Ombudsman Annual Report 2012. Washington DC: CAO.

CAO (2013a) *Dispute resolution conclusion report - Wilmar 3.* Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2013b) Monitoring and Evaluation Team on Implementation of Agreement between PT. ANI and Sajingan Kecil, 17 April 2013. Available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76. Last accessed 1 August 2016.

CAO (2013c) *Audit Monitoring and Closure Report*. 27 March 2013. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2014) *Indonesia: Wilmar Group-01/West Kalimantan, Final Report – CAO Dispute Resolution Function, June 2014*. Washington D.C.: IFC Compliance Advisor Ombudsman.

CAO (2016a) 'Compliance Investigation: IFC Investment in Delta-Wilmar (Projects #25532 and #26271) Complaint 03' CAO, Washington D.C.

CAO (2016b) 'Indonesia / Wilmar Group-01/West Kalimantan'. Available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=76 . Last accessed 2 September 2016.

Casson, Anne. (2000). The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change: Center for International Forestry Research.

Colchester, Marcus. (2011). *Palm Oil and Indigenous Peoples in South East Asia*: International Land Coalition and Forest Peoples Program.

Colchester, Marcus, Anderson, Patrick, Firdaus, Asep Yunan, Hasibuan, Fatilda, & Chao, Sophie. (2011). *Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi*: HuMA, SawitWatch and Forest Peoples' Programme.

Down to Earth Indonesia (2013) A turning point for Indonesia's indigenous people. Available at http://www.downtoearth-indonesia.org/story/turning-point-indonesia-s-indigenous-peoples , Last accessed 6 September 2016.

Feintrenie, Laurène, Chong, Wan Kian, & Levang, Patrice. (2010). Why do Farmers Prefer Oil Palm? Lessons Learnt from Bungo District, Indonesia. *Small-scale Forestry, 9*, 379-396. doi: 10.1007/s11842-010-9122-2

Friends of the Earth, LifeMosaic, & Sawit Watch. (2008). *Losing Ground: The human rights impacts of oil palm plantation expansion in Indonesia*. Jakarta: Friends of the Earth, LifeMosaic, Sawit Watch.

Forbes (2016) The World's Billionaires. Available at http://www.forbes.com/billionaires/ Last accessed 2 September 2016.

Forest Peoples' Programme et. al. (2007) Letter to Meg Taylor, Vice-President CAO, 18 July 2007

Forest Peoples' Programme (2011) Letter to Meg Taylor, Vice-President CAO, 9 November 2011.

Forest Peoples' Programme (2013) The World Bank's Palm Oil Policy. Available at http://www.forestpeoples.org/topics/palm-oil-rspo/news/2013/04/world-bank-s-palm-oil-policy . Last accessed 3 September 2016.

Forest Peoples' Programme (2015) Press Release: Palm oil giant Wilmar resorts to dirty tricks. Available at http://www.forestpeoples.org/topics/palm-oil-rspo/news/2015/07/press-release-palm-oil-giant-wilmar-resorts-dirty-tricks . Last accessed 2 September 2016.

Forest Peoples' Programme (2016) 'Free, Prior and Informed Consent (FPIC)' Available at http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic . Last accessed 7 September 2016.

The Forest Trust (2016) Wilmar. Available at http://www.tft-transparency.org/member/wilmar/ . Last accessed 2 September 2016.

Fortune 500 (2016) Wilmar International. Available at http://beta.fortune.com/global500/wilmar-international-254 Last accessed 2 September 2016.

IFC (2016a) Linking Independent Farmers for a Sustainable Business Model. Available at http://ifcextapps.ifc.org/ifcext/spiwebsite1.nsf/f5944b0a23b9299e85257e1900298bfc/95f75ea1171079f485257ba30057c72a?opendocument. Last accessed 5 September 2016.

IFC (2016b) SCI Plantations. Available at http://ifcextapps.ifc.org/ifcext/spiwebsite1.nsf/f5944b0a23b9299e85257e1900298bfc/b489bd460d3dfc5c85257c680069e4bd?opendocument Last accessed 5 September 2016.

IFC (2016c) IFC Management Response to the CAO Investigation Report on Delta-Wilmar 03/Jambi (#25532 and #26271) IFC, Washington. Available at http://www.cao-ombudsman.org/cases/document-links/links-177.aspx Last accessed 15 October 2016.

International Work Group for Indigenous Affairs (IWGIA) (2016) Indigenous People in Indonesia. Available at http://www.iwgia.org/regions/asia/indonesia . Last accessed 3 September 2016.

Institute for Policy Analysis of Conflict. (2014*). Indigenous rights vs agrarian reform in Indonesia: A case study from Jambi.* Jakarta: Institute for Policy Analysis of Conflict.

Jiwan, Norman. (2012). The Political Ecology of the Indonesian Palm Oil Industry. In O. Pye & J. Bhattacharya (Eds.), *The palm oil controversy in Southeast Asia: A transnational perspective* (pp. 48-75). Singapore: Institute of Southeast Asian Studies.

Kingsbury, Benedict. (1998). "Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy. *American Journal of International Law, 92*(3), 414-457.

Li, Tania Murray. (2000). Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot. *Comparative Studies in Society and History, 42*(1), 149-179.

Li, Tania Murray. (2001). Masyarakat Adat, Difference and the Limits of Recognition in Indonesia's Forest Zone. *Modern Asian Studies, 35*(3), 645-676.

McCarthy, John. (2012). Certifying in Contested Spaces: private regulation in Indonesian forestry and palm oil. *Third World Quarterly, 33*(10), 1871-1888.

Milieudefensie (Friends of the Earth Netherlands), Lembaga Gemawan, & KONTAK Rakyat Borneo. (2007). *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)*. Amsterdam: Milieudefensie (Friends of the Earth Netherlands), Lembaga Gemawan, and KONTAK Rakyat Borneo.

Obidzinski, K.; Andriani, R.; Komarudin, H.; Andrianto, A. (2012). Environmental and social impacts of oil palm plantations and their implications for biofuel production in Indonesia. *Ecology and Society, 17*(1), 25-.

Potter, Lesley. (2015). *Managing oil palm landscapes: A seven-country survey of the modern palm oil industry in Southeast Asia, Latin America and West Africa*: Center for International Forestry Research (CIFOR).

PT. TÜV Rheinland Indonesia. (2011). *Verification Report of "Suku Anak Dalam' Community Settlement Demolition within the Land Use Area (Hak Guna Usaha - HGU) of PT Asiatic Persada*. Jakarta: PT. TÜV Rheinland Indonesia.

Pye, Oliver. (2010). The biofuel connection – transnational activism and the palm oil boom. *Journal of Peasant Studies, 37*(4), 851-874.

Rist, L.; Feintrenie, L.; Levang, P. (2010). *The livelihood impacts of oil palm: smallholders in Indonesia*. Bogor: CIFOR.

Rofiq, Rukaiyah, & Hidayat, RIan. (2013). *Mediation: a strategy or a final objective?* : Setara; Forest Peoples' Programme; Ford Foundation; Perkumpulan Hijau; CAPPA; Misereor.

RSPO (2016a) 'How RSPO Certification Works', viewed 6 April 2016, available at http://www.rspo.org/certification/how-rspo-certification-works. Last accessed 7 September 2016.

RSPO (2016b) Case Tracker PT Permata Hijau Pasaman 1 (Wilmar International Ltd), 21 March. Available at: http://www.rspo.org/members/complaints/status-of-complaints/view/76 Last accessed 11 August 2016.

RSPO (2016c) Case Tracker: PT Wina (Mekar Bumi Andalas) (A subsidiary of RSPO Member Wilmar International Limited). Available at http://www.rspo.org/members/complaints/status-of-complaints/view/25 Last accessed 1 September 2016.

RSPO (2016d) Case Tracker: Biase Plantation Limited (Ibiae Estate) / Wilmar International. Available at http://www.rspo.org/members/complaints/status-of-complaints/view/26 Last accessed 1 September 1016.

RSPO (2016e) Case Tracker: Biase Plantation Limited (Ibiae Estate) / Wilmar International. Available at http://www.rspo.org/members/complaints/status-of-complaints/view/26 Last accessed 1 September 1016.

RSPO (2016f) Case Tracker: PT Agronusa Investama (Wilmar) Available at http://www.rspo.org/members/complaints/status-of-complaints/view/8 Last accessed 1 September 2016.

Stead, Victoria. (forthcoming). *Becoming landowners: Entanglements of Custom and Modernity in Papua New Guinea and Timor-Leste*. Honolulu: University of Hawaii Press.

Susila, Wayan R. (2004). Contribution of oil palm industry to economic growth and poverty alleviation in Indonesia. *Jurnal Litbang Pertanian, 23*, 107-114.

Sinaga, Hariati. (2013). Employment and Income of Workers on Indonesian Oil Palm Plantations: Food Crisis at the Micro Level. *Future of Food: Journal on Food, Agriculture and Society, 1*, 64-78.

Teoh, Cheng Hai. (2010). *Key Sustainability Issues in the Palm Oil Sector: A Discussion Paper for Multi-Stakeholders Consultations (commissioned by the World Bank Group)*. Washington D.C.: World Bank Group.

van Gelder, Jan Willem , Kroes, Hassel, de Wilde, Joeri , & Warmerdam, Ward. (2015). *The financing of Wilmar International– Update November 2015*. Amsterdam: Profundo Research and Advice.

Wakker, E. (2000). *Funding Forest Destruction: The involvement of Dutch banks in the financing of oil palm plantations in Indonesia*. Amsterdam: Greenpeace Netherlands.

Wilmar International (2016a) Grievance Procedure. Available at: http://www.wilmar-international.com/sustainability/grievance-procedure/ Last accessed 31 July 2016.

Wilmar International (2016b) Links to Subsidiaries and Associates. Available at: http://www.wilmar-international.com/who-we-are/links-to-subsidiaries-associates/ Last accessed 11 August 2016.

Wilmar International (2016c) Corporate Profile. Available at http://www.wilmar-international.com/who-we-are/corporate-profile/ Last accessed 2 September 2016.

Wilmar International (2016d) Tropical Oils: Plantations. Available at http://www.wilmar-international.com/our-business/tropical-oils/plantations/ Last accessed 31 July 2016

Wilmar International (2016e) *Wilmar's No Deforestation, No Peat, No Exploitation Policy. Third Update Report: 1 July - 30 September 2014*. Available at http://www.tft-earth.org/wp-content/uploads/2014/11/TFT-and-Wilmars-third-progress-report.pdf Last accessed 3 September 2016.

World Bank and the IFC (2011) The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector, March 2011. Washington D.C.: World Bank. Available at http://www.ifc.org/wps/wcm/connect/159dce004ea3bd0fb359f71dc0e8434d/WBG+Framework+and+IFC+Strategy_FINAL_FOR+Web.pdf?MOD=AJPERES Last accessed 2 September 2016

World Bank Group Sanctions Board (2015) *Sanctions Board Decision No. 76 (Sanctions Case No. 265)*. Report, March 6. Available at http://siteresources.worldbank.org/INTOFFEVASUS/Resources/3601037-1346795612671/SanctionsBoardDecisionNo.76%28SanctionsCaseNo.265%29.pdf.

World Growth (2011) *The Economic Benefit of Palm Oil to Indonesia* World Growth. Available at http://worldgrowth.org/site/wp-content/uploads/2012/06/WG_Indonesian_Palm_Oil_Benefits_Report-2_11.pdf Last accessed 2 September 2016.

Y-Charts (2016) Wilmar International Market Cap, Available at https://ycharts.com/companies/WLMIF/market_cap Last accessed 2 September 2016.

Zen, Zahari, McCarthy, John, & Gillespie, Piers. (2008). *Linking Pro-Poor Policy and Oil Palm Cultivation*. Canberra: ANU.

corporateaccountabilityresearch.net

Corporate Accountability Research

DESIGN BY
OPF-TECH.NET