



PRELIMINARY STAKEHOLDER ASSESSMENT

**Regarding Community and Civil Society concerns in relation to
activities of the Wilmar Group of Companies**

November 2007

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

BACP	Biodiversity and Agricultural Commodities Program
CAO	Office of the Compliance Advisor/Ombudsman
CPO	Crude Palm Oil
CSO	Civil Society Organization
ESIA	Environmental and Social Impact Assessment
FOE	Friends of the Earth
GEF	Global Environment Facility
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
RSPO	Roundtable on Sustainable Palm Oil
SPI	Summary of Proposed Investment

1. Introduction

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are responded to by the CAO's Ombudsman function.

This document is a preliminary record of the views heard by the CAO team, and suggestions for next steps among the parties. These suggestions are intended to stimulate further ideas and options.

1.1 The complaint

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

The complaint was screened for eligibility on July 27, 2007 and confirmation sent to the complainants and Wilmar that the complaint met all three of the CAO's eligibility criteria for further assessment:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

The full complaint is available on the CAO's website. The complainants raise a number of concerns, including:

- Illegal use of fire to clear lands
- Clearance of primary forests
- Clearance of areas of high conservation value
- Take over of indigenous peoples' customary lands without due process
- Failure to carry out free, prior and informed consultations with indigenous peoples leading to broad community support
- Failure to negotiate with communities or abide by negotiated agreements
- Failure to establish agreed areas of smallholdings
- Social conflicts triggering repressive actions by companies and security forces
- Failure to carry out or wait for approval of legally required environmental impact assessments
- Clearance of tropical peat and forests without legally required permits.

The complainants concerns are based on their field investigations of Wilmar Group operations in various parts of Indonesia. The sources presented to CAO include multiple letters and reports that present the findings of those investigations.

The most recent of these sources is a July 2007 report released by Friends of the Earth (FoE) Netherlands, and two Indonesian CSOs based in West Kalimantan – Lembaga Gemawan and KONTAK Rakyat Borneo – all three of which are signatories to the complaint. In the report, these CSOs describe the operations of three oil palm plantation companies in West Kalimantan’s Sambas District: PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation, and PT Agro Nusa Investama. According to the report, these three companies have been owned or managed by the Wilmar Group since 2005. However, another FoE Netherlands publication, “Buyers and Financiers of the Wilmar Group,” also released in July 2007, identifies the company PT Wilmar Sambas Plantation as not part of the Wilmar Group, but rather as a company of the Ganda Group. In this publication, FoE Netherlands states that “The Wilmar Group is closely connected to the Indonesian Ganda Group” through family ties and “The CPO (crude palm oil) production of this group is supplied to the Wilmar Group.” Wilmar has publicly responded to these reports and stated its perspective of the issues raised.

1.2 The Project

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

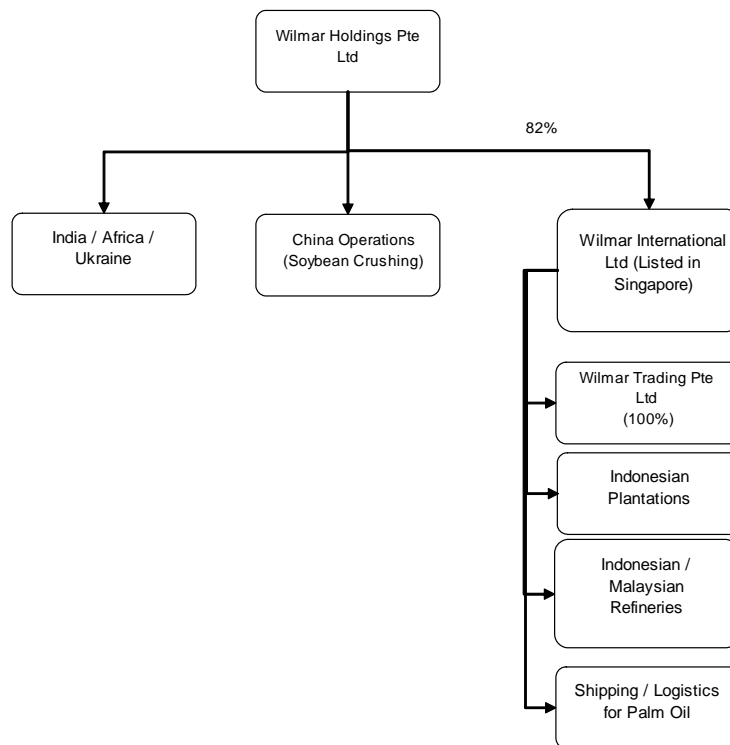
None of the IFC investments/projects in Wilmar Group companies are for the exploitation of any particular Wilmar Group oil palm plantations in Indonesia, nor are the investments in any Wilmar Group companies that directly manage oil palm plantations. However, all three of the projects’ Summary of Proposed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

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

The diagram below illustrates the structure of the Wilmar Group, which is composed of numerous separate companies, each with a varying percentage of Wilmar ownership.

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

Structure of the Wilmar Group (aka Wilmar Holdings Pte Ltd)²



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

The complaint references the following three IFC investments in the Wilmar Group:

1st IFC investment in the Wilmar Group: Wilmar Trading, #20348

- approved May 2004; status = complete
- project company: Wilmar Trading (“the merchandising and trading arm of Wilmar Holdings...[or Wilmar Group]”)
- project company location: “Wilmar Trading is located in Singapore, and Wilmar Group’s major palm oil refineries and plantations are located respectively in Dumai, Palembang, Kuala Tanjung, Bitung and Sumatra Indonesia;” (Dumai, Palembang, and Kuala Tanjung are on the island of Sumatra; Bitung is on the island of Sulawesi);
- type of investment: “partial guarantee...for a pre-shipment finance facility...extended by a commercial bank”
- project purpose: “project intended to enable Wilmar Trading to scale up its offtake of crude palm oil from oil plantations in Indonesia”³
- environmental category: C

² From IFC's *PDS Early Review for Project #25532*. *The Indonesian plantations and refineries are part-owned by Wilmar*

³ *Summary of Project Information; Project # 20348*.

2nd IFC investment in Wilmar Group: Delta-Wilmar CIS Ltd., #24644

- approved June 2006; status = active
- project company: Delta-Wilmar CIS Ltd (“Delta-Wilmar CIS is a joint venture between Singapore based Delmar Pte Limited [80%] and Ukraine based Market House Bread Harbour [20%],. Delmar Pte Limited in turn is a joint venture between the main Project sponsors: Wilmar Holding Pte Limited [62.5%] and Delta Exports Limited [37.5%], both of which are based in Singapore.”)
- project company location: Delmar Pte Limited, Wilmar Holding Pte Limited, and Delta Exports Limited are based in Singapore and Market House Bread Harbor is based in the Ukraine. While the SPI does not specifically mention where within Indonesia Wilmar International’s palm oil plantations are, the SPIs for the 1st and 3rd investments indicate that the plantations and/or refineries are on the islands of Sumatra and Sulawesi;
- Wilmar Group also manages plantations on the island of Kalimantan. (While this is not specifically mentioned in any of the SPIs, internal IFC reports indicate that IFC social and environmental specialists did inspect Wilmar plantations in West Kalimantan in 2006).
- type of investment: A loan
- project purpose: project “will construct, equip and place into operation a 1,500 metric ton per day crude palm oil refinery in Ukraine”⁴
- environmental category: B

3rd IFC investment in Wilmar Group: Wilmar WCap, #25532

- approved Dec. 2006; status: pending disbursement
- project company: Wilmar Trading Pte Limited (“a wholly owned subsidiary of Wilmar International Limited, incorporated in Singapore and listed on the SGX-ST”)
- project company location = “Wilmar Trading is located in Singapore, and Wilmar International Limited major palm oil refineries and plantations are located respectively in Dumai, Palembang, Kuala Tanjung, Bitung and Sumatra Indonesia”
- type of investment: “partial guarantee for an exposure...for a four-year annually renewable pre-shipment facility...to be extended by a commercial bank to the company”
- project purpose: “project is intended to enable Wilmar Trading Pte Limited to meet its working capital needs to purchase crude palm oil from palm oil plantations in Indonesia and process them into refined oil for export”⁵
- environmental category: C

⁴ Summary of Project Information; Project # 24664.

⁵ Summary of Project Information; Project #25532.

The complaint also references a grant through the Global Environment Facility's Biodiversity and Agricultural Commodities Project (BACP), approved in April 2007, called BACP #6.

Proposed GEF/IFC Biodiversity and Agricultural Commodities Program with Wilmar Group: Working with Smallholders to Reduce Biodiversity Impacts from Palm Oil Production in Indonesia

GEF funds environmental protection through grants to organizations for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants. GEF has a organizational structure with United Nations (UN) agencies and multilateral development banks partnering with CSOs to develop and implement projects. GEF has implementing agencies and executing agencies, which are responsible for developing and managing projects. The GEF's implementing agencies are the United Nations Development Program (UNDP), the United Nations Environment Program (UNEP), and the World Bank. The executing agencies (seven other UN agencies and multilateral development banks) assist the implementing agencies in managing the projects.⁶

IFC and GEF recently launched a new program called the "Biodiversity and Agricultural Commodities Program (BACP)," to support private sector-led initiatives that promote adoption of better management practices for biodiversity conservation throughout the supply chains of four commodity markets: palm oil, cocoa, soybean, and sugar cane. The BACP will initially focus on only several countries, with the intention of scaling up to a global level. IFC is identified as the executing agency for the project. According to IFC, The BACP will not provide financing directly to companies, but instead provide funds to CSOs and other organizations that work with the private sector.⁷

One of the initial projects to be initiated under the BACP is "Working with Smallholders to Reduce Biodiversity Impacts from Palm Oil Production in Indonesia." This project is still in its preliminary stages and has not yet been funded. In its Project Appraisal Document, IFC identifies the Wilmar Group as the "lead partner" on this project, which it describes as a partnership between BACP, IFC Linkages project, and the Wilmar Group to assist smallholders of oil palm in Sumatra and Kalimantan who have a partnership with Wilmar's oil palm mills in reducing their impact on biodiversity. The project aims to work with these smallholders to identify better management practices for biodiversity conservation on their oil palm farms, develop criteria for sustainable oil palm operations unique to the smallholders' level, and disseminate lessons learned to relevant stakeholders.⁸

In addition to these IFC investments/projects referenced by the complainants, IFC is considering further support through technical assistance that may relate to EIA and management system improvements particularly in relation to providing assurance over Wilmar's supply chain.

⁶ www.gefweb.org

⁷ IFC. March 2007. "Biodiversity and Agricultural Commodities Program (BACP) – Preserving biological diversity within agricultural production landscapes – transforming the markets for palm oil, cocoa, soybean and sugarcane."

⁸ IFC. April 12, 2007. "Biodiversity and Agricultural Commodities Program (BACP): Program Appraisal Document."

2. CAO Assessment

2.1 Site visit itinerary

As part of its assessment process, a CAO Ombudsman team visited Wilmar in Singapore as well as communities in West Kalimantan to discuss their interests and perspectives on the issues raised in the complaint. Our itinerary was as follows:

Thursday 6 September – Singapore

1030 – 1500 Meeting with Wilmar Executives: Mr Chua Phuay Hee; Mr Colin T S Tan; Mr Jeremy Goon; Ms Ng Kim Hoay; and Dr Lim Chin Huat.

Sunday, 9th September – Pontianak

1300 - 1800 Meeting with NGOs and community representatives in Pontianak.

Monday, 10 September – Pontianak and Sambas

1000 - 1300 Meeting with government representatives and academic experts. Presentations on burning, hotspot tracking and legality requirements and charges of violations by Wilmar subsidiaries.

1400 - 1900 Drive to Sambas with NGOs.

Tuesday, 11 September – Sambas, Sajingan Kecil and Senujuh

Boat ride to Sajingan Kecil. Visited land disputed between Sajingan Kecil and PT ANI: visited burned areas and stacking, see planting after burning. Talked with Kepala dusun of Sajingan Kecil.

Visit Senujuh. Afternoon meeting with communities; 200 people including residents from Senujuh and four hamlets (dusun):

- Ma'lebar
- Nante
- Tengiling
- Sajingan Kecil

Six villages were invited but two had a problem on the way because of floods that blocked the road. Others invited included:

- Sepantai
- Beringing
- Senabah
- Semakuan

Wednesday, 12 September – Senujuh and Sambas

Start in Senujuh. Walk via Nante to disputed area between Senujuh and PT WSP. Informal interviews with village elders in Senujuh.

1500-1800 Return to Sambas.

Thursday, 13 September – Sambas, PT ANI, Sasak and Pontianak

0700 - 1300 CAOs visit to Wilmar and PT ANI site camp: Met Mr Nharong Somchit; Dr Lim Chin Huat; Mr Joko Susilo. Briefly introduced to Kepala Desa of Sijang.

1330 - 1830 Visit to Sasak village, Sajingan Besar kecamatan. More than 150 people present maybe 200. Including people from:

- Santaban village (desa)

- Sasak hamlet (dusun)
- Sebunga village (desa)

2000 - 2200 Return to Sambas

2230 - 0230 Return to Pontianak

Friday, 14 September – Pontianak

1030 – 1300 Wrap up meeting with NGOs and community representatives.

1330 – 1500 Discussion with Wilmar staff in Pontianak: Mr Ong Kee Chau; Mr Nharong Somchit; Dr Lim Chin Huat

2.2 Findings

Based on discussions with CSOs, Wilmar and IFC, the issues raised in the complaint to the CAO appear to fall into three categories or topic areas:

Topic 1: Issues related directly to impacts between Wilmar and local communities in Sambas (Senuju, Sajingan Kecil and Sasak) . In these three cases (the villages/hamlets that CAO visited) there are specific concerns raised by villagers as well as one case (Sajingan Kecil) negotiations between Wilmar and the community groups are ongoing. Some in these groups have stated that they reject the presence of Wilmar and other commercial palm oil companies, whom they see as threatening their forests and encroaching upon their land without permission. These views are strongly held and people are clearly concerned about the impacts of oil palm plantations on their livelihoods. They feel that big corporations have the power to take over large amounts of land, leaving the villages with very little. We heard from some spokesmen of these villages that they do not yet trust a dialogue process – because previous dialogues have not resulted in implementation of agreements. These groups want Wilmar to meet two preconditions before engaging in further discussion: a) Wilmar stops all operations on its plantations (and should respect the Ministry of the Environment letter of 14 April, 2007, which asks Wilmar Sambas Plantation to stop further actions), including no planting, no harvesting, no clearing, no expansion in Sambas; and b) that Wilmar suspends its purchases from Duta Palma.

Wilmar acknowledges that the concerns about the land acquisition process are serious in some places. From their perspective, the land acquisition process is not predictable, bureaucratic procedures are confusing, complex and vary from place to place. Wilmar also states that, as a matter of policy, it will not expand into lands where communities are divided or dispute its approach. Wilmar has no objection to re-asserting this policy publicly, and assuring communities in Senujuh and Sasak (and elsewhere if necessary) that it will not expand any further in these areas if such expansion is disputed.

Issues relating to local approvals processes and land security are a sector-wide concern, as well as for these directly affected communities. RSPO and others are working on these issues, and real progress will need the active involvement of key stakeholders, including the government of Indonesia. An important question now is how best to ensure both local, practical improvements, in the short –term, as well as more systemic, longer-term changes more broadly.

Topic 2: Issues related to Wilmar's compliance with national laws and procedures – particularly with respect to environmental permits and burning. Communities and CSOs are concerned that Wilmar is sometimes operating without

full permits and has cleared land without waiting to complete environmental impact assessments and obtain the necessary environmental permits. Furthermore, they believe Wilmar has been responsible for using fire to clear land.

From Wilmar's perspective, in common with other operators in the sector, local government authorities have sometimes given permission to clear land while environmental impact assessments are still underway. There are inconsistencies between the national and kabupaten levels of government which make it difficult to know which rules to follow. Wilmar and IFC have both expressed concern that local regulating authorities sometimes require Wilmar to utilize contractors that are not timely, and often lacking in experience/capacity. This means that EIA's are poorly integrated into the decision-making process.

With respect to the use of fire to clear land, Wilmar is willing to work with CSO's as well as others to demonstrate, beyond reasonable doubt, that it does not set or promote fire on its properties. Wilmar has requested that CSOs meet, together with external experts, to agree how to create a system that provides credible and trustworthy information on this important topic.

In addition to addressing specific concerns associated with Wilmar, there may be an opportunity to find effective solutions that will have relevance to the sector as a whole. However, in order to work, these issues will require involvement of environmental and fire experts, and possibly representatives from the government of Indonesia, including the Ministry of Environment.

Topic 3: Issues related to the IFC. Complainants have also raised questions which relate to the IFC's investment in the project, and specifically its adherence to applicable IFC policies and guidelines:

- a) Is the environmental category designated by IFC (Category C) appropriate? How does IFC provide adequate safeguards to protect affected communities and their environment in this case, and what is the role of other IFC initiatives that have been implemented?
- b) Why were the older Safeguard Policies, rather than the new Policy and Performance Standards, applied, at least to IFC's last investment in Wilmar?
- c) How can IFC provide more consistent access to information when requested by civil society?
- d) How can IFC serve as a responsible investor within the Roundtable on Sustainable Palm Oil (RSPO)? What does it mean to apply RSPO principles and criteria at the same time as IFC standards? How should IFC make public comments or notifications in its documents/websites that are consistent with RSPO?

IFC staff/managers in Jakarta and Washington have acknowledged that the concerns raised by the complaints – relating to community land insecurity, confusing permitting procedures and proper use of EIA's – are highly visible and problematic. From IFC's perspective, the problems raised go beyond the operations of Wilmar and raise complicated issues relating to national regulations in Indonesia. Through its own membership of RSPO as well as the specific projects launched alongside its investments in Wilmar, IFC believes that it has taken some steps to address these concerns seriously. IFC have agreed to meet with the involved CSOs to discuss these issues and explore additional options for resolving them in a way that is constructive and fair.

IFC has also stated that they believe the terminology in the public release documents (the SPI and other web documents) has been misunderstood. IFC has informed CAO that it did not mean to claim that Wilmar was already in compliance with the RSPO Principles and Criteria, or that RSPO has certified Wilmar in any way. As of November 9, IFC has revised the language on the website to provide some clarification on this matter.

3. Next Steps

The complainant group told CAO they would like preconditions to be met before they will meet with Wilmar to talk about issues described in Topics 1 and 2 above. They also agreed to meet with IFC (but not Wilmar) to talk about issues related to Topic 3.

1. The concerned CSOs and the IFC have agreed to meet on November 30th in Jakarta (Hotel Sheraton Bandara) to discuss issues related to Topic 3 (i.e. broader IFC policy considerations). CAO is preparing a draft agenda for the meeting which will be circulated along with information on practical arrangements/logistics etc. We have asked an independent, professional mediator from the Centre for Dispute Resolution in the USA to facilitate this meeting. Because the focus of our discussion will be issues related to IFC (Topic 3), it will be important for CSOs to decide who will represent their group to ensure a productive discussion of these issues, and so logistics can be properly coordinated.
2. As of November 9, IFC has changed its website references to Wilmar and the company's adherence to RSPO standards.
3. The CAO has spoken with Wilmar about the preconditions for working together with the Ombudsman on next steps to resolve issues raised by the communities. The company's response is as follows:
 - a. Wilmar (and the IFC) understand and accept that many of the issues the CSOs have raised are serious and want to try to resolve them. As part of an agreement to promote collaborative action, Wilmar will accept the precondition for a freeze on all their activities in their plantations in Sambas with the exception that they be allowed to keep watering/maintaining the seedlings in their nurseries. Wilmar hopes this limited activity does not pose a threat to anyone and hopes these steps will be accepted as a demonstration of their good faith for participation in a CAO-mediated process.
 - b. Wilmar has heard and understands the pre-condition that they suspend purchase of CPO from Duta Palma. They have responded that it is difficult for them to accept this requirement as it could create a precedent that could adversely impact their whole business. They are willing to put this idea on the agenda for discussion, however, and Wilmar has said they that they would like to be able to demonstrate to the community that they are serious and want to engage in good faith progress. They want to explore whether there are other possible actions the community would accept as the company's expression of good faith to begin practical measures towards resolving concerns.
4. The CSOs and impacted communities are now in a position where they should decide how to respond to Wilmar and agree what options exist to ensure they are able to work towards outcomes that meet their objectives on Topic 1 and 2 issues. CAO would like to further discuss these ideas and possible next steps with the parties. It will be helpful for the CSOs to clarify what issues should be considered as pre-conditions to discussions, and what issues could be agreed as

topics for discussion. CAO's understanding is that there may be a number of alternative options that the CSOs and communities may wish to consider with respect to more fundamentally addressing their concerns. For example, they may wish to explore approaches to addressing land insecurity more directly in a way that gives greater assurance to all parties of their rights.

5. Based on the information provided in this preliminary assessment, the CAO would like to propose a second visit to Sambas for the week of December 3 -7, 2007, to ensure that all the options are considered and the communities are in a position to make a well informed and collective decision about how to proceed in resolving the outstanding issues.
6. The CAO would also like to meet again with Wilmar staff and managers to ensure that there is a good collective understanding of the current situation, and that the company is also in a position to ensure that its decisions are well informed.
7. The CAO's Ombudsman assessment process is available to all of the parties until 20 January 2008 at which time a decision must be made about whether it is acceptable to continue to work through an agreement with the Ombudsman. As part of the Ombudsman process, CAO will share with both the CSOs and Wilmar a draft version of a Memorandum of Understanding in order to help them make this decision.