Negotiating human rights: a case study of Wilmar and the CAO

Dr Samantha Balaton-Chrimes
Deakin University, Australia
Visitor at New School for Social Research
(sam.b@deakin.edu.au)
The CAO for IFC/MIGA

- **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.

- Not technically a human rights mechanism, but...
Wilmar complaints

• Human rights issues:
  • Inadequate protection of land rights and indigenous rights
  • Transformation of livelihoods from forest-based subsistence to cash economy
  • Violence and intimidation

• CAO process:
  • 3 x dispute resolution processes (mediation)
  • 2 x compliance investigations
Jambi dispute

• WHAT: indigenous lands appropriated under Soeharto
• WHO: PT Asiatic Persada (Wilmar subsidairy) vs 8(ish) community groups of SAD/Batin Sembilan (and transmigrants)
• WHERE: Jambi province, Sumatra, Indonesia
• WHEN: CAO process 2007-2013
• HOW: Multiple company-community mediations
## Mediation in Jambi

<table>
<thead>
<tr>
<th>Community group</th>
<th>Mediation status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanah Menang</td>
<td>Did not participate</td>
</tr>
<tr>
<td>Padang Salak</td>
<td>Did not participate</td>
</tr>
<tr>
<td>SAD Mat Ukup</td>
<td>Community informally withdrew early</td>
</tr>
<tr>
<td>Terawang</td>
<td>Community informally withdrew early</td>
</tr>
<tr>
<td>KOPSAD (Kooperasi of Suku Anak Dalam)</td>
<td>Community informally withdrew early</td>
</tr>
<tr>
<td>Bidin</td>
<td>Community informally withdrew</td>
</tr>
<tr>
<td>Sungai Beruang</td>
<td>Pursued until Wilmar sold PT AP</td>
</tr>
<tr>
<td>Pinang Tinggi</td>
<td>Pursued until Wilmar sold PT AP</td>
</tr>
</tbody>
</table>
Power imbalances I

• Capacity:
  – Technical, economic and financial literacy
  – Skill and experience in negotiation
  – Access to information about leverage (including other experiences)
  – Logistics and basic resources
  – Managing internal divisions and disagreement
Power imbalances II

• **Leverage:**
  – **Company sources of leverage:**
    • Legal land rights
    • Land acquisition a fait accompli
    • Heterogeneity vs homogeneity among parties
  – **Community source of leverage:**
    • Mobilisation > reputational damage > investment
  – **Variable sources of leverage:**
    • Standards (e.g. FPIC vs. RSPO)
    • Mediation preconditions
Outcomes

• Jambi
  – Wilmar sold PT AP and mediations ceased
• Sambas (2 agreements)
  – Return of some land returned as plasma (Senujuh)
  – Return of some land cleared, unplanted
  – Support in form of loan to plant for plasma (Sajingan Kecil)
  – Cash and in-kind support for community development, incl. plasma capacity building
  – Return of some deforested land + company to reforest (ended up being cash instead)
  – Compensation for continued company use of larger areas of planted land
  – Various other commitments re. behaviours, and an apology
  – NOTING that neither community is making effective use of plasma arrangements, and poverty persists today
So ... rights?

• A possible source of leverage if pro-actively made integral to mediation process
• Otherwise bargainable – is this compatible with the concept of rights?
• Conflicting rights (land vs livelihood)
  – Who decides, how, under what pressures?
• Concern about future possibilities for rights-compliance
  – Do negotiated deals limit these possibilities?