

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

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# 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 subsidiary) 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

Community group	Mediation status
Tanah Menang	Did not participate
Padang Salak	Did not participate
SAD Mat Ukup	Community informally withdrew early
Terawang	Community informally withdrew early
KOPSAD (Kooperasi of Suku Anak Dalam)	Community informally withdrew early
Bidin	Community informally withdrew
Sungai Beruang	Pursued until Wilmar sold PT AP
Pinang Tinggi	Pursued until Wilmar sold PT AP

# 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?



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