# Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi


## Report of an independent investigation into land disputes and forced evictions in a palm oil estate

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HuMa

Sawit Watch

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*Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi: report of an independent investigation into land disputes and forced evictions in a palm oil estate*
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Batin Sembilan child salvaging nails from the ruins of his home

This report provides an account of an independent investigation carried out in October 2011 of the conflicts and disputes in the PT Asiatic Persada concession in the Indonesian Province of Jambi on the island of Sumatra. This report has been written with the aim of helping resolve these disputes and ensure respect for human rights by RSPO members in line with the RSPO Principles and Criteria and the Performance Standards of the International Finance Corporation. Comments are welcomed and should be sent to: marcus@forestpeoples.org, norman@sawitwatch.or.id and andiko@huma.or.id

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**Cover photo:** Signboard stating that it is forbidden to carry out activities in the business use area of PT Asiatic Persada in accordance with paragraphs 46-51 of the Plantations Act. **Photo:** SETARA
**Other photos:** Sophie Chao and Patrick Anderson

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PT AP's operations are impacting numerous communities in their 20,000 ha concession

## Executive Summary

The forests of southern Jambi have long been home to indigenous peoples who produced the forest products on which the regional trading kingdoms, Malayu and later Srivijaya of the 7th to 13th centuries, relied. The forest peoples had their own polities and bounded territories and paid tribute to the chiefs of these kingdoms. The Batin Sembilan peoples lived from rotational farming, hunting, fishing and gathering and from the trade in resins, dyes, valuable woods and medicines from the forest. Under the Dutch these local systems were affirmed and their rights in land recognised, to some extent.

With independence their situation changed. Along with other social groups in Jambi they were officially classed as a poor and backward people – a 'tribe of children of the interior' – and their rights in land were not recognised. The government handed out their lands to logging, transmigration, cocoa and palm oil projects without consultation or their consent. This seriously disrupted the peoples' connections with their ancestral territories, diminished the remaining forests and deprived them of land and livelihood. The land squeeze led to out-migration of the indigenous people and the intrusion into their area of settlers from Java.

PT Asiatic Persada (AP) used to be named PT BDU, which since the 1970s held an extensive logging concession in the area. In 1987, PT BDU, with questionable legality, was given a 20,000 ha. license within its logging area to develop as plantations but it was not until the 1990s that much oil palm began to be planted. The company was renamed PT AP in 1992. As the plantations began to expand on the Batin Sembilan's lands, disputes emerged and, once the political situation changed allowing communities to express their views, they began to demand land rights and compensation for lands lost to oil palm. The company also changed ownership several times being bought out first by the Commonwealth Development Corporation and Pacific Rim (2000), then by Cargill (2006) and finally Wilmar later in 2006.

In response to community demands for lands and compensation, in 2004/5 the intermediate companies offered 650 ha. of smallholdings in the south and a further 350 ha. in the northern part of the concession. Maps clearly marked the areas and signs were even put up indicating their purpose. However, after Wilmar took over, the company withdrew the offer of providing smallholdings within the concession. The result was an increase in conflicts, which Wilmar, in response to a series of NGO complaints to the World Bank Group's International Finance Corporation, agreed be mediated by the IFC's Compliance Advisory Ombudsman process. Some community groups refused this negotiation process while others acceded. In the northern part of the concession participatory maps were developed showing the wide extent of the indigenous peoples' land claims within the concession. However, Wilmar refused to recognise their lands within the concession or provide smallholdings but instead offered a 1000 ha. joint venture on State lands west of their concession. While the mediation broke down, one northern group refused the offer but another group initially accepted. However, the leader of that group recently repudiated the joint venture agreement, which is claimed to offer better returns to the company than the people, and he is again demanding the return of customary lands within the concession.

Meanwhile there was no progress resolving the land issues in the south of the concession. When Batin Sembilan people moved back into the concession and set up settlements, PT AP initially offered them piece work for picking up loose fruits. PT AP became concerned that substantial fruit was being stolen and marketed outside the concession by an entrepreneur residing in one of the settlements in the concession. Meetings with the communities did not

resolve the land dispute or the conflict over fruit. In July 2011, the company contracted the mobile police brigade (BRIMOB) to secure control of their plantation.

In August, a dispute over stolen fruit with the entrepreneur led to: his lorry being impounded; a fight with police; the alleged theft of police weapons and; a large operation by BRIMOB to recover the weapons. The confrontation turned ugly – with different parties blaming each other for initiating the violence. A policeman was badly cut and shots were fired by BRIMOB which caused villagers to flee into the forest and one person to be wounded in the back by a spent bullet. The entrepreneur and his family, with 12 other suspects (later freed), were taken into custody. The entrepreneur and his family are still in jail awaiting trial.

According to testimony recorded in our investigation, the following day, without warning, BRIMOB and PT AP staff returned to the settlement firing shots and seeking to chase the people out of the settlement. Their houses were then flattened using excavators and their properties scattered. Over the following week, BRIMOB returned to rout the people while PT AP staff, under PT AP instruction and using company heavy plant, systematically destroyed the houses of 83 families in three settlements, even using caterpillar tractors to bulldoze up concrete floors. Most people fled, some taking refuge in the forests and others in nearby towns and settlements. BRIMOB closed the area for a week while the operation continued, denying access to NGOs, the media and local people. BRIMOB remain in the area and were said to be daily continuing to intimidate people by firing their guns, at the time of the study.

The events received considerable media coverage in the local papers. The government Department of Social Affairs brought in emergency tenting and some food for the affected people, while NGOs responded with a more sustained humanitarian operation to bring them food and clothes. Some of those evicted remain in the forests, while others have returned to their settlements to live in the temporary tenting provided. A number of NGOs appealed to the Wilmar Group to cease operations in the area and remove BRIMOB.

Wilmar repudiated the NGO complaints arguing that the case was unrelated to the land dispute and paid an RSPO-accredited assessor, PT TUV, to review the situation. The short investigation, with Wilmar and PT AP staff present, came to partial conclusions, but did note that the underlying land dispute would have to be resolved for the company to be certified.

Forest Peoples Programme, SawitWatch and HuMa, signatories of the original complaint to IFC, decided that the situation warranted a more detailed investigation. This was communicated to Wilmar which welcomed the enquiry. The seven-person team including anthropologists, environmentalists and lawyers, thus spent a week in the area interviewing villagers, medical personnel, NGOs, government officials and PT AP and Wilmar staff. This report is the result. A provincial government investigation into the evictions, carried out on 8th October 2011, confirms the three locations and the number of houses destroyed.

The team concludes that PT AP remains in violation of the IFC Performance Standards, is operating contrary to the RSPO P&C especially with respect land and dispute resolution. We also find that BRIMOB and PT AP between them share responsibility for serious human rights violations. These violations demand further investigation to ascertain the individuals responsible. They should be charged and brought to trial by the government authorities. The independence of assessor companies, Daemeter Consulting and TUV, is also called into question, casting doubt on the credibility of RSPO's reliance on 3rd party assessments. We make recommendations to Wilmar, RSPO, CAO and the Government to resolve the dispute.

## Introduction to this study: context, rationale and methods

The team which carried out this study are all from organisations that were signatories to complaints submitted in 2006 and 2008 to the Compliance Advisory Ombudsman (CAO) of the International Finance Corporation (IFC) and to the Roundtable on Sustainable Palm Oil (RSPO) about the social and environmental problems associated with subsidiary companies of the Wilmar Group. The complaints triggered CAO-mediated negotiations between impacted communities and Wilmar to seek resolution of the land conflicts. These mediated negotiations are ongoing. One of the cases being mediated under CAO supervision was the PT Asiatic Persada (PT AP) operation in Jambi, which focused on the land claims of people in the north of the concession. The mediation ran into difficulties in June and July 2011 and led to the mediation process being terminated.

In August 2011, a stream of reports emerged from Jambi through the independent media, as well as through NGOs, of serious conflicts, violence and mass evictions in the southern part of the PT AP concession. Several NGOs appealed to Wilmar to remedy the situation and also address the underlying land conflicts that had been the subject of the mediation. Wilmar replied strongly repudiating the reports and suggesting that there was no connection between land conflicts and the problems in the south of the concession, that the land dispute was already resolved, that the evictions were justified and that there had been no abuses or injuries. A report from a third party auditor, TUV, an RSPO-accredited Certification Body, which was contracted by Wilmar to look into the situation, was later issued substantially corroborating Wilmar's account of the situation. The TUV report did however mention that there was an underlying land dispute which would need to be resolved before the operation could be certified.

Given the termination of the mediation process, the discrepancies between the reports from Wilmar and TUV with respect to the land disputes and the much wider discrepancies between these reports and the accounts of local NGOs and journalists, the Forest Peoples Programme, in communication with Indonesian civil society groups and affected communities, decided that an independent investigation should be carried out. This was communicated to Wilmar and the RSPO Board. Wilmar wrote back welcoming the study and offering to help provide logistical help.

The investigation team was then formed, composed of the following:

| Name | Nationality | Expertise | Organisation |
|---|---|---|---|
| Dr. Marcus Colchester | British | Human rights, land tenure | Forest Peoples Programme |
| Patrick Anderson | Australian | Environmental justice | Forest Peoples Programme |
| Sophie Chao | French | Social anthropology | Forest Peoples Programme |
| Asep Yunan Firdaus | Indonesian | Law and community rights | HuMA |
| Fatilda Hasibuan | Indonesian | Community rights | SawitWatch |
| Mia Badib | Indonesian | Interpreter | - |

M. Yunus of CAPPA also accompanied the team to help with logistics and communications.

*Methods:*
The team elected to operate independent of Wilmar and used an interview-based approach to build up an understanding of the situation and determine the sequence of events. Wherever possible, efforts were made to corroborate allegations or claims through at least three sources. Where this was not possible, the text in the report seeks to make clear that the information

being recorded is the view or assertion of only one or two parties. Verification was also made by looking at all available documents, maps, photos and videos. Recordings were made of all meetings. A photographic record was also made.

The team spent a whole week in Jambi and travelled widely about the concession, staying in various villages and interviewing a wide range of people involved including community leaders, affected villagers, health workers, company staff and government representatives. Following the field investigation, members of the team had follow up meetings with various key parties. The schedule followed by the team is set out below.

| Date | Travel and Interviewees | Main issues addressed |
|---|---|---|
| 7 October | Arrival: meeting with CAPPA and SETARA | Logistical information |
| 8 October | SETARA presentation<br>Travel to Sungai Beruang<br>Community meeting | Outline of situation<br>People's view of their history and land conflicts |
| 9 October | Community meeting in Sungai Beruang<br>Visits to evicted groups<br>Community meeting in Sungai Beruang | Details of August events<br>Details of August events<br>Ethnic identity and land use |
| 10 October | Community meeting in Sungai Beruang<br>Travel to SAD 113<br>Community meeting with SAD 113<br>Visits to burial sites<br>Community meeting with SAD 113 | Community perspectives<br><br>History and land claims<br>Connections to land<br>Problems with negotiations |
| 11 October | Interview with health worker in Unit 22<br>Travel to Pompa Air: interviews<br>Travel to visit Mat Ukup group<br>Community meeting with Mat Ukup group<br>Travel to Bulian | Verification of wounds<br>Land, damages and compensation<br><br>Problems with *Kemitraan* scheme, demands of the community |
| 12 October | Travel to PKS<br>Meeting with Wilmar and PT AP staff | Customary rights, land issues, theft, evictions and compensation |
| 13 October | Travel to Bulian<br>Interviews with PEMDA | Legality and land issues<br>Reparations for evictions |
| 14 October | Discussion of findings with local NGOs<br>Travel back to Jakarta | Interim conclusions and possible recommendations |
| 18 October | Interview with Daemeter in Bogor | Participatory mapping and social assessment in conflict mediation |
| 21 October | Interview with CAO in Bogor | Roles and responsibilities of parties in CAO-facilitated mediation |
| 22 October | Interview with residents in Bungku | Communities' land claims in PT JM and PT MPS |

A complicating factor for the study was that several local individuals involved now face criminal charges related to the conflict in the south of the concession and these cases will go to trial in the next few weeks. In order not to prejudice these cases or criminal investigations, the team did not request interviews with the suspects, who are being held in jail in Bulian. The team also sought to avoid discussions about their presumed guilt or innocence.

*Status of this report:*
This is an independent report put together by concerned human rights and environmental NGOs that have had a long involvement in observing and studying the palm oil sector in Indonesia. It is not an official document of the RSPO and does not pretend to be a definitive account of the events recorded. It is however a faithful record of what was heard and observed during this investigation. It has been compiled in order to encourage a resolution of the conflicts in the PT AP concession in line with the Principles and Criteria of the RSPO, the Performance Standards of the IFC, national law and international human rights standards.

## People, land and culture in southern Jambi

The forested area, which is now the province of Jambi, shares, with Palembang to the south, the honour of once being the capital of the regionally dominant Srivijaya Empire that thrived between the 7th and 13th centuries.[6] Even before it was annexed to Srivijaya, Jambi was the centre of the earlier Malayu kingdom and had been a power on its own account. Remains of this Buddhist kingdom can still be viewed at Muaro Jambi. As early as the 7th century, the Malayu kingdom was recorded sending tribute to China.[7] The area later regained greater autonomy from Srivijaya and divided into a number of separate kingdoms that at various times asserted independence or fell under the authority of either Srivijaya to the south or the expanding Minangkabau kingdoms of the Sumatran highlands to the northwest. As locals still relate, the forested lowland area was shared out among several smaller trade-based coastal and riverine chiefdoms, which engaged in the regional trade in forest products, including gold, in exchange for products from India, China and other developed centres connected through the regional maritime trade.

Forest-based, Malay-speaking peoples such as the Batin Sembilan played a critical role in this regional trade, generating the wealth from the forests which the coastal chiefdoms and regional empires could trade with outside merchants. The communities we interviewed recall stories of this era in which they paid tribute to the regional chiefs and kings in resins, dyes, valuable woods and rattan.

The Batin Sembilan recount that they are so named because of their descent from nine founding brothers who established their settlements along nine named rivers in the region.[8] In those days, they recall, most communications were by river. Their ancestors established small, riverside, semi-permanent settlements and lived from shifting cultivation, hunting, fishing and from gathering forest products both for their own use and for trade. The strong historical and cultural bonds of the Batin Sembilan communities to their customary lands were combined with regular and frequent movement around these lands for economic and cultural reasons.

As Pak Roni, *kepala dusun* of Sungai Beruang, noted:

> We, the *suku anak dalam,* have always moved around the forest for our livelihoods. We move around the forest to hunt, gather, collect medicinal plants, roots, rattan and timber. We have sacred places we visit, and we have our grave sites. We move around the forest because this is our custom and our customary right, and because these are our lands to use and our forests to live from.

This economy sustained them right through until the 1980s, although by then, as road connections began to be established, they had become increasingly settled and involved in growing and tapping rubber.[9]

Although we did not have enough time to discuss in detail the Batin Sembilan's system of land tenure and inheritance, it was explained that lands are held in common by the different

[6] Ricklefs 2008; Tarling 1999; Reid 1995.
[7] Reid 2001; I Tsing 2001.
[8] And see also SETARA and Misereor 2011.
[9] Smallholder rubber in Indonesia became a globally significant part of the regional economy from the 1930s and grew up independently in competition with colonial rubber estates (Dove 2011).

peoples as collective territories – *ulayat*.[10] Within their *ulayat* territories families establish rights by farming and such properties in land are inherited equally by both men and women, who retain their properties after marriage, even if it is men who act as custodians. So, it was explained to us, women keep their lands if there is a divorce.

The village sites moved around a lot within the collective territory and are today recalled through old burial sites which can still be found within the forests (and now within the oil palm plantations).While sharing a common legend of origin, the various Batin Sembilan groups also competed for land and control of forests and defended their own territories, with force if needed. However, marriages and trade between the various forest villages was, we were told, sustained.

The Batin Sembilan shared the overall area with other peoples, notably the so-called '*Kubu*',[11] who practised less farming, were more dependent on hunting, fishing and gathering, but who also traded forest products for metals, salt and other goods that had become essential to their livelihoods. However, the Batin Sembilan do not self-identify as a nomadic people and thus differentiate themselves from the '*Kubu'*. As Pak Nurman explained:

> We live in settlements, but not with the *Kubu* people. The *Kubu* are not like us; they do not have permanent homes. They are nomads, we are not. We have houses, we have burial sites, gardens and crops. As for the *Kubu*, they move far away from their homes when someone from their community dies.

Each Batin Sembilan area had its own hierarchy of leaders and chiefs named as *depati* assisted by *manku*, while *temannggong* had overall authority over *adat* territories and looked after *ulayat* lands. Taxes were paid as tribute to the regional kings. 'We were still in the forest until the companies came.'

Under the Dutch, in line with the policy of indirect rule and the imposition of a dual system of law - with Dutch-derived law being applied to the colonials and commerce and customary law retained and regulated for the communities - the authority of the chiefs and kings continued to be recognised and tribute continued to be paid to them by the different villages. Interviewees also claimed that in the south, the Dutch had explicitly recognised an area of 25 square kilometres as their area and we were shown photocopies of faded and stained Dutch documents which show that the Dutch did recognise their authority during this period. The Dutch did not make much distinction between the hunting and gathering '*Kubu*' and the more settled but still mobile Batin Sembilan and it was during this period, according to our informants, that the Dutch began, paternalistically, to refer to both peoples to as *Anak Dalam*, 'children of the interior'.

The villagers recounted how, in the past, customary laws, referred to as *Undang Segaling Batang*, had been very strict and had required the cutting off of hands and the gouging out of eyes as punishment for certain crimes. During the Dutch era this system of customary law

[10] *Ulayat* is used more widely in Indonesia in very varied ways. It is also a term used in Indonesian law, notably the Basic Agrarian Law of 1960. As used by the Batin Sembilan the term is applied not just to farmlands but to wider forest areas that are held collectively by communities. It thus corresponds to the term *wilayah adat* – customary territory - used in many other parts of Indonesia.

[11] The term '*Kubu*' is now considered pejorative and so is held in quotes in this report. Today the people prefer to be known as *Orang Rimba* ('Jungle People'). Today they live both north and south of, but not within, the PT AP concession.

was reformed as the Dutch considered it 'against humanity' and a new code was adopted referred to as *Undang Kiling Dalam*. According to some interviewees, Islam came late to the area and there were some people during their grandparents generation who were still Buddhist and practised customary rites. Some of these customary dances, songs and ritual practices are still carried out on occasions but marriages are now celebrated in conformity with national law and Islamic traditions.

**Post-independence administration**

As recalled during community interviews, the system of social organisation and land use began to change, especially after the 1980s. Taxes were paid to state agents for land and for buildings and in 1982 the traditional system of leaders was replaced by a nation-wide uniform system of administration, although the *temanggong* continue to be honoured even if not recognised by the government.[12] Only after the definition of the area as State Forest Area did the system of land tax wane.

Another major change was that the new government no longer made any provisions to recognise customary rights in land; lands were not titled either as *ulayat* or as individual holdings. Although the forests have still not been fully gazetted, ever since the late 1970s the whole area was administered as a State Forest Area, in which, according to the way the Forestry Law was applied, the indigenous peoples' rights should give way to forestry development plans.[13] In fact a forest inventory was only carried out by the Forestry Department in 1987. This showed that there were some 4,000 hectares of shifting cultivation in the area of the PT AP concession,[14] suggesting that as many as 2,000 families were living in the concession area.[15] However, no measures were taken by the government to secure the rights of the people to their lands and livelihoods. In fact, with questionable legality as detailed below, the area had already been allocated for development as a palm oil plantation since 1986.

Instead, the approach of the regional government has been to officially classify the Batin Sembilan as *suku anak dalam* (SAD), 'tribes of children of the interior', who were assumed to be backward people in need of modernisation to bring them into the national mainstream.[16] Rather than encourage forest peoples to build up their own livelihoods based on recognition of their rights and their customary systems and uses, government policies towards SAD were designed to end their extensive systems of land use and encourage them to settle down in permanent villages and adopt 'modern' lifestyles. Their use of forest resources for subsistence and trade was thus officially discouraged.[17] During the 1980s, efforts were made by the local office of the Department of Social Affairs to resettle the people in centralised settlements, but as the people were provided with no lands, the scheme was unsuccessful.[18]

[12] The 1979 Land Administration Act, which imposed a uniform administrative structure on the whole country and occluded customary institutions, took some time to be applied throughout Indonesia.
[13] Colchester, Sirait and Wijadjo 2003.
[14] Letter issued by Badan Inventarisasi dan Tata Guna Hutan Nomor 393/VII-4/1987 (Dated 11 July 1987).
[15] The figure is only an estimate based on an average *ladang* holding of 2 hectares per family.
[16] Colchester 1986a.
[17] For detailed accounts of the comparable impacts of State policies of integration in Borneo and Sulawesi see Dove 2011 and Li 2006.
[18] We did not have time to clarify the details of the DEPSOS sedentarisation programme which was carried out in the 1980s.

Up until 1999, the whole of the area in question fell within one regency (or district – *kabupaten*), Batanghari, which was established as a district in 1948 even before Jambi became a province in 1963. In 1999, Batanghari was divided into two separate districts, Batanghari and Muaro Jambi, but the separation of powers has been slow with the bureaucracies only really being separated in 2002 and, as the local government also confirmed, there is still a lack of clarity, especially in the south, about where the boundary between the two districts lies. One consequence for the PT AP dispute has been that the while the people in the northern and western parts of the concession now look to the government in Batanghari for resolution, those in the southeast are administered by, and vote in, Muaro Jambi. To compound the confusion, the HGU is administered in Batanghari, but actually overlaps several settlements administered by Muaro Jambi.

**History of land development:**

During the 1970s, virtually the whole of the forested area of southern Jambi was handed out to various companies in the form of very large forestry concessions for the extraction of timber. Those overlapping the *ulayat* lands of the Batin Sembilan peoples now involved in the PT AP case included PT Tanjung Johor, PT Tanjung Asa, PT Bangun Desa Utama, PT Asialog and, further north west on the edges of the area in question, PT Tanjung Jati.

PT Bangun Desa Utama, the company that later became PT Asiatic Persada, belonged to the Asiatic Mas Corporation (AMC) owned by Andi Senangsyah, a Palembang resident with close family connections to the military. After PT AP was sold on to others in 2000, AMC retained a 49% share of the company. It still retains this share.

As the logging boom peaked in the 1980s, regional policy shifted towards opening up the area to plantations. On the eastern side of the area, a large Transmigration scheme was imposed, run by the para-statal company, PT Perkebunan Nusantara VI (PTPN VI), which developed the area as a Nucleus Estate and Smallholder project with Javanese transmigrants being expected to supply the workforce and get 2 ha. allocations per family for oil palm smallholdings. The project brought in large numbers of migrants many of whom have since moved away to live in other parts of the province.

According to detailed research done by local NGOs,[19] the local government made an initial offer to PT BDU to establish cocoa and oil palm plantations totalling 40,000 ha. in 1984. The idea was never confirmed but in 1986 a Land Use Permit (HGU) covering 20,000 ha. for 35 years was then issued to PT BDU. This is the concession which has since given rise to PT AP's land disputes. Later, AMC also got location permits (*ijin lokasi*) for two smaller areas to the west of the HGU for subsidiaries named as PT Jamer Tulen (3,871 ha.) and PT Maju Perkasa Sawit (3,381 ha.).

PT BDU only finally secured its forest release permit for 27,600 ha. in 1992 (see box) and it was at this time that PT BDU formally transferred the HGU to the newly formed company, PT Asiatic Persada. It was some years before the other interests of PT BDU were wound up, although at the village level people still refer to PT AP as PT BDU, which is the company name they have become familiar with. According to interviewees and concession maps that we were able to view, actual planting did not get going in a big way until later in the 1990s when expansion started in the northern part of the concession and it seems it was not until the

[19] CAPPA, SETARA, Hijau, AGRA 2011.

2000s that expansion of the oil palm areas really got going in the southern part of the concession. A report by PT TUV confirms that forest conversion and new planting is actually ongoing in the PT AP concession.[20]

According to interviewees, AMC sold 51% of its shares in PT AP, PT JT and PT MPS to the Commonwealth Development Corporation and Pacific RIM in 2000, which in turn sold its holdings to Cargill in early 2006 which sold PT AP and PT JT to the newly established Wilmar conglomerate in late 2006. PT MPS was acquired by PT AP the following year.

**The Legality of PT AP's holdings**

If the 1992 Forestry Ministerial SK is carefully scrutinised, it can be noted that the SK imposes compliance obligations on PT BDU. In the seventh dictum it is stated that should PT BDU fail to arrange their HGU within a year of the decree being issued, the land would automatically revert back to the Ministry of Forestry. The HGU was in fact issued in 1986 through a decree issued by the Minister of Home Affairs No.SK.46/HGU/DA/86 on the Issuance of HGU to PT BDU totalling 20.000 ha. in Batanghari District, followed up by the issuance of HGU certificate No.1 Tahun 1986. Thus, the legal question is: what was the basis of the decree issued by the Minister of Home Affairs listed above and the HGU certificate? The SK Menteri Kehutanan No.667/Kpts-II/1992, which should have been the basis for the issuance of the HGU, was only released six years after the HGU.

This point is further strengthened by the contents of the dictum number 1 of the SK Menteri Kehutanan No.667/Kpts-II/1992 which states that BPN is to issue a HGU title on the release of 27.675 ha. of land. There are solid reasons to argue that the Ministry of Home Affairs exceeded its authority and this would make the HGU of PT BDU null and void.

The Governor's decree,[21] on land allocation of ± 40,000 ha. for PT BDU, also imposed further stipulations which strengthen the argument that the HGU for PT BDU should be revoked. In the second dictum under number 1 it is stated that the decision to allocate land is only valid if the status of the land in forest designation maps (TGHK) is changed from limited production forest to forest that can be converted according to a letter of the Governor of Jambi, No.525.26/902/U/Bappeda, was approved by the Ministry of Forestry. It is also notable that when the Ministry of Home Affairs issued the HGU it stipulated that there were residents in the HGU whose concerns had to be resolved for the HGU to retain validity.

*Legal status of PT Jamer Tulen and PT MPS*
According to NGOs, in 2008 and 2009, Wilmar made efforts to renew the permits for PT JT and PT MPS but was unsuccessful. The local government confirmed to us that these two Wilmar subsidiaries lack HGU. Our understanding therefore it that the 7,500 ha. in these two areas have reverted to the status of being State Land and the legality of the continuing operations in the area - there are some 3,000 ha. planted - are now unclear.

Based on the chronology of the acquiring of permits listed in Annex 1, it is clear that PT BDU acquired a HGU for 20,000 ha. in 1986. Yet it was not until 1992, through the issuance of a decree,[22] that an area totalling 27,675 ha. was released by the forestry department for clearance for oil palm plantations by PT BDU. Legally, a 'business use permit' (HGU)

[20] PT TUV 2011a.
[21] Decree of the Governor of Jambi No.188.4/599 of 1985 dated 2nd of December 1985 on Land Allocation of ± 40.000 Ha for PT.BDU for an oil palm estate project.
[22] SK. Menteri Kehutanan (Ministry of Forestry) No.667/Kpts-II/1992 on the release of part of S.Bahar – S.Temindai forests located in Sarolangun Bangko District – Jambi, dated July 3rd 1992

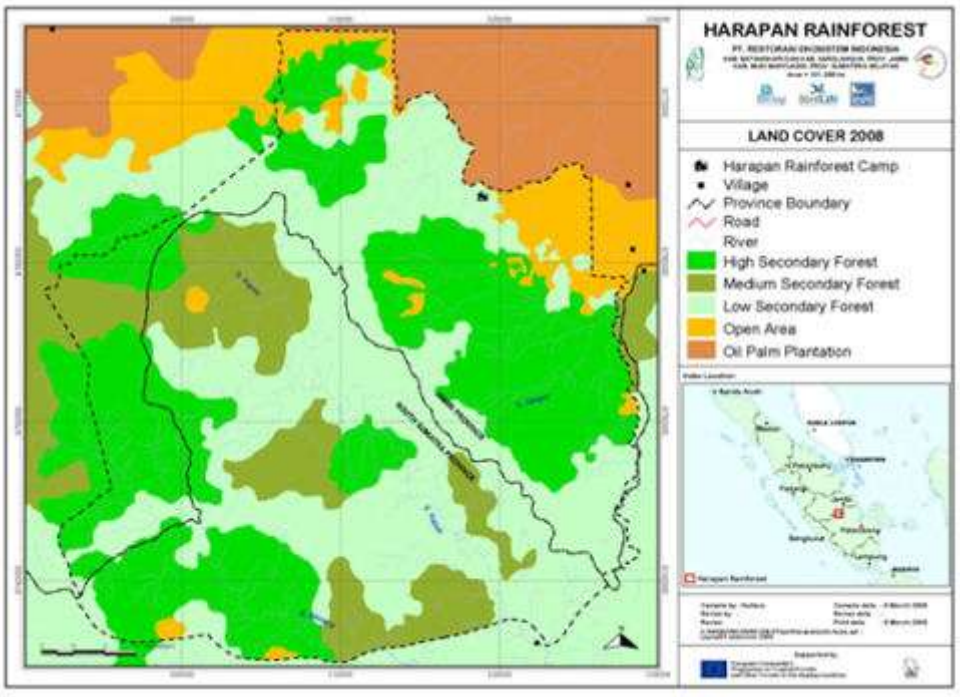
cannot be issued prior to the issuance of a forest release decree. The legal implication seems to be that since the issuance of the HGU to PT BDU is legally flawed, thus each transfer of the HGU, first to Pacific RIM, and then to Wilmar group as the majority shareholders, are also null and void. This also applies to any legal acts done by PT AP (see box above for details).

*Absence of smallholdings*

Another notable aspect of the PT AP operation is that, by contrast with the PTPN VI site to the east, PT AP's plantations were developed purely as nucleus estates with no lands at all being set aside for smallholders. Given that the Batin Sembilan communities have lost land to Transmigration to the east and more lately to a large conservation concession to the south west (PT REKI),[23] the decision to develop the plantation with no smallholdings has had major consequences for the Batin Sembilan and other people in the area and for their relationship with PT AP.

As for the neighbouring PT REKI conservation concession, this was established in the old logging concession of PT Asialog, and is now run by a consortium of Indonesian and International NGOs. Although the project has stated it wishes to work with the local people, its aims are to preserve rainforest and prevent further land clearance. Given the lack of land left for people to the north, the conservation concession does also restrict land access and pose a challenge to livelihoods.

Location of PT REKI immediately south west of the PT AP concession




[23] PT REKI is the corporation that is running the conservation project known internationally as the Harapan Rainforest Project. See http://harapanrainforest.org/

## Movements and displacement of people

As noted above, both the Batin Sembilan and the Orang Rimba (*Kubu*) peoples, have always moved around the forests within their extensive territories, although the latter were far more mobile having fewer ties to land through farming. However, the Batin Sembilan's movements have become much less voluntary with the imposition of development.

The first wave of movements which resulted from the imposition of the logging concessions could not be reconstructed by us in the limited period we were there. The main impact we discerned is that the creation of an extensive road network for the extraction of timbers, encouraged settlements to be established by the roadsides as overland communications gradually replaced riverine transport. The road network seems also to have encouraged the establishment of small-scale rubber gardens and allowed the development of local trade.

The imposition of the very extensive PTPN VI transmigration site, in the early 1980s, however, gave rise to major changes in the area. Relatively huge numbers of people, mainly from Java, were settled in the area under this state-sponsored resettlement programme.[24] PTPN VI, a para-statal organisation, implemented a so-called Nucleus Estate-Smallholder scheme (PIR) scheme, in which forests were cleared and a substantial area of land was planted as a large scale nucleus estate, while two hectare lots of oil palm were provided to the migrants as smallholdings, from which they were to sell their produce to PTPN VI's mill.

The Transmigration site was imposed without regard for the rights of the indigenous peoples, although the Batin Sembilan recall that nugatory payments were made to pay for cultivated areas and stands of rubber and fruit trees.

> We lost a lot of land to PTPN. They cleared our rubber trees and gardens. But what could we do? During the New Order we did not have many rights. There were a lot of soldiers about in those times... Yes, there was some compensation but it was not much, sometimes Rp 25,000 per hectare sometimes Rp 40,000 for a whole block of rubber. A lot of people are still traumatized but what happened, even up to now.

The Transmigration scheme which was established right along the eastern side of what was later to become the PT AP concession had the effect of cutting a huge swathe through the local Batin Sembilan's ancestral territory. The result was while some moved east to find alternative lands and livelihoods, others moved into the western part of their customary area. Transmigrants also expanded out of their schemes, something that was common during the 1980s,[25] and, according to the maps we were able to scrutinise, they occupied sizable portions of the PT AP concession area.

With so much population movement induced by imposed development and stimulated by new infrastructure, in recent decades there has inevitably been considerable mixing of peoples and identities in all the villages of the region. Intermarriages have led to many Javanese and Sundanese, and even some Banjar and Bugis, settling in the Batin Sembilan villages. By and large, the local people endorse these marriages and accept the presence of these new affines but this does not mean they have abandoned their own identities.

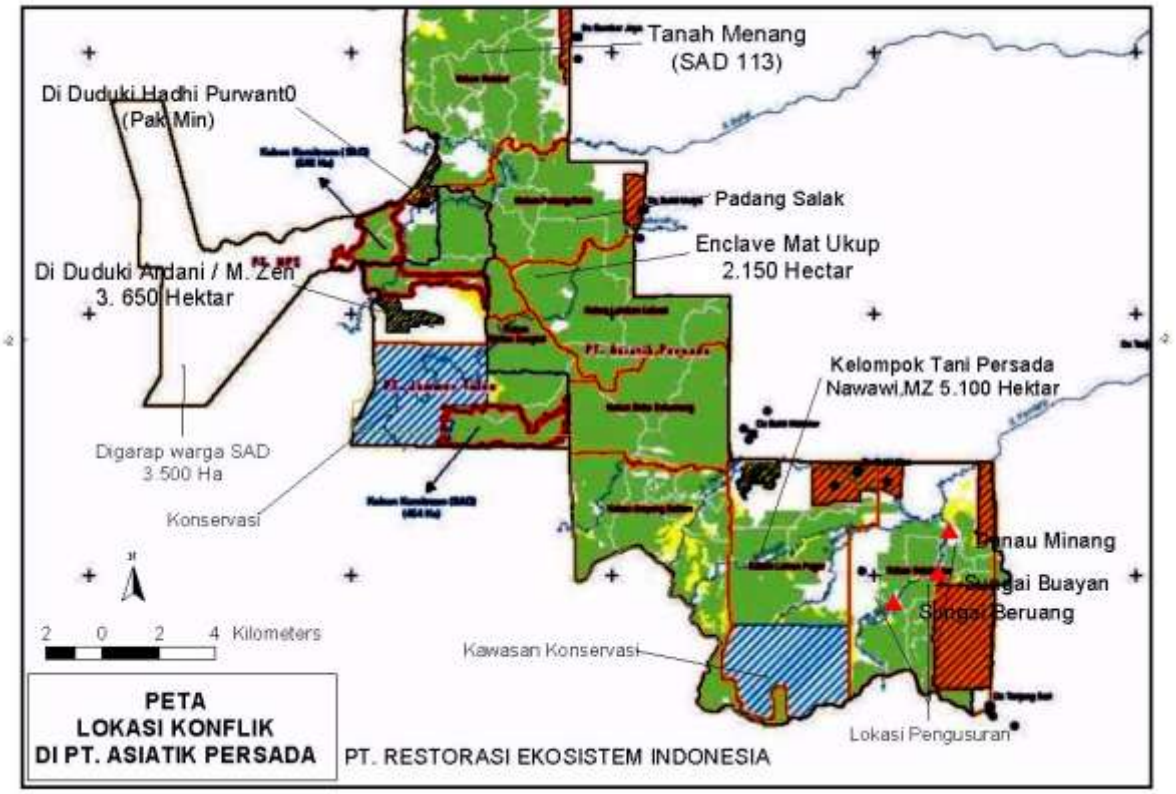
Spokespeople for PT AP that we interviewed cast doubt on whether those now claiming to be *Suku Anak Dalam* can indeed show descent from Batin Sembilan ancestors. Some can, some can't. But identity is not about blood, it is about social acceptance. As Pak Roni explained:

[24] Javanese people now make up about one third of the population of the Province.
[25] Otten 1986; Colchester 1986b.

> People who marry into our communities should be accepted as locals. They marry *Suku Anak Dalam* and so they become *Suku Anak Dalam*. How are we going to send away people who have married our daughters and have children here?

As noted above, the Batin Sembilan seem to have what anthropologist call a 'cognatic' descent and inheritance system, in which identity and land are inherited equally from father and mother.[26]

NGO Map showing PT AP concession with planted areas shown in green, intrusions by transmigrants from the PTPN VI area to the east shown in hatched orange, and the expired Ijin Lokasi of PT MPS and PT Jamer Tulen shown in white to the left. The blue hatched areas have been set aside for conservation by PT REKI. The red triangles in the south show the three sites where the evictions occurred in August 2011, which triggered this investigation.




[26] As noted later in this report, in 2010 PT AP contracted Daemeter Consulting to carry out genealogical research in some of the Batin Sembilan communities to establish (and / or challenge) the validity of their land claims. As we were not able to read this report, we cannot comment on its accuracy but it may be important to note that genealogies do not equate to social identities or systems of inheritance.

## Land conflicts and negotiations

As noted, the original allocations of the Batin Sembilan's ancestral lands in the PT AP area to private sector companies occurred during the era of President Suharto's authoritarian military regime (1966-1998),[27] when it was extremely dangerous to oppose government development plans.[28] Local opposition to the takeover of lands by PT AP was thus not overt until after the fall of Suharto when democratic principles, decentralization and a flowering of civil society organisations emboldened communities to re-assert their rights. According to what we learned from our interviews, this opposition seems to have first become overt in 2000 and it led immediately to negotiations between PT AP, then under new management by the Commonwealth Development Corporation and Pacific Rim, and the communities. The story is complex, varies from place to place, and only an outline of the salient events could be reconstructed by us in the time available. The rest of this section summarises as accurately as possible what we learned from our interviews.

*Northern part of the concession*

The community representatives that we interviewed in the northern part of the concession recall that land issues first began to be discussed by them with the government in the 1980s, at a time when the area was being exploited for timber extraction. As they recall, it was in 1983 that the Department of Forestry required that the land be reserved as a Permanent Forest Area. One year later, boundaries to the land in question were ascertained, with the signed agreement of the local communities, who themselves helped map the area of projected Permanent Forest. Pak Subuk states:

> We didn't know this land would be converted into a HGU. So we signed the agreement and helped them. We were actually tricked into mapping the concession. Pompa Air did some mapping too. The communities were told it would be to protect the forest. There had been a timber concession there before when Asialog and PT Tanjung Johor were active. But we were not told this would become an oil palm concession.

Later, after the plans for a cocoa and oil palm plantations were announced, the communities recall that PT BDU promised verbally to establish smallholdings of cocoa and oil palm trees. Later still, the community spokespeople assert, an agreement to establish smallholdings was even signed between the community known as SAD 113[29] and PT BDU (this was probably after 2000, according to our attempted reconstruction of events). At any rate, PT AP concession maps dated 2004 and 2005 do indeed show a 350 ha. partnership scheme within the HGU near the community of Johor.

Looking back on what then happened, the communities now suspect that they were tricked into allowing the development of the area. As Pak Subuk explains:

> PT BDU was being nice to us. They promised us cocoa, oil palm and *plasma* (small-holdings). We signed the KKPA. Was this their tactic to expand their land? We don't know. At the time, we already had planted fruit trees and cocoa plants on our customary lands. We trusted PT BDU. But after we had signed, PT BDU came and burned down our forests to plant their oil palm. They burned our graves at the same time. When we

[27] Simpson 2008.
[28] In 1966 hundreds of thousands of suspected communists were killed by military and anti-communist civilian militias and further hundreds of thousands of were jailed without trial (Fauzi Rachman 2011 citing Cribb 1990).
[29] The name SAD 113 was chosen by a group of 113 *suku anak dalam* who, in 2003, jointly agreed to pursue their land claim in the northern part of the concession.

> resisted, the company pointed guns in our faces. As for the KKPA, that they promised to us before planting. 1,500 ha of land had been promised us, from Pinang Tinggi to Bulit Balut, marked by signposts 650B and 649A. When PT BDU began to harvest the oil palm fruit, they took down the signposts. We had been tricked into giving up our lands.

The community members of SAD 113 place special emphasis on the destruction of their burial sites by the oil palm company, as these are one of the few ways they feel that they can prove their long term links with the ancestral lands. During our visit they thus insisted on showing us three of these sites at Jongot Kedondong, Marung Tenggah and Muaro Temidai, as well as one active graveyard at Tanah Menang.

Community meeting with the SAD 113 group

The villagers asserted that Jongok Kedondong was razed in 2003 by PT AP's bulldozers when it was still actively used. According to the community spokespersons, 159 graves were demolished. The community suspects that the company intentionally destroyed the site to expand and plant oil palm and to get rid of evidence of local communities residing there. Apart from the graves themselves, further evidence of human presence include planted fruit trees (durian, *sungai* and *nyaru*).

Marung Tengga (2 ha.) is a sacred graveyard of which only one portion remains. Although the coordinates of the burial site are in Daemeter's map, the community representatives allege that PT AP claims that this is a fabrication by the community to lay claims to land which they have never inhabited.The community reported that PT BDU's bulldozers had sunk into quicksand upon arriving at the site and had been unable to proceed with the destruction. Pak Nurman states:

> Look around, there are *rambutan* and cherry trees that our ancestors planted. Dig under the ground, and you will find the bones of our ancestors. Yet when we come here to visit the graves, we are accused of trying to steal the oil palm fruit. This site is on the land claims map that Daemeter was hired to make.

At Muaro Temidai (0.5 ha) land was cleared by PT BDU and then fully converted by PT AP in 2003 in order to build a ditch. The SAD 113 representatives claim that around fifteen fruit trees planted by SAD 113 were cut down in the process.

PT AP came under ownership of Wilmar in 2006. We asked PT AP staff what had happened to the smallholdings scheme that had been planned within the HGU. Company spokespeople informed us that as the areas selected were within the HGU, they could not be released to the community (and see below for more details about the similar situation in the southern part of the concession).[30]

The communities also complain that despite negotiations with PT AP (and see below), the company still does not respect their gravesites. As Pak Nurman noted:

> We demanded that the oil palm be cleared from here and Simon Siburat agreed to this immediately. But they are still planting the oil palm around the graves, and sometimes on the graves. This is desecration. This is an insult to our ancestors and to our brothers. The company said the graves here don't belong to SAD. No one else lives here or visits the graves; who else could they belong to?

Pak Nurman, spokesperson for SAD 113, makes his case

[30] Actually it is legally possible to excise an area from a HGU but it does require a quite lengthy administrative procedure.

Altogether, according to the community spokespersons, the SAD 113 communities lost a total of 3,614 ha. of customary lands to the HGU, the location and coordinates of which, they claim, have been mapped and accepted by the National Land Agency and the Ministry of Forestry. It is these 3,614 ha of land that SAD 113 is now claiming back, inclusive of their destroyed burial sites (over 240 ha).

*Attempted conflict mediation:*
In 2006, a consortium of concerned NGOs submitted a complaint to the International Finance Corporation's (IFC) Compliance Advisory Ombudsman (CAO) about IFC's financing of Wilmar International, providing detailed documentation showing that Wilmar was expanding its palm oil operations in violation of the IFC Performance Standards and contrary to the Principles and Criteria of the RSPO. The complaint focused on well-documented irregularities in Wilmar subsidiaries in Sambas District, West Kalimantan. The case was taken up by the CAO and affected communities in Sambas and Wilmar agreed to a CAO-mediated conflict resolution process. This relatively successful process is only now nearing finalisation.[31]

In 2008, the consortium filed a second complaint to the CAO, after IFC – ignoring NGO appeals not to do so - provided further financial support for Wilmar, even though many of the problems identified in the first complaint were still unresolved. The second complaint noted that there were serious land disputes between Wilmar subsidiaries and communities in many other parts of Indonesia, including in Sumatra, which also required resolution. The CAO agreed to take up this complaint also and subsequently got in direct contact with local NGOs that were party to the complaint. Departing from the successful procedure underway in Sambas, the CAO decided not to mediate all these disputes itself but to promote local NGOs to mediate instead. This process was then set in train in the Provinces of Riau and Jambi, with the CAO's role being limited to the provision of mentoring and to observing proceedings.

In Jambi, the local NGO SETARA, which already had a long engagement with some of the communities affected by PT AP, agreed to take on the role of mediator on behalf of the CAO. A process was endorsed by PT AP, Wilmar and two of the communities to attempt a resolution of the conflict subject to agreed procedures set out in an MoU and in a Code of Conduct. The two communities that agreed to this process were the SAD 113 group and another group a little further south led by Mat Ukup. The full details of the mediation process that ensued are not recapitulated here. The process involved: agreements by the communities on how they would be represented; the contracting of an independent party, Daemeter Consulting, to map the two communities' land claims and; a series of mediated discussions in pursuit of a settlement.

While the communities' demands were for land settlements and smallholdings within the 20,000 ha. concession area (HGU), the company resisted such, instead offering to establish a 1000 ha. joint venture with community members outside the HGU in the areas of the expired *ijin lokasi* of PT Jamer Tulen and PT Maju Perkasa Sawit. Although progress was made in mapping the land claims of the two communities, agreements to settle the dispute were deadlocked. Both communities demanded lands within the HGU, while the company offered a joint venture outside.

[31] The conflict resolution process in West Kalimantan with Senujuh village is now considered by the CAO to be resolved. The CAO also expects that the dispute with Sajinang Kecil hamlet will be resolved in 2013, when Wilmar hands over an agreed area of smallholdings to the community.

The lack of respect for community land rights evokes strong feelings

Parties interviewed have very different views about what then transpired and led to the breakdown of this mediation process. What is incontrovertible is that there was a breakdown of trust. It is alleged that the company began negotiations with the communities outside the mediation process. It is also the case that Daemeter Consulting declined to share maps and related documents with the mediator without the agreement of the company and also that the communities sent a letter to the mediator revoking her 'power of attorney'. The mediator resigned from her role citing the lack of collaboration in sharing documents as the principle cause.

In our interviews with PT AP we established further that PT AP had, independently of the mediation process, contracted Daemeter Consulting to carry out a social assessment aimed at establishing the legitimacy of the communities' land claims. This report was never shared with the communities and those we interviewed did not even know that such an assessment had been made (see box 'The Role of Daemeter Consulting'). The company also explained

that it had chosen not to agree to the release of the maps on the grounds that it was concerned that they would be misused by the communities to show the extent of the lands they owned when according to the company they only showed the extent of the lands they claimed.

Pak Wilton from Wilmar stated that the company had met the communities' demands and that Daemeter had shared electronic copies of the maps with the communities and the mediator:

> They wanted a map so we made a map. We showed Daemeter's report to the SAD. You can't say we broke our promises.

However, Pak Wilton explained that the map could not be given out freely because it could then:

> ...be used as propaganda to own everything. We don't want the map to be misused. We don't want it distributed. We don't have the map either. This map is for negotiation, not for provocation.

Community interviewees were unhappy about the way the map was withheld from them:

> We signed that map.[32] But we are not told anything about where it is, what has happened to it. PT AP will not give it to us. PT AP suggested Daemeter should do the mapping, but their map was only ever used in negotiations, and never taken out after. Pak Wilton told us he does not recognise the findings of Daemeter; we don't understand. Now, they want to re-measure the area. We are being played around with, and the return of our rights to the land is being delayed on purpose.

We had a long discussion with the SAD 113 group about the company's offer of the joint venture scheme and why they had rejected it. One major reason cited was the internal differentiation of SAD groups in terms of their association with certain lands for historical and cultural reasons. Pak Nurman explains:

> The company talks only of the 1,000 ha., nothing else, even though we have appealed against it many, many times. PT AP thinks that the 1,000 ha. will resolve all the different land conflicts. But the land conflicts are different because the communities involved are different. The company knows that. We have customarily lived in different areas; our demands are not the same. For example, there are three places alongside the river; Padang Salak, Pinang Tinggi and Tanah Minang. We don't want to be in the 1,000 ha with them; we are not the same community.

The *kemitraan* scheme proposed by PT AP is seen as disadvantageous by the communities, as they cannot manage the land or use it the way they want to. Rather than a solution, the *kemitraan* scheme is perceived as an insult:

> We don't want money; we want rights to our land and our own livelihoods. What the *kemitraan* implies is the opposite of upholding our rights and honour. We have lost our personal dignity in over a decade of oppression; this offer can only continue to worsen our situation. We don't want *kemitraan*. We want our legacy. We want our dignity back and so, God willing, we will see this happen.

[32] We have not seen any copy of the map signed by the local communities.

The majority of SAD 113 members have thus rejected the *kemitraan* scheme and are claiming back the 3,640 ha. of land taken from them since the inception of the oil palm concession. While they are prepared to incur debts on land improvement, they will not accept a share in the 1,000 ha of *kemitraan* land further west.

During the interview with the team, PT AP staff questioned the legitimacy of the land claims of the SAD 113 group and they asserted that the unreleased report from Daemeter Consulting shows that while the Mat Ukup group could demonstrate deep genealogies, the SAD 113 group could not and they were not *Suku Anak Dalam* (SAD).[33] For their part the SAD 113 group continue to demand the return of their lands and have refused to participate in the joint venture.

The investigative team after their interviews, with PT AP and Wilmar staff

On the other hand, when we interviewed them, PT AP staff members claimed that SAD do not have rights to land as they move around from place to place. Pak Syafei stated:

> SAD are nomads, they keep moving around. So do they really have any rights? We don't know how much land they use or how many they are. And because they are nomads, they can't really be represented either.

From PT AP's point of view, *Kemitraan* is a just and fair form of compensation and source of livelihood for people who are 'thieving nomads'. As PT AP staff stated to us:

> They are nomads, so their rights to land are fully questionable. (Pak Syafei)
> They are thieves, and their leaders are coordinators of thieves. (Pak Wilton)

[33] The team has not been able to examine this report of Daemeter Consulting although it was shown to us during the interviews (and see box on the role of Daemeter Consulting).

The company personnel interviewed insisted that the current *kemitraan* scheme that they are offering is the sole form of compensation they can consider. We were told that no alternatives are considered necessary by the company:

> If they continue to steal, we will send them all to the police, and we will force *kemitraan* onto them. (Pak Wilton)

> We offered it as compensation, they said no. We cannot do more than we have done. They claim the land is theirs, but in fact, it is planted with oil palm, so it is ours. (Pak Syafei)

In the interview, PT AP staff also questioned whether the livelihoods of the SAD communities were the concern of the company in the first place, stating that the majority of them were not local to the area, nor "verified SAD":

> More and more people just kept coming into the Riparian Zone of our concession. These people started coming in from 2002 onwards. Most of them are not SAD, but people from other areas, such as Sumatra, Java and Palembang. They set up their camps in our estate and prevented the company staff from accessing the plantation. (Pak Joko)

**The Role of Daemeter Consulting**[34]

Daemeter Consulting was initially contracted by PT AP in 2009 to prepare HCV assessments and social impact assessments of the whole of the PT AP concession, and neighbouring areas affected by or affecting the PT AP concession. These were conducted in 2009 and 2010. For the social aspects of the HCV assessment, inter village meetings were held, and based on those meetings, field interviews were conducted. The social impact assessment finished in May 2010.

In 2010, Daemeter was invited to be an observer in the negotiations between SAD communities (SAD 113 and Mat Ukup) and PT AP, mediated by SETARA on behalf of the CAO. PT AP contracted Daemeter to observe the negotiations, which at that point had been going on for a year. Daemeter also signed onto the MoU and Code of Conduct agreed by all for the mediation process.

As agreed by both the communities and the company, Daemeter was then contracted to undertake participatory mapping of community land claims in the area of PT AP's concession overlapping with the communities of Mat Ukup and SAD 113. During the field surveys to compile maps of community lands, only lower level staff from PT AP participated. Daementer staff, Aisyah Sileuw said that she believed that this was the reason that in the end, PT AP did not sign off on the map that was produced. According to Aisyah, neither the communities (SAD 113 and Mat Ukup) nor the company signed the maps that were produced.[35]

Daemeter signed the original map that was produced, to confirm that it was a correct representation of the field information that had been gathered, showing where community graveyards, former gardens and former village sites were located. According to Aisyah, all parties, including the mediator, SETARA, were sent a CD and paper copy of the map. All parties, including SETARA, asked Daemeter for the original of the map which Aisyah had signed. Due to Daemeter's belief that neither communities nor company had signed off on the original map, Daemeter stated that it did not think it was appropriate to send the original map to any of the parties, and so retains the signed map at its office.

[34] Based on an interview with Aisyah Sileuw and Philip Wells, Daemeter Consulting conducted by Patrick Anderson at Daemeter office in Bogor, 18th October 2011.
[35] Interviewees in SAD 113 claim they did sign off on the map, however (see above).

On several occasions in the first half of 2011, the mediator asked Aisyah to come to Jambi to explain to the negotiating parties about the process of the map-making, and the role of Daemeter in making the maps, conducting social impact assessments, and conducting an update on the lineage verification. Due to conflicting schedules, Aisyah was unable to visit and she assumed that there was no longer a need for her to travel to Jambi to brief the parties. For SETARA, however, this is an outstanding and unresolved issue.

When Daemeter realised that the map showing community land claims was not agreed to by the parties, Daemeter decided to make an assessment of family lineages of the two SAD communities. Under contract to PT AP, Daemeter conducted the study to update the results from a verification survey which had been produced by the company and the communities a year previously. This initial verification survey had listed the families and their ancestory for SAD 113 and Mat Ukup. In its report, Daemeter had written that, based on their analysis of the extended families and ancestors of SAD 113, "there may or may not be invalid claims."

In the interview, it was noted that PT AP had shown the report the team during the investigation team's visit to the company office, and the company had claimed that this showed that the land claims of SAD 113 were invalid. The company was not willing to provide us with a copy of the report, and was not willing to share the report with the communities, because, the company claimed, it would be used by the communities for propaganda. Daemeter staff, Aisyah and Philip Wells were surprised to hear that the company was using the report in this way, and did not think the Daemeter report justified the company's assertion that the report showed that SAD 113 have no rights in land. Daemeter said that they thought that the community should have access to the report, but due to their confidentiality agreement with the company, Daemeter could not provide the report to the community directly.

Unlike for HCV studies, no public consultation was held to brief the communities on the results of the study into family lineages.

> We value transparency and encourage companies to make assessments publicly accessible. There is nothing in the reports that Daemeter made for PT AP that could not be made public. We suggested to the company to make the reports available to the communities. We cannot make the report available to the communities due to a confidentiality agreement with the company.

*The Kemitraan scheme: the Mat Ukup group and SAD 113*

The so-called Mat Ukup group is reportedly composed of some 104 families from four small settlements, located in the northern part of the PT AP oil palm concession. Their leader, Mat Ukup, who is recently deceased, was also involved in the SETARA-mediated process with PT AP. As recounted to us by Mat Ukup's son, Pak Acil, the original demands of Mat Ukup's group were for: the return of their rights to their customary land, free of conflict; a map of the extent of their customary land and; to engage in negotiation to resolve the land conflict. Based on the participatory land claim map made with the assistance of Daemeter Consulting, the Mat Ukup group claims that it owns 2,063 ha. of customary land within the HGU.

However, as noted above, while the conflict mediation process was breaking down, the company and the local government attempted to jointly broker an agreement with the communities to join a *kemitraan* joint venture scheme.[36] The offer that was outlined was that

[36] *Kemitraan* means partnership. Unlike earlier *inti-plasma* and KKPA schemes in which farmers are (eventually) allocated land titles to smallholding to look after themselves, under *kemitraan* schemes State lands under 35 year plantation leases are managed as a joint venture by the company, and community members are treated as shareholders entitled to a share of the profits. In the case of the 1,000 hectare scheme offered to

instead of being offered land within the concession the government would help the communities organise as a cooperative which would be allocated 1000 ha. HGU on (State land in the area of the expired) PT JT and PT MPS areas. Under the proposal, community members could join the scheme as shareholders, not as landowners. The company, PT AP, would manage the area on behalf of the cooperative and profits would be shared 50/50 between the company and the cooperative. Interviewees mentioned that substantial sums of money were promised without their having to actually work to get it.

The results of the participatory mapping by Daemeter Consulting of community land claims

According to interviewees, the majority of the SAD 113 group did not agree to the proposal. However the majority of the Mat Ukup group acceded.

According to Pak Nurman of SAD 113, at a meeting between PT AP, local government officials, Mat Ukup and SAD 113, the local government reportedly advised the communities to go along with the *Kemitraan* scheme as they would have no other opportunity in the future. As noted above, PT AP confirmed to us that this was the only offer they could make.

In the view of Pak Nurman, as expressed to us in the community meeting:

> There was no Free, Prior and Informed Consent for us in the meeting. The eight RSPO criteria were not even discussed. Does the company even know what FPIC means? Does Pak Wilton understand the standards? We were not free to choose between alternatives. We were not fully informed about the contract terms; those who have accepted the scheme are realising this now. Many of them have returned to their villages as a result.

communities affected by PT AP, no allocation of lands for smallholdings, housing or home gardens has been made.

In 2010, Mat Ukup accepted the *Kemitraan* scheme under the advice of the local government (PEMDA) on the understanding that there would be no ensuing land problems. Over a decade of conflict with the company had encouraged them to go along with the scheme as a means of getting a resolution.

A contract was therefore signed with the cooperative on behalf of Mat Ukup's SAD community members, in the presence of the Regent, company representatives, and the treasurer (at the time Pak Acil), secretary and the chair of the cooperative. However, because the agreement had been brokered outside of the process agreed for the conflict-resolution being mediated by SETARA on behalf of the CAO, both the CAO and SawitWatch, which were observing the mediation, declined to sign the agreement. Pak Acil stated to us:

> There were many important people there, so we thought it was a fair process. But they didn't read out the MoU; we didn't really know what was in it. We relied on their word; we trusted their word. We just thought we would be safe. We thought it could be peaceful there. One year on, things are not peaceful at all. We have been completely cheated.

According to Pak Acil, there has been no improvement or progress in their situation. The *Kemitraan* is outside the HGU whereas he asserts the community had been told verbally that it would be located within it. Mat Ukup had made it clear from the start that they would only be willing to relocate if the 1,000 ha. were free of conflict. Yet conflict has not only persisted but has been aggravated, as the *Kemitraan* land is already claimed by people in the community of Bungku (and see below).

Community meeting with Pak Acil of the Mat Ukup group

There were other aspects of the contract that were apparently not clear to the community members until after it was signed. Pak Acil stated to us:

> We thought we would manage this land. We are ready to take a loan from the company to do that. We were promised two hectares per family; we have only received one. At the

> time, 771 people in 4 villages were signed onto the scheme. But now, there are far more than those listed. There may be around 1,000 people involved. The government has blanketed all SAD into this contract. The amount of land is limited to 1,000 ha, so who knows how little we will end up receiving if this continues.
>
> We were also promised verbally that we could manage the land as smallholders. But then PT AP didn't let us manage it ourselves. This is not a good deal for us. We are supposed to receive 50% of the profit but we don't know how much is being harvested from our land.
>
> We also later found out that we have to contribute to maintenance, harvesting, transportation and security management fees for PT AP, all of which is deducted from our income. What is left is halved and we receive one half while PT AP receives the other. Now, we realise that the company is manipulating our situation to get more land for their plantations, and we are the ones paying for it. If we had known this, we would never have agreed to the *Kemitraan*. Never again will we be tricked like this. It's all lies.

Community members also complained that PT AP was not fulfilling its part of the contract. PT AP had verbally promised the participants up to 800,000 Rp./month, to be paid every third week; the interviewees claim that they are receiving 200,000 Rp. each month, and sometimes every three months. Contrary to what is stipulated in the contract, according to the interviewees, no receipts or written records of these payments are given to the community members, nor are receipts given upon their monthly repayment of the debt. Furthermore, the community members report never having received any information or updates regarding maintenance and finance from PT AP, as also stipulated in the contract. Nor have they been shown proof that their repayments have been transferred to the bank. Unlike PT AP, the community does not have a direct relationship with the bank to which the monthly debt repayments are transferred. Of greatest concern is the fact that the SAD of Mat Ukup do not know how much of the loan they have paid off. Pak Acil stated to us:

> The cooperative took out 28 million rupiah per hectare as a loan from Mandiri Bank. We don't know how much we have paid already. We get no receipts from the company; we just sign. There is no time frame for this contract; we don't know when the deal will expire, because we don't know when our debt will be fully repaid. We pay taxes too; but we don't know if we are paying more or less, because we don't know how much land we have. We don't know who owns what, or where our portion of land is. I couldn't tell you where my land is within the *Kemitraan*. We know nothing. Every month, we pay off something and we ask the company where our land is? We have complained to them many times about the lack of transparency. We have been lied to, and we are being ignored in our complaints. The *Kemitraan* deal is a lie; no conflicts have been resolved here.

On 30th September 2011, Pak Acil resigned as treasurer of the cooperative. His letter of resignation lists the reasons as:

- The community of Mat Ukup has been lied to about compensation for the customary lands they have lost to PT AP
- The *Kemitraan* contract is not in line with the Regent's Decree
- MPS and Jamer Tulen are already riven with problems

- Acil requests that PT AP return the customary lands of the SAD of Mat Ukup, of a total area of 2,150 ha, as identified and verified for the 104 heads of families (508) people of the community.[37]

In our interview with PT AP staff, we also questioned the legal validity of the contract signed with Mat Ukup, noting that the contract with the community actually predates the legal establishment of the cooperative that they were signing on to. This led to a surprising response. In the interview with us, PT AP staff stated:

> Take us to court, we don't care; they don't have a legal identity, so we'll take them to court for fraud. These people understand only the law of the jungle. (Pak Wilton)

Indeed it appears that from point of view of PT AP's staff, the rejection of the *kemitraan* scheme by some communities and individuals testifies to the fact that they are not SAD. As stated by Pak Wilton in our interview:

> They don't want *Kemitraan* because they know they won't get any, because they are not even SAD. They can't be SAD; otherwise, of course, they would take the *kemitraan.* They keep saying they want their lands back. Most of them are not SAD, I can guarantee that. I would say there are only 5 to 10 real SAD in Sungai Beruang. Pak Roni is definitely not SAD.[38] These people's claims to being SAD is a mask they use to hide what they are really up to; stealing the oil palm fruit from us. That is their real target.

*Is the Kemitraan scheme compensation?*

Under the *Kemitraan* scheme entered into by PT AP and those SAD who have agreed to it, the land for the scheme is provided by the State within the expired *Ijin Lokasi* of PT JT and PT MPS. The capital investment is provided by Bank Mandiri, is guaranteed by PT AP, and is repaid at interest by the SAD out of their 50% share of the profits. The SAD also repay all the overhead costs incurred by PT AP for the management, operation and maintenance of the scheme. The other half of the net profits are taken by PT AP. Both parties are expected to pay taxes on their net profits.

In effect, and assuming the scheme is successful, PT AP not only incurs no costs – either in lands, technical assistance, interest payments or capital – but actually makes a significant profit. It is the State, through providing lands to the SAD that is making some compensation for the lands that the SAD have given up in PT AP's HGU, while PT AP itself avoids paying any compensation.

However, PT AP does consider the *Kemitraan* scheme to be compensation. Pak Wilton stated to us:

> We're already being very generous; do you know how much 1,000 ha costs? It's a lot of money. There are also taxes to pay the Regent for that land and the oil palm planted on it. Do you think many companies would do this for local people? It's already a lot. If they want it, they are welcome to register. But these people don't even want it.

[37] Letter from Pak Acil of 30th September 2011.
[38] Pak Roni founded and is head of the SAD Alliance and is *kepala dusun* of Sungai Beruang.

## Legality of the *Kemitraan* scheme

Based on the agreements between PT. Asiatic and Koperasi Sanak Mandiri on the Kemitraan Scheme dated 24 June 2010, and reading the Regent's Regulation No. 12 of 2010 on Handing Over and Management of Oil Palm Estates as compensation from PT. Asiatic Persada to Suku Anak Dalam (SAD) who once resided and or owned lands in Desa Bungku Kecamatan Bajubang Kabupaten Batang Hari, and the Batanghari Regent's Decree Number 292 of 2011 on Establishing a Batanghari District Estate Development Guidance Team (TP3K), a number of legal questions should be raised.

*The capacity of the parties*
In regard to the capacity of the three people representing Koperasi Sanak Mandiri, Hendriyanto (Chair of the Koperasi), Muhamad Adam (Secretary of the Koperasi) and Acil Saputra (Treasurer) in regard to the decision made during the meeting of the Koperasi members on the 2nd of June 2010, where on that day the formal document establishing the Koperasi was made before Public Notary Chintia Untari and dated 2nd June 2010, and Koperasi Sanak Mandiri was made official by the Minister of Cooperatives and SME of the Republic of Indonesia was issued on the 17th June 2010, under No.231/GUB.DISKOP.UMKM/JUNI/2010, thus the capacity of the three people representing the Koperasi is not yet sufficient to sign the kemitraan agreement. Koperasi Sanak Mandiri was only validated by the Minister on the 17th June while the meeting of Koperasi members was already held on the 2nd June 2010. Thus, when signing the agreement, the Koperasi did not yet have legal status. Therefore, the signatures were not valid.
According to Cooperative Law No. 25 of 1992:

> Article 9:
> Cooperatives have to receive legal status after their establishment document has been validated by the Government.

A legal consequence of one of the parties to the agreement not possessing the capacity or proficiency to sign is that the agreement is not binding, as stated in Article 1320 of the Civil Code on requirements to validate an agreement.

When interviewing Pak Acil, one of the Koperasi caretakers on the 11th of October at his house, located within the PT AP estates, the question was posed to him whether he understood the contents of the agreement and its consequences. Pak Acil answered that he did not understand, his reason being that the government of Batanghari and the company had arranged everything.

In the *Kemitraan* agreement in the opening provisions, it states that that the oil palm estate handed over to the first party the Koperasi consists of 1000 ha. of land handed over by PT. Jamer Tulen and PT. Maju Perkasa Sawit to PT. AP, who respectively have documents which hand over land, notarised by Robert Purba SH. These documents are numbered 14 and 15 respectively, dated 10th February 2010. The land is located in Desa Bungku Kecamatan Bajubang Kabupaten Batang Hari.

In regard to the object in the agreement (the land). It must be clear, if the object in question is land, the aforementioned land cannot be under dispute or under the occupation of a third party.

Based on the agreement, the object is land in Mentilingan, consisting of 546 hectares and 454 hectares in Durian Dangkal. However, based on interviews with Pak Acil, attended by a number of Mat Ukup group members on the 11th October, we heard that the land was not empty and free of conflict, because there were already many third parties occupying that land. According to Pak Acil, that was in violation of what was initially agreed verbally (prior to the formal agreement) when Mat Ukup's group were told they would receive empty lands.

Another discrepancy is that, in the provisions regarding conflict resolution in Article 14 paragraph 4, it is stated that if the parties could not reach consensus, then the conflict would be resolved by the TP3K team. However, this team was not yet established when the agreement was signed and in fact was only established on the 13th May 2011, under the Regent's Decree Number 292 of 2011.

*Pompa Air*

The team also interviewed a mixed community of transmigrants and *Suju Anak Dalam* at Bukit Terawang, Pompa Air. The interviews were conducted at a protest camp which had been established in early October 2011 to demand that PT AP recognise their rights in land and compensate them for destroying their gardens. Pak Arjai stated to us:

> I arrived here in 1995 as a transmigrant from East Java. I purchased four hectares of land from a member of the SAD Pompa Air, in 2001 for 6 million Rupiah, which at the time was a big investment for a transmigrant. My purchase was recorded by the village head, and I received a letter from the village admistration acknowledging my purchase (*surat jual beli*).
>
> I established oil palm on my four hectares, but in 2006 or 2007, my garden was destroyed by PT Asiatic Prasada, using heavy equipment. I received no warning that my trees and hut were to be destroyed; they were standing in the morning, but in the afternoon when I returned, all was destroyed. Company staff, Pak Sabidi and Pak Basar, came to my house and offered me compensation. I received 15 million Rupiah in compensation, and the company took my letter of purchase (*surat jual beli*). I have no receipt or record of the compensation. The company has my documents. I am protesting because my garden was destroyed without my agreement, and the amount of compensation is not adequate.

Protest camp at Pompa Air

Continued Pak Arjai:

> My palm trees were fruiting, and bringing me income when they were destroyed. Lots of people had their gardens destroyed by the company in 2006/07, including members of SAD from Pompa Air.
>
> We are demanding that the boundaries of our lands and the concession of PT Asiatic Persada be defined first. Our lands are not part of the company concession.

Pak Widodo was another transmigrant who had bought land from a Suku Anak Dalam, Mat Jani Bin Matkasir, in 1997, for 5 million Rupiah. The land had not been planted but was still

being prepared by him, when in 2006-2007 the whole area was 'flattened' by PT. AP without prior consultation or notification. He said he had received no compensation at all although there had been promises made that things would be settled. However, to date, Pak Widodo had neither receive any land or compensation by PT AP. Like Pak Arjai, Pak Widodo was demanding that his land be returned. He stated that there 160 households many of them transmigrants who were in the same situation.

Another interviewee was Pak Mat Kari. He told us:

> I was born in 1957 in this area, Sungai Tenguludang. I am *Suku Anak Dalam*. My mother's name was Siti Ria, she was born in this forest. My grandfather was called Lisman, and my grandmother's name was Soya. My grandfather received an official letter from the Dutch authorities in 1921, acknowledging that his gardens in this area covered 15 *bidang*, which is about 35 hectares. [Pak Mat Kari provided us with a photo copy of this letter]. His farm had durian, honey trees, and other fruit trees. I inherited this farm from him. My garden, covering these lands, was cleared by PT AP in 1995. Pak Jubairin, the subordinate of Pak Semeron from Asiatic, accompanied me to my land, after it had been destroyed by the company, and offered me compensation. I accepted it, as I had no choice. But I am protesting now, as the amount of compensation was not enough. I was only provided with 13.5 million Rupiah, for the loss of 27 hectares of land.
>
> I heard about the offer of the company to form a cooperative for us, and that we can each receive shares in land. But I don't want this, and I didn't join. I wasn't invited directly, but I heard about the negotiations. I didn't know that there had been a mapping process, to map everyone's land.
>
> Our protest here started on 3rd October 2001. Pak Tan from PT Asiatic came here and took our message back to the company. We are asking for a clear schedule for resolving the land conflict with the company. As a first step, we need to define together the boundaries of the company's HGU and our lands that are not part of the HGU.

The demands of the community of Pompa Air (both SAD and transmigrants) as expressed in their protest which started on 3 October 2011, are as follows:

1. Excise lands to which people have rights from the HGU
2. Delineate the boundary between the HGU and community lands
3. PT AP must pay compensation transparently [to those who suffered losses]
4. PT AP must return the land outside its HGU to the community members who have been evicted from there.

*Southern part of the concession*

The southern part of the PT AP concession has been developed as a plantation more recently and indeed clearance and expansion is still underway in this part of the estate. The people in this area are also from one (or more) different ethnic groups. Some of those who claim to be Batin Sembilan say they are from the Batin Bahar sub-group. The head of the Sungai Beruang hamlet said that the southern area was their *ulayat* lands and in the community meeting it was recounted that their traditional territory used to extend right down to the border with South Sumatra. Much of this area now falls in the PT REKI conservation concession. Other community members we interviewed also expressed strong emotions about their lands:

> This is our ancestral legacy, we will defend it until we die. But we will not give it to the company. If we do, where will we live? So, we will always hang on to it.

Community members in discussions with the team in Sungai Beruang

When the HGU was first issued to PT BDU in 1986, the communities in the south were not consulted.

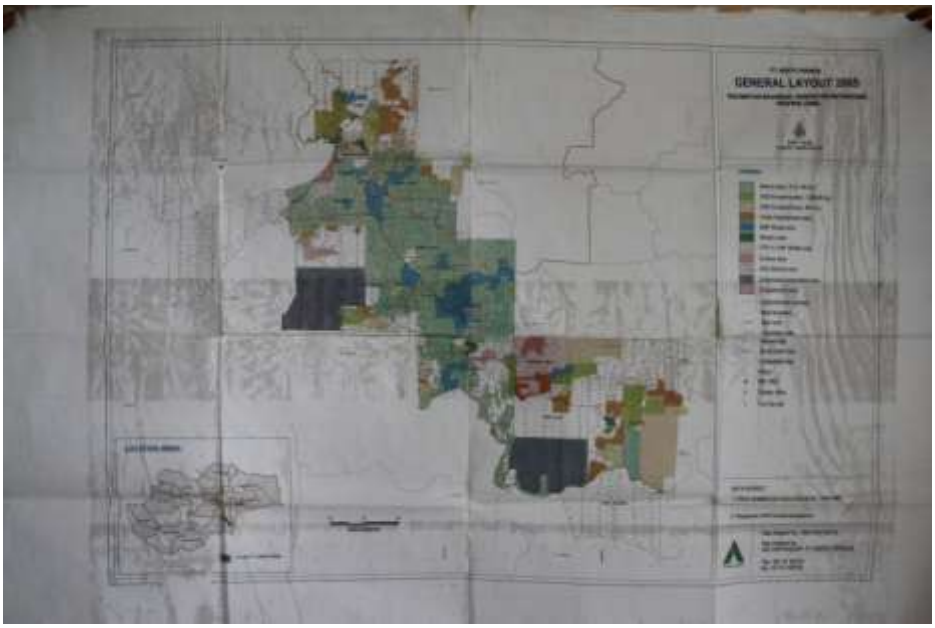
> We were never involved when the HGU was decided. We should have been but we were not. That is why there is conflict. If they had talked to us we would have limited their area. What they are now offering is very small compared to our original territory which was very wide... but we are now negotiating based on what has been offered. We are not trying to get back our whole area. We would have to go to war to get that but we are not.

Community members in Sungai Beruang recall that they have been discussing compensation for their lands for at least 11 years.

> We have been demanding our customary rights since 2000. These are the lands of our ancestors yet we were not informed when they opened them up for plantations on our lands.

> We have been in this area for over a century and now they have our *ulayat* lands. All of them are now in the HGU, so that's why there is conflict...We've been in conflict since 2000 over our *ulayat* lands and now we have lost our livelihoods and our ability to seek our own livelihoods. We used to seek our livelihood in the forest but the forests have now been cleared. We are still unclear about the boundaries but all our *ulayat* lands are gone. The burial sites of our ancestors are also in the HGU. Our *ulayat* lands were over 3,000 hectares, they all belonged to us, but now they are gone and we have nothing while 1,100 hectares has been set aside for conservation on the edge of our land near PT REKI. If you really want to help us resolve this issue, then get them to deliver what they promise.

The promise referred to is the resolution they thought they had reached some years ago. They began to organise as a farming group in 2002 and held discussions with the government which issued a sketch map showing about 1,500 ha as community lands (photo of map).




The PT AP General Layout Map of 2005 clearly shows areas allocated to smallholdings

During the period when PT AP was owned by CDC and Pacific Rim, the company then identified some 640 hectares of land in the southern part of the concession that it would make available to local communities as smallholdings. The area is clearly marked on the 2004 and 2005 land use maps of that era (photos). Community interviewees say that it was also around this time that PT AP agreed to enclave a small burial site, where important ancestors were buried (photos from Yunus).

However, after the company was taken over by Wilmar in 2006, it seems that this scheme was dropped. The local people expressed anger about this. 'They are just toying with us and this is unacceptable' said one. 'They put it in our name and then they turn it into *inti* (nucleus estate)' said another. PT AP explained to us that the compensation area was in the HGU and had in any c**a**se been largely taken over by settlers and so could not be made available as smallholdings.

According to those interviewed in the community meeting in Sungai Beruang, they have repeatedly held meetings with PT AP since the company was taken over by Wilmar, although they do not know if the results of these meetings were reported to the new owners. 'We met many, many times, more than a hundred times'. In the meetings, since 2008, it was claimed, they made clear they did not want to have to move outside their customary area and that they wanted actual holdings and not just shares in a company-run scheme. However what they were offered was to participate in the 1000 ha. *kemitraan* scheme in Bungku on the lands previously held by PT JT and PT MPS (and see above for details), they rejected this scheme as it is 30 kilometres away, far to the north. As two interviewees noted:

> We don't want the *kemitraan* scheme. We are saying 'no' to that offer.
>
> It is not in the HGU, and we don't have rights there.

The interviewees referred to a meeting in the regent's office in Batanghari on 18th July 2011, when they explicitly rejected the scheme.

> ... but we said we don't want to join. Those are not our *ulayat* lands, they are the *ulayat* lands of other people and we don't want *kemitraan* because it means that until the Apocalypse it will still be managed by PT AP.[39]

The following day we heard the same explanation in more detail:

> We want to remain close to our burial grounds and our sacred sites. We abide by our customary charter, the Bokor Charter, to which we have taken a vow. If we break it, that is the end of our unity as a community since time immemorial. We don't want to be combined with other groups. The company has to treat us case by case. Each hamlet has to be able to come up with its own resolution for this to be a sustainable solution. If only PT AP and the government would listen to us. There is no one size fits all solution to our conflicts. If we all go to the 1,000 ha, there will be even more conflicts until Apocalypse day. Each community is an open wound; each wound needs to be dealt with separately.

For these communities, the *kemitraan* scheme is not seen as the solution to the land conflict but rather it might only perpetuate it. As Pak Roni stated:

> We need to be able to revive our economic activities and the basis of our livelihoods, and we need land for this. For this to happen, of course we need land. But not that land, we don't want the *kemitraan* land because it is causing even more problems. Problems are growing within our community because of it, and with the communities already living in the *kemitraan*. We will have no security, no ownership, no rights of management, and no peace, because more and more communities will fight over the same land. And we do not want conflict: we want a peaceful negotiation and resolution.

As noted above, the situation is complicated by the fact that the villages in the south of the concession are now administered as part of a newly separate regency, Muaro Jambi, which so far has not worked out how to deal with the HGU which was issued in another regency.

In their interview with the team, PT AP informed us that it has not carried out any mapping or assessment of the villages in the south of the concession area to determine the extent of the communities' claims and rights, such as it contracted Daemeter to do in the north. On the one hand, PT AP denied that the people in the south were *Suku Anak Dalam* at all, but on the other hand the company claimed that they have offered those that are SAD shares in the 1000 ha. *kemitraan* scheme being set up in the old *ijin lokasi* of PT MPS.

Asked what solution would satisfy them, the community representatives said they wanted:

- 600 hectares of small holdings
- Compensation for the homes and properties recently destroyed (see below)
- That their current residential and remnant farmlands be enclaved and excised from the HGU.

[39] We asked to see minutes of this meeting but these had not been shared with the communities.

They said that those who should be party to this resolution should be the 150 families of Sungai Beruang, the 55 families in Muara Penjeruwang who are now in the Transmigration site and the 204 families in Tanjung Lebar.

**Livelihood Conflicts:**

All the communities interviewed reported that their livelihoods are severely impoverished and restricted by PT AP's activities and control of their former customary lands. All protested against the company for not taking their livelihoods into consideration in the negotiation processes and in terms of the *kemitraan* scheme in particular.

> We are cut off from our traditional sources of income, food and natural resources, through the clearing of our forests to plant oil palm and the restriction on our movements and settlement within the HGU. Rivers run shallow and thick with mud and pollution. Fruit trees planted by the communities have been cut down. Denied the right to use the land, we cannot grow crops for subsistence. (Pak Nurman)

In SAD 113, the main source of income was from the riverine trade of rattan and resins, particular with the communities of Palembang. Nowadays, community members work as labourers and sell live snakes and vegetables. For the last decade, the 1,359 persons living in the three hamlets of SAD 113 are living off a mere 241 ha of available land. Pak Butar states:

> We are surrounded by the oil palms. We are oppressed. We don't have enough to make a livelihood; we are just surviving now. Before, no one went hungry. Now, with all this oil palm, there are no livelihoods at all....The company is planting oil palm everywhere; less than a metre from the river, which is illegal, and sometimes even right in the middle of the rivers. We cannot catch fish like we used to. PT AP lets us pick the loose fruit but we are only paid 300 Rp./kilo, which is below the minimum wage. A kilo of rice alone costs 8,500 rupiah. Is this not oppression? People need to eat. We are economically weak; we are left behind and our livelihoods have been ripped away from us.

SAD 113 community members also reported the problem of the 30 ha. of land overlapping with the HCV area within the concession, which has further restricted their use of the land for subsistence purposes. Pak Butar states:

> We didn't know about HCV in the past, but we knew how to take care of our environment. PT AP know about HCV, but they have destroyed the swamps and polluted the rivers. Daemeter agreed that we could manage the HCV as long as we didn't pollute it. We wanted to plant rubber, but PT AP refused, saying it was HCV. There are human beings to think about too; not just nature. You protect the monkeys, but what about the humans?

Community members of Sungai Beruang and particularly SAD 113[40] claim that their treatment by PT AP since over a decade reflects a serious, prolonged and unresolved violation of their rights as indigenous peoples:

> We want to present our grievances to the RSPO. The company is not taking these conflicts seriously. We have tried and tried again to make them understand our claims and the basis of our claims. Where are the RSPO standards they are supposed to be respecting? Where are the IFC standards they are supposed to abide

[40] The community of Mat Ukup said it had not been made aware of the existence or purpose of the RSPO.

> by? The World Bank must not extend further loans to this company until the land conflict is resolved.

Community members now live right in the midst of the plantation

As Pak Roni drove with the team members to Danau Minang, he described how PT Asiatic Persada had affected his own livelihood:

> I used to have 30 hectares of Durian trees over there, (adjacent to the road between Dusun 4, and Danau Minang). The company poisoned them. Now there are only stumps in amongst the oil palms. I am demanding compensation from PTAP for killing my trees. The current rate of compensation is 5 million rupiah per hectare. I have written to the company to lodge my complaint and claim for compensation, but have not received a reply.
>
> The company should have checked first with the Dusun and Desa [hamlet and village administrations] as to who lived in this area. The government made a mistake issuing permits without checking on existing rights.

*Theft of fruits:*

PT AP and Wilmar have made clear in their written statements and in our interviews with them, that they see the major cause of the conflicts in the concession to be the result of the illegal gathering and sale of both loose fruits and whole fruit bunches by local people.[41] According to PT AP, substantial areas of the southern part of the concession were being systematically pilfered by local communities and they showed us photographic evidence which, they claimed, showed that the very communities that they and BRIMOB later sought to evict (see next section) were trading in large volumes of illegally harvested fruit.

[41] Wilmar 2011a.

Apart from the trader and his family who were arrested and jailed in the incident which sparked the evictions, PT AP has been repeatedly requesting the police to make arrests of alleged fruit thieves. According to local NGOs,[42] during 2010, there were 85 arrests for fruit theft in Batanghari of which 35 were from the PT AP concession. In 2011, up to October, there had already been 135 arrests, of which 85 persons were from the PT AP area.

In our interview with them PT AP staff also claimed that the very reduced payments being received by the participants in the *kemitraan* scheme are a result of massive theft of fruits from the *kemitraan* area, thus reducing the harvests, so the profits and so the dividends. As Pak Wilton noted to us:

> Of course, if they steal, then the production per hectare will be less and they will receive less. That's normal. We told them this.

On the other hand, Pak Acil of the Mat Ukup group reported to us that the communities have never been given information by PT AP regarding monthly harvests.

> We don't know how much PT AP harvests from the 1,000 ha, so we don't know if what we are being given in cash is the right amount.

The local government interviewed in Batanghari expressed the view that the leaders of the cooperative of the *Kemitraan* scheme orchestrated the thefts.

Not surprisingly we found it hard to get the local people to talk openly about whether or not they were involved in taking fruits from areas planted by PT AP. Some interviewees in Sungai Beruang did admit that fruits were being taken 'illegally' but they insist they were taking these fruits from the contested area of 600 ha where they claim rights:

> We have claims to all the land but the most we do is take the fallen fruits. People do it because they need to eat. They are hungry so they sell it.

Other interviewees, who had been convicted of theft and who asked not be named in this report, questioned their convictions on the grounds that the company had never legally acquired their lands for the estate and that the HGU was in any case in dispute. It is notable that on 19th September 2011, after a year long consideration, the Constitutional Court of Indonesia ruled that two provisions of the 2004 Plantations Act, which criminalized residence and settlement in plantations and damage to plantation assets, are unconstitutional and therefore invalid.[43]

[42] We carried out interviews with CAPPA,Setara, Agra and Perkumpulan Hijau.

[43] The two articles which have been declared invalid are: Article 21 'Individuals are prohibited from performing any action that can result in the damage to the plantation and/or other assets, use of plantation land without any permit and/or any other actions that can disrupt the plantation activities'; and Article 47 '(1) Any individual intentionally breaking the law by performing activities leading to destruction of plantation and/or other assets, using plantation land without any permit and/or other actions that lead to the disruption of plantation activities as stated in Article 21 shall be sent to trial with the maximum parole of 5 (five) years and fined with the maximum of IDR 5,000,000,000, (2) Any individual carelessly perform activities leading to destruction of plantation and/or other assets, using plantation land without permit and/or other actions leading to the disruption of plantation activities as stated in Article 21 shall be sent to trial with the maximum parole of 2 (two) years and 6 (six) months and fined with the maximum of IDR 2,500,000,000.

## Human Rights Abuses: forced evictions and police firings

In the light of the alleged continuing thefts of fruits from their estate, in July 2011, PT AP contracted members of the local mobile police brigade (BRIMOB) from their Provincial station in Jambi to strengthen security in the concession.[44] Their presence was immediately felt by the local people in terms of increased surveillance and in mid-August they were involved in some very controversial operations against the residents in the southern part of the concession. It is these events which led to the investigation, on which this report is based, being carried out.

The events seem to have been triggered by a relatively minor incident on 8th August 2011.[45] On that day a dispute had arisen between the PT AP mill and a local person, Pak Zainal, who is married to a Suku Anak Dalam woman and is resident in the hamlet of Jembatan Sungai Beruang. It is alleged that Pak Zainal had been acting as an entrepreneur in the sale of FFB. On that day, security forces at the PT AP mill impounded his vehicle claiming it was found to carrying what they claimed were fruits stolen from PT AP's estates. Later that day, Pak Zainal remonstrated with members of the BRIMOB and in a scuffle members of his group are alleged to have taken possession of two of their weapons.[46]

The following day, 9th August 2010, BRIMOB carried out a concerted action to retrieve the weapons from Pak Zainal which led to further arguments, violence, police firings and 18 persons being arrested. Then on the day following, BRIMOB and PT AP personnel returned to the settlement with heavy machinery and proceeded to fire their weapons and destroy the people's houses. These events are detailed in the sections which follow based on our interviews with the persons affected and PT AP and Wilmar staff.

Figure 3: Location of the three settlements which experienced evictions


[44] Information from PT AP staff interviewed on 12th October 2011.
[45] Because the six persons directly involved in this incident are still in jail awaiting trial we do not here provide details of what we learned about this incident so as not to prejudice a fair hearing.
[46] TUV 2011b.

*Jembatan Sungai Beruang*

The team interviewed the remnants of the group of people who had been living near the bridge a few hundred metres from the official hamlet of Sungai Beruang. The place is known as Jembatan Sungai Beruang and is where the Zainal family had resided. According to those whom we interviewed on 9th October, this settlement had been established in the second half of 2008 and until August 10th had been occupied by some 35 families, each with its own house. The area they settled is a riparian strip that PT AP is not cultivating in compliance with environmental regulations. The people had initially been making a living by being paid by PT AP for picking up loose fruits from the surrounding estate run by PT AP. This practice was later banned after they allegedly began selling the fruits for full price to traders and other mills. According to PT AP staff, whom we interviewed on 12th Otober 2011, they had gone on from that to unauthorised harvesting of FFB to the extent that the people were actually preventing company personnel from having access to cultivation blocks.

The people note that they come from Tanjung Lebar and have close ties to Sungai Beruang hamlet. Although they have recently moved back to this area, the people claim that they are Suku Anak Dalam, do have customary rights in the area, speak their own dialect amongst themselves and belong to the Batin Sembilan people.

Interviewees told us tht when the BRIMOB came into the village on the 9th August, allegedly to recover the stolen weapons, after some altercations and a fight,[47] shots were fired by BRIMOB into the air and the majority of the people in the settlement fled into the forests or carried their children into the river. PT AP staff alleged that two police officers were injured in the scuffle that precipitated this and they showed us pictures of one BRIMOB soldier later being treated for a long cut on his thigh. Residents told us that some them also suffered injuries such as blows to the head (photographic evidence). Other testimonies show that one resident Basri bin Markus was shot in the back (photographic evidence) while crossing the creek, apparently by a ricochet or spent bullet.

According to interviewees, Basri bin Marcus initially fled to the forests with his family but the following day he sought medical treatment from a clinic in Unit 22. The team interviewed the paramedic in Unit 22, who had treated bin Markus, on 10th October. Photos shown to the team confirm what the paramedic told us that the gunshot wound in his back was perfectly round but not very deep. It was treated by the paramedic, who also took video and photographic evidence of the injury, which was shown to the investigation team. Basri bin Markus is said to have since returned to the forest and is believed to be living with his family in the PT REKI conservation concession. No persons were killed in the incident.

As we were told, some 18 persons were arrested by the police and taken to Batanghari police station, where they were detained. 12 of them were later released and returned home on 11th or 12th August. We were informed that the others were arrested and charged and are now facing trial. The villagers allege that Zainal's house was also set on fire by BRIMOB but the villagers were able to extinguish the fire (video footage viewed by the team confirms this story).

[47] This report does not seek to reconstruct the exact events surrounding the arrest of the Zainal family as their cases have yet to be heard in court.

However, we were told, the following day, BRIMOB returned to the village in the afternoon accompanied by PT AP Manager Joko Susilo (at his own admission), the southern estate manager Pak Jason (according to interviewees), a number of company workers and some heavy machinery (video footage and interviewees testimony). Both villagers and PT AP staff, interviewed independently, estimated there were about 20 BRIMOB personnel there. Villagers estimated there were also 20 PT AP personnel involved but PT AP staff when interviewed would not say how many PT AP personnel were involved. BRIMOB again fired shots into the air once again causing all the residents to flee into the forests and the rivers. 'They called us 'dogs' and 'pigs' and 'animals' and they told us to run!', several villagers recall.

> I was there but I was confused. I had one child there and my wife who was pregnant. We ran away in different directions, I was scared she would start to bleed. My son who was eight years old ran off into the forest. I did not find him again till 6 pm.

The company machine operators, who, according to the villagers, were directed by the estate managers, then proceeded to knock down the 35 houses in the settlement and bulldoze the remains of the houses into the creeks on either side of the settlement. PT AP staff declined to answer when asked who had authorised the use of company machinery for these operations, only saying that the BRIMOB were very angry. However interviewees were explicit:

> Orders were given by the managers – we could see Jason giving orders to BRIMOB and telling the operators of the excavators where to go.

People of Jembatan Sungai Beruang now live under tarpaulins provided by the Department of Social Affairs

While PT AP staff claimed to us that time was given to the residents to remove their possessions, the community members we interviewed deny this. Some villagers claimed they were beaten when they attempted to remove their properties. Handphone video footage taken

by residents at the time of the incidents, viewed by the team, seems to show company personnel looting properties both from destroyed houses and intact dwellings. Other residents viewed the on-going destruction of their village from the forests on the other sides of the creeks. 'We could see what was going on from far away', noted one woman who witnessed the events, 'we were crying looking at our homes being demolished.'

As told by the local community members we interviewed, these operations in Jembatan Sungai Beruang continued for three days until the 12th August. In the process, not only were the buildings torn down but caterpillar tractors were used to bulldoze up cement floors and foundations. The testimony of the villagers is corroborated by evidence from the site in the form of track marks in the clayey soils and the remnants of the broken up floors in the detritus lining the creek banks (photos). Some of the houses, especially those of the Zainal family, were substantial modern dwellings, while the majority were traditional wooden dwellings with planked floors and walls but with zinc sheeting for rooves. However even in the more traditional sections of the village we noted the remains of painted walls, glass windows, concrete floors in a few cases, corrugated concrete roofing, as well as substantial sawn timbers and nails. We were told that amongst the properties destroyed were: clothing, food, cooking utensils and stoves, fridges, televisions, generators, hifi systems, children's toys, one motorbike and one car. Some people said that they lost valuable documents like birth and marriage certificates. Some fruit trees were also bulldozed down, it is alleged.

According to the interviewees, the more than one hundred people evicted by this destruction fled in various directions. We were told that some fled to the local townships to the north, others to east to the town of Tanjung Lebar. A large number fled south into the conservation concession of PT REKI where, so we were told but were not able to confirm, they have been receiving assistance from the conservationists. It was also noted by interviewees that one woman had gone into labour and given birth while taking refuge in the forest.

> Some are still there in the forest. They have nothing to come home to.

Relief began to be provided by the Department of Social Affairs towards the end of August when some food and plastic tarpaulins were provided. Substantial assistance in the form of food and clothing is also being provided by local NGOs. The people that now remain are estimated at about 40 persons and are now living in tented shelters alongside the wreckage of their former homes (photos). Many of these people say they are occupied in salvaging timbers, zinc sheeting, nails and other scrap with which they hope to rebuild their lives. One woman told us they have had to sell their zinc roofing to buy rice.

Asked what should be done, the group we interviewed noted:

> We want compensation. We want everything to be replaced and we want it fast. We can't stand to live like this any more. We don't have any way of making a living. If we stay here like this we will get dengue.
>
> It is really difficult for we don't want to do anything that might get us into trouble. It is really difficult here. We are really uncomfortable as it is so insecure.

The evictions affected old and young, men, women and children alike

*Danau Minang*

Team members also visited the second settlement where there had been evictions and where seven buildings had been destroyed by PT AP machinery. When the team members arrived in the afternoon of 9th October they found no one in the tents that have been put up adjacent to the seven destroyed houses. Pak Roni from Sungai Beruang had to go ahead to look for the residents, calling out to say that he had come with friends and that there was no need to hide. They had fled on hearing the approach of our vehicle. Slowly community members emerged, about 15 people in all. We sat under the main tarpaulin that had been erected and discussed the events associated with the 16th August eviction and demolition.

Danau Minang community members in temporary dwellings after their houses were destroyed

In the interviews Pak Mahadi told the team:

> These lands belong to our ancestors. Decades ago, they planted fruit trees here, Duku, Durian, Manggis, Nangka. In 1998 or 1999, the Bupati of Batanghari came here and said, "this is a place of Suku Anak Dalam".[48]
>
> We planted root crops, bananas and vegetables here before 2002. In 2002, we started planting oil palms. In all, there are 100 hectares of lands here that we have planted. We have planted 30 ha. of this area with oil palms, and it is fruiting. We sell the fruit to transmigrant traders. We are seven families living here, about 30 people in all.
>
> In 2005, the company forced our people to leave this place. The graves of our ancestors in this area were marked with wood or stones. All have been lost, taken over by PT Asiatic Persada's oil palm plantations. If they say we are not *Suku Anak Dalam*, they are lying. We are all descended from SAD Tanjung Lebar. We have been here since our ancestors gathered forest products and planted fruit trees in this place.

According to Pak Mahadi:

> On 16th August, the moble police brigade (BRIMOB) and PT Asiatic Persada turned up here without warning. There were police with rifles and the company brought heavy machinery. The first we knew was the sounds of guns being fired. On coming out of our houses, we thought that BRIMOB were firing their guns at us, so we fled. Those who didn't leave immediately were beaten by BRIMOB. We fled into the forest, and stayed there for three nights and three days. We lived in the forest next to the river, eating rattan shoots and fish. It was very hard for the infants and children. When we returned, all of

[48] This was before the area was transferred to the jurisdiction of Muaro Jambi.

our seven houses had been completely destroyed, including our property, which we had slowly accumulated over years from working as farmers. They destroyed our food store and threw away our rice. But the transmigrants helped us, giving us rice and other provisions.

We hope that our houses can be rebuilt on this place. Our homes and gardens are here. The wet season starts in November, and it will be hard to live under tarpaulins through the wet season.

Young boy in front of his destroyed house in Danau Minang

*Sungai Buayan Ilir*

The third settlement of *Suku Anak Dalam* affected by the evictions was the settlement of Sungai Buayan Ilir which comprised some 41 family houses. In the interviews, community members told us that they have chosen Pak Bidin as their leader so they are often called the Bidin Group. The group feels it is in conflict with PT. AP since their ancestral lands were included in the HGU of PT AP. This is the land that their village currently occupies. They insist that their ancestors opened up the forest for farming there a long time ago. They point to six old Durian trees planted by their grand parents still standing in the area of the village.

In addition, they noted, they possess a Land Opening Letter (*Surat Pembukaan Lahan*), on behalf of Syawa Lajyb, the father of Bidin. The letter was issued by Dato Bujang, Head of Tanjung Lebar Village in 1983. It clearly establishes the boundaries of the village. The villagers told us that they have been struggling with PT AP to retain their rights to their lands

in the area for nine years. About two years ago, PT AP responded to their demands by measuring the community lands in Sungai Buayan Ilir. The area was found to be 157.73 ha.

They told us that PT AP has acknowledged that the ancestral land of the SAD Sungai Buayan Ilir is within its HGU. On 25th March 2011, PT AP issued a letter 023/050.80/BM/11, Concerning Settlement of Land Compensation Business, which was signed Joko Susilo, Head of Community Liaison. The letter offered compensation to the SAD Sungai Buayan Ilir at Rp. 1.25 million (about US$140) per hectare.

But on 10th and 12th August, 2011, they testified, PT AP displaced the people in the settlement Sungai Buayan Ilir without dialogue or prior notice. 'Without warning, immediately they came up with heavy equipment' said Mr. Adi, who was evicted on 10th August, at about 10 am, before the evictions in Jembatan Sungai Beruang (also known to them as Jembatan Besi (Iron Bridge)).

They recounted that as soon as BRIMOB arrived, they started shooting, scaring away the people who lived in the neighborhood, yelling 'Run, you run!', while pointing their weapons at the people fleeing.

> Everyone ran scared, trying to save themselves. None of our goods could be brought with us. Only the clothes on our bodies.

Pak Herman told us that he tried to support one of his grandmothers, who is elderly. Before the eviction, Pak Herman was taking rice from the storage pot to his grandmother. Later, Pak Herman yelled as one member of the BRIMOB shot the rice pot and destroyed it. Pak Herman said he was sad to see the broken pot, because the pot is a symbol for food, a symbol of life.

According to interviewees, that day nine houses in the place, owned by nine heads of the family, were destroyed; some were burned and some buried in the ground. 'All the contents of the houses are gone, vanished'. They told us that they do not know where are the contents of their homes, since, when the homes were being demolished, they had fled in fear of BRIMOB.

According to the community members interviewed, two days later, on 12th August 2011, PT AP and BRIMOB came again to evict the other people in the settlement of Sungai Buaian Ilir, those living about 500m from the group evicted on the 10th. They told us that around 11 am, four trucks of BRIMOB arrived, immediately firing shots and yelling at the residents to leave their houses and flee and the place. We were informed that all the villagers were pursued by BRIMOB brandishing their weapons and shouting, 'Do you want to run or not?'

Everyone ran. Some of the children were separated from parents. 'Just like in a war', Komi said when describing the eviction. Ibu Intan was cooking rice in a pot to the stove. It was shot, scattering the rice.

The people said that they did not have time to save their property. Clothing, blankets, cooking utensils, documents such as KTP (identity cards), a gas stove and rations from the government, all were left behind, they said. At the time of the eviction, a number of employees of PT AP put the goods into their truck, they allege. According to these testimonies, the company staff who participated in the eviction were named Jason and Ali

Basrin. Interviewees asserted that it was these two who ordered the heavy equipment operator (excavator) to tear down the houses. Some dwellings were also burned, while others were demolished, down to the ground, they alleged. The next day, they told us, some people came to the place of their former homes, intending to take back their property but BRIMOB prevented them from doing so, saying that the property is not theirs, but rightfully belongs to PT Asiatic Persada.

According to interviewees, Erwin (9 months), who was evicted along with his family, is still sick (as of 10 October), with frequent seizures. At the time of eviction his mother, Una, was apparently ill. When she heard gunshots and screaming police, Una tried to run while carrying Erwin. While running, she dropped him and he fell into a ditch. Since then Erwin has been ill. He was taken for treatment to several places but still has not healed well.

The interviewees also noted that on 8th October 2011, a team from the province came to Sungai Buayan Ilir. The community did not know about the team, they just understood that it was from the Province. They discussed their situation with the team. They provided data on their property and houses that were destroyed and lost due to the evictions. They reckoned that the total number of houses demolished in Sungai Buayan Ilir was 41 units. They do not know whether their goods and properties will be returned or replaced.

The people allege that after the eviction at Sungai Buaian Ilir, PT AP banned the community from harvesting fallen fruit. Currently they hunt, fish and catch turtles, and salvage scrap metal. 'We used to be allowed to gather fallen oil palm fruit. Now if we do that, we are chased by BRIMOB', said Ibu Intan, wife of Bidin. Since the eviction, nobody goes out at night. They say that fear being accused of stealing, and fear being shot by BRIMOB.

According to those interviewed, the evictions, the banning of harvesting fallen oil palm fruit, and the behavior of BRIMOB are ways that PT AP tries to make the SAD fearful, so that they cannot eat, and then will be forced to leave the land that they are struggling for. Said Ida, one of the SAD from Sungai Buayan Ilir:

> The police were searching for a problem, it seems. It seems they wanted us out of here. The wish of BRIMOB is that all the SAD leave.

The people of Sungai Buayan Ilir said they will stay where they live now, because it is their land. They assert that they have proof in the form of a letter. The two grandmothers are still alive and still able to tell the history of the land. 'Our grandmothers are still alive, they can still tell our history, so we continue to claim this land', said Adi, who lives in Sungai Buayan Ilir.

They said that they don't care that they are accused of being thieves by PT AP and BRIMOB as they struggle for their land. Said Herman:

> If we are accused of thieving, who actually stole in the first place?

According to those interviewed on 10th October 2011, at least 2 times a day, about 6-10 people from BRIMOB patrol Sungai Buayan Ilir. They are apparently always dressed in full uniforms and carry rifles. While patrolling, the members of BRIMOB allagedly often discharge their weapons. The people say that they stop and interrogate people whom they

meet or run into on the road, especially *Suku Anak Dalam*. The police are always yelling, pointing guns and threatening people that they will be shot, we were told.

According to the interviewees, the behavior of the members of BRIMOB has resulted in people feeling terrorized. The residents of Sungai Buayan Ilir say that they are fearful, especially when members of BRIMOB enter the settlement and question the residents, with weapons drawn.

For example, we were told, on Monday (10/10/2011) just before our visit, BRIMOB members went into the settlement of Sungai Buayan Ilir. They had done the same a few days earlier. With rifles in hand, they asked which people live in that place. 'Why don't you harvest? Why not havest the fallen fruit? Go and harvest, there is lots of fruit.' According to people of Sungai Buayan Ilir, BRIMOB are trying to create a disturbance, because since the evictions, the community is forbidden to harvest fallen fruit.

On one of these occasions, we were told, at about 10 am, Ibu Pendi, a *Suku Anak Dalam* resident, was drying fish in front of her house, while her 6-year-old son was playing nearby. Six members of BRIMOB arrived, and one of them asked Ibu Pendi, 'Where did you get the fish, did you steal them?' The woman answered, 'I bought the fish earlier from a trader'. Then the policeman is said to have shouted at her, 'You continue to steal, so I will shoot you'. The policeman allegedly cocked and aimed his rifle at Ibu Pendi. Seeing the incident, her child ran toward his mother, terrified. Two hours later the child had a high fever and did not recover until late afternoon.

Members of the Sungai Buayan Ilir community who work outside the settlement say they have been prohibited from entering. They say they are accused of being NGOs who try to benefit from the problems of the *Suku Anak Dalam.*

*Views of PT AP and Wilmar staff*
During our discussions in the company office, PT AP representatives affirmed that they were the victims in the current conflict, as it was leading to a loss of profit due to fruit theft and to the criminalisation of the company in the media. As Pak Wilton noted to us:

> In the media, SAD are portrayed as angels. But they are violent people. Of course we are the victims. We are the big company against the little people; who do you think will support us?

With regards to the southern areas of the concession, the forced eviction of the communities of Jembatan Sungai Beruang, Danau Minang and Sungai Buayan Ilir between 8th to 16th August 2011 was not recognised as such by PT AP staff we interviewed:

> I don't agree with the word 'eviction'. This is our land legally. These people are nomads, so we have the right to kick them out. It's our estate, and they come in to set up houses and steal our fruit. They are not even SAD. We know because we follow the government criteria for identifying SAD. (Pak Syafei)

*Blocked access:*
Information about the incidents reached Jambi by SMS and telephone quite quickly and some leaders and other villagers went to Jambi on the 10th August to alert officials, NGOs and the media to what was going on. The team gathered independent testimony from several witnesses, which confirmed previous assertions by local NGOs, that BRIMOB forces

prevented access to the area for several days following the initiation of the evictions. According to those we interviewed, the blockade was lifted by the 17th August (after the operations to flatten the houses had been completed on the 16th August). This seems to have been the main reason it took some time for outsiders to realise that the evictions not only occurred over several days but took place in three different settlements. PT AP staff when interviewed could not explain why the access was blocked nor say who had given instructions to prevent access.

*Findings of the Provincial Government team*

A government authorised team of 20 persons, including officials from social affairs department, the land agency, forestry department parliamentarians, NGOs and one company manager, has now been set up to investigate the alleged human rights violations and it carried out a first one-day site visit on 8th October, only hours before we arrived to commence our week-long survey. The government team also found that 83 houses had been destroyed in the three settlements and this team will now undertake a more detailed investigation of what occurred.[49] The national human rights commission has been contacted by NGOs but has yet to investigate the incidents, although we were told that a visit is promised later in October.

*Were warnings given of the evictions?*

Villagers interviewed in the course of this investigation were emphatic that no warnings had been given that their houses were to be destroyed, although they did acknowledge that there had been disputes about stolen fruit and the company had sought to prevent this. We also asked PT AP staff to clarify if they had given any warnings to the communities that their dwellings were to be destroyed. Pak Joko asserted that they had been so warned and when asked how, he stated that signboards had been put up. We asked him on what date these boards had been put up and he said he could not recall. We then asked him in which month they were put up and again he replied he could not recall. However later in the interview, he reverted to the question and, apparently referring to his notebook, stated that the boards had been put up in early June 2011.

PT AP staff told us these signboards were erected prior to the evictions

[49] PEMDA Batang Hari 2011. The official term of this investigative team may now have expired and it is unclear if further official investigations are planned.

There are several problems with this assertion. The first is that the text on the boards in question (see above) do not warn that houses are to be destroyed, they only warn people not to violate certain paragraphs of the Plantation Act. Other notices (see cover photo) also refer to the penal code under which violations are punishable. The testimony of NGOs and villagers, as well as photographic records, all concur that the signboards and notices were not erected until after the evictions.

Based on all the information gathered during this investigation we conclude that the evictions and destruction of the dwellings and other properties were carried out without warning, without any court order, without due process of law and were disproportionate in relation to the alleged misdemeanours.

**Conclusions:**

It is the view of the investigating team that four issues are closely entangled. In the first place, there is a serious problem resulting from the process by which the company has acquired land without recognising customary rights and without consent of those rightsholders. While this process has been endorsed, even facilitated, by the local government, it has been resented and resisted by the local people and is contrary to international standards and law (and see below).

In the second place there is the problem that the allocation of lands by the government to development schemes – transmigration, palm oil development and conservation concessions – has limited the livelihood opportunities of the local people. They have nowhere to go and some are, at their own admission, pilfering fruits as a survival strategy. The company alleges this is occurring on a massive scale.

Thirdly, the company has responded to these challenges. It has done so in two ways: one is by offering the communities options in a joint venture profit-sharing scheme being set up by the government west of the concession. This has been refused by most and has proved problematic to others who accepted it. The company's other response has been to criminalise those accused of fruit theft by reporting them to the police and having them arrested.

Finally, there has been an outbreak of violence, initially in relation to one local family accused of theft but then, in retaliation, by police and company personnel, who have worked in a coordinated way, but outside the law, to evict three settlements of people whom they accuse of involvement in the thefts of fruit. The systematic intimidation of local people by police brought in under contract by the company and the destruction of property by company personnel, without proper warning and without due legal process, constitute serious violations of human rights.

*Incorrect repudiation:*
The investigation also shows that the initial reports of the NGOs and the letters of concern sent to Wilmar in August were substantially accurate.[50] In its initial responses to NGOs' appeals to the company to settle the dispute and refrain from violence, the company strongly

[50] Letters and emails were sent to Wilmar and the RSPO during August by inter alia the local NGO Setara, the national palm oil monitoring NGO which is a member of the RSPO, SawitWatch, by the international human rights organisation, Forest Peoples Programme, and the German NGO, Robin Wood.

repudiated the accusations and issued both a public statement and a media release reaffirming its commitment to respect human rights.[51] In the public statement[52] the company:

- sought to play down the fact that there is an underlying land dispute by claiming an agreed form of land compensation had been approved by the government. As detailed above, the land disputes are far from resolved.
- asserted that 'no one was shot' and 'no one was hurt'. There is strong evidence that one person was shot and several people were injured in the fracas (including a number of villagers and two policemen).
- said no houses were set alight. Videos show that an attempt was made to burn Pak Zainal's house. Interviewees note that villagers extinguished the flames. Interviewees also allege that houses were burned in Sungai Buayan Ilir.
- defended the evictions, police firings and destruction of houses by insisting that 'the customary rights issue is used as a front to cover their modus operandi which is to steal crop from the estate'. However, even if true, this is not a reason for the company to take the law into its own hands and destroy people's properties.
- repudiating the demand that it cease making payment to local security forces, asserted that 'we have every right to safeguard our employees and the assets of the company and will do so in full accordance to Indonesian law and its legal system'. Our investigation is that the evictions occurred without a court order and in violation of police procedures (see below).
- claimed that 'most of the structures that were demolished were shelters made up of canvas or oil palm fronds' and that there 'only 4 semi-permanent houses and 1 concrete house that belonged to Zainal and his family'. Our evidence is that 83 dwellings in three settlements were destroyed, many being substantial houses.
- repudiated the claim that the police had blocked access to the area for three days, artfully noting that 'no one was prevented from entering or leaving the hamlet of Sungai Beruang.' Our investigation shows that, just as local NGOs had claimed, access to the three evictions sites (which are unofficial satellites of the officially recognised hamlet of Sungai Beruang) was blocked by BRIMOB between 10th and 17th August, while the settlements were being systematically demolished using PT AP plant.
- asserted that 'there is no land dispute. This is a case of organized crime under the guise of customary rights by using indigenous people from other places to legitimise the stealing of crop'. Our investigation shows that the local people do assert customary rights both in the north of the concession and in the south in the area of the evictions. Indeed, in the past, people in the south of the concession had been offered 640 ha. of compensatory smallholdings, an offer later unilaterally withdrawn by the company.
- claimed that 'the illegal squatters were given an opportunity to remove their personal belongings before their shelters and quarters were dismantled' and that 'local communities were given a few hours to evacuate their personal effects'. All the interviewees from the settlements assert that the police and company actions were carried out without warning and some assert that they were beaten when they tried to recover their properties. When PT AP staff were questioned about whether warnings were given prior to the evictions they asserted that signboards were erected. However,

[51] Wilmar 2011a, 2011b.
[52] Wilmar 2011a.

> these signboards do not say that there are to be evictions and, according to photographs and witnesses, were erected after the settlements were demolished.[53]

The company was, however, correct in stating that no one had died in the incidents, something which NGOs (on the basis of what they emphasised were preliminary reports), had asked be investigated.

*Independent Investigation*

In its letter of 19th August 2011, Forest Peoples Programme (FPP) called for an independent investigation of both the events and the underlying causes of the dispute. Wilmar noted in response that it had 'engaged TUV Rheinland, a Certification Body approved by RSPO to verify the case on the ground.'[54]

The report of TUV Rheinland was shared by Wilmar with the Board of Executive Directors of the RSPO and with FPP on 29th September 2011 with a covering email note which stated that 'We stand by every point by point rebuttal made in the previous correspondence, as verified by the TUV Report'.[55]

In fact the TUV 'audit' does not accord fully with Wilmar's statements. The report notes that there are unresolved land disputes in both the north and south of the estate and it notes that one of the reasons people moved back into the south of the estate was because their land claims had not been settled.[56] In the annexes the report shows that these settlements were already occupied in 2002.[57] TUV notes that these land issues must be resolved before the plantation can be certified. The TUV report also notes that PT AP staff

> ... admi[t]ted that the demolition [was] done after the community members attacked and seized the Brimob's weapons on 9 August 2011. This was not through a good process, but a result of the high pressure situation.[58]

In other respects, however, the TUV report seems deficient: the interview with the village head of Tanjung Lebar was carried out in the company of Wilmar staff; the interview of the police was also carried out in the presence of Wilmar staff; the report asserts that TUV could not verify the condition of the demolished buildings in Jembatan Sungai Beruang as they were being rebuilt, whereas we could easily trace the demolition and assess the prior condition of the houses when we visited the site seven weeks later. Notwithstanding, TUV repeated the company assertion that, with exception of Zainal's house, all the dwellings were 'temporary huts'.[59]

*Analysis in terms of human rights norms*

The incidents of the 9th-16th August 2011, which involved a number of BRIMOB police, occurred in an area of an oil palm estate claimed to belong to PT AP. A number of violent acts were perpetrated by BRIMOB and witnessed or facilitated by a number of PT AP managers and occurred in three settlements, Jembatan Sungai Beruang, Sungai Buayan Ilir

[53] According to TUV Rheinland (2011b) three letters were sent to the PERMASAD cooperative asking those who had set up huts in the concession to move out of the area.
[54] Wilmar 2011a.
[55] Email from Jeremy Goon to RSPO EB dated 29th September 2011.
[56] TUV 2011b:4-6.
[57] TUV 2011b:12.
[58] TUV 2011b:8.
[59] TUV 2011b:7.

and Danau Minang. BRIMOB and PT AP staff destroyed at least 83 homes, property and other assets belonging to households in those locations. Terror and intimidation was inflicted upon the residents, causing psychological fear in adults and children. Intimidation of the affected communities by BRIMOB was reported to be ongoing, at least up until the date of the visit of the investigation team. Community members reported regularly being threatened with rifles, and that BRIMOB discharged its guns near to the evicted settlements every afternoon or evening. From a national and international legal standpoint, the violent acts perpetrated by BRIMOB and facilitated by PT AP constitute violations of human rights.

A number of the acts committed by BRIMOB clearly contravene Indonesian National Police Chief Regulation, No.8 of 2009 on Implementation of Rights and Human Rights Standards in Conducting Police Duties (Perkapolri No.8/2009), issued by Police General Bambang Hendarso Danuri. The Regulation refers to a number of national legal instruments, including the 1945 Constitution, and contains a number of articles which regulate how members of the police should act in dealing with incidents. Articles 7 and 8 of the Regulation require the police to understand and comply with international and national human rights instruments.These instruments include those already ratified into national law, including the International Covenant on Civil and Political Rights, the International Covenant on Economic,Social and Cultural Rights (both ratified in 2005), the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1999), the Covention on the Elimination of Discrimination Against Women (ratified in 1981), the Convention Against Torture and Cruel, Inhuman and Degrading Treatment (ratified in 1984) and the Convention on the Rights of the Child (ratified in1990).

According to the Regulation, in conducting their duties, each member of the Indonesian national police is obliged to protect and respect Human Rights. They should at least:

- Respect the dignity and human rights of each person
- Act fairly and in a non-discriminatory manner
- Act politely
- Respect religious, ethical and modest norms.
- Respect local cultures as long as these do not contravene human rights, moreover they
    - Cannot intimidate or tolerate acts of torture, or acts that are inhumane and degrading
    - Cannot use violence, unless needed to prevent crimes, in accordance with the laws on use of force.

Under Article 45, in exercising force and using firearms, each member of the police should consider the following:

- Acts without violence should be used first
- All acts of violence should have a legal basis
- Acts of violence should only be executed if greatly needed
- Use of force, firearms or tools in acts of violence has to be in proportion to the threat faced.
- Destruction and injuries due to use of force/violence should be as minimal as possible

Based on the evidence collected in our investigation, the violent acts carried out by the police were in contravention of these norms. Therefore, law enforcers need to act and KOMNASHAM needs to investigate and hold each person to account.

As noted in this investigation, and as TUV Rheinland also found, underlying the immediate conflict in the south of the concession lie unresolved land disputes. It is clear that the way that PT AP has acquired lands in Batanghari is in violation of the rights of indigenous peoples as set out in international treaties ratified by Indonesia and summarised in the UN Declaration on the Rights of Indigenous Peoples, which Indonesia has endorsed. Most evidently, PT AP has violated the right of the Batin Sembilan communities in the HGU to the ownership and control of the lands and natural resources they have traditionally owned, occupied or otherwise used. The company has failed to respect the people's right to give or withhold their Free, Prior and Informed Consent. In depriving the people of their lands, the company has violated their other rights including their rights to subsistence and a decent livelihood.

It is a norm of international law that violations of human rights give rise to the right of reparation for the victims, which may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Where indigenous peoples seek reparations for the loss of their customary lands, they are entitled to demand the return of these lands, where they maintain some form of connection with them. They also maintain their property rights in land in cases where they have been forced to leave or otherwise lost possession of their lands, including where their lands have been expropriated or transferred to third parties, unless this was done in good faith and consensually.[60]

Under international law, therefore, PT AP has an obligation to restore the customary lands of the Batin Sembilan which the company took without consent to establish its plantation. They must also make reparations for the properties taken and destroyed in the evictions and for other losses and damages caused.

*Analysis against RSPO Principles and Criteria:*
The evidence from our investigation is that PT AP is currently acting in contravention of several of the RSPO Principles and Criteria. In the first place, insofar as the company is violating human rights treaties and laws ratified by the Government of Indonesia, the company is in violation of Criterion 2.1. Further, the company is not adhering to Criterion 2.2 which requires that the use of the land is not legitimately contested. The company is clearly diminishing the legal and customary rights of indigenous peoples' and local communities' without their free, prior and informed consent, in violation of Criterion 2.3.

Moreover, the problems in finding resolutions to the land conflicts stem, at least in part, from the failure to implement a mutually agreed dispute resolution procedure satisfactory to many of the complainants. Instead, the company and local government have imposed an *ex gratia* settlement (the *Kemitraan* scheme), which has proven problematic even to those who accepted it. To be compliant with Criteria 6.3 and 6.4, the mutually agreed process should recognise the communities' legal and customary rights and provide them with agreed compensation and benefits. The lack of transparency in negotiation processes is also contrary to Criterion 6.2.

[60] MacKay 2011:38 citing van Boven 1993 and the jurisprudence of the Inter-American Court of Human Rights.

*Analysis against IFC Performance Standards:*[61]
The 8 IFC Performance Standards on social and environmental sustainability are applicable to all clients receiving investments from IFC. The facts gathered clearly show that PT Asiatic Persada is in violation of at least 4 out of 8 of these standards. To summarise:

1. *Performance Standard 4: Community Health, Safety and Security*

The forced evictions, intimidation of local people, shootings and beatings, and destruction of the properties in the three hamlets, without due process of law and without warning, constitute a serious violation of PS 4. It also appears that, to date, no grievance mechanism has been established by the company to allow the affected community to express concerns about the security arrangements and acts of security personnel on this or other occasions.

2. *Performance Standard 5: Land Acquisition and Involuntary Resettlement*

Contrary to PS 5, PT AP has acquired extensive lands from the local communities without giving the communities a chance to refuse land acquisition, without recognising their customary rights in land, and without negotiated settlements. The restrictions on local livelihoods caused by the plantation and the recent evictions constitute 'involuntary resettlement' in IFC terms and yet have not been addressed as such.

3. *Performance Standard 7: Indigenous Peoples and Cultural Heritage*

Contrary to PS 7, PT AP has not been respecting the rights of the indigenous peoples in their concession area. Far from applying special mechanisms to ensure 'Good Faith Negotiation' so that they are able to negotiate 'without coercion, intimidation or manipulation', company personnel are openly abusive of the local communities and have denied that they have rights to land within the concession. The imposed *ex gratia* settlement through the Kemitraan scheme does not constitute a fair or proportionate compensation for the extensive lands acquired without adequate consultation or consent by the company. More there have been extensive damages to graveyards and other areas of importance to the peoples' cultural heritage.

## Recommendations

As noted at the outset, the aim of this investigation and resulting report is not just to identify what has been going on but to find ways for resolving the conflicts over land and disputes about legality in the PT AP concession in Jambi. For this to be effective a number of actions are proposed.

*Compliance Advisory Ombudsman*
The Compliance Advisory Ombudsman of the IFC needs to urgently restart the mediation process in the concession and address the land problems of all the affected communities in both the north and south of the concession subject to the agreement of Wilmar and the communities.

*Roundtable on Sustainable Palm Oil*
The RSPO has recently set up a Dispute Settlement Facility which is designed to facilitate the settlement of the many land disputes in palm oil concessions.[62] However, given the

[61] The IFC has recently adopted revised Performance Standards. However we here assess the company against the Performance Standards in force at the time of the IFC financial support in 2006.

entrenched nature of this conflict in PT AP and given that the DSF is not yet tried and tested, in our view it is preferable the RSPO DSF acts as an observer to the proposed mediation process. Lessons learned by the DSF from this experience can then be applied to other cases.

Until these serious disputes are resolved in a satisfactory way consistent with the RSPO standard and legal norms, the RSPO must suspend all Wilmar's certifications in accordance with Paragraph 4.2.4 of the RSPO Certification Systems document.[63]

*Wilmar / PT AP*
In line with Principles and Criteria of the RSPO, PT AP and the wider Wilmar group, must re-engage in an open way in negotiations with the communities. In our view this requires that the company accepts that:

- the communities have customary rights to lands and these need to be respected.[64]
- the communities have the right to determine what happens to their lands
- the communities have the right to represent themselves through their own freely chosen representatives.

To address the current plight of the evicted communities, the company should:

- immediately ask BRIMOB to withdraw from the Sungai Beruang area, as the presence and activities of the mobile police continue to threaten and intimidate the communities
- quickly provide restitution of lands and compensation for destruction of property so that those whose houses and belongings were destroyed in the Sungai Beruang satellite hamlets do not have to live under tarpaulins though the wet season, which is expected to start this month.

Given that this is one of numerous cases where Wilmar's operations have been found to be in violation, we also call on the company to substantially increase its capacity to retrain staff to observe human rights norms and RSPO standards (or replace non-compliant staff). The company needs to revise (or apply) its standard operating procedures so that it pro-actively resolves land disputes in conformity with international human rights standards. The company should also increase its capacity to monitor and assess disputes. It should not require investigations by NGOs before company personnel act decisively to resolve problems in the company's estates.

*Provincial Government in Jambi, Batanghari and Muaro Jambi*
*Evictions and human rights:* The Government must urgently intensify its investigations into the evictions carried out in the three settlements linked to Sungai Beruang, namely Jembatan Sungai Beruang, Sungai Buayan and Danau Minang. The government needs to identify those involved and those responsible for these criminal actions and prosecute them.

[62] SawitWatch has records of some 663 conflicts in palm oil concessions Indonesia. The national land bureau (BPN) has stated in an RSPO meeting that there are some 3,100 land conflicts related to oil palm in the country.
[63] The RSPO (2006:12) Certification Systems document section 4.2.4 requires that where one of a holding company's subsidiaries is in violation of several requirements, including 'significant land conflicts', then 'Certificates for all of the company's holdings shall be suspended if there is noncompliance with any of these requirements'.
[64] The fact that some members of the communities are migrants does not change the fact that the communities assert extensive collective customary rights within the concession.

*Land dispute:* Underlying the disputes in the PT AP concession area is the problem of land. Neither the Jambi Provincial Government nor the Batanghari District Governments have recognised the customary rights of the communities to their lands. They have thus obliged the communities to accept *ex gratia* compensation in the form of the *Kemitraan* joint venture. As such the Government shares responsibility for the conflicts and is not in a position to independently mediate a solution. The Government's role should therefore be to observe the mediation process and ratify the implementation of any agreement reached between the communities and PT AP such as through an official statement (*peraturan daerah*).

*National Government Bodies:*
We also call on the Indonesian National Human Rights Commission to urgently carry out a detailed investigation of these abuses and take all necessary steps to ensure that those guilty of perpetrating or ordering human rights abuses are brought to justice.

*3rd parties: need to ensure greater independence of audits and assessors*
The credibility of the RSPO rests substantially on the degree to which 3rd party auditors are able to independently assess compliance with the RSPO standard. If the independence of Certification Bodies is in doubt, then the suspicion will grow that RSPO is allowing companies to get away with abuses and avoid compliance with the RSPO Principles and Criteria. Our investigation suggests that assessors and auditors working for Wilmar in the PT AP concession have been controlled or supervised by the company.

In future, to limit this problem, we recommend that all auditors should be recruited and paid through an RSPO ESCROW fund into which companies pay their contributions and not directly chosen and contracted to the company they are auditing.[65] Equivalent measures to distance other assessors from the companies whose operations they are assessing are also required.

[65] NGOs have been recommending such an ESCROW fund repeatedly since 2004/5.

Annex 1: Legal analysis of permits relating to PT AP concession

| Year | Document | Remarks |
|---|---|---|
| 1985 | Izin Prinsip from the Governor of Jambi, dated 20th April 1985 adressed to PT. BDU for oil palm estates in Batanghari district | |
| 1985 | Decree of the Governor of Jambi No.188.4/599 of 1985 dated 2nd of December 1985 on Land Allocation of ± 40.000 Ha for PT.BDU for an oil palm estate project. | In the dictum, it was stated that this decision to allocate land would only be applicable should the proposal to convert TGHK from a limited production forest to a production forest in accordance with the letter from the Governor of Jambi No.525.26/902/U/Bappeda be approved by the Minister of Foresty.<br>In the next listing, 2-8, it can be read in the attachment that a number of obligations have to be met by PT BDU before they could operate. |
| 1986 | Copy of Minister of Home Affairs Decree No.SK.46/HGU/DA/86 on provision of HGU to PT.BDU to the amount of 20.000 Ha. In Batanghari District. | In the first dictum under number 3, it was stated that the HGU area was still occupied by residents who settled there prior to the issuance of the HGU and there were no resolutions, and PT BDU was obliged to resolve those issues.<br><br>In dictum D, it was stated that the issuance of the HGU was in itself null and void should PT BDU fail to meet obligations under dictum 1,2 and 3 a) and b). |
| | HGU No.1 of 1986 to the amount of 20.000 Ha. | |
| 1992 | Ministry of Forestry Decree No.667/Kpts-II/1992 on acquisition of part of the group of forests in S.Bahar – S.Temindai located in Sarolangun Bangko – Jambi to the amount of 27.675 Ha. for oil palm estates, under PT.BDU, dated 3rd July 1992 | In dictum 1 under 1 and 2, it was stated that the acquisition of 27.675 Ha was handed over to BPN for titling in PT. BDU's name and forest boundaries were to be released in accordance to boundary documents dated 18th August 1989. In the seventh dictum, it was stated that should PT.BDU fail to arrange their HGU witin one year of the decision issued then the acquisition would be forfeited and the forest areas stipulated would revert back to the Ministry of Forestry. |
| | Change of company name on the 26th of August 1992 from PT. BDU to PT. Asiatik Persada based on a decree issued by the Minister of Justice. Later sale of PT. Asiatic Persada 51% shares sold to Pacific RIM. Wilmar bought the 51% holding of Pacific RIM on the 23rd of November 2006, and this was notarised on the 30th of May 2008. | PT Asiatic Persada bought two plantations that share boundaries with PT. Jamer Tulen (3900 ha) in 2002 and PT. Maju Perkasa Sawit in 2007 (4.200 ha.). This data is based on TUV reports.[66] |

[66] Other sources suggest these two holdings cover smaller areas.

## Annex 2: Other legal commentary

The permits of PT. MPS and PT. Jamer Tulen, where the 1000 ha Kemitraan is to be established, are not clear:

1. PT. Jamer Tulen's location permit has expired, and the government has informed the company that it will not be extended. In the Agreement between PT. AP and the Cooperative Sanak Mandiri made on June 24, 2010, the partnership in 1000 ha was given in the Mentilingan Division and Duren Dangkal Division of PT. JT and PT. MPS. The permits of PT. JT are allegedly problematic. PT. JT obtained its location permits from the Regent in Batang Hari, in 2002. , for Oil Palm, covering an area of approximately 3871 hectares located in the village of Muara District Bungku Bulian. But on April 27, 2007, Regent Batang Hari Syahirsah Mr. SY, wrote to PT. Jamer Tulen, and said that the location permit granted to the company since May 2005 has ended. It turned out that PT. Jamer Tulen continued to do land clearing without any problem-solving efforts with communities around the site.

On November 24, 2008 Regent Batang Hari, Syahirsyah. SY again wrote to PT. Jamer Tulen stating that the local government will not extend location permits for PT. Jamer Tulen and PT. MPS.

The Regent of Batang Hari then wrote to PT. Jamer Tulen on February 25, 2009, to confirm the Regent's letter from 24 November 2008, which states that local government only recognizes the acquisition of lands by PT. Jamer Tulen PT MPS that took place during the period of the location permit.

2. PT. MPS has never obtained location permit or in principle permit. PT.MPS has not obtained an in principle permit from the Regent. PT. MPS only has a letter of recommendation for reservation of land in Jambi from the Governor, dated December 3, 1991.

It therefore looks like both companies are above the law. PT. Jamer Tulen's location permit had expired but the company is still clearing and planting palm. While the PT. MPS only an in principle reservation of land to obtain future permits, based on the recommendation from the Governor of Jambi, but it has planted oil palms in the area.

3. It is assumed that PT. AP has taken over Limited Production Forest covering approximately 525 ha. This encroachment by PT AP is thought to have occurred in the areas of PT. AP, PT. MPS, PT. Jamer Tulen. It is assumed that the 1000 ha for the partnership is related to this forest encroachment.

Alleged encroachment of forest by PT. AP can be seen in the "Minutes of Outcomes of Research and Testing of Coordinates of PT. Asiatic Persada going into the Village Forest Village (Hutan Desa) of Bungku Bajubang, Kabupaten Batang Hari", from April 15, 2010. Essentially, the coordinates are located in the Limited Production Forest of Sungai Lalan Kelompok Hutan Senami Bahar. The field conditions show palm trees planted by PT. Asiatic Persada in 2006.

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