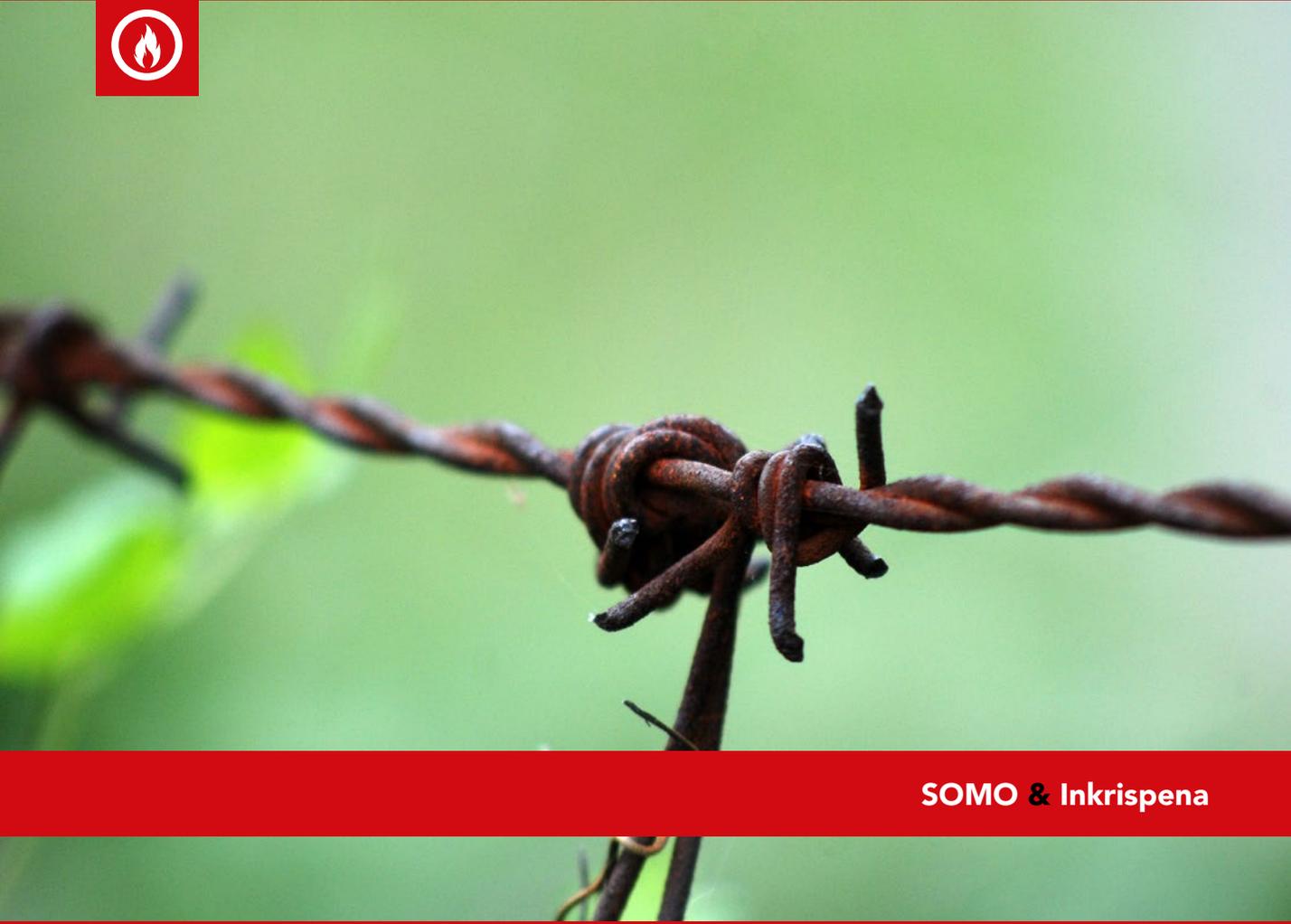


The two hats of public security actors in Indonesia

Protecting human rights or preserving business interests?
Case research in the palm oil and logging sector



SOMO & Inkrispena

June 2017

Colophon

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Authors: : Vincent Kiezebrink & Mark van Dorp (SOMO) and Y. Wasi Gede Puraka & Ayudya Anzas (Inkrispena)

Text editing: Prof. Nigel White, Prof. Mary Footer and Dr Kerry Senior (Nottingham International Law & Security Centre, University of Nottingham), Fleur Scheele, Esther de Haan, Kris Genovese and Gerhard Schuil (SOMO) and Robie Kholilurrahman (Inkrispena)

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Inkrispena

Jl. Lapangan Roos II No.42 RT 015 RW 005
Kelurahan Bukit Duri, Kecamatan Tebet,
Jakarta Selatan 12840 Indonesia

T: +6221 8370 4503

info@inkrispena.org – www.inkrispena.org

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Stichting Onderzoek Multinationale Ondernemingen

Centre for Research on Multinational Corporations

Sarphatistraat 30

1018 GL Amsterdam

The Netherlands

T: +31 (0)20 639 12 91

info@somo.nl – www.somo.nl

The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment.



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Vincent Kiezebrink & Mark van Dorp (SOMO)
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Amsterdam, June 2017

Contents

Acronyms.....	4
Executive Summary.....	4
1 Introduction.....	5
2 Methodology.....	6
2.1 Research objectives.....	6
2.2 Case study selection process.....	6
2.3 Research questions for the case studies.....	7
2.4 Field data collection process.....	7
2.5 Review process.....	9
3 Case study 1: PT Asiatic Persada.....	10
3.1 Corporate profile.....	10
3.1.1 Asiatic Persada.....	10
3.1.2 Relationship between Ganda Group and Wilmar.....	14
3.1.3 Ganda Group.....	16
3.1.4 Wilmar.....	17
3.2 The role of Asiatic Persada’s security providers and human rights violations.....	22
3.2.1 The social conflict.....	22
3.2.2 Security incidents and human rights violations.....	29
3.2.3 Asiatic Persada’s security providers and human rights violations.....	33
3.3 Conclusions for Asiatic Persada.....	35
4 Case study 2: PT Wirakarya Sakti.....	37
4.2 Corporate profile.....	37
4.1.1 Wirakarya Sakti.....	37
4.1.2 Sinar Mas Forestry.....	39
4.1.3 Asia Pulp & Paper (APP) group.....	39
4.1.3 Sinar Mas Group.....	42
4.2 The role of Wirakarya Sakti’s security providers and human rights violations.....	44
4.2.1 The conflict.....	44
4.2.2 Security incidents and human rights violations.....	44
The case of Senyerang.....	44
The case of Terjun Gajah.....	47
The case of Parit Jawa Timur.....	49
The case of Lubuk Mandarsah.....	52
4.2.3 Wirakarya Sakti’s security providers and human rights violations.....	54
4.2 Conclusions for Wirakarya Sakti.....	58
5 Analysis of the case studies in the international law framework.....	59
5.1 Corporate liability.....	59
5.2 State liability.....	59
6 Overall conclusions.....	61

Acronyms

AS	Agronusa Alam Sejahtera
ADM	Archer Daniels Midland
AFAMSA	Agrupación de Fabricantes de Aceites Marinos
AMC	Asiatic Mas Corporation
AMS	Agro Mandiri Semesta
AP	Asiatic Persada
APP	Asia Pulp and Paper
BDU	Bangun Desa Utama
Brimob	Mobile Police Brigade
CAO	Compliance Advisor Ombudsman
CDC	Commonwealth Development Corporation
CPO	Crude Palm Oil
CSR	Corporate Social Responsibility
DfiD	Department for International Development (UK)
FCP	Forest Conservation Policy
FFB	Fresh Fruit Bunch
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples' Programme
GAR	Golden Agri-Resources
HGU	Land Use Permits
IFC	International Finance Corporation
JJP	Jatim Jaya Perkasa
MCP	Mangala Cipta Persada
MIGA	Multilateral Investment Guarantee Agency
NILSC	Nottingham International Law & Security Centre
NWO	The Netherlands Organization for Scientific Research
PMSC	Private military and security companies
PPJ	Persatuan Petani Jambi
RSPO	Roundtable on Sustainable Palm Oil
SAD	Suku Anak Dalam
SMART	Sinar Mas Agro Resources and Technology
SPV	Special Purpose Vehicle
TNI	Tentara Nasional Indonesia
URC	Rapid Response Force of MCP
WKS	Wirakarya Sakti
WWF	World Wildlife Fund

Executive Summary

This report presents the results of a research project on the role of state and private security actors in human rights violations in the extractive industry in Indonesia. While legal and policy frameworks are based on a clear distinction between public and private security actors and functions, the reality on the ground in Indonesia reveals that both the military and police are engaged in the commercialisation of security services. In fact, they often play a role alongside private security companies (mainly local, though there is some evidence of a growing international presence) and the security personnel of companies engaged in agribusiness and extractive industries. This has led to serious human rights violations of indigenous peoples and other local inhabitants, who often find themselves entangled in protracted conflicts with multinational companies over access to their land.

This report includes the results of two case studies: one on palm oil company Asiatic Persada, owned by the Ganda Group, and one on logging company Wirakarya Sakti, owned by the Sinar Mas Group, both Indonesian multinationals. These two case studies, which involved fieldwork in Sumatra in July and August 2016, reveal a pernicious and deliberate erosion and violation of rights of local inhabitants across the spectrum of security actors, showing that public security actors are protecting corporate interests rather than performing public functions. The implications of these findings are considered in terms of legal responsibilities as well as access to justice, highlighting some of the challenges of non-judicial grievance mechanisms such as the IFC's Compliance Advisor Ombudsman and the RSPO Complaints Mechanism. The report ends with a call for necessary legal and policy changes.

The research was carried out in a consortium consisting of the University of Nottingham (Nottingham International Law & Security Centre), SOMO and Inkrispena. It was funded by NWO/WOTRO as part of the Knowledge Platform Security & Rule of Law, under the call for applied research on the influence of transnational challenges in Fragile and Conflict-Affected Settings.

1 Introduction

The flow of natural resources through a supply chain that starts locally in a plantation, forest, mine or oil well, and ends up in another country, necessitates an accompanying flow of security involving many different security actors. Indonesia is an example of a country with low-intensity conflict,¹ where supply chains involve the police, army, local private security, national security companies, international private military and security companies (PMSCs) and, at times, militia, non-state armed groups and criminal gangs.²

To improve the understanding of these relationships, a multidisciplinary research project was set up by the University of Nottingham (Nottingham International Law & Security Centre or NILSC), SOMO and Inkrispena. The project was funded by NWO/WOTRO as part of the Knowledge Platform Security & Rule of Law, under the call for applied research on the influence of transnational challenges in Fragile and Conflict-Affected Settings. The project duration was seven months (July 2016 – February 2017). The overall research results will be presented in an academic article. This report provides the results of the two case studies carried out for this research: 1) palm oil company PT Asiatic Persada, and 2) logging company PT Wirakarya Sakti, both of which operate in the province of Jambi, Sumatra.

Drawing on a mixture of desk-based legal and empirical research, with two case studies based on field work in Jambi province, Sumatra, Indonesia, the project examined the nexus between different forms of security – local, national and international – that accompanies the flow of licit and illicit goods and services arising from the land-based natural resources and commodities sectors. The case studies were designed to investigate the relationship of local, national and/or international private security providers with businesses and with the Indonesian military (Tentara Nasional Indonesia or TNI) and/or the police, in determining whether they are improving security or increasing insecurity and to make proposals for necessary reforms.

The report is structured as follows: for each of the two case studies, a corporate profile is provided, including the ownership structure, sustainability policies and supply chain relationships of the companies. This is followed by a description and analysis of the security incidents that have occurred in or around the concessions of these two companies and the role of the different security actors involved. Subsequently, a brief analysis of these two cases is given in relation to the international law framework. Finally, the report provides conclusions and recommendations.

-
- 1 Indonesia has a presence of low-intensity conflicts around resources and has known many social conflicts leading to communal and ethnic violence; S. Jones, 'Causes of Conflict in Indonesia', undated; <<http://asiasociety.org/causes-conflict-indonesia?page=0,0>> (27 March 2017).
 - 2 See for instance: Human Rights Watch, 'Indonesia: Military Business Reforms 'Totally Inadequate' - Money-Making by Armed Forces Hinders Accountability and Undermines Civilian Control', January 2010; <<https://www.hrw.org/news/2010/01/12/indonesia-military-business-reforms-totally-inadequate>> (27 March 2017).

2 Methodology

2.1 Research objectives

The overall research project, of which these two case studies form an integral part, had the following research objectives.

By viewing security as a form of transnational flow that accompanies the flow of licit and illicit goods and services, the objective of this study was to examine the connectivity in 'security' that is provided in the land-based natural resource sector and extractives industry by security providers – local, national and/or international – so as to determine their impact on local stakeholders in Indonesia, especially on the human rights of civilians and workers connected to the natural resources sector and extractive industries.

The main research question of the overall research project was as follows:

What is the nature, extent and role of private and, where relevant, state security actors in protecting the interests of the international extractives and natural resources industries and what is their impact on the human rights and security of local people?

This research question has been answered through a systematic desk-based evaluation of the evidence of state and private security in Indonesia and its regulation and, specifically, through the deployment of fieldwork in two case studies, to assess the extent and impact of both state and private security providers on human rights at the local level. The project has used the evidence gathered to generate policy recommendations so as to improve the regulation of state and private security providers and their compliance with human rights standards. It has also made proposals that address the responsibility of multinational corporations in the Indonesian natural resources and extractives sectors to respect human rights throughout their supply chains, including the prevention, mitigation and remediation of human rights abuses committed by any private or state actors protecting the interests of the company.

2.2 Case study selection process

At the start of the project, preliminary research was carried out with the support of the University of Nottingham to identify instances of human rights violations by security forces working for multinational corporations in Indonesia's extractive industry. Sixteen cases, involving MNCs from the UK, US, Australia, Chinese, Indonesian and various other Asian countries, were identified. After a thorough selection process, two case studies were selected that best fitted in the research methodology and approach. As also mentioned in section 1, these cases are: 1) palm oil company PT Asiatic Persada, and 2) logging company PT Wirakarya Sakti, both of which operate in the province of Jambi, Sumatra.

2.3 Research questions for the case studies

For the two case studies, the following sub-questions were specifically formulated:

- ❑ By providing security to companies, do security actors of PT Wirakarya Sakti and PT Asiatic Persada impact the security of communities in the area in which they operate?
- ❑ What are the connections of private security providers to the TNI and the police in securing land for PT Wirakarya Sakti and PT Asiatic Persada?
- ❑ What is the human rights impact of the various state and private security providers at PT Wirakarya Sakti and PT Asiatic Persada?
- ❑ What financial ties are there between the multinational corporations involved and the various security actors?

In addition to information about the role of security actors, information was collected about the companies involved, including the ownership structure and supply chain relationships of the companies.

2.4 Field data collection process

The field data collection was conducted in July and August 2016 by a team of researchers of Inkrispena, with guidance from SOMO and the University of Nottingham. The limited time available for the field research was one of the key challenges, but has been resolved by carrying out the field research on the two case studies simultaneously by two teams of researchers.

In order to understand the role of private and state security actors in the Indonesian natural resource sector, the approach used in this research was qualitative, where the main corpus of data was gained by conducting in-depth interviews with the stakeholders on experiences, practices and perspectives on company security. In-depth interviews are ethnographic data collection techniques, which allow local contextualisation of gained data. Aside from in-depth interviews, focus group discussions were also used as data collection techniques in order to obtain a fuller picture through involving various resource persons.

The data collection process was guided by questions concerning business practices, human rights, and social and environmental impacts. The guiding questions were designed before the research team visited the field and were further developed throughout the research process. Secondary data were accessed from the national and the local government's statistics bureau and other secondary sources in order to collect data, policies and regulations on the development of the security sector. In addition, an extensive desk review was done of the many NGO reports and academic papers written about these two cases.

The process of collecting data and finding relevant resource persons was conducted by a snowball sampling method. This method was chosen because not all resource persons immediately trusted the researchers, as the issues related to security were considered sensitive. As a consequence, the research had to rely on the role of gatekeepers to facilitate meetings and help to build trust between the researchers and resource persons to ensure the quality of the research.

The method consisted of interviews with the main stakeholders involved in each of the two companies, PT Wirakarya Sakti and PT Asiatic Persada in Jambi. In total, 50 key individuals (41 male, 9 female) were interviewed on the basis of semi-structured questionnaires:

Category of individual	Wirakarya Sakti		Asiatic Persada		Total
	Men	Women	Men	Women	
Community member	3	5	2	2	12
Indigenous leader	8	-	2	-	10
Local government	3	-	1	-	4
Peasant union member	2	-	5	-	7
Peasant group	-	-	2	-	2
NGO	1	1	9	1	12
Contracted security worker	1	-	-	-	1
Police officials	-	-	1	-	1
Company representative	-	-	1	-	1
Total	18	6	23	3	50

The in-depth interviews were done in the houses and offices of interviewees, or at other meeting points, most notably in the provincial capital Jambi, for two reasons. First, especially for non-governmental individuals, the interviews were conducted there to minimize the risk of security threats that could arise if the interviews were conducted in the villages where the interviewees live. Second, the interviews in the city allowed those interviewed to speak more freely because the surrounding urban environment gave them a feeling of safety and did not expose them to the monitoring apparatus of company security officers, local police, or the village administration. The data collection with NGOs, local peasant unions, community members and government officials were conducted prior to data collection with the companies, police and military officials. All interviews have been anonymised and the names, locations and dates of the interviews are not described specifically for security reasons.

During the fieldwork, some problems were also encountered, mainly related to bureaucracy and limited time available, which led to the fact that not all planned interviews could be conducted. Specifically, this included PT Wirakarya Sakti management, security companies, police officials, military officials, and detainees of the Lubuk Mandarsah killing incidents (see section 4.2.2). However, this has not had major implications on the research, but only meant that the level of detail is lower than it could have been, had there been more time available. Another limiting factor was the relatively low availability of female interviewees: only 18% of the interviewees were female. This can be explained by various factors, including the general lack of gender equality in Indonesia.³ In the footnotes of section 3.2 and 4.2, it is indicated which interviewees are the sources of certain information, while the names, location and date are withheld for safety reasons.

³ The Jakarta Post, Indonesia still struggles to close gender equality gap: UNDP, March 2017, <<http://www.thejakartapost.com/news/2017/03/22/indonesia-still-struggles-to-close-gender-equality-gap-undp.html>> (27 March 2017).

Another important remark is that the two case studies are different in terms of the amount of new information that came out of the field data collection process. In the case of Asiatic Persada, most information is based on secondary sources, with updated information based on interviews in Jambi Province, Sumatra. In the case of Wirakarya Sakti, this was the other way around: most data were collected during the field research, while some information was collected through secondary sources. The main reason is that for the case of Asiatic Persada, a lot of information was available from literature, while for the Wirakarya Sakti, most information had to be collected first hand. This also explains the somewhat different presentation of the results of the field research in sections 3.2 and 4.2.

2.5 Review process

SOMO's strict review guidelines stipulate that all companies mentioned in a research report are given the opportunity to review, respond to and comment on those parts of a report that directly relate to them. This is intended to avoid inaccuracies being published and is, as such, an essential part of ensuring high-quality research. However, the authors remain solely responsible for the report's contents.

The review process for this publication involved sharing a draft of the case study with the companies investigated.

- ❑ In the case of Wirakarya Sakti, the draft report was sent to Sinar Mas Forestry, the direct owner, as well as to Asia Pulp & Paper (APP), to whom Wirakarya Sakti exclusively supplies its raw materials. However, apart from two brief emails from APP announcing that they would comment on the report, no comments on the draft were ever received, despite several reminders by SOMO.⁴
- ❑ In the case of Asiatic Persada, the draft report was sent to the Ganda Group as the direct owner of the company since 2013. In addition, the report was sent to Wilmar International, the former owner of Asiatic Persada, and closely linked to the Ganda Group. No response was received from the Ganda Group, despite several email requests and visits to their premises in Jakarta. Wilmar sent an elaborate response by email, in which the company provided comments on the report, which have been incorporated into our report where relevant.⁵

4 APP, e-mails 9 December 2016 and 9 January 2017.

5 Wilmar International, e-mail 23 December 2016.

3 Case study 1: PT Asiatic Persada

3.1 Corporate profile

3.1.2 Asiatic Persada

PT Asiatic Persada⁶ is a palm oil company which holds a licence for 20,000 ha of land in the Batanghari and Muaro Jambi districts of Jambi Province, Sumatra, Indonesia. Asiatic Persada (AP) has been sold and bought by a number of companies over the years.

In the 1970s, during President Suharto's dictatorship, virtually the whole of the forested area of southern Jambi (Sumatra) was given out to various companies in the form of very large forestry concessions for the extraction of timber. In this period, PT Asiatic Persada was a privately held company operating under the name PT Bangun Desa Utama (PT BDU), which since the 1970s had held an extensive logging concession in the area. PT BDU was owned by the Asiatic Mas Corporation (AMC), owned by Andi Senangsyah, a businessman with 'close family connections to the military'.⁷

According to research done by local NGOs, the local government made an initial offer to PT BDU to establish cocoa and oil palm plantations totalling 40,000 ha in 1984. The plan was never confirmed but in 1986 a Land Use Permit (HGU) covering 20,000 ha for 35 years was issued to PT BDU. This is the concession which has since given rise to PT AP's land disputes. Later, AMC also acquired location permits 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). A forest inventory was carried out by the Forestry Department in 1987 which showed that 4,000 ha of this concession were used for shifting cultivation, cultivated by an estimated 2,000 families. However, no measures were taken by the government to secure the rights of the people to their lands and livelihoods. PT BDU finally secured its forest release permit for 27,600 ha only in 1992 and it was at this time that PT BDU formally transferred the HGU to the newly formed company, PT Asiatic Persada. It was not until the 1990s that oil palms began to be planted in significant quantities.⁸

6 For convenience purposes, the company is shortened to Asiatic Persada or AP in this report; it should be noted that in December 2016, the company was renamed Berkas Sawit Utama (Source: Notary acts obtained in Indonesia, January 2017), but given the fact that this was never announced officially, in this report the name Asiatic Persada is used.

7 Forest Peoples Programme (FPP), Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi, November 2011, <<http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2011/human-rights-abuses-and-land-conflicts-pt-asiatic-persada-conc>> (27 March 2017), p.12.

8 Ibidem, p.11-13.

Box 1 Land ownership in Indonesia

In Indonesia, a company's land is owned by the state, which provides companies with the 'Right to Cultivate', also known as Land Use Permits (Indonesian: *hak guna usaha*, or HGU).⁹ Legally, the Right to Cultivate is granted only over non-forested areas for periods up to 35 years, with a possible extension of another 25 years.¹⁰ Only Indonesian citizens and corporate bodies in Indonesia, including foreign investment companies, can be granted the Right to Cultivate.¹¹

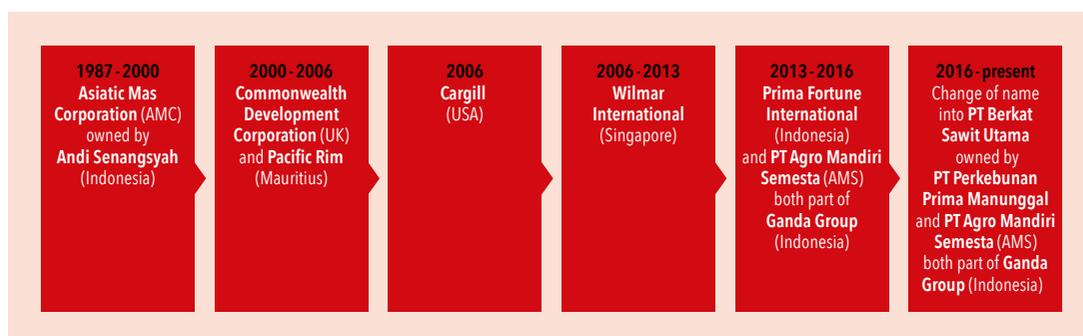
In 2000, 51 per cent of Asiatic Persada's shares were sold to the UK-based and Department for International Development (DfID)-supported Commonwealth Development Corporation (CDC) and Pacific Rim, while Asiatic Mas Corporation (AMC) held a 49 per cent share of AP.¹² Pacific Rim, formerly known as CDC Industries Holdings (Mauritius) Limited, is a company incorporated in Mauritius and whose principal business is the production and sale of palm oil and other related products. At that moment, Pacific Rim was owned by CDC Group Plc, the British Government's Development Finance vehicle in pre-emerging and emerging markets.¹³ Since 2006, Pacific Rim has been operating as a subsidiary of Wilmar International Limited.¹⁴

In early 2006, CDC and Pacific Rim's 51 per cent share of AP was sold to the US-based company Cargill.¹⁵ This was part of a broader deal in which Pacific Rim's palm oil plantations (two in Indonesia and three in Papua New Guinea) were sold to CTP Holdings, a company owned by Cargill and Temasek Holdings.¹⁶

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- 9 Indonesia Real Estate Law, "Legal Aspect of Right to Cultivate (HGU) and its Regulation", <<http://www.indonesiareales-tatelaw.com/2013/04/30/legal-aspect-of-right-to-cultivate-hgu-and-its-regulation/>> (6 May 2016).
- 10 Indonesia-Investments, "Land Rights Indonesia Available for Foreign Investors", 22 August 2015, <<http://www.indonesia-investments.com/business/business-columns/land-rights-indonesia-available-to-foreign-investors/item5859>> (6 May 2016).
- 11 Ibidem.
- 12 Forest Peoples Programme (FPP), Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi, November 2011, p.5, 12.
- 13 Pacific Rim Palm Oil Ltd (PRPOL) was CDC's largest palm oil group, which it controlled until 2005.
- 14 Bloomberg, "Company Overview of Pacific Rim Palm Oil Ltd" <<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=98982276>> (28 March 2017).
- 15 Forest Peoples Programme (FPP), Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi, November 2011, p.13.
- 16 Actis, "Actis exits its investment in Pacific Rim Palm Oil Limited (PRPOL)", <<http://www.act.is/news/actis-exits-its-investment-in-pacific-rim-palm-oil-limited-prpol/>> (28 March 2017).

Shortly thereafter, in November 2006, Wilmar bought Cargill's 51 per cent shareholding by taking over Pacific Rim Palm Oil Ltd. This was incorporated by notarial deed in May 2008. In 2009, Wilmar increased its share to 95 per cent through the acquisition of Newbloom Pte, which holds a 44 per cent share of AP.¹⁷ The remaining 5 per cent of the shares were held by Indonesian company PT Natura Wahana Gemilang.¹⁸ This means that up until 2013, Wilmar held the formal ownership of AP.

Figure 1 Ownership history of Asiatic Persada¹⁹



In July 2013, Wilmar sold AP to Prima Fortune International and PT Agro Mandiri Semesta (AMS), part of the Ganda Group.²⁰ Through this transaction, AP ceased to be an indirect subsidiary of Wilmar.²¹ According to corporate databases, Prima Fortune International is the ultimate owner of AP, and does not have any other subsidiaries, while no information could be found about its shareholders.²² It is likely that Prima Fortune International was created by the Ganda Group as a special

17 Notary acts obtained in Indonesia, January 2017; Bloomberg, "Company Overview of Newbloom Pte. Ltd.", <<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=130223231>> (28 March 2017); Wilmar International Limited, 2013, <<http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTk5OTc0fENoaWxkSUQ9LTF8VHlwZT0z&t=1>> (28 March 2017).

18 Notary acts obtained in Indonesia, January 2017.

19 Compiled by SOMO/Inkrispena, based on various databases (sources as mentioned in footnotes 4-15).

20 Notary acts obtained in Indonesia, January 2017; Forest Peoples Programme (FPP), 14 May 2013, Letter to Wilmar, Complaint regarding Wilmar Group's sale agreement of PT Asiatic Persada (Jambi, Indonesia) to Prima Fortune International Ltd and PT Agro Mandiri Semesta; <<http://www.forestpeoples.org/sites/fpp/files/publication/2013/05/complaint-pt-apsale-withoutcommfpcmay2013eng.pdf>> (27 March 2017)

21 Wilmar International Limited, 2013, <<http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTk5OTc0fENoaWxkSUQ9LTF8VHlwZT0z&t=1>> (28 March 2017).

22 Bloomberg, "Company Overview of Prima Fortune International", <<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=245226660>> (28 March 2017). This is confirmed by Orbis, a company database which states that since July 2013, Prima Fortune International, registered in Indonesia, is the global ultimate owner of Asiatic Persada and owner of 95% of its shares (which equals 51 and 44%); Orbis database (4 April 2017).

purpose vehicle (SPV), with the sole purpose of holding the shares of AP.²³ This is supported by the fact that the company is incorporated in the British Virgin Islands.²⁴

Box 2 Wilmar's perspective on divestment decision from Asiatic Persada

According to Wilmar, the divestment from Asiatic Persada was a commercial decision, primarily due to the very difficult business conditions surrounding Asiatic Persada in Jambi. The company states that 'the complex issues of land rights stretched as far back as some 40 years, way before the Wilmar Group acquired PT Asiatic Persada in 2006. The conflict involved two separate issues; one with regards to traditional land rights owners, and one concerning illegal settlements. Prior to Wilmar's takeover, PT Asiatic Persada was owned and managed by three different companies during different periods. The conflict between the indigenous people of Jambi and previous managements of this company started in the late 1980s.'²⁵

During this research project's review process, Wilmar International stated that they were informed that the Ganda Group divested from PT Asiatic Persada in May 2014.²⁶ However, recently acquired notary acts show that ownership of PT Asiatic Persada still lies with the Ganda Group. In fact, in December 2016, Asiatic Persada changed its name to PT Berkat Sawit Utama, which is 95 per cent owned by PT Perkebunan Prima Manunggal, while the remaining 5 per cent is still owned by PT Agro Mandiri Semesta.²⁷ The main shareholder of PT Perkebunan Prima Manunggal is PT Wahana Karya Agrinusa, which in turn has PT Agro Ganda Indigo as its main shareholder. This company has as main shareholders PT Wahana Indigo (50 per cent) and PT Ganda Indigo Nusantara (50 per cent). Both of these companies are in turn jointly owned by Ganda Group Vice President Andy Indigo²⁸ and Jacqueline Sitorus, who is likely a family member of Ganda Group's president, Mr Ganda Sitorus. This would indicate that since 2013, ownership has been with the Ganda Group under different company names, and held through different corporate entities.

23 SPVs are subsidiary companies with an asset/liability structure and legal status that makes its obligations secure even if the parent company goes bankrupt. They help companies securitize assets, create joint ventures, isolate corporate assets or perform other financial transactions. Investopedia, "Special Purpose Vehicle/Entity – SPV/SE", <<http://www.investopedia.com/terms/s/spv.asp>> (28 March 2017).

24 Notary acts obtained in Indonesia, January 2017. In these acts, the company's address is as follows: PO Box 957, Offshore Incorporation Centre, Road Town, which according to a Google search leads to a trust firm called Offshore Incorporations Limited, based in Tortola, British Virgin Islands, one of the most popular locations for offshore companies, especially because of its zero income tax rates and its secrecy provisions.

25 Email from Wilmar International, 23 December 2016.

26 Email from Wilmar International, 23 December 2016.

27 Notary acts obtained in Indonesia, January 2017.

28 Ganda Sawit Utama (GWU), "Key Management Team", <<http://ganda.jigsy.com/people>> (28 March 2017).

In conclusion, since AP was created, ownership of the company has changed several times (see also the timeline in Figure 1). Wilmar was the owner at least between 2006 and 2013. Since then, the situation is less clear, which leads to a problematic situation with regards to corporate responsibility for the company's actions, including the responsibility for human rights abuses. Based on the information found, it is assumed that both the ownership as well as the day-to-day management of Asiatic Persada (now renamed Berkat Sawit Utama) is held by the Ganda Group, and in particular PT Agro Mandiri Semesta, as confirmed in a letter by RSPO to PT Agro Mandiri Semesta.²⁹

With regards to supply chain responsibility, it is important to know the buyers of palm oil from Asiatic Persada. In the past, this included the following companies, but they both have reportedly stopped buying from the company:

- ❑ Wilmar International: AP was a supplier to Wilmar at least up until the sale of Asiatic Persada by Wilmar to the Ganda Group in July 2013, but Wilmar has ceased buying from AP since then.³⁰
- ❑ Musim Mas: this palm oil company bought palm oil from Asiatic Persada between January and June 2015, but has stopped buying from the company since then.³¹

There is no information about who is currently buying the palm oil produced by Asiatic Persada. Nevertheless, it is not unlikely that palm oil produced by AP ends up in the supply chain of Wilmar, Musim Mas or other companies that have made far-reaching commitments to sustainability. A recent NGO report demonstrates how illegally grown palm oil from government-protected areas deep inside Sumatra entered the supply chains of several of the most well-known palm oil suppliers in the world.³² Among others, subsidiaries of Wilmar and Musim Mas were found to be receiving illegal fresh fruit bunch (FFB) or crude palm oil (CPO) tainted with illegal FFB.³³

3.1.2 Relationship between Ganda Group and Wilmar

While Ganda Group and Wilmar are clearly related, little information on the business relationship between them appears to be publicly available. The Ganda Group does not publish a list of its buyers. Wilmar, on the other hand, is known to be buying crude palm oil from the Ganda Group, as will be explained in more detail in section 3.1.4. As far back as 2007, it was reported that the palm oil produced by the Ganda Group was supplied to the Wilmar Group.³⁴

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- 29 RSPO, "Letter to PT Agro Mandiri Semesta Plantation – Ganda Group", 22 July 2013, <[http://www.rspo.org/file/letter_to_Ganda_group_22July2013\(1\).pdf](http://www.rspo.org/file/letter_to_Ganda_group_22July2013(1).pdf)> (28 March 2017).
 - 30 Email from Wilmar International, 23 December 2016; Wilmar International, "Letter re. Sale of PT Asiatic Persada", 30 May 2013, <<http://www.forestpeoples.org/sites/fpp/files/publication/2013/05/wilmarreplycomplaintsaleptapmay2013.pdf>> (28 March 2017).
 - 31 Aidenvironment, December 2016, pers. comm., based on saved online records.
 - 32 Eyes on the Forest, No one is safe, April 2016, <[https://c402277.ssl.cf1.rackcdn.com/publications/870/files/original/EoF_\(06Apr16\)_No_One_is_Safe_English_FINAL.pdf?1460552904](https://c402277.ssl.cf1.rackcdn.com/publications/870/files/original/EoF_(06Apr16)_No_One_is_Safe_English_FINAL.pdf?1460552904)> (28 March 2017).
 - 33 Tainted supplies refer to CPO or other palm oil products which may have been "contaminated" when illegally grown FFB (fresh fruit bunches) were milled and the oil was bulked with other supplies for shipment and/or further processing (Eyes on the Forest, 2016).
 - 34 Profundo, "Buyers and financiers of the Wilmar Group", July 2007, <https://www.foeeurope.org/sites/default/files/publications/foee_wilmar_palm_oil_financers_0707.pdf> (28 March 2017).

In 2014, an article in *Der Spiegel* mentioned that Indonesian media reported that the Ganda Group has been a regular supplier to Wilmar.³⁵ NGO Rainforest Rescue doubts that links have really been cut and suspects that oil from AP is still making its way to Wilmar through indirect channels. People in Bungku stated that trucks with Wilmar logos were painted over following a violent incident in March 2014. Employees of a palm oil storage facility called Pelita said that AP tanker truck drivers work together with Wilmar. In the same article, Wilmar admitted that the depot had in fact been used until January 2014, but it had not been used to transfer oil from Asiatic Persada.³⁶ In 2015, another NGO report confirmed that Wilmar was still the largest buyer of palm oil from the Ganda Group.³⁷ Given the close financial ties between the two companies (the Ganda Group was set up with financial input from Wilmar founder Martua Sitorus) as well as the fact that Ganda Group is one of the main suppliers of Wilmar in Indonesia, it seems possible that Wilmar is still buying palm oil from AP.

However, according to a letter from Wilmar to a coalition of NGOs, after Wilmar sold AP to the Ganda Group in 2013, AP ceased to be a supplier to Wilmar.³⁸ This was confirmed in an email from Wilmar to SOMO in 2016, in which the company stated that “Following the sale of PT Asiatic Persada, Wilmar no longer buys from that mill and its plantations. (...) We would like to categorically state that we do not purchase from PT Asiatic Persada, and we would not accept oil from PT Asiatic Persada entering our supply chain.”³⁹

Given the fact that Wilmar no longer owns AP, while it claims not to be buying palm oil from Asiatic Persada, the company cannot be held accountable for Asiatic Persada’s malpractices. However, the Ganda Group can be held accountable under international guidelines, such as the 2011 UN Guiding Principles on Business and Human Rights, as well as under the principles and criteria of the Roundtable on Sustainable Palm Oil (RSPO), for human rights violations in its supply chain.

Because of the importance of Wilmar in AP’s history, both the Ganda Group and Wilmar are briefly described below as the main corporate actors involved.

35 Der Spiegel, “The Dirty business of Palm oil”, 2 May 2014, <<http://www.spiegel.de/international/world/indonesian-villagers-driven-from-villages-in-palm-oil-land-theft-a-967198.html>> (28 March 2017).

36 Der Spiegel, “The Dirty business of Palm oil”, 2 May 2014, <<http://www.spiegel.de/international/world/indonesian-villagers-driven-from-villages-in-palm-oil-land-theft-a-967198.html>> (28 March 2017).

37 Greenomics, Grievance Report, June 2015, <http://www.greenomics.org/docs/The%20Grievance%20Report_Wilmar%20cases_Greenomics_30June2015.pdf> (28 March 2017).

38 Wilmar International, “Letter re. Sale of PT Asiatic Persada”, 30 May 2013.

39 Wilmar International, E-mail of 23 December 2016.

3.1.3 Ganda Group



There is very little publicly available information about the Ganda Group. The Ganda Group was created in 2001, through the acquisition of several plantations in Sumatra.⁴⁰ Based on the scattered information available on their own websites, it appears that the Ganda Group is a vertically integrated conglomerate of Indonesian companies covering the full palm oil supply chain, ranging from palm oil plantations (including AP), oil milling, marketing, construction, logistics and security. It describes itself as 'a multi-diversified investment company that focuses on palm oil plantations and mills, cement manufacturing, properties, heavy equipments, engineering and construction.'

The group is headed by Mr Ganda Sitorus, brother of Wilmar owner Martua Sitorus. Ganda Sitorus was previously involved in Wilmar's palm oil operations.⁴¹ In 2007, it was reported that the Ganda Group received financial input from Wilmar's founder, Martua Sitorus, which would explain its fast growth as a company.⁴² The Ganda Group does not publish a list of its buyers. There is no publicly available information on its supply chain. While it is reported by various sources that the Ganda Group's crude palm oil products were supplied to Wilmar, Wilmar has stated that this is no longer the case. The Ganda Group consists of at least ten subsidiaries.⁴³ In a 2007 report, the Ganda Group was reported to hold 16 oil palm plantation companies but it is not certain if this is still the case.⁴⁴

The company that is mentioned as one of the owners of AP, PT Agro Mandiri Semesta, is described as a group of companies which mainly focus on palm oil agribusiness in Indonesia. The company states that it owns 338,640 ha of land, of which 142,832 ha is planted, presumably with oil palms. The company operates in the following geographical areas: Sumut, Riau, Jambi, Kalbar, Kaltim, Sulbar and Merauke.⁴⁵

Two other Ganda Group companies, PT Gandaerah Hendana and PT Inecda, which are involved in palm oil production in Riau Province, Sumatra, are part of S&G Biofuel, a joint venture company of Samsung and the Ganda Group. This company was founded in July 2008 and is based in Singapore. S&G Biofuel Pte Ltd. is a subsidiary of Samsung C&T Corporation, the parent company of the Samsung Group.⁴⁶

40 Website of PT Ganda Sawit Utama; <<http://ganda.jigsy.com/about/me>> (27 March 2017).

41 Ibidem.

42 Profundo, 2007.

43 According to one of its websites, the following subsidiaries are part of the Ganda Group: PT Gandaerah Hendana, PT Inecda Plantation, PT JatimJaya Perkasa, PT Wawasan Kebun Nusantara, PT Perkebunan Kaltim Utama I, PT Patiware, PT Sumatera Unggul Makmur, PT Sentosa Asih Makmur, PT Putralirik Domas. Together with PT Agro Mandiri Semesta, this leads to a total of 10 known subsidiaries; Website of PT Ganda Sawit Utama; <<http://ganda.jigsy.com/about/me>> (27 March 2017).

44 Profundo, 2007.

45 Facebook page of PT Agro Mandiri Semesta; <<https://www.facebook.com/AgroMandiriSemesta/photos/>> (13 October 2016).

46 Bloomberg, "Company Overview of S&G Biofuel Pte Ltd.", <<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=54414494>> (28 March 2017).

Another important part of the Ganda Group is PT Ganda Sawit Utama, established in 2003 as ‘a flagship to represent Ganda Group companies with a focus on Fabrication, Shipping and Contractor’. Ganda Sawit Utama consists of three subsidiaries, involved in transportation, land clearing for palm oil plantations, and palm oil mill construction and maintenance.

Sustainability policies

The Ganda Group does not appear to have a very strong commitment to sustainability or CSR. On the various websites of the Ganda Group, no CSR policies are published.

3.1.4 Wilmar

Wilmar International Limited, founded in 1991 and headquartered in Singapore, is Asia’s leading agribusiness group.⁴⁷ Wilmar is ranked amongst the largest listed companies by market capitalisation on the Singapore Exchange. It ranked 252nd in the Fortune Global 500 in 2015.⁴⁸

Wilmar’s business activities include oil palm cultivation, oilseed crushing, edible oils refining, sugar milling and refining, manufacturing of consumer products, specialty fats, oleochemicals, biodiesel and fertilizers as well as flour and rice milling. At the core of Wilmar’s strategy is an integrated agri-business model that encompasses the entire value chain of the agricultural commodity business, from cultivation, processing, merchandising to manufacturing of a wide range of agricultural products.

In 2016, the main shareholders of Wilmar were:⁴⁹

■ Kuok Brothers Sdn. Bhd.:	18.34%
■ Archer Daniels Midland Co:	11.41%
■ Kerry Group Ltd.:	9.99%
■ ADM AG Holding Ltd.:	5.86%
■ Global Cocoa Holdings Ltd.:	5.57%

According to the same source, in 2016, Mr Martua Sitorus, the brother of Mr Ganda Sitorus, and one of the founders of Wilmar, holds a 0.08 per cent interest in Wilmar (down from a 7 per cent interest in 2015). This is explained by the fact that Archer Daniels Midland (ADM) bought a large part of the shares of Martua Sitorus on two occasions (in October 2015⁵⁰ and in June 2016⁵¹). Other minor share-

47 Wilmar International Limited, “Corporate Profile”, <<http://www.wilmar-international.com/who-we-are/corporate-profile/>> (28 March 2017).

48 Wilmar International Limited, “Annual Report 2015”, <http://media.corporate-ir.net/media_files/IROL/16/164878/Wilmar_International_Limited_Annual_Report_2015_9MB_.pdf> (28 March 2017), p. 42.

49 Data from Thompson Reuters Eikon database (9 November 2016).

50 World-Grain, “ADM continues to increase holdings in Wilmar”, 9 March 2016, <http://www.world-grain.com/articles/news_home/World_Grain_News/2016/03/ADM_continues_to_increase_hold.aspx?ID=%7B6DA5749C-A6A2-496B-B20A-87CD2FD1651A%7D&cck=1> (28 March 2017).

51 The Business Times, “Wilmar co-founder sells 127m shares to commodity giant ADM for S\$3.3765 apiece”, 14 June 2016, <<http://www.businesstimes.com.sg/companies-markets/wilmar-co-founder-sells-127m-shares-to-commodity-giant-adm-for-s33765-apiece>> (28 March 2017).

holders include a number of pension funds, including ABP and PFZW (both Dutch), Old Mutual and Prudential (both British) and Deutsche Bank (German).⁵² According to an NGO report of July 2016, Wilmar borrowed a total of US\$ 3.4 billion from the following four EU-based banks: HSBC (UK), BNP Paribas (France), Rabobank (Netherlands) and Crédit Agricole (France).⁵³

Wilmar International is the world's largest palm oil trading company, valued at US\$ 16.8 billion in 2016.⁵⁴ The company employs 92,000 people. It has 19 significant subsidiaries and seven significant joint ventures. There are different figures regarding the amount of land that the company controls. According to its own annual report, Wilmar has a total planted area of 240,956 ha (as of 31 December 2015). Wilmar has around 69 per cent of its total planted area in Indonesia, 24 per cent in East Malaysia and 7 per cent in Africa.⁵⁵ According to the UK-based NGO Forest People's Programme, through a raft of subsidiaries the Singapore-based company holds a 'land bank' of over 600,000 hectares, principally in Sabah, Sarawak, Sumatra and Kalimantan in Malaysia and Indonesia. It is also expanding its operations into Africa. It accounts for about 45 per cent of all globally traded palm oil.⁵⁶ Wilmar has become one of the world's largest oil palm plantation owners and the largest palm oil refiner in Indonesia and Malaysia. It has over 500 manufacturing plants and an extensive distribution network covering China, India, Indonesia and some 50 other countries.⁵⁷ Wilmar is a major player in several other key agricultural commodities; for example, it is one of the largest soy importers and processors in China.⁵⁸

Wilmar has about 1,000 suppliers.⁵⁹ The company started tracing its supply flows from ports and refineries back to palm oil mill sources in 2015. In January 2015, Wilmar published a list of known CPO mill sources that supply its refineries – the first company ever to do so. As of mid-2015, the Group had identified all the mills directly supplying each of its operational facilities in Indonesia and Malaysia.⁶⁰ In the list dated July 2016, the following links were found between Wilmar and the Ganda Group:

- Among the suppliers of Wilmar on Sumatra are three Ganda Group mills, namely Inecda, Gandaerah Hendana (which is part of the Samsung/Ganda Group joint venture), Jatimjaya Perkasa and Patiware.⁶¹

52 Fern, Financing land grabs and deforestation, July 2016, <<http://www.fern.org/financinglandgrabs>> (28 March 2017), p. 24.

53 Ibidem, p.17.

54 Forbes, The World's Biggest Public Companies - #359 Wilmar International, 2016, <<https://www.forbes.com/companies/wilmar-international/>> (27 March 2017)

55 Wilmar International Limited, "Annual Report 2015", p.32.

56 Forest Peoples Programme (FPP), "Wilmar International", <<http://www.forestpeoples.org/tags/wilmar-international>> (29 March 2017).

57 Wilmar International Limited, "Corporate profile".

58 Fern, Financing land grabs and deforestation, July 2016, p.12.

59 Wilmar International Limited, "Annual Report 2015", p.47.

60 Wilmar International Limited, "Supply Chain Map", <<http://www.wilmar-international.com/sustainability/supply-chain-map/>> (29 March 2017).

61 Wilmar International Limited, PT Wilmar Nabati Indonesia, Dumai - Traceability Summary - Supplies April 2015 - March 2016; <http://www.wilmar-international.com/sustainability/wp-content/uploads/2016/08/160627_WINA-DML_L1.pdf>; PT Wilmar Nabati Indonesia, Pelitung - Traceability Summary - Supplies April 2015 - March 2016; <http://www.wilmar-international.com/sustainability/wp-content/uploads/2016/08/160627_WINA-PLT_L1.pdf> (27 March 2017).

- ❑ These mills specifically supplied Wilmar’s subsidiaries PT Wilmar Nabati Indonesia at two locations in Riau⁶², as well as PT Multimas Nabati Asahan in North Sumatra.⁶³

Wilmar does not provide a list of buyers. In Wilmar’s annual report, the only company mentioned as a buyer is Unilever.⁶⁴ According to a 2016 report by Amnesty International, the main buyers of Wilmar included:⁶⁵

- ❑ Archer Daniels Midland Company (ADM)
- ❑ Agrupación de Fabricantes de Aceites Marinos (AFAMSA)
- ❑ Colgate-Palmolive
- ❑ Elevance Renewable Sciences
- ❑ The Kellogg Company (Kellogg’s)
- ❑ Nestlé
- ❑ Reckitt Benckiser
- ❑ Unilever
- ❑ Procter & Gamble

Amnesty International also traced the movement of palm oil from refineries in Indonesia to other parts of the world, especially to countries where key purchasers of palm oil have manufacturing facilities. Researchers traced palm oil from the 12 Wilmar refineries in Indonesia to Wilmar refineries in Europe, North America, China and India, amongst other locations. These include Wilmar refineries in the Netherlands and Germany as well as Wilmar’s refinery in Stockton, California, in the US.

Sustainability policies

Wilmar does not have a very solid reputation with regards to CSR performance, although it has made efforts to improve this. In December 2013, Wilmar announced its integrated ‘No Deforestation, No Peat, No Exploitation Policy’ that aims to advance an environmentally and socially responsible palm oil industry. Key to this policy is the scope which extends beyond its own mills and plantations to include joint ventures regardless of shareholding and third-party suppliers.⁶⁶

As part of this policy, ‘Wilmar is committed to upholding and promoting the Universal Declaration of Human Rights for all workers, contractors, indigenous people, local communities and anyone affected by its operations under the full scope of this Policy. The company is committed to ensuring that the rights of all people working in any operation covered under the full scope of this policy are respected according to local, national and ratified international laws. Wilmar also commits to ensuring international best practices where legal frameworks are not yet in place. This includes respect for the rights of indigenous and local communities to give or withhold their Free, Prior and

62 Ibidem.

63 Wilmar International Limited, PT Multimas Nabati Asahan, Paya Pasir - Traceability Summary - Supplies April 2015 - March 2016, <http://www.wilmar-international.com/sustainability/wp-content/uploads/2016/08/160627_MNA-PPS_L1.pdf> (29 March 2017).

64 Wilmar International Limited, “Annual Report 2015”, p.47.

65 Amnesty International, “The Great Palm Oil Scandal”, November 2016, <<https://www.amnesty.org/en/documents/asa21/5184/2016/en/>> (29 March 2017).

66 Wilmar International Limited, “Sustainability Policies”, <<http://www.wilmar-international.com/sustainability/integrated-policies/>> (29 March 2017).

Informed Consent (FPIC) to operations on lands to which they hold legal, communal or customary rights. Also, the company will resolve all complaints and conflicts through an open, transparent and consultative process.⁶⁷

The policy continues to state that ‘all provisions in this policy, with no exception, apply to:

- ❑ All Wilmar operations worldwide, including those of its subsidiaries, any refinery, mill or plantation that we own, manage, or invest in, regardless of stake.
- ❑ All third-party suppliers from whom we purchase or with whom we have a trading relationship.’

Wilmar has 26 RSPO-certified mills, out of a total of 46 mills.⁶⁸ This includes Wilmar’s subsidiaries PT Wilmar Nabati Indonesia and PT Multimas Nabati Asahan, which buy crude palm oil from Ganda Group companies.⁶⁹

Box 3 Wilmar’s No Deforestation policy: the challenges of implementation in Ganda Group concessions

Despite the company’s well-established policies, NGOs have remained critical of Wilmar’s implementation. In 2013, Greenpeace stated that Wilmar’s first test is how it would deal with palm oil suppliers still engaged in ongoing forest destruction and social conflict. Greenpeace investigations exposed how the Ganda Group, as a palm oil supplier that is closely connected to one of Wilmar’s co-founders, violates all Wilmar’s new principles. Violations include current forest clearance, illegal development of deep peatland, and social conflict.⁷⁰ Greenpeace published a report describing the case of PT Jatim Jaya Perkasa (PT JJP), which is a member of the RSPO and owned by the Ganda Group, having been sold to the group by Wilmar in 2005.⁷¹

Greenpeace researchers found that all of the concession was originally tiger habitat, although no forest remained by 2013; indeed, the concession was almost completely deforested by the time Wilmar sold it. This means plantation development in these areas violated the RSPO’s standards, which require both legal compliance and protection of HCV areas.

67 Wilmar International Limited, “No Deforestation, No Peat, No Exploitation Policy”, December 2013, <<http://www.wilmar-international.com/sustainability/wp-content/themes/wilmar/sustainability/assets/Wilmar%20Integrated%20Policy%20-%20FINAL%20-%202013.pdf>> (29 March 2017).

68 Wilmar International Limited, “Sustainability Dashboard”, <<http://www.wilmar-international.com/sustainability/>> (29 March 2017).

69 RSPO, “Supply Chain Certificate Holders”, <<http://www.rspo.org/certification/supply-chain-certificate-holders/page/4?keywords=wilmar&country=>>> (29 March 2017).

70 Greenpeace, “You did it! Palm oil giant commits to No Deforestation”, <<http://www.greenpeace.org/international/en/news/Blogs/makingwaves/palm-oil-giant-Wilmar-commits-no-deforestation/blog/47623/>> (29 March 2017).

71 Greenpeace, “Licence to Kill”, October 2013, <http://www.greenpeace.org/international/Global/international/publications/forests/2013/LicenceToKill_ENG_LOWRES.pdf> (29 March 2017).

◉ **Box 3 Wilmar's No Deforestation policy: the challenges of implementation in Ganda Group concessions**

An additional problem was forest fires in areas that were under development beside the established plantation area. Following media coverage of fires in June 2013, the RSPO executive board took the unusual step of launching its own complaint against PT JJP. Confidential information obtained by Greenpeace indicates that palm oil from Ganda plantations, including PT JJP, is processed by Wilmar and traded to global markets. According to Greenpeace, Wilmar fails to hold its suppliers, including Ganda Group, to account for the impact of negligent operations.

A report by Greenomics-Indonesia, an NGO, found clearing of forested peatlands on a concession controlled by the Ganda Group.⁷² The concession is held by a Ganda subsidiary called Patiware, reportedly the largest listed supplier of Wilmar Indonesia.

Landsat images show clearing on the concession in West Kalimantan province on the island of Borneo.⁷³ In response to the complaint of Greenomics against Patiware, Wilmar initiated a dialogue with Ganda Group in July 2015. To comply with Wilmar's Policy, PT Patiware has agreed to stop clearing the remaining undeveloped plasma area;⁷⁴ they will also be meeting with the local communities to explain why they have to stop the plasma development programme, as well as to work out a mechanism to compensate the affected smallholders.⁷⁵ It is unknown if Patiware has since then started complying with Wilmar's new policies, but the example shows that Wilmar can (and should) exert its leverage over the Ganda Group to ensure it complies with its own no deforestation policy.

The Wilmar Group is also reportedly in violation of the Principles and Criteria of the RSPO, of which it is a member, and in violation of the RSPO's Code of Conduct as a result of its handover of PT Asiatic Persada; the transfer to the Ganda Group, closely related to Wilmar, took place without any prior consultation of the communities involved in a conflict-resolution process.⁷⁶ According to another NGO, awasMIFEEI, the sale of AP was part of a series of acquisitions made by Ganda in recent years to take

72 Greenomics, Grievance Report, June 2015, <http://www.greenomics.org/docs/The%20Grievance%20Report_Wilmar%20cases_Greenomics_30June2015.pdf> (28 March 2017).

73 Mongabay, "Not just any Wilmar supplier caught violating no-deforestation policy", <<https://news.mongabay.com/2015/07/not-just-any-wilmar-suppliers-caught-violating-no-deforestation-policy/>> (29 March 2017).

74 In Indonesia, small plots are called 'plasma gardens', kebun plasma, a term which derives from the state-promoted 'nucleus estate' plantation model introduced in the 1980s, under which smallholders in the 'plasma' would cooperate with the large company in the 'nucleus'. Source: Inside Indonesia, "The trouble with oil palm", October 2009, <<http://www.insideindonesia.org/the-trouble-with-oil-palm>> (29 March 2017).

75 Wilmar International Limited, Grievance update, May 2016, <http://www.wilmar-international.com/sustainability/wp-content/uploads/2016/04/160506_Grievance-update.pdf> (29 March 2017).

76 Greenpeace, "Licence to Kill", October 2013.

over plantations that do not pass Wilmar's ethical commitment to the RSPO.⁷⁷ This is confirmed by German magazine *Der Spiegel*:⁷⁸ 'Ganda Sitorus, in any case, himself a former Wilmar employee, has used his own company to create a clearinghouse for troublesome Wilmar subsidiaries that could be a threat to the publicly traded corporation's reputation. The system appears to be tried and tested. Several years ago, the non-government organisation Friends of the Earth documented how Wilmar subsidiaries had been involved in deforestation activities in Borneo. At the time, Wilmar described itself as a "responsible" company. A short time later, Wilmar moved to sell the controversial firms. One of the buyers was Ganda Sitorus. In the conflict surrounding Asiatic Persada, Ganda Sitorus has shown few, if any, signs of social responsibility. The new owner, the World Bank mediator said, has shown "no willingness" to discuss the issue. Instead, it has "driven residents of several villages out of their homes." In September, the company announced it would cease participation in mediation efforts.'

3.2 The role of Asiatic Persada's security providers and human rights violations

3.2.1 The social conflict

The AP concession has been a source of social conflict since its beginning in the 1980s. The semi-nomadic indigenous Suku Anak Dalam (SAD) people that historically inhabited the area were displaced from the land between 1985 and 1992, when the Indonesian Minister of Forestry under the Suharto regime allocated 20,000 ha of land to the concession. Up until 2006, the concession belonged to the companies CDC-Pacific Rim, and then Cargill, which then sold it to the Singapore-based palm oil company Wilmar. In 2013, the concession was sold again, this time to the Ganda Group, as described above.

The previously nomadic SAD have become more sedentary in the past decades, and have integrated with migrants from Java and Sumatra who moved to the area. Among other locations, they now live in the village of Bungku⁷⁹, which lies both between and across several parts of the concession. Bungku village was founded in the 1970s as a resettlement project for the indigenous semi-permanent Batin Sembilan group, also known as Suku Anak Dalam.⁸⁰ The village and the corresponding administrative area of Bungku are spread out over 30,000 and 77,000 ha, respectively.⁸¹ The village consists of five hamlets, each being multiple kilometres apart from another, and together housing

77 Eco-Business, "Palm oil row erupts in Sumatra, leaving one dead", <<http://www.eco-business.com/news/palm-oil-row-erupts-sumatra-leaving-one-dead/>> (29 March 2017).

78 Der Spiegel, "The Dirty business of Palm oil", 2 May 2014.

79 Google Maps, Bungku, Batang Hari, Jambi, Indonesia. <<https://ms.wikipedia.org/wiki/Bungku>> (27 March 2017).

80 First introduced by the Dutch, the term Suku Anak Dalam ('Ethnic Group of the Children of the Interior') is nowadays used by the local government to classify ethnic groups according to certain cultural characteristics; B. Beckert, C. Dittrich and S. Adiwibowo, "Contested Land. An Analysis of Multi-Layered Conflicts in Jambi Province, Sumatra, Indonesia", *ASEAS – Austrian Journal of South-East Asian Studies*, 7(1) (2014), p. 75-92. <<https://aseas.univie.ac.at/index.php/aseas/article/view/257/95>> (27 March 2017).

81 Beckert et al., *Contested Land*, 2014.

10,000 people. The inhabiting SAD as well as former migrants from Java and other parts of Sumatra make a living cultivating rubber, oil palm and vegetables.⁸²

Besides Asiatic Persada's palm concession, Bungku is also surrounded by the concessions of three other companies, namely PT REKI (reforestation), PT Wanakasita Nusantara (logging), and PT Agronusa Alam Sejahtera (logging), the last of which reportedly also belongs to the Ganda Group.⁸³ The lack of clarity over where the separate concessions end and begin, which security personnel work for which company, and which hamlets are in conflict with which company, makes the social conflict complex and the area volatile.

Local SAD and former migrant populations have reportedly been in social conflict over land with all four companies. In their 2014 publication, Beckert et al. refer to the land conflicts involving these companies as four separate 'time bombs', signifying the potential volatility of the situation. In this report, the focus is on the social conflict between Bungku's inhabitants and AP, and the role AP's security providers have played within it.

AP's social conflict with local communities concerns 3,550 ha of its 20,000 ha concession.⁸⁴ The company's concession licence states that areas of residence, cultivation and shrubbery owned by the community should have been excluded from its concession.⁸⁵ However, the fact that several government institutions granted AP an area of differing size for it to cultivate,⁸⁶ as well as the absence of a documented formal land ownership system in the area, has allowed for disputes over contested land to arise nonetheless. As the company managed to increase the amount of cultivated land, this brought them further into social conflict with communities holding claims to that land. Since 2008, members of the SAD indigenous population have occupied part of this concession land which they claim is their ancestral land.⁸⁷ There have been multiple studies describing the social conflict in further detail.⁸⁸

The Singapore-based company Wilmar bought AP in 2006. The conflict came to a head in July 2006 when a village was evicted by a police mobile brigade (Brimob) shooting and AP's bulldozers destroying houses.⁸⁹

82 Ibidem.

83 World Rainforest Movement (WRM), "'Paper Dragons': Timber Plantation Corporations and Creditors in Indonesia", June 2013, <<http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/paper-dragons-timber-plantation-corporations-and-creditors-in-indonesia/>> (29 March 2017).

84 Principle License of the Inventorization and Forestry Use Planning Agency, Jakarta, No. 393/VII-4/1987, dated July 11th 1987.

85 Source: Inkrispena

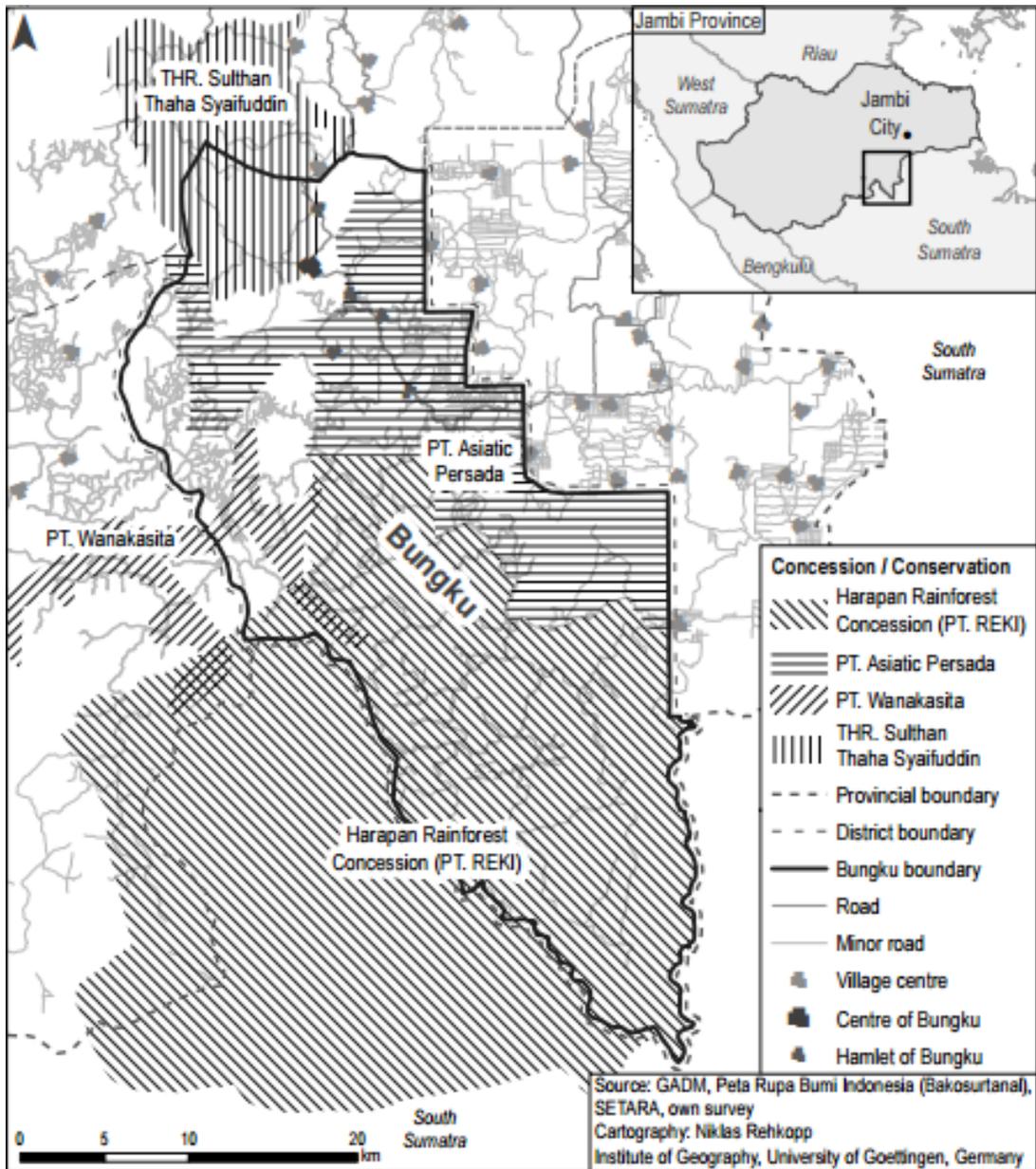
86 Beckert et al., *Contested Land*, 2014.

87 Ibidem.

88 See among others: Beckert et al., *Contested Land*, 2014; Forest Peoples Programme, SawitWatch and HuMa, "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", November 2011, <<https://www.regenwald.org/files/de/Final%20report%20on%20PT%20AP%20Nov%202011%20low%20res.pdf>> (27 March 2017).

89 Beckert et al., *Contested Land*, 2014.

Figure 2 Bungku village and concessions within its area



Source: GADM, Peta Rupa Bumi Indonesia (Bakosurtanal), SETARA in Beckert et al., *Contested Land*.⁹⁰

90 Beckert et al., *Contested Land*, 2014. p.81

In order to resolve the social conflict, between 2007 and 2012 several Indonesian government institutions became involved in the situation. In 2007 the Regional Office of the National Land Agency (Kanwil BPN) in Jambi initiated research into the SAD claims to the land, and managed to successfully mediate an agreement between an SAD group called SAD Mat Ukup and Asiatic Persada, regarding the transferral of ownership of 2.4 km² of land to the community. In 2012, Indonesia's National Commission on Human Rights (Komnas HAM) mediated between another SAD group called SAD 113 and the company, wherein it was agreed that the contested land should be mapped and measured.

A coalition of NGOs followed up the case, making complaints to the International Finance Corporation (IFC), which funds Wilmar, and the Round Table on Sustainable Palm Oil (RSPO), of which Wilmar is a member. These two complaints are described in Box 4 and 5 below.

Box 4 The IFC/CAO complaint

Wilmar International, the owner of AP up to 2013, has been a recipient of loans from the World Bank's International Finance Corporation (IFC). In 2007, this financial connection allowed several SAD groups, supported by a coalition of NGOs (the Forest Peoples' Programme or FPP, Sawit Watch and HuMa), to file a complaint with the Compliance Advisor Ombudsman (CAO), the independent recourse mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The complaint dealt with the alleged violation by AP of the IFC's Performance Standards on Environmental and Social Sustainability, to which all of the IFC's loan recipients are required to adhere.⁹¹ This complaint raised issues regarding adverse environmental and social impacts of Wilmar Group operations, including:⁹²

- Land clearance without appropriate community approval or completion of Environmental Impact Analysis (EIA) processes;
- Violation of national regulations and laws as well as the certification protocols of the Roundtable on Sustainable Palm Oil;
- Inadequate compliance with IFC operating procedures and due diligence requirements. The complainants were concerned about environmental and social impacts being experienced by local communities caused by wholly owned subsidiaries (other palm oil plantations) of the Wilmar Group.

91 Compliance Advisor Ombudsman (CAO), Assessment Report Regarding Community and Civil Society concerns of 3rd Complaint in relation to Activities of the Wilmar Group of Companies in Indonesia, July 2012, <<http://www.cao-ombudsman.org/cases/document-links/documents/WilmarCase3AssessmentReportJuly2012.pdf>> (29 March 2017).

92 CAO, "Indonesia / Wilmar Group-02/Sumatra", <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=79> (29 March 2017).

◉ **Box 4 The IFC/CAO complaint**

The CAO subsequently became involved as an observer to the Indonesian government's mediation efforts, and then took over the mediation process in November of 2011, after receiving a new complaint.⁹³ A specific element of this complaint related to Wilmar's reliance on the mobile police brigade or Birmob, a paramilitary unit of the Indonesian police, for security on the AP concession since July 2011. The complaint referred to an incident in August 2011 when a violent confrontation between local residents and company staff and security culminated in the demolition of settlements in the sub-village where those residents lived. A third-party verification report commissioned by the parent company noted that Brimob and AP staff had forcibly evicted people from areas of the concession, although accounts of the conflict differed. Following an initial review, the CAO found the complaint eligible for further assessment. The parties agreed to a mediated dialogue between AP and several local communities beginning in March 2012.

Wilmar, in response to a draft version of this report, stated that "our company is fully empathetic toward the predicament of the affected local communities. Since 2006, Wilmar has worked relentlessly on resolving the social conflicts. When more local community parties came forward to lay claims on the land and the verification process became more challenging, in 2011 we initiated a grievance process and sought the assistance of the local Indonesian government and the Compliance Advisory Ombudsman of the IFC to mediate the process which involved local NGOs as well. Following the CAO assessment, all parties agreed to mediation by a Joint Mediation Team (JOMET) involving the local government and the CAO, and supported by an Official Decree of the Governor of Jambi Province. Despite genuine attempts at resolving the conflicts, it is most regrettable that our efforts did not gain the traction it had hoped for. The plantation of PT Asiatic Persada was increasingly becoming more costly to operate as local communities prevented us from harvesting some of the areas, and employee safety was at stake. Theft of oil palm fresh fruit bunches was also prevalent in the area."⁹⁴ However, as can be seen on the CAO's website, the complaint was not initiated by Wilmar but by a coalition of community groups and local and international NGOs.⁹⁵

In 2013, while the mediation processes of CAO and RSPO were still ongoing, Wilmar decided to sell Asiatic Persada to Prima Fortune International and PT Agro Mandiri Semesta, which is part of the Ganda Group. According to a coalition of NGOs, the sale of Asiatic Persada by Wilmar has

93 CAO, "Indonesia / Wilmar Group-03/Jambi", <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=177> (29 March 2017).

94 Email from Wilmar International, 23 December 2016.

95 CAO, "Indonesia / Wilmar Group-03/Jambi", <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=177> (29 March 2017).

effectively halted the mediation attempt with the affected communities.⁹⁶ The Ganda Group is not an IFC loan recipient and reportedly chose to withdraw from the mediation, thereby bringing it to a close.⁹⁷ The CAO reported that the new owners of Asiatic Persada showed no willingness to engage on these issues.⁹⁸ It stated that unfortunately, Wilmar's sale of AP has had direct and indirect adverse consequences for the affected communities. Interim agreements that were reached through mediation are not being honored, and communities with previously acknowledged land claims are being evicted from their land. This raises questions for the CAO about the ethical responsibility of the company in discharging assets to a new owner in the midst of a sensitive mediation process, with no contingency plan provided for affected communities. In its report, the CAO concluded that sometimes, as external conditions change, a conflict may no longer be resolved through mediation, no matter the effort and commitment of the mediators; and mediators cannot force the good faith participation of any party.⁹⁹ As a result, in September 2013 the complaint was transferred to the CAO compliance function.¹⁰⁰ The CAO's compliance investigation was released on 3 May 2016, which identified a number of shortcomings in relation to IFC's disbursement and supervision of the Wilmar loans. The CAO has indicated that it will monitor IFC's actions in response to this report and expects to issue a monitoring report within one year of the date of publication (i.e. before May 2017).

In response to a draft version of this report, Wilmar has stated that "it was never the company's intention to abandon the ongoing mediation before and after the sale. We organised a meeting as soon as we could between the JOMET and the buyer which took place on 29 March 2013. At the same time, we communicated to the new owner the progress and status of the mediation, and stressed on the importance of continuing with the mediation process. We also promised our best efforts in ensuring a smooth transition."¹⁰¹ Despite the company's "genuine attempts at resolving the conflicts",¹⁰² the reality shows that these efforts have completely failed. The CAO complaint has not led to a remedy for the complainants and serious shortcomings have been identified in how the IFC has dealt with the case, as was concluded by the CAO in its final report.¹⁰³

It is important to note that, despite the close family ties between the Ganda Group and Wilmar, as described in section 3.1.2, the change in corporate ownership and the refusal of AP's new management to continue the CAO mediation caused the CAO to cancel the mediation process.¹⁰⁴

96 Mongabay, "Palm oil deal undermines efforts to resolve 25-year conflict in Sumatra", October 2013, <<https://news.mongabay.com/2013/10/palm-oil-deal-undermines-efforts-to-resolve-25-year-conflict-in-sumatra/>> (29 March 2017).

97 CAO, Dispute Resolution Conclusion Report – Wilmar 3, December 2013, <<http://www.cao-ombudsman.org/cases/document-links/documents/Wilmar3ConclusionReportDec2013.pdf>> (29 March 2017).

98 Ibidem.

99 Ibidem.

100 CAO, Compliance investigation. IFC Investment in Delta-Wilmar (Projects #25532 and #26271), March 2016, <<http://www.cao-ombudsman.org/cases/document-links/documents/CAOFinalComplianceInvestigationReportWilmar3-ENG.pdf>> (29 March 2017).

101 Email from Wilmar International, 23 December 2016.

102 Ibidem.

103 CAO, "Indonesia / Wilmar Group-03/Jambi".

104 FPP, "Indonesia: IFC CAO withdraws from mediation process in PT Asiatic Persada oil palm concession", November 2013, <<http://www.forestpeoples.org/topics/palm-oil-rspo/news/2013/11/indonesia-ifc-cao-withdraws-mediation-process-pt-asiatic-persada-o>> (29 March 2017).

Ever since, the mediation has been led by a team set up by the Batang Hari Regency¹⁰⁵ government but this has reportedly not yielded any tangible results.¹⁰⁶ Furthermore, interviewees have stated that they perceive the regional government team to be biased in favour of AP.¹⁰⁷

Even though the complaint process did not lead to a resolution in the case of AP, it did lead to a suspension of all investments in palm oil by the World Bank/IFC until the adoption of a new global palm oil strategy in 2011. This strategy is now the key framework against which all palm oil investments of IFC are being assessed.¹⁰⁸

Box 5 The RSPO complaint

Parallel to the IFC CAO process, in 2011 a complaint was lodged in the RSPO complaints panel by FPP, Sawit Watch and HuMa on behalf of the Batin Sembilan ethnic group (also known as the Suku Anak Dalam). Following the sale and transfer of AP to the Ganda Group in 2013, the latter confirmed that it would honour the commitments made by Wilmar to the local and indigenous communities by continuing with the mediation process. In July 2013, a letter was sent by RSPO to the Ganda Group, in which RSPO stated that it was happy that Ganda had confirmed that it would honour the commitments made by Wilmar to the communities by continuing with the mediation process. However, shortly afterwards, the mediation process was ended by the Ganda Group, and no new information has been published on the RSPO website.¹⁰⁹ Since 2013 no progress has been made on resolving the RSPO complaint.¹¹⁰ In fact, the mediation process has effectively stopped since the Ganda Group took over ownership of AP.

It is conceivable that Wilmar International has used the sale of PT Asiatic Persada to the Ganda Group in 2013 as a way of circumventing two costly, time-consuming and very public complaints processes (the IFC CAO mechanism and the RSPO complaints process). Instead, it has allowed a locally-based holding company, the Ganda Group (which is not an RSPO member and is not

105 In Indonesia, a regency is a sub-district of a province.

106 Part IV. Rejection of Partnership Scheme for 2000 hectares of Indigenous Peoples SAD and local peasant (residents of Mentilingan) Bungku Village in Supplementary Data of Conflict Suku Anak Dalam with PT. Asiatic Persada, Chairman of Regional Committee of the National Peasant Union of Jambi Province. Source: <<http://www.stn.or.id/download/tambahan-data-resume-konflik-sad-pt-asiatic-persada/>>, (27 March 2017).

107 Interview with National Peasant Union of Jambi Province, location and date withheld for safety reasons.

108 International Finance Corporation, "IFC in the Palm Oil Sector", <http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/agribusiness/resources/palmoil_landingpage> (29 March 2017).

109 RSPO, "Ravin Krashnan, letter to the Ganda group", 22 July 2013, <[http://www.rspo.org/file/letter_to_Ganda_group_22July2013\(1\).pdf](http://www.rspo.org/file/letter_to_Ganda_group_22July2013(1).pdf)> (29 March 2017).

110 RSPO, "Case Tracker PT Asiatic Persada", <<http://www.rspo.org/members/complaints/status-of-complaints/view/1>> (29 March 2017).

held to RSPO standards), to replace it in its production and export of palm oil from this particular concession. According to one NGO, the sale of AP was part of a series of acquisitions made by Ganda in recent years to take over plantations that do not pass Wilmar's ethical commitment to the RSPO.¹¹¹ This is confirmed by German magazine *Der Spiegel*, which has called the Ganda Group 'a clearinghouse for troublesome Wilmar subsidiaries that could be a threat to the publicly traded corporation's reputation. In the conflict surrounding Asiatic Persada, Ganda Sitorus has shown few, if any, signs of social responsibility.'¹¹²

3.2.2 Security incidents and human rights violations

Throughout the social conflict among the Suku Anak Dalam communities that live in the Asiatic Persada plantation, these communities have experienced violent action against them from both private and state security actors. These incidents have involved Asiatic Persada staff, its security personnel, and Indonesian security forces in the form of police, the mobile police brigade (Brimob), and the Indonesian military (TNI). In this chapter, a non-exhaustive overview will be given of the harassment and intimidation that has taken place in the area in recent years.

Reportedly, the social conflict between AP and the SAD population living on or near their concession has been smouldering since the year 2000, with the company and the communities claiming ownership of the same area.¹¹³ AP employs its own security personnel, in varying capacities. In July 2011, AP hired the mobile police brigade (Brimob) to increase the security of their plantation.¹¹⁴ A month later on 8 August, a violent confrontation took place between a local resident called Pak Zainal, who was working as a salesman of fresh fruit bunches (FFB), and AP staff who accused him of stealing the company's palm fruit. Following the accusation, Brimob became involved and a scuffle ensued between them and the salesman and some of his associates. During the scuffle, the Brimob allegedly had some of their weapons taken from them, and the following day they entered the village of Jembatan Sungai Beruang¹¹⁵ to retrieve them. A fight took place between inhabitants of the village and the Brimob, after which Brimob fired their guns and arrested 18 people. Two Brimob personnel were reportedly wounded in the scuffle, and several villagers also received injuries, with one villager being shot in the back, seemingly due to a ricocheting bullet.¹¹⁶

In the following days, the local FFB salesman's house was set on fire, 83 families from three hamlets in the area were evicted and many had their houses bulldozed and looted by AP personnel. The destruction of these houses was reportedly done using AP's machinery, was directed by AP's

111 Eco-Business, "Palm oil row erupts in Sumatra, leaving one dead", 7 March 2014, <<http://www.eco-business.com/news/palm-oil-row-erupts-sumatra-leaving-one-dead/>> (27 March 2017).

112 *Der Spiegel*, "The Dirty business of Palm oil", 2 May 2014.

113 Steinebach, "Today we Occupy the Plantation – Tomorrow Jakarta": Indigeneity, Land and Oil Palm Plantations in Jambi", In: B. Hauser-Schäublin (ed.), *Adat and Indigeneity in Indonesia*, p.63-79, <http://www.academia.edu/12990214/Today_we_occupy_the_plantation-tomorrow_Jakarta_Indigeneity_Land_and_Oil_palm_Plantations_in_Jambi_Indonesia> (27 March 2017).

114 Forest Peoples Programme, SawitWatch and HuMa, November 2011.

115 Location of Sungai Beruang: <<http://mapcarta.com/29279990>>.

116 Forest Peoples Programme, SawitWatch and HuMa, November 2011.

manager – a man named Joko Susilo – and was overseen by 20 AP staff and 20 Brimob members.¹¹⁷ While the village was being destroyed, Brimob personnel reportedly fired their guns into the air while verbally abusing the villagers, calling them ‘pigs’ and ‘dogs’. Several villagers stated that they were beaten as they tried to remove belongings from their houses.¹¹⁸ More than one hundred people that fled the scene took up shelter in the neighbouring forest and nearby villages with food aid and plastic shelters provided by the Department of Social Affairs after 20 days.¹¹⁹

Beyond the violence inflicted upon Bungku’s inhabitants, the presence of AP’S private security personnel in the area, backed up by state security, constantly reminds the village’s inhabitants of the company’s presence and power, likely causing them to further fear for their safety. For example, in 2011 following the conflict between the fruit salesman from Bungku and Brimob, Brimob personnel undertook frequent patrols of the communities in the area, with one of Bungku’s hamlets visited twice a day by 6-10 armed policemen. They reportedly came out to people’s houses, verbally abusing and threatening to shoot them while shooting their guns into the air. It was said that interviewees from Bungku felt terrorised by the police actions.¹²⁰

As explained before, Bungku is beset on all sides by the concessions of four companies, all with their own private security personnel. The different security forces are not easily identifiable, as most do not wear insignia stating which company they work for. Meanwhile, security personnel guard roads leading to and on the plantation. AP’s security guards are known to drive through Bungku in their 4x4 trucks at high speed, causing dust in the road to come up which in turn causes breathing and visibility issues, as well as soiling villagers’ clean clothes hung out to dry.¹²¹

In December 2013, eight months after AP was sold by Wilmar to the Ganda Group, 1,500 armed forces, a mix of Brimob and TNI members, reportedly drove 500 SAD families from their land¹²², and looted and destroyed at least 295 houses.¹²³ Allegations were made that this had been done under orders of AP, and that the company had paid the soldiers and police to clear the land.¹²⁴ SAD villagers stated that during the eviction their savings and other belongings had been looted, and their livestock killed.¹²⁵ Between December 2013 and March 2014, 700 huts and houses of communities in conflict with AP were reportedly destroyed by the police and military.

117 Ibidem.

118 Ibidem.

119 Ibidem.

120 Ibidem.

121 Interview with village chief, location and date withheld for safety.

122 Rainforest Rescue, “Land grabbing for biofuels gets lethal”, October 2014, <<https://www.rainforest-rescue.org/petitions/943/land-grabbing-for-biofuels-gets-lethal>> (27 March 2017).

123 Rainforest Rescue, “Indonesia: terror and eviction for palm oil”, October 2014, <<https://www.rainforest-rescue.org/petitions/936/indonesia-terror-and-eviction-for-palm-oil>>; Urgewald, “Palmölfirma vertreibt Indigene auf Sumatra”, December 2013, <<https://www.urgewald.org/presse/palmoelfirma-vertreibt-indigene-sumatra>> (27 March 2017).

124 Rainforest Rescue, “Land grabbing for biofuels gets lethal”, October 2014.

125 Tribunews.com, “Suku Anak Dalam Jadi Korban Teror dan Ancaman Pembantaian”, December 2013, <<http://www.tribunews.com/regional/2013/12/17/suku-anak-dalam-jadi-korban-teror-dan-ancaman-pembantaian>> (27 March 2017).

When in February 2014 thousands of the evicted community members attempted to return to what they perceive as their indigenous land, they were blocked by police and military.¹²⁶ According to subsequent reports, the land has been inaccessible to the former inhabitants ever since, with AP's security staff guarding it.¹²⁷

The most recent widely reported violent incident in the social conflict between the SAD and AP took place on 6 March 2014 when Bungku inhabitant Titus Simanjuntak was taken from his home by six personnel of the Indonesian military. He was taken to one of AP's security posts where he was stripped and beaten, and made to lick his own blood off the floor.¹²⁸ Titus was allegedly arrested because he had witnessed the military removing signposts which demarcated contested land in the area, by identifying that land as claimed both by local communities and by two subsidiaries of AP.¹²⁹ During the beating, local police officials present at the security post watched the physical abuse without intervening.¹³⁰ According to Indonesian NGOs Walhi and KontraS, Titus had long been involved in the social conflict between AP and the SAD, and was abducted for opposing AP. According to his lawyers, the military personnel beat and tortured Titus both en route to and at AP's facilities.¹³¹

The afternoon following Titus' abduction, 20 villagers from Bungku went to the facility to demand his release. Eight of the protesters were subsequently beaten, kicked and shot with stun guns by AP's security staff and TNI personnel.¹³² One of those villagers, a man called Puji Bin Tayat, was taken by the military and company security, who bound his hands before beating him to death.¹³³ The other villagers protesting Titus' abduction were chased off by the military, who threatened to shoot them. People nearby reported hearing gunshots until 10 o'clock that night, which they presumed were intended to scare people and stop them from protesting further.¹³⁴

126 GATRAnews, "KPA: Kembalikan Tanah Suku Anak Dalam Jambi", March 2014, <<http://www.gatra.com/nusantara-1/48505-kpa-kembalikan-tanah-suku-anak-dalam-jambi.html>> (27 March 2017).

127 Rainforest Rescue, "Land grabbing for biofuels gets lethal", October 2014; Global Forest Coalition, "Wilmar's No Deforestation policy tested by latest abuses by PT Asiatic Persada", December 2013, <<https://peopleforestsrights.wordpress.com/2013/12/20/wilmars-no-deforestation-policy-tested-by-latest-abuses-by-pt-asiatic-persada/>> (27 March 2017).

128 Amnesty International, "Amnesty International Report 2014/15: The state of the world's human rights", 2015, <<https://www.amnesty.org/download/Documents/POL1000012015ENGLISH.PDF>> (27 March 2017).

129 These subsidiaries are PT. Jummer Tulen and PT. Maju Perkasa.

130 Interview with female interviewee, location and date withheld for safety, and KONTRAS, Investigation Report of Suku Anak Dalam Agrarian Disputes, unpublished, p. 10-11.

131 Interview with National Peasant Union, location and date withheld for safety. Also see: Tribun Jambi, Kata Pendamping Petani, Terjadi Penganiayaan, March 2014, <<http://jambi.tribunnews.com/2014/03/07/kata-pendamping-petani-terjadi-penganiayaan>> (27 March 2017).

132 Interview with female interviewee, location and date withheld for safety, and KONTRAS, Investigation Report of Suku Anak Dalam Agrarian Disputes, unpublished, p. 10-11.

133 Amnesty International, "Amnesty International Report 2014/15: The state of the world's human rights", 2015; Berdikarionline, "Kronologis Penculikan, Kekerasan Dan Pembunuhan Warga SAD Oleh Aparat TNI", March 2014, <<http://www.berdikarionline.com/kronologis-penculikan-kekerasan-dan-pembunuhan-warga-sad-oleh-aparat-tni/#ixzz3OscOStQx>> (27 March 2017).

134 Interview with female interviewee, location and date withheld for safety, and KONTRAS, Investigation Report of Suku Anak Dalam Agrarian Disputes, unpublished, p. 10-11.

Box 6 The case of another Ganda Group company: Agronusa Alam Sejahtera

Another company owned by the Ganda Group, Agronusa Alam Sejahtera (AAS), has been implicated in violence against communities in the Bungku area. The company operates a concession adjacent to AP, where it grows acacia which is exported for use in furniture production.¹³⁵ In 2009, a violent confrontation erupted between the inhabitants of Bungku and the company's security personnel, supported by Brimob. Those specific Bungku inhabitants had moved to the area from Java between 1998 and 2000, and Agronusa Alam Sejahtera claimed they were residing within its concession. The company demolished several houses, and were met with protest from the inhabitants, as well as the SAD 113 group.¹³⁶ Ever since the escalation in 2009, interviewees stated that visits to the hamlet and intimidation by AAS's security forces have been frequent, with them conducting house-to-house visits, and at times verbally abusing and/or beating inhabitants, as well as accusing them of stealing palm FFB from AP's concession.¹³⁷

In 2011, the government authority of the Batang Hari Regency, wherein Bungku lies, organised a meeting to resolve the social conflict, which was also attended by the Batang Hari Regency forestry agency and staff from a local military office. Interviewees stated that the meeting had not been effective in helping to resolve the social conflict. Bungku inhabitants who had joined the meeting were asked to sign an attendance list. The next day, AAS's security personnel arrived at the houses of those who had signed the attendance list with heavy machinery, accompanied by Brimob, claiming that what the villagers had signed had been an agreement to give up their land.¹³⁸ Interviewees stated that in this way a ploy was used by the company to obtain their land.

The Palembang Military Court sentenced six soldiers involved in the killing to three months in prison each. The Palembang Military Court's verdict of the six soldiers stated their mandate in Jambi province had been to prevent social conflict between the SAD and AP in Bungku village.¹³⁹

135 PT AAS is subsidiary of PT Agro Mandiri Semesta (PT AMS). PT AAS produces raw materials for furniture for export purposes. The parent holding company of PT AMS is Ganda Group. Sources: World Rainforest Movement (WRM), "Paper Dragons: Timber Plantation Corporations and Creditors in Indonesia", June 2013; Timber Plantation Corporations and Creditors in Indonesia, CAPPA Indonesia, June 2013; and Serikat Petani Indonesia (SPI), Lima Hari Berturut, Aksi Bersama SPI Jambi Tuntut Pengembalian Lahan, November 2013, <<http://www.spi.or.id/lima-hari-berturut-aksi-bersama-spi-jambi-tuntut-pengembalian-lahan/>> (27 March 2017).

136 Interview with male interviewee, location and date withheld for safety.

137 Interview with male interviewee, location and date withheld for safety.

138 Interview with male interviewee, location and date withheld for safety.

139 In a verdict of military court, it is said that the six soldiers (the defendants) acted based on the letter of command order number Sprin / 21 / II / 2014, dated February 5, 2014 and letter of command order number Sprin / 36 / III / 2014, dated March 1, 2014 on the deployment of military personnel of 142/KJ Infantry Battalion. Source: Inkrispenna.

The Military Court trial has been heavily condemned by Indonesian NGO KONTRAS, who state it was not conducted according to law, and that the sentence of the military personnel was unfairly low. Five of AP's private security were arrested by Jambi's regional police and charged with violence resulting in Puji's death, and their trial is currently ongoing.¹⁴⁰

The above mentioned security incidents are directly related to the vulnerable position of local communities. In an academic paper analysing the complaints pertaining to Wilmar's palm oil plantations, including the Asiatic Persada case, it is concluded that the deeper-seated problems facing people affected by the oil palm sector can be exacerbated by patterns of violence and intimidation by state and non-state actors who can be deployed to 'protect' palm oil plantations from people who 'occupy' them (usually returning to their indigenous lands to lay claim to them) or harvest fruit that is legally considered the property of the company.¹⁴¹ More specifically, the arrests (for theft of oil palm in Jambi) involve company security guards working together with local police, reinforcing a widely held perception that the police effectively act as an extension of the company. When the 'thieves' face beating or extortion after arrest, as not infrequently happens, the sense of anger deepens.¹⁴²

3.2.3 Asiatic Persada's security providers and human rights violations

In this section, the role of the different security providers is discussed, and how they are related to human rights violations.

Private security

AP employs dozens of security personnel, in varying capacities. During this research, no reliable source was found to determine whether AP itself hires its security personnel or whether they are hired through a separate security company. However, AP's managers have been known to directly instruct its security staff,¹⁴³ and no known security company has been publicly associated with AP in recent years. This makes it highly likely that the security is hired and managed directly by the company, thereby making AP's management directly responsible for the conduct of their security staff. If so, this could be seen as an almost deliberate attempt to conceal and/or confuse as to who the perpetrators of violence against local people are.

AP's regular private security staff are short-term contract workers or workers contracted on a daily basis. Only their managers have permanent contracts. They occupy guard posts, which are at times

140 Eksposnews, "5 Petuagas Asiatic Jadi Tersangka Pemukul Petani", March 2014, <<http://eksposnews.com/hukum-kriminal/5-Petuagas-Asiatic-Jadi-Tersangka-Pemukul-Petani>> (27 March 2017).

141 S. Balaton-Chrimes and K. Macdonald, "Wilmar and Palm Oil Grievances: The Promise and Pitfalls of Problem Solving", 2016, Non-Judicial Redress Mechanisms Report Series 8, p.26, <<http://corporateaccountabilityresearch.net/njm-report-viii-wilmar/>> (27 March 2017).

142 Institute for Policy Analysis of Conflict, "Indigenous rights vs agrarian reform in Indonesia: A case study from Jambi", April 2014, IPAC Report No.9, p.23, <<http://www.understandingconflict.org/en/conflict/read/25/Indigenous-Rights-vs-Agrarian-Reform-in-Indonesia-A-Case-Study-from-Jambi>> (27 March 2017).

143 Forest Peoples Programme, SawitWatch and HuMa, November 2011.

positioned close to villages in the area. Some of the security personnel contracted on a daily basis are reportedly hired in an ad-hoc way when AP are planning to execute evictions, or otherwise expect protest from neighbouring communities.¹⁴⁴ Overall, interviewees stated AP's security personnel are mostly recruited from other areas in the Jambi province, and are not from the area they work in.¹⁴⁵

The short-term contract workers are paid monthly, with the amount they are paid depending on the hours they have worked. Reportedly, no regular security staff have the right to sick leave or holidays. Also, some of AP's security staff working in the vicinity of Sei Butang village, in the Sarolangun regency close to Bungku, were reportedly not officially registered with any company for the security services they provided.¹⁴⁶ It was not possible to verify the employment status of all of AP's security staff during the course of this research.

In the event of conflict between the security staff and nearby communities, AP's security personnel have been known to bear rifles.¹⁴⁷ Yet, the majority of AP's regular security personnel reportedly have not received training from the police on how to properly use firearms.¹⁴⁸ Such police training is a legal requirement for bearing firearms in Indonesia.¹⁴⁹

Police

The police (in the form of Brimob) have played a controversial role in the social conflict between the SAD and AP. Brimob entered into the social conflict in July 2011, when they were reportedly hired by AP to increase security on their concession.¹⁵⁰ A month later they were involved in violence against and evictions of local communities, actions which were reportedly orchestrated by AP's management. In April of 2013, they were again involved in large-scale evictions and violence, allegedly at the behest of AP.

Brimob have invariably been on the side of AP during its social conflict with the SAD, and their violent action seems to have caused the conflict to intensify. The fact that they, being a police force, have been hired by a company in whose interest they subsequently committed human rights violations, shows they have done the opposite of fulfilling their duty to protect the Indonesian people. Although the nature of AP's financial contributions to Brimob is unclear, the fact that the police force was invited to the area and hired by the company makes AP complicit in Brimob's actions.

Military

Like Brimob, the military's involvement in this case also appears to have been aligned with AP's commercial interests. In April of 2013 they were involved in the mass evictions described above, which they conducted together with Brimob. Then in 2014, TNI personnel abducted a villager

144 Interview with village chief, location and date withheld for safety.

145 Interview with 2 male interviewees location and date withheld for safety.

146 Interview with male interviewee, location and date withheld for safety.

147 Interview with village chief, location and date withheld for safety.

148 Interview with village chief, location and date withheld for safety.

149 For private security personnel, regulations on the possession of firearms are based on the Letter of Decree of the Chief of Police (Surat Keputusan Kapolri) No. Pol : Skep/82/II/2004 dated February 16 2004; Source: Inkrispenna.

150 Forest Peoples Programme, SawitWatch and HuMa, November 2011.

from Bungku, whom they then murdered at AP's facilities, for which six TNI personnel were later sentenced to extremely mild three-month jail sentences. Thus, their violent actions in the area appear to have been aimed at threatening and intimidating communities in social conflict with AP. No financial links or reports thereof were found between the company and the military, and it remains unclear whether the military have been contracted by AP for their security.

It is important to view this case in the light of the dual role of Indonesia's armed forces, which have a longstanding practice of raising independent income outside the approved budget process. The military's role in Indonesia's economy takes several forms: military-owned businesses organised under TNI foundations and cooperatives; collaboration with the private sector, including protection payments and leasing of public land for profit; criminal enterprises, such as involvement in illegal logging; and various forms of corruption, including inflating the cost of military purchases. Despite a law passed in 2004,¹⁵¹ requiring the Indonesian government to shut down or take over all TNI businesses by October 2009, this largely failed, according to a Human Rights Watch report,¹⁵² due to resistance of the military and a lack of political will.

3.3 Conclusions for Asiatic Persada

Based on the above findings, the following conclusions can be drawn.

Regarding the corporate accountability of the owners of Asiatic Persada

- ❑ There is a lack of clarity as to the ownership situation of AP. The company has changed its name and formal ownership recently, but still seems to be held by the Ganda Group. It is unclear who the Ganda Group's shareholders are, which subsidiaries it operates, and who is financing the group.
- ❑ It seems that the change in ownership of AP in 2013, from Wilmar to the Ganda Group, has made the situation worse than previously because of the lack of a CSR policy, and the lack of willingness to operate under national and international human rights standards by the Ganda Group. It is likely that Wilmar decided to sell the concession in order to circumvent the costly and public complaints processes it was involved in, which would be in line with our analysis of the company's corporate strategy. This fits into a pattern whereby Wilmar appears to sell off problematic concessions, like Jatim Jaya Perkasa which it sold to Ganda Group in 2005. By selling off the problematic AP concession, Wilmar seems to have attempted to improve compliance with its own "No Deforestation, No Peat, No Exploitation Policy", adopted in December 2013. Further research is needed to clarify the business relationship between Wilmar and the Ganda Group, in order to determine to what extent Wilmar is still responsible for any violations taking place in the AP concession.

151 TNI Law No. 34/2004.

152 Human Rights Watch, "Unkept Promise - Failure to End Military Business Activity in Indonesia", 2010; <<https://www.hrw.org/report/2010/01/11/unkept-promise/failure-end-military-business-activity-indonesia#page>> (27 March 2017).

- ❑ The IFC CAO process did not lead to any tangible results for the complainants and serious shortcomings were identified of the way in which the IFC dealt with the Asiatic Persada case over time. The complaint process and the ensuing mediation paid no attention to the role of security actors in the business and human rights aspects of the case.
- ❑ This case leads to the recommendation that the IFC needs to consider incorporating into its Performance Standards provisions around when and how their clients disengage from a project, including when the companies are involved in a dispute resolution process.
- ❑ It is unclear who the buyers of AP's palm oil are, given that Wilmar claims that they no longer buying from the concession. This is mainly due to a lack of transparency and responsiveness by the Ganda Group. This information is important, because recent NGO reports have shown that RSPO and non-RSPO certified palm oil are possibly entering into mixed supply chains of the final buyers of palm oil. Once the buyers of AP's non RSPO certified palm oil would be known, these companies could be held accountable for any human rights violations.

Regarding the role of security actors and human rights violations

- ❑ It is highly likely that the security forces are hired and managed directly by AP, thereby making its management directly responsible for the conduct of their security staff. If so, this could be seen as an almost deliberate attempt to conceal and/or confuse as to who the perpetrators of violence against local people are.
- ❑ The relationship between the company, Brimob and the army is not always clear, but this case study, building on earlier research, shows that the actions of the state security forces have usually been aligned with the interests of the company.
- ❑ In all violent incidents, the only charges made have been against company security personnel and against army staff that were directly involved. The army staff convicted received relatively light sentences. However, the company has never been held directly responsible for its role in the violence.

4 Case study 2: PT Wirakarya Sakti

4.2 Corporate profile

4.1.1 Wirakarya Sakti



PT Wirakarya Sakti (WKS)¹⁵³ is an Indonesian registered company that was established in Padang (West-Sumatra Province) on 11 October 1975. WKS acquired its first plantation permit for 1,000 ha in Jambi Province, Sumatra in 1989. In 1996, the company obtained its first definitive concession area for 78,240 ha from the Ministry of Forestry.¹⁵⁴ This concession spanned five of the province's regencies.¹⁵⁵ The decree granting the concession states that already existing settlements as well as community land in the area should be excluded from the company's concession.¹⁵⁶ In 2004, the Ministry of Forestry increased the concession's size to 293,800 ha.¹⁵⁷ The company has planted an area of 174,200 ha, which is 85 per cent of the target plantable area.

Wirakarya Sakti is part of the Sinar Mas Forestry corporate group, which is itself part of the Sinar Mas conglomerate.¹⁵⁸ Sinar Mas Forestry is the exclusive supplier of raw material for the paper mills of Asia Pulp and Paper (APP), which is also part of the Sinar Mas conglomerate.¹⁵⁹ APP's subsidiary PT Lontar Papyrus Pulp & Paper Industry processes the WKS' timber at two of its mills on the island of Sumatra.¹⁶⁰

153 For convenience purposes, the company is shortened to Wirakarya Sakti or WKS in this report.

154 Ministry of Forestry Decree Number 744/Kpts-II/1996on; World Rainforest Movement, "Urgent call: A farmer and environmental defenders activist murdered by security force of PT. WKS, a subsidiary of Asia Pulp and Paper – Sinar Mas Group", March 2015, <<http://protectionline.org/2015/03/06/urgent-call-farmer-environmental-defenders-activist-murdered-security-force-pt-wks-subsidiary-asia-pulp-paper-sinar-mas-group/>> (27 March 2017).

155 In Indonesia, a regency is a sub-district of a province.

156 Ministry of Forestry Decree Number 744/Kpts-II/1996on

157 Ministry of Forestry decree Number SK 346 Menhut-II/2004

158 Sinar Mas Forestry, "About us", <http://www.sinarmasforestry.com/about_us.asp?menu=1> (1 December 2016).

159 Ibidem.

160 Asia Pulp and Paper, "PT. Lontar Papyrus Pulp & Paper Industry", <<http://asiapulppaper.com/office/pt-lontar-papyrus-pulp-paper-industry>> (27 March 2017).

Box 7 Jambi Province, Sumatra: From primary rainforest to industrial area

Jambi Province is located on the east coast of central Sumatra. The population size is 3.4 million (2014 estimate).¹⁶¹ Although covered in dense rainforests for centuries, Jambi province is now primarily an industrial area. The province hosts a variety of palm oil companies (including Asiatic Persada, the other case study), logging companies, paper and pulp producers (Asia Pulp and Paper – Sinar Mas), extractives companies (including oil and gas company Petrochina) and coal mining companies.

Figure 3 Map of location of WKS concession in Jambi Province, Sumatra



Source: WKS/Sinarmas Forestry¹⁶²

161 Wikipedia, "Jambi", <<https://en.wikipedia.org/wiki/Jambi>> (27 March 2017).

162 WKS/Sinarmas Forestry, "Fire management and community participation in PT Wira Karya Sakti Plantation Forest in Jambi", <<http://www.slideshare.net/GlobalEnvironmentCentre/plantation-forest-fire-management-and-community-participative-approach>> (27 March 2017).

4.1.2 Sinar Mas Forestry

Sinar Mas Forestry manages companies that operate forest plantations in Sumatra and Kalimantan. It started managing its first plantation forest in 1986.¹⁶³ It is unclear if Sinar Mas Forestry is a separate legal entity or if it is just a collection of economic activities under the Sinar Mas Group. The company is not specified as a separate business unit within the Sinar Mas group¹⁶⁴, and there is no record of Sinar Mas Forestry in corporate information databases¹⁶⁵ nor in Indonesian corporate registries.¹⁶⁶

Sinar Mas Forestry manages 33 APP pulpwood suppliers covering 38 logging concessions.¹⁶⁷ Despite not being under APP's direct ownership (although APP has shared ownership in six suppliers¹⁶⁸), APP states that it has a responsibility to manage and monitor their activities. Furthermore, there appears to be at least some direct operational control by Asia Pulp and Paper over WKS, as will be illustrated further on. APP states that it has a responsibility to manage and monitor the activities of its suppliers, which are directly managed by Sinar Mas Forestry. Sinar Mas Forestry's subsidiary Wirakarya Sakti trades directly with Indah Kiat, which is one of Asia Pulp and Paper's two main operational companies. In 2014 and 2015, Indah Kiat owed Wirakarya Sakti 12.9 and 2.9 million US dollars in trade payables, respectively.¹⁶⁹

One of the sons of Sinar Mas Group founder Eka Tjipta Widjaja, Muktar Widjaja was the president commissioner of Sinar Mas Forestry's company PT Wirakarya Sakti (WKS). He holds senior positions in APP/Sinar Mas Forestry and GAR/SMART, as well as other Sinar Mas divisions.¹⁷⁰ No information could be found on the current management of Sinar Mas Forestry.

4.1.3 Asia Pulp & Paper (APP) group

The Asia Pulp & Paper (APP) group, created in 1972, is Indonesia's largest pulp and paper producer, and one of the largest pulp and paper companies in the world. It controls 30 per cent of Indonesia's current pulp capacity.¹⁷¹ Paper mills in China and Indonesia under the APP brand produce more than 19 million tonnes of various paper products.¹⁷² APP markets their products in more than

163 Sinar Mas Forestry, "About us", http://www.sinarmasforestry.com/about_us.asp?menu=1 (1 December 2016).

164 Sinarmas, "Business Units", <http://www.sinarmas.com/en/> (27 March 2017).

165 Databases consulted: Orbis, Reuters Eikon, and Opencorporates.

166 Sources: Indonesia Industrial Company Directory, <<http://kemenperin.go.id/direktori-perusahaan>>; Ministry of Trade, Corporate Directory, <<http://www.kemendag.go.id/en/perdagangan-kita/company-directory/data-center-collection/>> (27 March 2017).

167 APP, 2015, Sustainability Report 2015; <https://www.asiapulppaper.com/system/files/app_sustainability_report_2015.pdf> (27 March 2017).

168 It is unknown if this includes WKS.

169 APP, "Indah Kiat 2015 Annual Report"; <<http://www.asiapulppaper.com/download/file/fid/3613>> (27 March 2017).

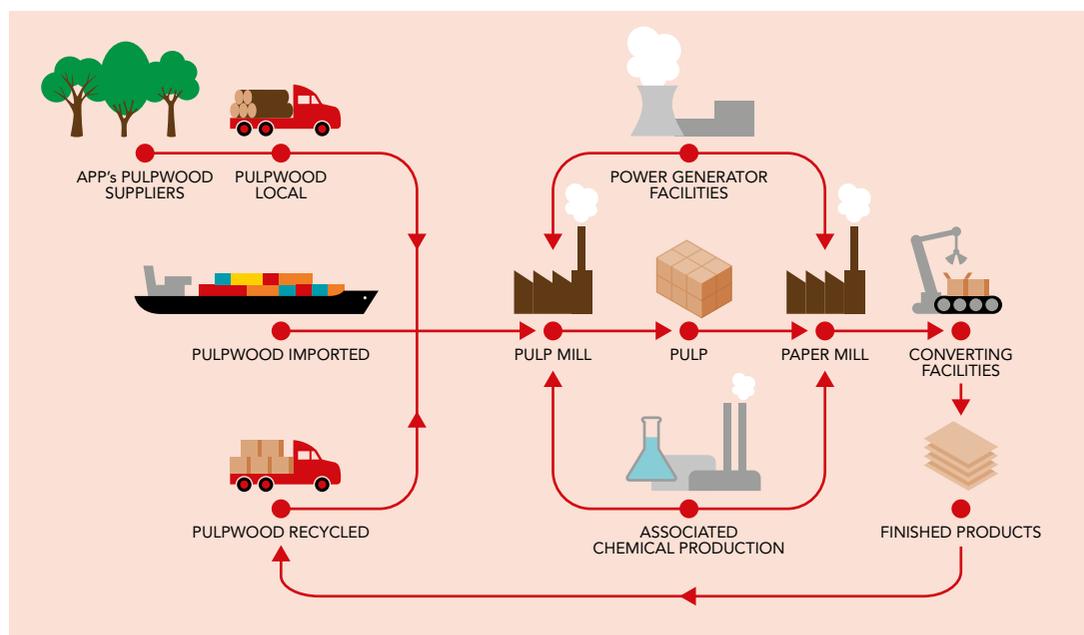
170 Greenpeace, 2010, p.4; Sinar Mas Introduction and Overview, 2016.

171 Greenpeace, 2010, p.4.

172 Sinarmas, "Business Units", <<http://www.sinarmas.com/en/>> (27 March 2017).

120 countries across six continents and employs 37,951 people. In 2015, APP recorded revenues of US\$ 5.7 bn¹⁷³ The company provides an illustration of its supply chain, which can be seen below.

Figure 4 Supply chain of Asia Pulp & Paper (APP)



Source: APP, Sustainability Report 2015¹⁷⁴

Asia Pulp and Paper consists of two subsidiaries, Indah Kiat and Tjiwi Kimia, which are both listed on the Jakarta stock exchange¹⁷⁵. These two subsidiaries are majority owned by PT Purinasa Ekapersada, which appears to be APP's holding company.¹⁷⁶ One of the sons of Sinar Mas Group founder Eka Tjipta Widjaja, Teguh Ganda Widjaja, heads APP.¹⁷⁷

173 DNV-GL, "Future of Spaceship Earth - The Sustainable Development Goals Business Frontiers", 2016, p.115, <<https://www.dnvgl.com/technology-innovation/spaceship-earth/>> (27 March 2017).

174 APP, "Sustainability Report 2015", 2015, p.36; <https://www.asiapulppaper.com/system/files/app_sustainability_report_2015_1_0.pdf> (27 March 2017).

175 APP, "Composition of shareholders - Tjiwi Kimia", <https://www.asiapulppaper.com/system/files/tkim_ownership_structure.pdf>; APP, "Composition of shareholders - Indah Kiat", <https://www.asiapulppaper.com/system/files/inkp_ownership_structure.pdf> (27 March 2017).

176 Bloomberg, "Company Overview of PT. Purinasa Ekapersada", <<http://www.bloomberg.com/Research/stocks/private/snapshot.asp?privcapId=41694490>> (27 March 2017).

177 Greenpeace, "How Sinar Mas is expanding its empires of destruction", 2010, p.6; <http://www.greenpeace.org/international/Global/international/publications/forests/2010/SMG_ExpandingEmpires_2010_2.pdf>; APP, "About us", <<http://www.app.com.cn/en/about/index/id/123>> (27 March 2017).

Thirty-three pulpwood suppliers (managed by Sinar Mas Forestry) managing 38 concessions provide APP with raw material. These concessions are FMUs (forest management units) based on government forest concession licences.¹⁷⁸ An overview of APP's buyers is not publicly available. Investigations by Greenpeace have shown that packaging for Mattel-, Disney-, LEGO- and Hasbro-branded merchandise is made using APP paper.¹⁷⁹ Several buyers, such as Mattel, Staples, Office Depot, Wal-Mart and Woolworths Limited, have stopped buying paper products from APP under pressure from NGO campaigns.¹⁸⁰

Box 8 Asia Pulp & Paper's Forest Conservation Policy: Problem-solving or cover-up?

In February 2013, after widespread public criticism of the company, community opposition and pressure from customers and investors, APP released a Forest Conservation Policy (FCP) that included a commitment to respect the rights of communities affected by its own operations and to push its suppliers to do the same.¹⁸¹

In an independent evaluation by a coalition of NGOs in 2014, it was concluded that much work remains to be done for APP to successfully implement its policy commitments. Although the company has put a host of measures in place to implement its commitments, in most cases, changes have yet to take effect on the ground where many practices remain the same as prior to APP's announcement of its Forest Conservation Policy. Though the exact number was not available publicly when this report was published (in 2014), hundreds of unresolved land and other disputes with communities remain throughout APP's and its suppliers' land bank.¹⁸²

In October 2015, twelve NGOs including WWF-Indonesia sent a joint open letter to APP to express concern over lack of adequate progress on the ground on many key elements of the FCP. One of the key concerns is the fact that serious social conflicts remain unresolved, and has been compounded by the violent murder in February 2015 of Indra Pelani, a community activist, by a security firm that was hired to protect a Sinar Mas concession (for more details on this case, see section 4.2.2).¹⁸³

178 APP, "Sustainability Report 2015", 2015, p.62, <https://www.asiapulppaper.com/system/files/app_sustainability_report_2015_1_0.pdf> (27 March 2017).

179 Greenpeace, "Greenpeace investigations link the toy sector to APP", undated, <<http://www.greenpeace.org/international/en/campaigns/forests/asia-pacific/app/toys/sector/#tab3>> (27 March 2017).

180 Wikipedia, "Asia Pulp & Paper", <https://en.wikipedia.org/wiki/Asia_Pulp_%26_Paper> (27 March 2017).

181 HuMa et al., "APP's performance in meeting its social responsibility commitments – Joint NGO submission", 2015, p.3, <http://www.forestpeoples.org/sites/fpp/files/news/2015/01/ExecutiveSummary_APP_20140114_FINAL_SK_reduced%20size.pdf> (27 March 2017).

182 HuMa et al., "APP's performance in meeting its social responsibility commitments – Joint NGO submission", 2015, p.3.

183 WWF, "WWF Advisory to Buyers and Investors of Sinar Mas Group / Asia Pulp & Paper (SMG/APP)", October 2015, http://www.wwf.or.id/?42802/WWF-Advisory-to-Buyers-and-Investors-of-Sinar-Mas-Group-Asia-Pulp-Paper-SMGAPP#_edn6 (27 March 2017).

APP has a number of letterbox companies registered in the Netherlands, including Tjiwi Kimia Finance BV, Indah Kiat International Finance Company BV, and Indah Kiat Finance BV. The Netherlands is often used for tax avoidance purposes by multinational companies.¹⁸⁴ In fact, a report by Profundo states that the attractive Dutch tax climate is the reason why APP has established the Dutch holding company Paper Excellence.¹⁸⁵ The ownership of Paper Excellence is hidden behind a string of foreign holding companies in Malaysia and the British Virgin Islands, although it is very likely that it is ultimately controlled by the Widjaja family.¹⁸⁶ This corporate structure illustrates how a lack of transparency regarding its ownership relationships pervades Sinar Mas.

4.1.3 Sinar Mas Group

There is very little publicly available information about the Sinar Mas Group and there are no annual reports available. Based on the scattered information available, Sinar Mas Group is a conglomerate of companies based in Jakarta. Sinar Mas is involved in many different industries, ranging from pulp and paper, agribusiness and food, financial services, real estate and telecommunications to energy and infrastructure. The company reports to consist of several separate business units, each with their own focus.¹⁸⁷

However, in reality Sinar Mas' corporate structure is much less straightforward. In fact, Sinar Mas does not exist as a single business entity at the head of a corporate group, but is instead a name that unites several legally unconnected business groups.¹⁸⁸ These business groups are Asia Pulp and Paper, Sinar Mas Agro Resources and Technology (SMART), Sinar Mas Financial Services, DSS Energy and Infrastructure, Smartfren, and Sinar Mas Land.¹⁸⁹ Sinar Mas¹⁹⁰ explains in its corporate brochure that 'Sinar Mas is a brand name that is used by companies that are independently managed but share a common history and corporate values'. Overall, this creates a highly obscure corporate structure, making it more difficult to hold Sinar Mas accountable as a group for its subsidiaries' impacts.

184 The Netherlands hosts around 12,000 Special Financial Institutions that fulfill conduit financing functions, channeling royalty, loans and interest payments or dividends between subsidiaries of a group. These companies have no physical presence or economic substance. SOMO, "Private Gain – Public Loss. Mailbox Companies, Tax Avoidance and Human Rights", 2013, <<https://www.somo.nl/private-gain-public-loss/>> (27 March 2017).

185 Profundo, "Dutch private companies related to APP – Update. A research paper prepared for Greenpeace Nederland", undated, p.i, <<http://www.profundo.nl/files/download/Greenpeace1205a.pdf>> (27 March 2017).

186 Ibidem.

187 Sinarmas, "Business Units", <<http://www.sinarmas.com/en/>> (27 March 2017).

188 Orbis data; Sinar Mas Business Profile, undated, <<http://www.sinarmas.com/en/images/download/Sinar%20mas%20Business%20profile.pdf>> (27 March 2017).

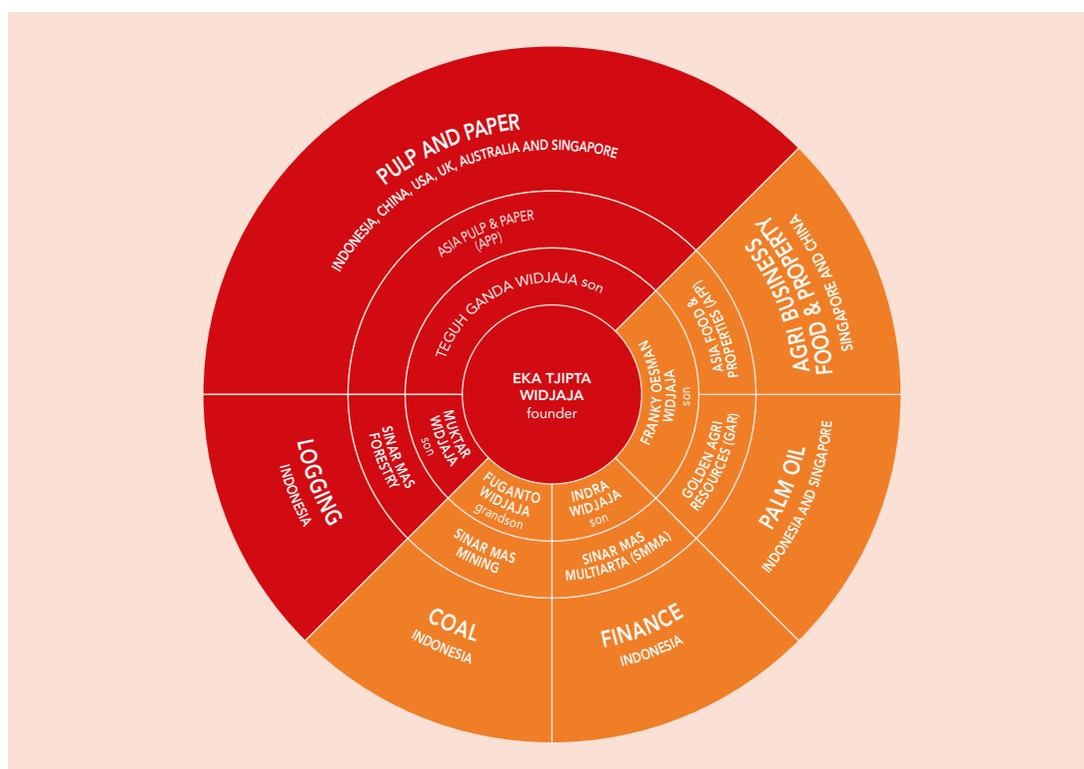
189 Sinar Mas Business Profile, undated.

190 The name Sinar Mas means Golden Light. This name and logo are inspired by the golden rays of light from the sun that shines endlessly, giving light and life.; Sinar Mas, "Introduction to and overview of Sinar Mas", undated, <<https://www.slideshare.net/KusnadiHalimSalim/sinar-mas-group-profile>> (27 March 2017).

In 2010, Greenpeace reported how Sinar Mas was actively developing and expanding its land bank for pulp plantations, oil palm and coal. Confidential Sinar Mas documents obtained by Greenpeace revealed that Sinar Mas has been targeting several million hectares of land across Indonesia for pulp and oil palm expansion.¹⁹¹ In the same report, it was shown that Sinar Mas functions as a family conglomerate, with separate business units run by sons or grandsons of company founder Eka Tjipta Widjaja¹⁹², ranked by Forbes as Indonesia’s fourth richest man.¹⁹³ The intricate corporate structure is illustrated below (Figure 5).

It was concluded by Greenpeace that the Sinar Mas Group is typified by a lack of transparency in both operations – for example, a lack of publicly available concession area maps – and in corporate structure.¹⁹⁴

Figure 5 Business units of the Sinar Mas Group



Source: Greenpeace¹⁹⁵

191 Greenpeace, “How Sinar Mas is expanding its empires of destruction”, 2010, p.1.

192 Ibidem.

193 Forbes, “Eka Tjipta Widjaja & family”, <<http://www.forbes.com/profile/eka-tjipta-widjaja/>> (27 March 2017).

194 Greenpeace, “How Sinar Mas is expanding its empires of destruction”, 2010, p.4.

195 Ibidem.

4.2 The role of Wirakarya Sakti's security providers and human rights violations

4.2.1 The conflict

Throughout this research, conflict was found between WKS and communities living close to its concessions in four separate villages, in three of Jambi's regencies, namely Muaro Jambi, Tanjung Jabung Barat, and Tebo. Community members that were interviewed expressed animosity towards WKS, stating that the company had caused them to lose land and livelihood, as well as the loss of their way of life, and the death and criminalisation of their fellow community members by company security, Brimob and the Indonesian military. The specific social conflicts are dealt with in detail in the following sections.

4.2.2 Security incidents and human rights violations

As stated above, interviews were conducted in and around four villages in this investigation into human rights violations by WKS' security providers. In this section, the findings will be discussed per village.

The case of Senyerang

Between 2001 and 2004, Senyerang's elected village officials held negotiations with WKS over the usage of land in the area.¹⁹⁶ When agreement was reached in 2004, the Ministry of Forestry's decree¹⁹⁷ expanding the WKS concession followed, and placed a large part of the land in the Senyerang area within the concession.

Interviewees for this research stated that most of Senyerang's villagers had not been invited to the negotiations, and that the agreement had placed 72 km² of Senyerang's customary land within the WKS concession. However, those same villagers reportedly only became aware of this in 2006, when WKS brought in heavy machinery to build canals running through villagers' farms and nearby forests.¹⁹⁸ From 2006 onwards, Senyerang's villagers repeatedly protested the company's presence on what they perceived to be their customary land, and re-occupied land the company was operating on multiple occasions. Many then joined the local union Persatuan Petani Jambi (PPJ) in 2009.¹⁹⁹

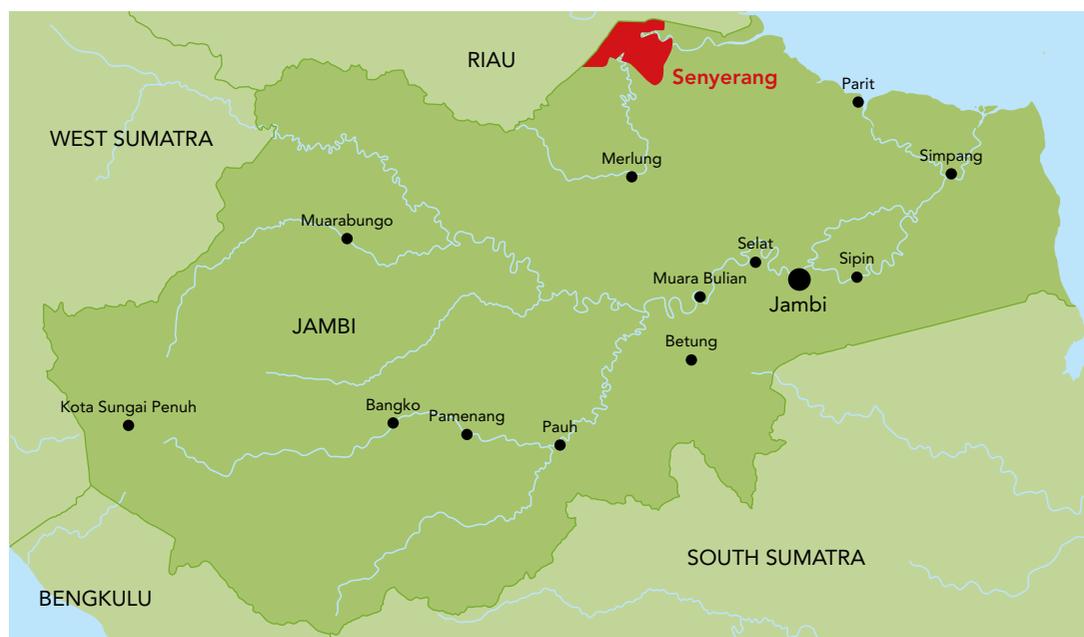
196 The agreement was signed by the village head, a member of the village representative body and a village community leader; Source: P. Anderson et al., "Lessons Learned from the Conflict, Negotiations and Agreement between Senyerang Village and PT Wira Karya Sakti", October 2014, p.5, <<http://www.forestpeoples.org/topics/pulp-paper/publication/2014/lessons-learned-conflict-negotiations-and-agreement-between-senye>> (27 March 2017).

197 Ministry of Forestry decree No. SK 346 Menhut-II/2004.

198 Combined information from several interviews, location and date withheld for safety.

199 Combined information from several interviews, location and date withheld for safety.

Figure 6 Senyerang, Tanjung Jabung Barat reGENCY, Jambi Province, Sumatra



Source: Google Maps

Subsequent conflict between the company and Senyerang's community members led to WKS and police together blockading the only road to Senyerang, by using containers. This road, which runs through the WKS concession, was blockaded between 2009 and early 2011, thereby isolating the village. The villagers were then forced to travel by river to other towns where they sold their crops or bought goods, severely hampering their capacity to make a living.²⁰⁰

To protest their isolation, on National Farmers Day, 24 September 2010, Senyerang's inhabitants conducted a demonstration near WKS' facilities. Both police and the military had been notified by the protesters, and had given their consent for the protest to proceed. The so-called Rapid Response Force (or URC) of WKS' security company PT. Mangala Cipta Persada (MCP), however, did not move away, and became involved in a clash with the protesters.²⁰¹ One of the protesters described the incident as follows:

200 Combined information from several interviews, location and date withheld for safety.

201 Interview with male interviewee, location and date withheld for safety.

*'The National Farmers Day was a peace demonstration; the villagers asked the company security URC to respect that, but they refused and even mocked the villagers. The villagers replied and mocked the security. The villagers had at that time put down wooden barriers where they stood. The URC refused to step back, instead moving forward passing through the barriers. One of the URC personnel was carrying a cleaver. The villagers got angry and fought back.'*²⁰²

In the ensuing violence, three URC personnel sustained injuries and two were subsequently hospitalised.²⁰³ It was not possible to ascertain how many of the villagers involved in the violent incident were physically hurt. Nobody appears to have been arrested or charged at the time in light of the incident.²⁰⁴

To protest the occupation of what they perceived as their land, as well as the obstruction of the road leading to their village, on 4 November 2010 Senyerang's villagers blockaded the Pangabuan river.²⁰⁵ They installed wire across the river to prevent ships from passing through.²⁰⁶ After four days WKS' transport ships guarded by Brimob²⁰⁷ moved towards the wire, and were approached by 20 motorboats carrying villagers of Senyerang.

While the villagers told them to move away from the blockade, the WKS ships proceeded downriver, breaking the wire blockade. The villagers continued to yell at the ships' crew, urging them to stop, meanwhile approaching the ships. As the villagers approached, Brimob who were escorting WKS' ships started shooting at them. One of the protesters, called Ahmad Adam bin Syafri, was shot in the head and killed instantly.²⁰⁸ Subsequently, Senyerang's community members started throwing objects at the ships, and at least one Molotov cocktail.²⁰⁹ None of the Brimob personnel or protesters were charged in court over any of the violence. Several villagers called upon Brimob to resolve the killing of Ahmad and to prosecute the shooter. However, WKS subsequently filed a lawsuit against the protesters over damage it alleged had been done to one of its ships during the confrontation in which Ahmad died. The same villagers who had called for prosecution of Ahmad's killer were then called to the local police station to answer questions about the damage to WKS' ship. In the end, neither the alleged damage to the ship nor the killing of Ahmad was resolved.²¹⁰

Following the confrontation on the Pangabuan river and the death of Ahmad bin Syafri, the captain of the local police office was replaced. The new captain reportedly instructed his forces to act as a buffer between the communities and WKS' security, thereby seemingly fulfilling their regular police functions, and meanwhile diminishing the severity of confrontations between private security and

202 Translated from Bahasa. Interview with male interviewee, location and date withheld for safety.

203 Interview with male interviewees, location and date withheld for safety.

204 Interview with male interviewees, location and date withheld for safety.

205 Senyerang Peasant Shooting Chronology, January 26th 2011, obtained by Inkrispina during field research.

206 Antaranews, "Kasus Penembakan Warga Petani Dilaporkan ke Komnas HAM", November 2010, <<http://www.antaranews.com/berita/233251/kasus-penembakan-warga-petani-dilaporkan-ke-komnas-ham>> (27 March 2017).

207 Ibidem.

208 Senyerang Peasant Shooting Chronology, January 26th 2011, obtained by Inkrispina during field research.

209 Youtube, "Tragedy Senyerang Berdarah – video and description", uploaded by Sidik Suhada on January 9, 2011, <https://www.youtube.com/watch?v=a8esEPvw_Bw> (27 March 2017).

210 Interview with male interviewees, location and date withheld for safety.

community members in the area. Furthermore, Jambi's governor initiated meetings between the company, police, and Senyerang's inhabitants in an attempt to resolve the conflict.²¹¹

The outcome of this conflict resolution process was an agreement that 40 km² would be excluded from WKS' concession and would be considered Senyerang's customary land, and that the company would pay the community 6 billion Indonesian Rupiah – the equivalent of €415,000²¹² – so that they could cultivate said land. Because the payment provided to the community turned out to be insufficient funds to cultivate all 40 km², only a quarter was cultivated with rubber, and the rest was developed through a partnership with WKS to grow acacia.²¹³ Because the 40 km² that were excluded from the concession are a far cry from the 72 km² Senyerang's inhabitants reportedly considered to be their customary land, they reportedly still aim to regain the rest. Interviewees stated that although villagers still encounter WKS' security, as well as police and military, confrontations currently do not occur often.²¹⁴

The case of Terjun Gajah

WKS started its operations in Tanjung Jabung Barat in 1996. Its concession area in the regency of Tanjung Jabung Barat is spread over several separate areas, parts of which overlap with the village of Terjun Gajah. One of APP's mills used for processing wood as one of the first steps in producing pulp and paper is situated nearby.²¹⁵

Terjun Gajah's villagers were previously dependent on the surrounding forests where they gathered various types of fruit as well as honey, and produced bamboo. However, the area was awarded to WKS through its concessions, and the company has since cut down much of those forests, replacing them with acacia and eucalyptus trees. The forest's destruction has caused the village to lose a major source of livelihood. When interviewed, inhabitants of Terjun Gajah stated they had appealed to WKS to allow them to conserve part of the forest with its heterogenic plants and animals, but their request was denied.²¹⁶

This lack of interest in conserving the forest's ecosystem also surfaced in the actions of WKS personnel who were found to be indiscriminately killing monkeys within the concession. WKS employees filled bananas with rat poison, which were then hung throughout the plantation, killing the monkeys that ate them.²¹⁷

Interviewees have also stated that WKS pays individuals to mine peat in the area, which the company uses to nurse the seedling trees that are later planted in the concession. Peat mining

211 Senyerang Peasant Shooting Chronology, January 26th 2011, obtained by Inkrispina during field research.

212 Following a currency exchange rate of EUR 1:14450 IDR, as on 9-11-2016.

213 Interview with 2 male interviewees, location and date withheld for safety

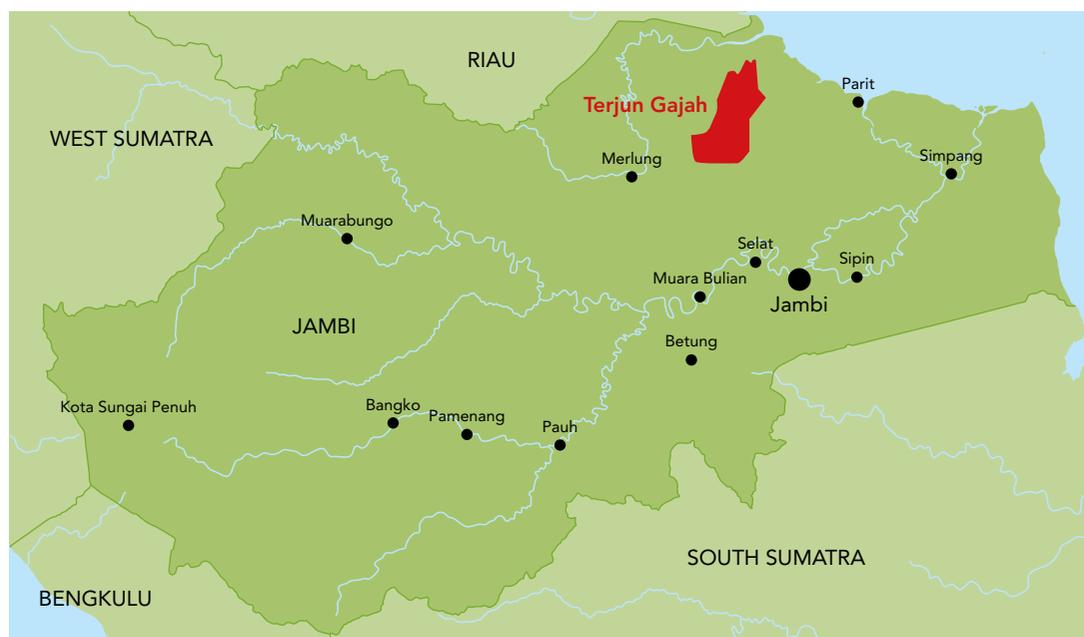
214 Interview with 2 male interviewees, location and date withheld for safety.

215 Interview with male interviewee, location and date withheld for safety.

216 Interview with male interviewee, location and date withheld for safety.

217 Interview with male interviewee, location and date withheld for safety.

Figure 7 Terjun Gajah, Tanjung Jabung Barat regency, Jambi Province, Sumatra



Source: Google Maps

negatively affects the soil's ability to absorb water, making areas drier and more susceptible to fires.²¹⁸ The practice is illegal under Indonesian law,²¹⁹ and in APP's FCP the company also committed to protecting peatland in an effort to combat greenhouse gas emissions.²²⁰ This peat mining is reportedly done by people from outside of Jambi, who are paid low wages to do hazardous work, as the peatland's acidic soil irritates their skin. WKS allegedly told the peat miners to run if anyone approached them while mining, only for them to return several weeks later.²²¹

Intertwined with the conflict over forest conservation has been a social conflict between the community of Terjun Gajah and WKS over the ownership of sections of land which both consider their own. In order to resolve this, an agreement was set up to delineate the border between company and community land, by creating a 200 m² buffer. Both were to give up 100 m² of what they considered to be their own land, for this buffer. However, community members have stated that WKS planted 150 m² of said land with trees for pulp and paper production, while a 3 m deep canal

218 Wingecarribee, "Peat Mining Impacts", <<http://www.herinst.org/wingecarribee/mining/impacts.html>> (27 March 2017).

219 Greenpeace, "Larangan Pembukaan Gambut Adalah Langkah Terbaik Mengatasi Perubahan Iklim", November 2015, <<http://www.greenpeace.org/seasia/id/press/releases/Larangan-Pembukaan-Gambut-Adalah-Langkah-Terbaik-Mengatasi-Perubahan-Iklim/>> (27 March 2017).

220 Asia Pulp and Paper, "APP's Forest Conservation Policy", 2013, <http://www.asiapulppaper.com/sites/default/files/app_forest_conservation_policy_final_english.pdf> (27 March 2017).

221 Interview with male interviewee, location and date withheld for safety.

was built on the remaining 50 m². Community members reported that this canal, situated right beside their land, formed a danger to their children who regularly play in the area. The community had intended to protest its construction, but were deterred by the sight of Indonesian military personnel guarding the digging of the canal by WKS employees.²²²

Many of Terjun Gajah's villagers have reportedly been arrested over the past two decades for working contested land that both they and the company believe to be their own. Furthermore, there have been arrests of villagers cutting trees in the so-called conservation area of the WKS concession.²²³ According to APP company regulations, conservation areas are legally set at 20 per cent of the land of any logging concession.²²⁴ An interviewee stated that many of those apprehended within the so-called conservation area of WKS' concession used to take wood from the forest. However, since the forest was removed and replanted with WKS' trees, they have turned to the conservation area to find wood, often unaware of the area's status. Arrests of villagers said to be trespassing on WKS' land are made by the company's security and the Indonesian military, who patrol the area together. The apprehended villagers are then brought to the police for processing.²²⁵ The local farmers union, which was recently formed by the community of Terjun Gajah, now maintains communication with WKS, and attempts to negotiate with the company concerning the aforementioned arrests, which reportedly continue to this day.²²⁶

The case of Parit Jawa Timur

WKS' concession in the regency of Tanjung Jabung Timur overlaps with the village of Parit Jawa Timur, which has been the cause of a social conflict over 180 km² of land. Interviewees from Parit Jawa Timur stated this figure would be higher if surrounding villages were included, but that was found to be outside the scope of this research.²²⁷

The company came to the area in 1999, and their presence was first noted by Parit Jawa Timur's villagers when the company constructed a canal to set the concession's border. WKS reportedly stated at first that the canal was built with the intention of providing local villages with water. Furthermore, they reportedly stated that their only activities in the area were to harvest the forest's timber, not to create a logging plantation. This reassured the villagers of Parit Jawa Timur, who expected to be able to work the land that WKS were to clear of forest. However, after clearing the forest, in 2001 WKS began to plant the area with their own trees.

222 Interview with male interviewee, location and date withheld for safety.

223 Interview with male interviewee, location and date withheld for safety.

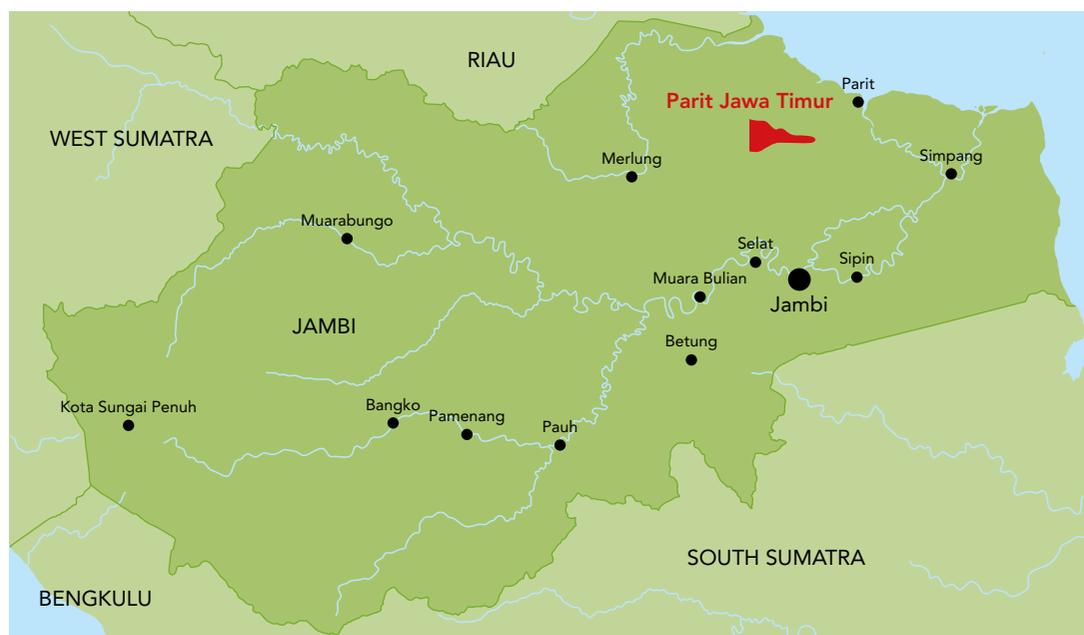
224 Interview with male interviewee, location and date withheld for safety. According to the regulation, it is stated that if a forest area is given as concession to a certain company, and within it there are protected forests, or any form of forest which is already stated by the government, then the forest has to stay as it is.

225 Interview with male interviewee, location and date withheld for safety.

226 Interview with male interviewee, location and date withheld for safety.

227 Interview with male interviewee, location and date withheld for safety.

Figure 8 Parit Jawa Timur, Tanjung Jabung Barat reGENCY, Jambi Province, Sumatra



Source: Google Maps

In the two years following WKS' planting of the area, villagers repeatedly objected to their operations, resulting in the first anti-WKS protests in 2003. During that protest, as well as in the following years, the villagers were said to have experienced intimidation by Brimob in the area. Between 2003 and 2012 the situation in the area was such that when villagers cultivated plants on land of which ownership was contested by WKS, the company's workers would uproot the plants, and the Brimob personnel accompanying them would arrest the farmer.²²⁸ It is reported that many such arrests have led to farmers receiving jail sentences, or spending time in jail while waiting for court proceedings to finish. Their families reportedly often spend large amounts of money on legal fees while trying to free their relative. For example, in 2005 a farmer burned the vegetation on a piece of land he was intent on cultivating. WKS claimed the land belonged to its concession, while the farmer said it was originally his land, and he had not received any payment or compensation from the company. The farmer was arrested by the police and sentenced to two years in jail.²²⁹

The villagers applied for clarity over the contested land with the village authority, but the village officials could not provide them with information on where the concession's boundaries lay. To this day, Parit Jawa Timur's inhabitants have not been able to obtain clarity from any Indonesian government officials as to where the WKS concession ends.²³⁰

228 Interview with male interviewee, location and date withheld for safety.

229 Interview with male interviewee, location and date withheld for safety.

230 Interview with male interviewee, location and date withheld for safety.

In 2012, farmers from Parit Jawa Timur reclaimed 20 km² of contested land. WKS personnel asked them to leave the land, and when they refused to do so, WKS security's Rapid Response Force threatened a group of villagers, apprehending some of them and chasing the rest into the forest. Their agricultural tools were confiscated and brought to a nearby police station, where they are reportedly still being kept. Police and military personnel stood by as the Rapid Response Force executed the removal of the farmers, but intervened only by arresting several farmers.

Although WKS' security violently chased off some of Parit Jawa Timur's inhabitants, others managed to successfully reclaim some land. An interviewee stated that in response to this, WKS started constructing canals 4 m deep and 8 m wide outside Parit Jawa Timur, thereby diminishing their access to the concession. Two other villages in the area were reportedly also cut off from the concession due to the canals. Furthermore, many of Parit Jawa Timur's community members were subsequently denied access past security posts on roads through the concession, further limiting their mobility. As concession roads are important for transporting the village's produce, the villagers were subsequently forced to do this using a nearby river, reportedly severely diminishing their livelihoods.²³¹ The canals have since been the cause of pollution, as branches and leaves rot within them, and pesticides run off into the water, polluting the surrounding soil. Parit Jawa Timur is said not be heavily affected by this pollution, but a neighbouring village called Sinar Wajo is.²³²

In order to improve their mobility, Parit Jawa Timur's inhabitants then constructed their own road, running through the WKS concession. To do so, they piled rocks and dirt on the canals to create a passageway. Between 2012 and 2015, the villagers used this road to move through the concession, but they were detained and questioned whenever passing one of WKS' security posts in the area. When passing through the concession to reach markets or other villages, Parit Jawa Timur's inhabitants had to pass five such security posts. An interviewee stated that when stopped, villagers were never sure of which company's security they were talking to, because several security posts were shared by WKS and Petrochina, which owns an oil concession in the area.²³³

In 2015, through negotiations between the local farmers union PPJ (who represent the community of Parit Jawa Timur), the provincial government and WKS, an agreement was reached between the community and the company over part of the contested land. The company is allowed to harvest the trees currently planted on the contested land, however it will not replant the area, but return it to Parit Jawa Timur's inhabitants.²³⁴

Even with this agreement, tensions in the area remain high, as was exemplified by the arrest of a man from Parit Jawa Timur at the end of 2015, who was charged with stealing WKS' fertilizer. He claimed to have legally bought the fertilizer from one of the company's sub-contractors, unaware of the fact that the sub-contractor had been selling WKS' property. The arrested farmer was then beaten up by WKS' security and Indonesian military personnel.²³⁵

231 Interview with male interviewee, location and date withheld for safety.

232 Interview with male interviewee, location and date withheld for safety.

233 Interview with male interviewee, location and date withheld for safety.

234 Interview with male interviewee, location and date withheld for safety.

235 Interview with male interviewee, location and date withheld for safety.

Recently, relations between the farmers union PPJ and WKS have improved somewhat, and at least for its members, PPJ is said to have been able to discuss issues directly with the company, thereby decreasing the number of arrests by the police.²³⁶

The case of Lubuk Mandarsah

Lubuk Mandarsah is a village consisting of 10 separate hamlets, some of which reportedly overlap with WKS' concession in the area. WKS' presence in the area was first noticed in 2006, when the company announced that it would be constructing roads through the area. After the roads were finished that same year, WKS personnel reportedly returned to Lubuk Mandarsah accompanied by the Indonesian military, evicted several villagers and cleared their cultivated land, thereby destroying their livelihoods.²³⁷ In the following two years, the remaining villagers were often visited by military personnel, verbally intimidating them and firing their rifles into the air in an effort to scare them out of the area.²³⁸

In 2008, the conflict intensified as Lubuk Mandarsah's inhabitants repossessed part of the land WKS had claimed as their concession, and in 2009 when they burned some of WKS' heavy equipment as well as a fuel truck. Following the burning, several Brimob trucks came to the village with arrest warrants for 11 villagers. The villagers protested the arrest warrants, stating that either all or none of them were to be arrested, after which Brimob reportedly gave up and left.²³⁹

In 2013, Lubuk Mandarsah's villagers reportedly reclaimed another portion of land previously taken by WKS. Interviewees stated that in response to this, WKS deployed the URC to this part of their concession, after which villagers were often visited at home by URC personnel and otherwise intimidated into leaving the area.²⁴⁰

The tensions between Lubuk Mandarsah's community and WKS' security came to a head when, in February of 2015, several URC personnel beat a local union organiser called Indra Pelani to death following a verbal altercation. Indra Pelani and his friend were stopped by URC at a WKS security post when the fight began. As the beating started, the friend managed to run off to get help. When he returned with several union members, Indra and the guards were nowhere to be found, although Indra's dead body, hands tied together behind his back, was found the next day in a nearby swamp.²⁴¹ Indra had been beaten and then had a rope tied around the neck, which led to his suffocation and death.²⁴²

236 Interview with male interviewee, location and date withheld for safety.

237 Interview with several interviewees, location and date withheld for safety.

238 Interview with several interviewees, location and date withheld for safety.

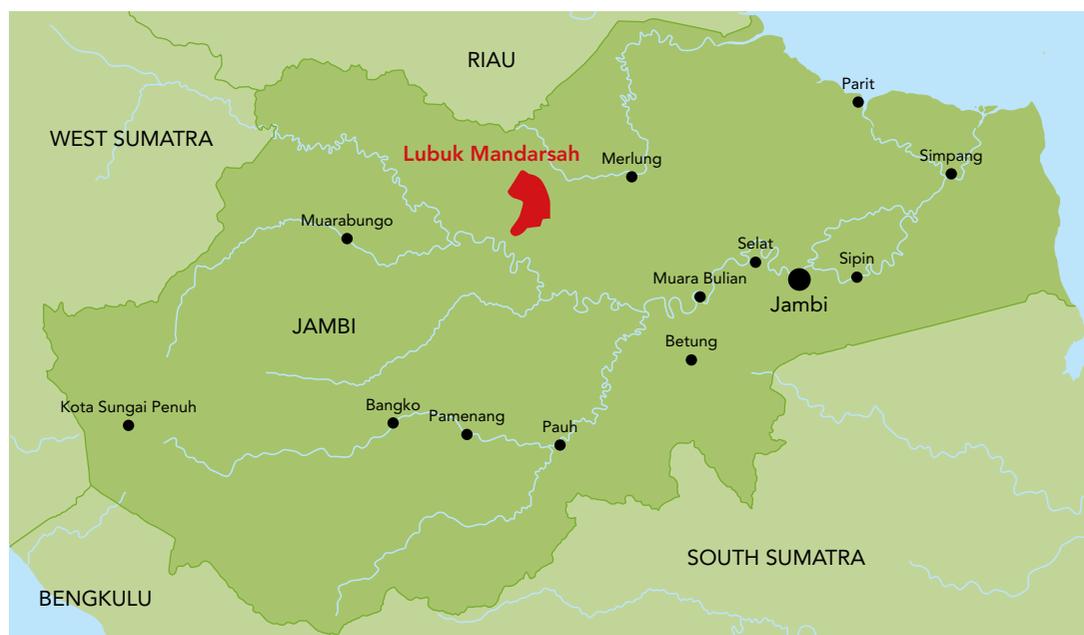
239 Interview with several interviewees, location and date withheld for safety.

240 Interview with several interviewees, location and date withheld for safety.

241 Interview with several interviewees, location and date withheld for safety.

242 Konsorsium Pembaruan Agraria, "Usut tuntas pelaku pembunuhan Indra Pelani", October 2015, <<http://www.kpa.or.id/news/blog/usut-tuntas-pelaku-pembunuhan-indra-pelani/>> (27 March 2017).

Figure 9 Lubuk Mandarsah, Tebo regency, Jambi Province, Sumatra)



Source: Google Maps

As a result of the court case covering the incident, five URC personnel were sentenced to jail for periods varying from eight to 15 years. It was noted by the Indonesian NGO Walhi that during the court proceedings no attention was paid to the question of whether the URC personnel had been acting under instructions to use force if necessary. Reportedly, the judges instead assumed the URC personnel had acted violently at their own discretion. Furthermore, no representatives of WKS or MCP reportedly attended the proceedings.²⁴³

Following the murder of Indra Pelani, WKS' sole customer APP stated that they 'gave instructions' to WKS' management to suspend all security personnel implicated in the incident, as well as the head of security at MCP.²⁴⁴ In APP's Sustainability Report 2015, the company's managing director stated that he was 'deeply saddened by the death of a community member in Jambi, following an altercation with a third-party security contractor working for one of APP's pulpwood suppliers, Wira Karya Sakti (WKS).' APP's managing director also stated that 'WKS ceased its contract with the security contractor and responded to the recommendations made by the Human Rights Commission.

243 Mongabay Indonesia, "Walhi Jambi: Kasus Kematian Indra Pelani Janggal", October 2015, <<http://www.mongabay.co.id/2015/10/22/walhi-jambi-kasus-kematian-indra-pelani-janggal/>> (27 March 2017).

244 APP, "Verification Report on District 8 Incident in the Concession of Wirakarya Sakti – Jambi", April 2015, <https://www.asiapulp.com/system/files/verifikasi_report_wks_incident-english-april_2015.pdf> (27 March 2017).

Following independent advice from NGOs and third-party security experts we have also developed and implemented improvements to our security arrangements across the organisation.²⁴⁵

Towards the end of 2015, WKS management chose to hire another company for their private security altogether, known only as Bima. Several months later, Bima was replaced by international security company G4S, which is now responsible for security at WKS' concession.²⁴⁶ However, MCP is still employed by other Sinar Mas subsidiaries in the area. Also, several former MCP employees are now employed by G4S. Reportedly, G4S has provided more information and training to its employees on Indonesian legislation and the company's code of conduct to which they must adhere.²⁴⁷

4.2.3 Wirakarya Sakti's security providers and human rights violations

In this section, the role of the different security providers is discussed, and how they are related to human rights violations.

Private security

From 2009 until their dismissal at the end of 2015 following the murder of Indra Pelani, private security company Manggala Cipta Persada (MCP) worked for WKS. How private security personnel were employed by WKS beforehand remains unclear, and neither WKS nor one of its security guards has provided any further information.²⁴⁸ Very limited information was found to be publicly available on MCP, and its legal ownership could not be established. However, through interviews it has become clear that at the moment of writing, MCP still provides security to at least several other Sinar Mas subsidiaries operating near WKS.²⁴⁹ The obscure nature of the company – only a Facebook page referring to it could be found – makes it likely that its only client is Sinar Mas, which might also own the company.

MCP's security personnel were divided into two groups: security post guards and members of the URC, or Rapid Response Force, reportedly making up 560 security employees in total.²⁵⁰ The first group manned security posts to monitor who passed through the concession, while the URC's role was to respond to acute security incidents, such as riots or protests.

URC personnel were reportedly better paid and treated by their management, and were all from outside of the area they worked in. In fact, it was only in 2013 that any people from local

245 APP, "Sustainability Report 2015", 2015; <https://www.asiapulppaper.com/system/files/app_sustainability_report_2015.pdf> (27 March 2017).

246 Public relations staff for WKS in district 8 confirmed this information. Information obtained after Community Meeting in Z village, on July 28th 2016.

247 Interview with male interviewee, interview with community members, and interview with Indonesian NGO, locations and dates withheld for safety.

248 Interview with male interviewee, interview with community members, and interview with Indonesian NGO, locations and dates withheld for safety.

249 Interview with male interviewee, interview with community members, and interview with Indonesian NGO, locations and dates withheld for safety.

250 Mongabay Indonesia, "Walhi Jambi: Kasus Kematian Indra Pelani Janggal", October 2015, <<http://www.mongabay.co.id/2015/10/22/walhi-jambi-kasus-kematian-indra-pelani-janggal/>> (27 March 2017).

Photo 1 WKS security riot shield²⁵⁵



Figure 10 MCP's logo



Source: MCP Facebook page²⁵⁶

communities were hired by MCP to become regular security post guards.²⁵³ The URC's attire was said to be appropriate for violent confrontations; they wore dark blue suits with the letters 'URC' on them and carried riot shields, sticks, and knives or other sharp weapons.

Interviewees reported that the URC received training in a military fashion from what they thought was an active military officer with the Indonesian Special Forces (or Kopassus), known amongst local communities only as Mr Kemas. Mr Kemas was said also to be known for his involvement in search operations to capture farmer activists or organisers who protest WKS' land acquisitions.²⁵⁴ Some of these trainings reportedly took place at a location beside an APP factory in Tanjung Jabung Barat regency close to WKS' concession.²⁵⁵ The URC also set up a training location in Lubuk Mandarsah, on land recently reclaimed by the community. Interviewees reported that this allowed them to intimidate Lubuk Mandarsah's inhabitants by marching through the area while shouting, and that the URC personnel spied on women bathing in a nearby river, which stopped the women from going to the river to bathe.²⁵⁶

251 Source: Inkrispina Documentation 24th July 2016.

252 Source: Facebook page of MCP, <<https://www.facebook.com/PT-MCP-Manggala-Cipta-Persada-686947554677654/info/>> (27 March 2017).

253 Interview with male interviewee and separate interview with 2 male interviewees, locations and dates withheld for safety.

254 Interview with male interviewee, location and date withheld for safety.

255 Interview with 2 male interviewees, location and date withheld for safety.

256 Interview with 1 Male and 2 Female community members, locations and dates withheld for safety.

For MCP employees to become security guards, either manning posts or in the URC, they reportedly had to be trained by the police. However, one of WKS' security personnel stated that although he had been promised such training while in MCP's employment, he had never received it. He had worked for MCP for years, starting in 2009, and had never received so much as a written job description; instead, he was referred to a piece of paper glued to the window of one of WKS' security posts describing his function. Due to the lack of training, he also had no knowledge of any procedures to be followed by MCP personnel, nor any regulations or laws governing his work.²⁵⁷

When MCP still ran WKS' security, relations between the security post guards and the URC personnel were reportedly poor, as the URC were said to signify trouble for the security post guards. The security worker that was interviewed stated that the URC would often initiate violent confrontations with local community members, thereby causing the security post guards to be called into the area to diffuse the situation.²⁵⁸

Following the murder of Indra Pelani, MCP was briefly replaced by a company known locally only as Bima, which was in turn replaced by international private security company G4S, which now provides security personnel to WKS.²⁵⁹ G4S still employs some of the same personnel who previously worked for MCP. One interviewee stated that he used to work for MCP and is now doing the same work (under probation) for G4S, but that his new employer treats him very differently. He is now provided with instructions with regard to adhering to the law, G4S's code of conduct, and which procedures to follow during his work.²⁶⁰ Although MCP and the URC have not been employed by WKS for close to a year now, many members of the communities that were affected by them remain wary of coming close to WKS' security guards.²⁶¹ It is too early to say whether the situation has improved compared to before G4S was hired, and it is recommended to monitor the situation on the ground.

Police

The police agency most prominently involved in the land conflict between WKS and communities neighbouring its concession is Brimob, which has played a controversial role. Its actions and inaction appear to have invariably been in support of WKS, instead of being focused on mediating and resolving the social conflict between the company and nearby communities, and being impartial in upholding the law. In 2010, while guarding one of WKS' transport ships, Brimob personnel shot and killed a protesting community member (Ahmad Amad bin Syafri) from Senyerang. In Lubuk Mandarsah, Brimob reacted aggressively when community members burned several of WKS' vehicles, and in Parit Jawa Timur, Brimob have on many occasions been involved in intimidating villagers and arresting people that work on contested land.

The police have reportedly been involved in clashes between WKS' private security and neighbouring communities, at times fighting community members. At other times, they have taken a more

257 Interview with male interviewee, location and date withheld for safety.

258 Interview with male interviewee, location and date withheld for safety.

259 Public relations staff for WKS in district 8 confirmed this information. Information obtained after Community Meeting, location and date withheld for safety.

260 Interview with male interviewee, location and date withheld for safety.

261 Interview with 2 male interviewees, location and date withheld for safety.

passive role, allowing clashes between the two conflicting parties to take place, without intervening. After the murder of Ahmad Amad in Senyerang, the local Chief of Police was replaced by another, who reportedly instructed his personnel to function as a buffer between the two parties, and at least in Senyerang there have been fewer violent confrontations since.²⁶² In Parit Jawa Timur, however, Brimob reportedly still accompany WKS personnel on contested land, arresting any community members they meet there.²⁶³

Overall, Brimob's involvement in the conflict between WKS and neighbouring communities has mostly served the company's interests. Brimob have both perpetrated violence against community members, and have looked away when WKS' private security did the same. It was not possible to determine whether any financial links exist between WKS and Brimob, although their apparent allegiance to the company does suggest the existence of such a relationship.

Military

Between 2006 and 2008, Indonesian military personnel and WKS' private security personnel jointly conducted the forced eviction of several of Lubuk Mandarsah's inhabitants, claiming they were living on WKS' newly acquired land. For a period of two years, they also intimidated any who resisted. Furthermore, the Indonesian military and WKS' private security have been known to carry out joint patrols of the company's concessions. Members of several communities close to WKS' concession have stated that they encounter military patrols near their villages, and that the military intimidate villagers they find on contested land.²⁶⁴ In Terjun Gajah, military personnel were also seen guarding WKS personnel as they dug a controversial canal on what community members perceived to be their land, and in Parit Jawa Timur they joined WKS' private security in beating up a farmer whom they claimed had stolen some of the company's fertilizer.²⁶⁵

Like the police, the military's involvement in this case appears to have been aligned with WKS' commercial interests, and has meant much violent action towards communities in the area. The Indonesian military has a history of involvement with the private sector, allegedly aimed at supplementing the insufficient funding they receive from the Indonesian government.²⁶⁶ The institution controls its own businesses, but is also known to provide security for corporations.²⁶⁷ This has in the past led to cases of military personnel being involved in community displacements²⁶⁸ and human rights violations while working for multinational corporations.²⁶⁹ Although no financial relationship between WKS and the military could be established during the course of this research,

262 Interview with 2 male interviewees, location and date withheld for safety.

263 Interview with male interviewee, location and date withheld for safety.

264 Interview with male interviewee, location and date withheld for safety; Interview with male informant, location and date withheld for safety.

265 Interview with male interviewee, location and date withheld for safety.

266 Human Rights Watch, "Unkept Promise" - Failure to End Military Business Activity in Indonesia", January 2010, <<https://www.hrw.org/report/2010/01/11/unkept-promise/failure-end-military-business-activity-indonesia>> (27 March 2017).

267 Ibidem.

268 Ibidem.

269 ICTJ, HRWG, KontraS, and Imparsial, "A Matter of Complicity? Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh", Case Study Series, International Center for Transitional Justice, 2008, p.3, <<https://www.ictj.org/sites/default/files/ICTJ-Indonesia-Aceh-Exxon-2008-English.pdf>> (27 March 2017).

the fact that their personnel patrol WKS' concession together, and that the military is dependent on private sector funding, makes it likely that such a relationship exists.

4.2 Conclusions for Wirakarya Sakti

Based on the above findings, the following conclusions can be drawn.

Regarding the corporate accountability of the owners of WKS:

- ❑ The corporate structure of Wirakarya Sakti is very complex and ownership relations between the Sinar Mas Group and WKS are unclear. As long as ownership relations between different Sinar Mas companies related to WKS are not clarified, it remains impossible to establish who is ultimately responsible for human rights violations at the WKS concession.
- ❑ As the sole buyer of WKS, the role and responsibility of Sinar Mas company Asia Pulp & Paper (APP) needs to be clarified. APP has elaborate sustainability policies that WKS do not seem to comply with. Since APP's Forest Conservation Policy was introduced in 2013, this has not led to a reduction in local conflicts and rights violations, considering the murder of Indra Pelani in 2015, among others.
- ❑ Furthermore, APP's buyers are responsible for human rights violations that take place within their own supply chains. APP does not publish the names of its suppliers, which makes it impossible to establish who is buying products originating from WKS.

Regarding the role of security actors and human rights violations:

- ❑ The relationship between the company, Brimob and the army is unclear, but this research shows that the actions of state security forces have usually been aligned with the interests of the company.
- ❑ In all the violent incidents, the only charges have been against company security personnel that were directly involved. However, the company itself has never been held responsible for its role in the violence, either directly or indirectly.
- ❑ MCP, WKS's previous private security company, has been implicated in most of the security incidents described above. MCP's ownership is unknown, but this research shows that the company works for multiple Sinar Mas group companies. The business relationship between MCP and Sinar Mas arguably makes the latter responsible for its human rights violations.
- ❑ It is unclear if the situation on the ground has improved after G4S was hired to take over the security management of the WKS concession. More field research would be necessary to verify this.

5 Analysis of the case studies in the international law framework

5.1 Corporate liability

Under current business and human rights law, both WKS and AP, and their corporate groups, Sinar Mas and the Ganda Group, have a corporate responsibility to *avoid* causing or contributing to human rights impacts that may arise during the ordinary course of their operations.²⁷⁰ This corporate responsibility extends to *seeking* to prevent or mitigate human rights impacts by third parties,²⁷¹ such as private security forces that WKS or AP may hire to secure their plantations. Any use of excessive force, occasioning fatalities, serious injury or other prejudice, such as the unlawful removal of indigenous or local communities from their land, is a further abuse of this responsibility, and gives rise to the right to a remedy for the victims and/or their families.

Corporate groups like Sinar Mas and the Ganda Group, and the multinationals they supply, also have a business responsibility that runs through their transnational supply chains to *prevent* or *mitigate* adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.²⁷² This includes complex situations arising out of supply chain relationships with business partners and any other non-state or state entity involved in their business operations.²⁷³ If the corporate groups involved appear to contribute to rights violations, they also need to provide remedy to the affected communities.

5.2 State liability

The facts revealed by the case studies and by background research show that state actors in the form of Indonesian military and police often provide security services for commercial gain to a business, or a business contracts with a militia or private security firm for security. In the case of Indonesian military and security forces, they are agents of the state, and if they violate human rights in the course of their operations, then their violations are acts of the state. Thus, the Indonesian government is liable for such abuse, even if such forces are operating in the private sphere but

270 UN SSRG, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect Remedy" Framework", UN Human Rights Council, UN Doc. A/HRC/17/31 (Mar. 21, 2011), Guiding Principle 13(a). <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> (27 March 2017).

271 Ibidem, Guiding Principle 13(b).

272 OECD Guidelines on Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Environment, 25 May 2011, Chapter IV, p, 31, para. 3, <<https://www.oecd.org/corporate/mne/48004323.pdf>> (27 March 2017)

273 Ibidem, Commentary on Human Rights to Chapter IV, p. 33, para. 43.

continue to use their status as state actors to do so.²⁷⁴ That liability means that the Indonesian government is under a duty to provide remedies for victims of such abuse and to punish individual soldiers or police who are criminally responsible.

While the Indonesian government is directly liable for the human rights abuses committed by its security forces, it is also indirectly liable for the actions of private security providers working for businesses or alongside state security forces. The Indonesian government has a duty to prevent human rights violations by private security actors (by, for example, ensuring proper licensing, vetting and training of private security personnel, especially when they carry weapons), to punish individuals who commit such violations, and to provide remedies for the victims of such violations.²⁷⁵

274 United Nations, Art 4 and 7 Articles on Responsibility of States for Internationally Wrongful Acts 2001, <<https://www.ilsa.org/jessup/jessup17/Batch%201/Articles%20of%20Responsibility%20of%20States%20for%20Internationally%20Wrongful%20Acts.pdf>> (27 March 2017).

275 This principle of international human rights law is embodied in a number of treaties to which Indonesia is a party, for example the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights 1966. Indonesia became a party to these Covenants in 2006. The duty to protect human rights and to prevent their violation is also embodied in the United Nations Guiding Principles on Human Rights 2011, principles 1, 3 and 5.

6 Overall conclusions

- ❑ Palm oil company Asiatic Persada and logging company Wirakarya Sakti are responsible for the human rights violations committed by the security providers they work with. This responsibility also applies to their corporate groups. More information is needed on the ultimate ownership of these companies, so that the owners can be held accountable.
- ❑ Under the UN Guiding Principles on Business and Human Rights, companies such as WKS and AP should avoid causing or contributing to human rights impacts, including the prevention and mitigation of human rights impacts by third parties with which they work. The OECD Guidelines on Multinational Enterprises make clear that this responsibility extends to multinationals buying products that contain materials from the plantations of WKS and AP. More research is needed to determine where the supply chain for WKS and AP's products leads and in which consumer products they finally end up.
- ❑ The relationship between the companies, the mobile police brigade (Brimob) and the Indonesian army (TNI) is not always clear, but it seems that the actions of the public security forces have usually been aligned with the companies' interests. No information could be found about whether a financial relation exists between the companies and public security providers involved, although the actual behaviour of Brimob and TNI suggest the existence of a mutually beneficial relationship.
- ❑ In the context of weak rule of law in the areas where WKS and AP operate, Indonesian security forces often do not protect local people's rights but instead seem focused on protecting corporate interests. This has allowed company security personnel and state security officials responsible for human rights violations to operate with near impunity.
- ❑ Although violence and intimidation towards communities appear to have taken place on a structural basis, carried out by both public and private security providers, only individual personnel directly involved in violations have been charged with these offences. AP and WKS have never been held directly responsible for their role in the violence and the human rights abuses arising therefrom.

The two hats of public security actors in Indonesia

Protecting human rights or preserving business interests?
Case research in the palm oil and logging sector

This report presents the results of a research project on the role of state and private security actors in human rights violations in the extractive industry in Indonesia. It includes the results of two case studies: one on palm oil company Asiatic Persada, owned by the Ganda Group, and one on logging company Wirakarya Sakti, owned by the Sinar Mas Group. These two case studies, that involved fieldwork in Sumatra in July and August 2016, reveal a pernicious and deliberate erosion and violation of (human) rights of local inhabitants across the spectrum of security actors, showing that public security actors are protecting corporate interests rather than performing public functions. The implications of these findings are considered in terms of legal responsibilities as well as access to justice, highlighting some of the challenges of non-judicial grievance mechanisms such as the IFC's Compliance Advisor Ombudsman and the RSPO Complaints Mechanism. The report ends with a call for necessary legal and policy changes.

The research was carried out in a consortium consisting of the University of Nottingham (Nottingham International Law & Security Centre), SOMO and Inkrispena. It was funded by NWO/WOTRO as part of the Knowledge Platform Security & Rule of Law, under the call for applied research on the influence of transnational challenges in Fragile and Conflict-Affected Settings.

