

# TRADING RISKS

How ADM & Bunge are failing  
Land & Environmental Defenders  
in Indonesia



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# EXECUTIVE SUMMARY



Virgin peatland rainforest has been taken over by palm oil plantations in a remote region of Papua.  
Credit: © Greenpeace

The environmental impacts of the global food system, and the agribusiness companies at the centre of it, have received significant attention in recent years – from deforestation to pollution, to exacerbating the climate crisis. However, the other side of the story is the significant human and social impact on communities around the world – and the threats and violence towards those peacefully defending the rights of their communities to their land and a healthy environment.

Under international standards, global agribusiness companies have a clear responsibility to monitor and address the human rights and land rights abuses in their supply chains, even if they do not directly own the processing or production sites where such abuses are taking place. Where investigations reveal that any allegations of such abuses are credible, companies are obliged to work with their suppliers to remedy these abuses. Extra vigilance is required if they are sourcing from countries with a high risk of land or human rights abuses, and companies are expected to invest in additional due-diligence in such countries.

## **But to what extent are major agribusiness companies meeting these responsibilities?**

This report seeks to answer this question by examining the Indonesian palm oil supply chain of two US-based agribusiness giants – commodity-trading companies The Archer-Daniels-Midland Company (ADM) and Bunge Limited. It presents the findings from our investigation into the incidence of alleged land and human rights abuses associated with the mills supplying both companies in the largest palm oil exporting country in the world – Indonesia. Our investigation also explored what action ADM and Bunge have taken to monitor and address these allegations of abuse.

Palm oil is a significant global agricultural commodity, with production more than tripling over the past 20 years.<sup>1</sup> Commodity-trading companies are a powerful group, which have dominated the international trade in grains and oilseeds, including palm oil, for over a century. Operating in the middle of the palm oil supply chain, ADM and Bunge source from between 800 and 1,000



Indonesian mills.<sup>2</sup> The supply chain begins at the plantation, with harvested fruit then processed at a mill to extract the crude oil. The oil is then transported to refineries, and shipped for use in the manufacturing of everything from cosmetics and soaps to processed food.

While Indonesia is the world's top palm oil producer, and therefore of strategic commercial importance to global agribusiness companies such as ADM and Bunge, the country presents a complex, high-risk operating environment. It has a poor record on the protection of environmental and community land rights, as well as on protecting the people defending those rights. The Indonesian state has persistently failed to uphold indigenous rights as recognised under international law. Land access and ownership are major sources of conflict in the country, and corruption in the management of natural resources is widespread – including in the palm oil sector. The criminalisation of land and environmental defenders is particularly rife in Indonesia, and intimidation, physical attacks and killings have been widely documented.

It is therefore clear that any company operating or sourcing land-based products from Indonesia needs to carry out significant and ongoing due-diligence processes to identify, prevent and mitigate land and human rights abuses.

## OUR INVESTIGATION AND KEY FINDINGS

To explore the nature and extent of alleged land and human rights abuses associated with ADM and Bunge's supply chain operations in Indonesia, we investigated the mills supplying both companies. We looked for credible allegations of land and human rights abuses made by surrounding communities or their representatives against these mills, and reports of any associated conflicts

between the mills and communities. We chose to analyse the mill-level data, as at the time of this analysis ADM and Bunge did not publish the full list of plantations in their supply chain.

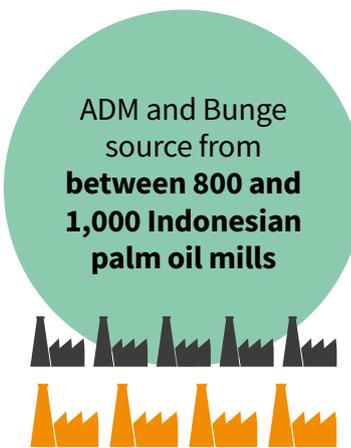
To assess these mills, Global Witness reviewed a random sample of 330 of the 658 mills in Indonesia supplying palm oil to both ADM and Bunge, according to the companies' most recently available mill lists. We looked at each of these mills by running simple internet searches using keywords indicating alleged land rights abuses and/or related conflicts between community members and the mill companies. To illustrate the kinds of abuses taking place, we researched six cases in further detail based on publicly available information, which we then verified with Indonesian civil society organisations supporting those communities.

**Our searches revealed that nearly 2 in 5 of the sampled mills supplying both ADM and Bunge have been accused of:**

- **violating community and indigenous peoples' land rights;**
- **failures to uphold the rights of human rights defenders to operate freely and safely; and/or**
- **failing to prevent or mitigate adverse impacts on local communities and their environment.**

The majority of these issues were reported within the last five years, and almost 1 in 5 of the mills were linked to conflicts still reported as active in 2019 and 2020. For nine of the sampled mills, well-publicised allegations of abuse stretch back for a decade or more.

Allegations against mill companies include seizure of land without paying compensation, and dumping waste into rivers – jeopardising community livelihoods and destroying local ecosystems. For 11 of the mills in our sample, local community members have



ADM and Bunge source from **between 800 and 1,000 Indonesian palm oil mills**



Nearly **40%**

**of sampled mills had allegations of land, environmental or human rights abuses against them**

been reportedly arrested, put on trial, or otherwise subjected to judicial processes and fines after protesting against palm oil company activity.

It is clear that there are significant issues linked to mills supplying both ADM and Bunge. Moreover, our investigation findings indicate that both commodity traders' procedures for investigating and remedying land and human rights issues in their supply chains – and at mills specifically – are insufficient. ADM and Bunge investigate and address complaints of illegality or abuse against their suppliers through internal grievance mechanisms, however only a handful of the cases we identified have been flagged through these mechanisms. Furthermore, even in these limited cases, the published complaints relate to deforestation – neither trader appears to have considered reports of land or human rights abuses associated with the majority of mills in question.

ADM rejected Global Witness' evidence base and our analysis of their due-diligence process. However, ADM investigated all mills identified in this report as linked to land and human rights abuses. ADM replied to Global Witness that it would be monitoring 9 mills identified in our report, and continuing investigations on a further 36 mills. It closed investigations or otherwise declined to investigate the remaining mills. Bunge acknowledged that the alleged incidents were in its indirect supply chain and reiterated that it includes credible instances of human rights violations in its grievance list for engagement.

However, anyone with access to the internet – if they made the effort to check – could easily discover that these palm oil mills have been associated with multiple allegations of land and/or human rights abuses. This apparent blind spot, when considered alongside the numbers of reported land and human rights issues we were able to identify quickly and easily, **demonstrates a failure by ADM and Bunge to adequately anticipate**

### **and monitor potential abuses in their supply chains.**

The evidence presented in this report indicates that both commodity traders are failing to live up to their responsibilities towards local communities and those who defend their land and environmental rights. We can conclude that neither company are exercising the degree of due-diligence expected by international standards, and that their existing policies and systems of oversight and implementation are inadequate.

## **THE COSTS OF INACTION**

As well as potentially being associated with devastating human and environmental costs incurred by affected communities, ADM and Bunge's failure to respect the land and human rights of communities and defenders in their supply chain also exposes them to significant business risks. Evidence shows that palm oil producers experience substantial business costs from social conflicts in Indonesia – ranging from disruption of their operations, to legal and reputational damage. According to some estimates, costs from community-company conflicts have reached up to US\$2.7 million for some palm oil companies in Indonesia, with research indicating that these costs are increasing.<sup>3</sup>



**Our investigation indicates that both commodity traders are failing to live up to their responsibilities towards local communities and those who defend their land and environmental rights**

Palm oil fruit in Deli Serdang, North Sumatra.  
Credit: Jefri Tarigan /Anadolu Agency/ Getty Images

## CALLS TO ACTION

### What ADM and Bunge should do:

To address the due-diligence failings found by our investigation, we call on both ADM and Bunge to:

- **Adopt a public policy position on human rights defenders** that includes a zero-tolerance stance on threats and violence against defenders, with the explicit inclusion of those at highest risk, namely land and environmental defenders.
- **Adopt a public policy position on the prevention of land rights abuses** across their supply chains, including a zero-tolerance stance on illegal land acquisition, and to ensure the right of free, prior and informed consent (FPIC) for affected communities.
- **Adopt and implement effective systems to implement these policies** throughout their supply chains and operations.
- **Ensure effective mitigation and remedy processes** are developed and implemented for where adverse impacts are identified.
- **Champion land and environmental defender issues with governments**, including the Indonesian government, using their commercial and political leverage to press for greater respect for defender rights.

### What governments should do:

While the focus of this report is on the specific responsibilities of global agribusiness companies, governments also have a duty to act. Voluntary corporate responsibility measures have not been sufficient to prevent significant environmental and human rights abuses throughout global company supply chains.

Governments therefore need to strengthen regulations on corporate accountability and responsible business conduct. The European Union's current move towards enacting mandatory corporate due-diligence legislation is a welcome development. However, to ensure that the types of alleged abuses highlighted in this report are addressed, this legislation must include clear requirements to respect the rights of human rights defenders.

National governments also have an important role to play. In relation to our investigation's findings, it is clear that the Indonesian government must more effectively protect the rights of its citizens. Global Witness supports Indonesian civil society in their calls on the Indonesian government to:

- **Respect, protect and fulfil the rights of human rights defenders** in line with the UN Declaration on Human Rights Defenders, and investigate and prosecute perpetrators of violations against them, including the intellectual authors of these crimes.
- **Strengthen the recognition and protection** of indigenous territorial and customary rights.



A palm oil mill in Kendawangan, West Kalimantan.  
Credit: ADEK BERRY/AFP via Getty Images

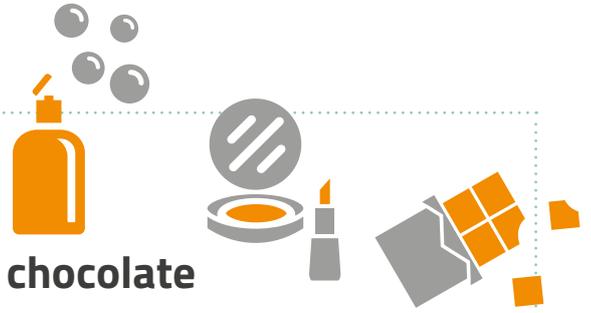


A plantation worker sorts palm oil fruits in Jambi, Sumatra.  
Credit: © Muhammad Adimaja/  
Greenpeace



## PALM OIL

Found in everything from shampoo, cosmetics and processed foods such as chocolate



## INDONESIA

The largest palm oil exporting country in the world



Rife with land and human rights abuses related to palm oil plantations and mills including

**Land grabbing**  
**Threats and attacks**  
**Pollution**



## THE DATA

Global Witness looked at the Indonesian palm oil mills supplying two of the world's largest commodity traders: **ADM** and **BUNGE**



Reviewing a random sample of 330 of the 658 mills



Nearly **40%** of analysed mills supplying both ADM and Bunge have been accused of **violating local community land rights, criminalising or attacking defenders, and/or causing serious environmental degradation**

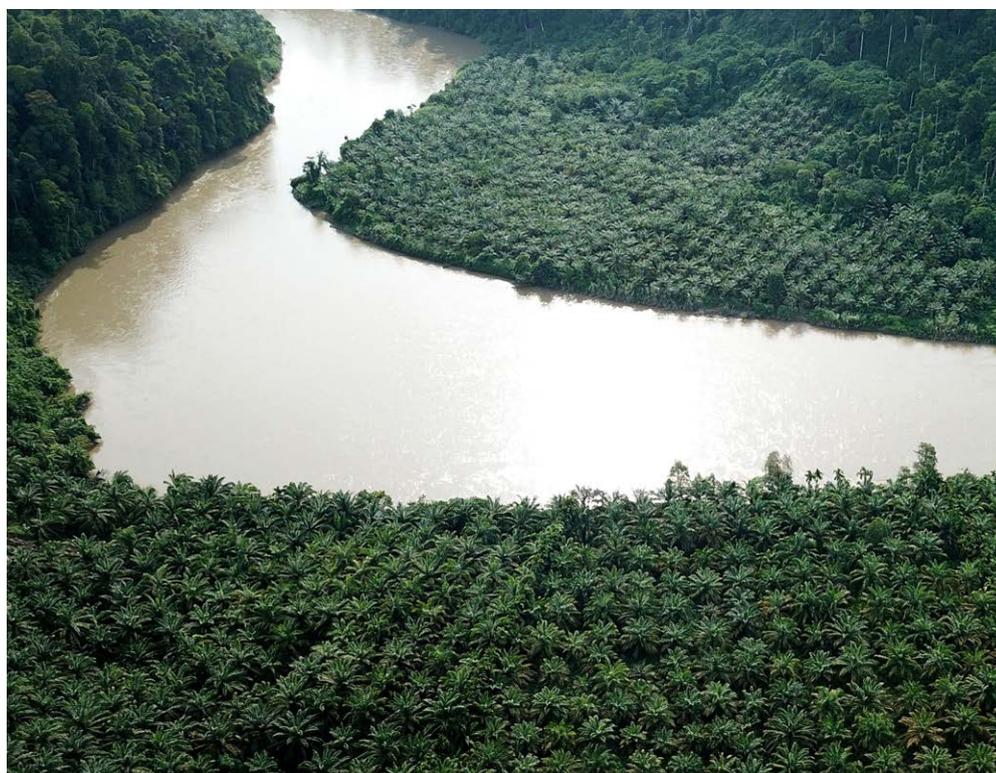
## OUR FINDINGS

Global Witness found that neither company is addressing the majority of these allegations through their formal grievance processes.

Anyone with access to the internet – if they made the effort to check – could easily discover that these palm oil mills have been associated with multiple allegations of abuses.

This demonstrates a failure by ADM and Bunge to adequately anticipate and monitor potential abuses in their supply chains.

# INTRODUCTION



Palm oil plantations in Aceh, Sumatra.  
Credit: JANUAR/AFP  
via Getty Images

Palm oil is big business in Indonesia. It is the country's most valuable agricultural export, with the industry employing a reported 16.2 million people in 2018.<sup>4</sup> It is currently the world's top producer of palm oil, controlling approximately 60% of global market share.<sup>5</sup>

But the development of this industry has come at a heavy price, with millions of hectares of biodiverse forests felled. On Borneo alone, the palm oil industry has been linked to 39% of the island's forest loss over the past two decades.<sup>6</sup> In response, Indonesian and global civil society organisations have pushed the environmental impacts of palm oil onto policy makers' agendas in recent years.

However, the industry is also responsible for significant socioeconomic impacts on the communities surrounding plantations and oil-processing facilities. Allegations of land grabs and conflicts between companies and communities have been widespread. Indeed, palm oil is the largest contributor to agrarian conflicts in

Indonesia, with 204,135 hectares affected in 2018 – 1.4% of the country's total oil palm area.<sup>7</sup> As it has expanded into ever more remote regions, the industry has increasingly affected the rights of indigenous communities. Deforestation, waste pollution and loss of land have damaged communities' livelihoods, health and food security.<sup>8</sup>

**Land and environmental defenders** – those communities and individuals that take a stand against the unjust, discriminatory, corrupt or damaging exploitation of natural resources and the environment – have often faced violent reprisals for their work in opposing palm oil expansion. Intimidation, physical attacks and even murders have frequently been linked to companies or projects in the sector. Criminalisation of these defenders – the use and abuse of existing laws and policies to intimidate and silence defenders, their families and the communities they represent – is particularly common in Indonesia (see Operating Environment section on page 12).

The palm oil supply chain begins at the plantation, with the harvested fruit then processed at a mill to extract the crude oil. The oil is then transported to refineries, often located at export ports, and shipped for use in the manufacturing of everything from cosmetics and soaps to processed food products. The Indonesian palm oil industry's top three markets are India, the European Union and China.<sup>9</sup>

This report focuses on the Indonesian palm oil supply chain of two US-based agribusiness giants – commodity-trading companies The Archer-Daniels-Midland Company (ADM) and Bunge Limited. Indonesia is a major source of palm oil for both companies – ADM, for example, buys 89% of its palm oil from Indonesia and Malaysia.<sup>10</sup>

Global agribusiness companies such as ADM and Bunge have a responsibility to monitor and address the human rights and land rights abuses in their supply chains, even if they do not directly own the processing or production sites where such abuses are taking place. As we detail in this report, this responsibility is made clear

in international standards, and in some cases in national law and even in both companies' corporate policies.

Companies should be extra vigilant if they are sourcing from certain countries. Given that Indonesia has a poor track record both in protecting and respecting defender rights and in dealing with land rights issues, companies should put substantial effort and resources into regular monitoring of abuses in their supply chain, including in particular at the mills that they source from.

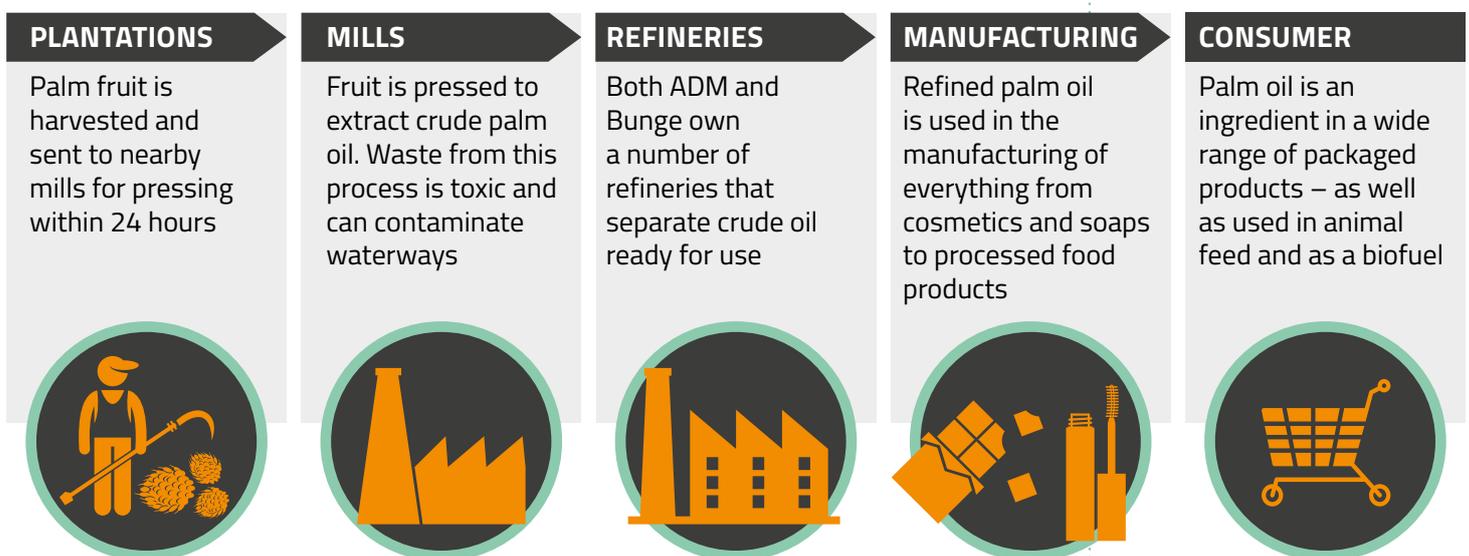
They are required to investigate any allegations of abuses, whether from publicly available sources, or direct allegations from communities or their representatives. Where investigations reveal that allegations have a sound basis, companies should work with their suppliers to remedy these abuses.

**But to what extent are ADM and Bunge living up to these obligations?** To answer this question, Global Witness conducted an investigation of a random sample of mills in Indonesia supplying palm oil to both traders.



A worker holds palm oil fruit at a plantation in Aceh province. Indonesia is the world's top producer of the commodity.  
Credit: CHAIDEER MAHYUDDIN/AFP via Getty Images

## PALM OIL SUPPLY CHAIN



This report sets out the findings of this investigation. It provides a brief description of the methodology used to prepare this report, followed by an overview of the operating environment in Indonesia, as well as of the two traders: ADM and Bunge. We then outline the national and international laws and policies with which the traders are obliged to comply, and set out our evidence of how ADM and Bunge are failing to meet these responsibilities. These are discussed in relation to respect for local land rights, upholding the rights of human rights defenders, and preventing or mitigating adverse impacts of business operations on local communities. The business risks the companies face as a result of these failings are then outlined, as well as what actions the companies should take to address these issues. Finally, we explain the methodology used in our investigation in more detail.

## OUR METHODOLOGY IN BRIEF

Global Witness reviewed a random sample of 330 of the 658 mills in Indonesia supplying palm oil to both ADM and Bunge, according to their published supplier lists.<sup>11</sup> We assessed each of these mills by running searches for keywords indicating alleged land rights abuses and/or related conflicts between community members and the mill companies.

To illustrate the kinds of abuses taking place, we researched six cases in further detail, based on publicly available information, which we then verified with Indonesian civil society organisations supporting those communities.

We conducted additional secondary research to assess the operating environment for palm oil companies in Indonesia, and ADM and Bunge's policies and procedures concerning respect for the rights of local communities and those who defend them.

The recommendations contained in this report were developed in consultation with relevant Indonesian and international civil society organisations. A more detailed description of our methodology is provided at the end of the report.

**Our investigation looked at reports of land, environmental and human rights abuses against a sample of mills supplying palm oil to both traders**

# THE OPERATING ENVIRONMENT



Protesters against the controversial omnibus law that aims to increase investment by reducing regulatory requirements for business permits and land acquisition processes. Many fear the new law will harm indigenous land rights and roll back environmental protections.

*Credit: Algi Febri Sugita/SOPA Images/LightRocket via Getty Images*

## INEFFECTIVE POLICIES AND IMPLEMENTATION

Indonesia presents a challenging operating environment with significant policy and implementation issues relating to land and indigenous rights, and a lack of protection for human rights defenders.

Land access and ownership are major sources of conflict in the country. Its complex land-governance systems fail to prevent or resolve disputes. Indonesia's national Forestry Law No. 41/1999, for example, regulates the management of forests – however, provisions in the law could actually facilitate land grabbing and the conversion of customary (or community-managed) forests into state forests.<sup>12</sup> The law authorises the state to issue various licensing schemes for forestry activities to private corporations, and the rights of indigenous and traditional communities to their customary forests can easily be disregarded in this process.<sup>13</sup>

Legislation requiring companies to consult with local communities at every

stage of a business project in order to obtain operating permits has been in place for several years. However, reports reveal cases where companies have not undertaken meaningful consultation, nor adequate human rights risk analysis.<sup>14</sup> While the legislation is clear, in practice there is minimal government oversight of how a company conducts consultations, which have been called a box-ticking exercise with little community participation.<sup>15</sup>

The persistent failure of the Indonesian state to uphold indigenous rights as recognised under international law has led to growing calls for a specific legal framework to be passed. The Indonesian government views all citizens as 'indigenous', creating tensions with civil society groups campaigning for greater legal protections for traditional indigenous communities. A landmark constitutional ruling in 2013 rescinded state control over indigenous lands and returned it to Indonesia's indigenous peoples.<sup>16</sup> However, the government was reported to have recognised only 164 km<sup>2</sup> as customary forestland in 2017,

Global Witness has documented **12 killings of land and environmental defenders** in Indonesia since 2015



drastically short of the 19,000 km<sup>2</sup> square kilometres of ‘ancestral forest’ estimated by indigenous rights group Aliansi Masyarakat Adat Nusantara.<sup>17</sup>

Claims of corruption are widespread in the sector, especially concerning the permitting process for plantations. There have been several high-profile arrests of politicians for graft, with accusations of using shell companies and proxy owners as vehicles for corruptly selling licences to multinational companies. Indonesia’s Corruption Eradication Commission (KPK) states that many companies have been allowed to operate in forest areas that are supposed to be off-limits for oil palm cultivation.<sup>18</sup>

The government has responded to claims of palm oil-related deforestation by declaring a three-year government moratorium on the issuing of forest release forms for plantations – scheduled to end in 2021. However, oil palm continues to spread into old-growth forests. Papua, for example, saw a five-fold increase in palm acreage between 2000 and 2015.<sup>19</sup>

## REPRISALS AGAINST THOSE WHO SPEAK OUT

Indonesia is a high-risk country for those taking a stand for their land and environment. Every year, international and Indonesian civil society groups circulate grim statistics on the number of land and environmental defenders killed or criminalised during disputes between communities and companies (often with the backing of the state). Much of this violence and abuse centres on oil palm plantations and mills.

Global Witness has documented 12 killings of land and environmental defenders in Indonesia since 2015, with agribusiness the industry most linked to these attacks.<sup>20</sup> Research from Indonesian human rights organisation ELSAM found

27 cases of violent attacks against land and environmental defenders in 2019, stretching across 14 provinces and ranging from intimidation to physical attacks and murder.<sup>21</sup>

Indonesian law specifically protects land and environmental defenders: article 66 of Law No. 32/2009 reads: ‘Every person who fights for the right to a good and healthy environment cannot be charged with criminal or civil offense.’ However, the criminalisation of land and environmental defenders is particularly rife, including in the palm oil sector. The Indonesian Legal Aid Foundation (YLBHI) recorded 708 cases of criminalisation of human rights defenders in 2019, with almost a quarter of them targeted for defending land rights.<sup>22</sup>

While the Indonesian constitution and law provide for the freedoms of peaceful assembly and association, in practice there is ample evidence that the government regularly restricts these freedoms. International watchdog CIVICUS has classified the country’s civic space as ‘obstructed’.<sup>23</sup> The Indonesian government continues to fall short when it comes to protecting human rights defenders – reinforcing the imperative for any company sourcing from the country to take additional measures to guarantee that defenders are consulted and that their rights are respected.<sup>24</sup>

Land grabbing and the threats to communities’ land rights in areas of oil palm cultivation are likely to continue. Opponents of the recently passed Omnibus Law on Job Creation say it will enable human rights abuses, and increase the chances of conflicts and reputational risks for companies sourcing from the country.<sup>25</sup>

It is clear that any company operating or sourcing land-based products from Indonesia needs to carry out significant and ongoing due-diligence processes to identify, prevent and mitigate land and human rights abuses.



## WHO ARE THE TRADERS?

Commodity-trading companies are a powerful group. For over a century, ADM, Bunge, Cargill and Louis Dreyfus, known as the Big Four traders, have dominated the international trade in grains and oilseeds, including palm oil.<sup>26</sup> ADM and Bunge are both global US-based agribusiness giants operating in the middle section of the supply chain (see diagram on page 9). The companies source palm oil from between 800 and 1,000 Indonesian palm oil mills. Both traders have palm oil supply chain links to major brands including The Coca-Cola Company, General Mills, Kellogg's, Mondelez, Nestlé, PepsiCo and Unilever.<sup>27</sup>

**ADM**, headquartered in Illinois, is one of the world's largest agribusinesses, with a global value chain that includes agri-commodity procurement, ingredient manufacturing and crop transportation networks. The company plays a significant role in the global palm oil industry: ADM is a major shareholder in Wilmar International Limited, and is expected to retain a 20% strategic ownership stake in the company following an August 2020 sale of shares.<sup>28</sup> More than 70% of ADM's palm oil supply is sourced from Wilmar refineries.<sup>29</sup> Wilmar International is the world's biggest palm oil trader and

one of the largest plantation owners. The company is the leading producer and seller in Indonesia, with 35% of market share.<sup>30</sup>

**Bunge** is headquartered in Missouri, and like ADM, its agribusiness operations include the purchase, storage, transportation, processing and sale of agri-commodities. In 2018, Bunge acquired a 70% ownership interest in palm oil giant IOI Loders Croklaan.<sup>31</sup> IOI reportedly has 96 palm oil plantations across Indonesia and Malaysia, with a landbank totalling 217,937 hectares.<sup>32</sup>

The two companies are both listed on the New York Stock Exchange, and both have the same institutional investors in their top-five owner ranking. As of September 2020, T. Rowe Price Associates, Inc. owns more of Bunge Ltd than any other institutional investor, while State Farm Management Corporation holds the highest number of shares in ADM. The Vanguard Group is the second-largest Bunge and ADM shareholder. BlackRock Fund Advisors and State Street Global Advisors are Bunge's third and fourth largest shareholders, while for ADM these institutional investors are the fourth and third largest investors.<sup>33</sup>



ADM and Bunge are both global US-based agribusiness giants.

Above image credit: Tim Boyle/Bloomberg via Getty Images

Left image credit: Vincent Mundy/Bloomberg via Getty Images

# OUR INVESTIGATION FINDINGS:

## How ADM and Bunge are failing to ensure compliance

This section of the report provides evidence from our primary investigations, supported by secondary research, of how ADM and Bunge are failing to ensure compliance with national and international laws, as well as their own policies, as regards respect for land and human rights. We first set out our top-line investigative findings, highlighting the numbers of mills in our sample associated with alleged abuses of such rights. We then look in turn at the three main types of alleged abuses that we revealed, namely:

- > abuse of community and indigenous peoples' land rights
- > prevention of human rights defenders from operating safely and freely
- > failure to mitigate the negative impacts of business operations on local communities and their environment.

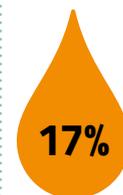
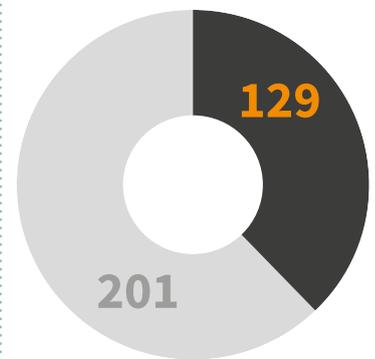
For each of the above types of alleged abuse, we first outline what ADM and Bunge *should* be doing – as set out in Indonesian law, international standards and their own corporate policies. Then we provide evidence of what is *actually* happening in their palm oil supply chains in Indonesia. Finally, we explore the extent to which the traders have sought to investigate or remedy any of the alleged land and human rights abuses we found.

### TOP-LINE FINDINGS

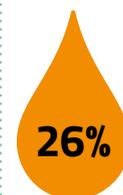
Our investigation identified a substantial number of issues related to land rights, criminalisation and attacks against defenders and a failure to mitigate, investigate and remedy adverse impacts, including:

- > Nearly 40% – or 2 in 5 – of the sampled mills supplying both ADM and Bunge (129 mills of 330) have, according to credible reports, been accused of violating local community land rights, criminalising or attacking defenders, and/or causing serious environmental degradation.
- > The majority of these allegations have occurred in the past five years, and 17% of the mills had active and ongoing conflicts in 2019 and 2020. Nine of these disputes had been going on for a decade or more and were the subject of multiple media reports.
- > Local communities accused 26% of the mills in our reviewed sample of having seized community-owned land (86 mills). In eight of these cases, it was explicitly reported that the community had been evicted from their lands, though the true number of unreported evictions may be higher.
- > Violent confrontations between mill- or state-security forces and communities were reported for conflicts involving 13 mills, usually resulting from a long-standing land dispute.

### NUMBER OF MILLS WITH CREDIBLE REPORTS OF LAND, ENVIRONMENTAL AND/OR HUMAN RIGHTS ABUSES



of mills had active or ongoing conflicts in 2019/20



of mills have been accused of grabbing community land

## COMMUNITY AND INDIGENOUS PEOPLE'S LAND RIGHTS

### What ADM and Bunge should be doing: company obligations under Indonesian law, international standards and their own corporate policies

There are a number of Indonesian laws and international standards that clearly state companies' responsibilities to respect local community and indigenous peoples' land rights:

- Indigenous peoples' rights are enshrined in Indonesian law, guaranteed under the constitution and bolstered by a series of ministerial regulations and case law (though, as discussed, Indonesia is nevertheless a challenging operating environment). There are also increasing protections for indigenous rights at a sub-national level.<sup>34</sup>
- Palm oil companies are required to consult with potentially affected communities at numerous points throughout the permitting process, including through the environmental and social impact assessment.<sup>35</sup>
- Under Indonesia's 1999 Forestry Law (article 68) and 2014 Plantation Law, permit-holders of new forestry and agricultural projects are required to pay compensation to local communities for loss of access to land.
- The United Nations Declaration on the Rights of Indigenous Peoples – which Indonesia voted for – outlines specific territorial rights of indigenous people, including that 'no relocation shall take place without the free, prior and informed consent (FPIC) of the indigenous peoples concerned'. There is increasing recognition that the principle of FPIC should be applied to all communities whose land, resources or rights might be affected by a

business project. The lack of community consultation and consent for business projects is one of the root causes of conflict that leads to threats and attacks against defenders.

ADM and Bunge's own corporate policies also include commitments to respecting local communities' rights to land. In its human rights policy, ADM has committed itself to: 'Respect land-tenure right[s] and the rights of indigenous and local communities to give or withhold their free, prior and informed consent to operations on lands to which they hold legal rights.'<sup>36</sup> Bunge, similarly, avows 'Respect of local and indigenous community rights and application of FPIC for land purchases and use' and 'Support of the Food and Agriculture Organization Voluntary Guidelines on the Responsible Governance of Tenure' in its Palm Oil Sourcing Policy.<sup>37</sup> However, while both ADM and Bunge's policies include language on land rights and FPIC, they provide few details on compliance monitoring or accountability for the failure of their suppliers to respect these rights.

### What is actually happening? Our investigation findings

Unfortunately, our investigation revealed that it is highly likely these obligations are not being met in ADM and Bunge's Indonesian palm oil supply chain. It highlighted numerous instances of mills that supply ADM and Bunge that have been reportedly accused by local communities of violating their land rights. Indeed, the most frequent conflict type that our review identified within the sample of mills supplying palm oil to ADM and Bunge in 2019-2020 were alleged land grabs and other types of land disputes. These included disputes over the boundaries of community-owned and company-owned land, incursions into forested areas used by communities, and alleged failures by companies to consult or compensate communities for loss of land.



Our investigation found that local communities accused 86 of the sampled mills of having seized community-owned land. In eight of these cases it was explicitly reported that the community had been evicted from their lands, though the true number of unreported evictions may be higher. Moreover, our analysis found reports of corrupt land acquisition practices alleged against five mills in our sample.

Research indicates that corruption in land acquisition by agribusiness companies in Indonesia is widespread.<sup>38</sup> Indonesia's Corruption Eradication Commission (KPK) points out that many companies have been allowed to operate in forest areas that are supposed to be off-limits to oil palm cultivation.<sup>39</sup> The government has continually refused to publish maps of agricultural concessions in some regions – citing concerns relating to proprietary company information – despite a court ruling for disclosure. This has impeded public scrutiny of corruption claims against palm oil companies.<sup>40</sup> Nevertheless, bribery and other corrupt practices are crimes under Indonesian law.<sup>41</sup> An international trader purchasing

palm oil from a company proven to have engaged in corrupt practices could be liable to prosecution under Indonesian law, if it is proven that the trader is aware of these practices.<sup>42</sup>

Our sample found evidence explicitly linking 19 mills (or nearly 6%) to violations of indigenous communities' rights. The disproportionate impacts of the expansion of commercial oil palm on the territorial rights of the largely forest-dwelling indigenous people in Indonesia are well documented. One such example involves the Sambawa (Sabandete Walandawe) communities of North Konawe regency in South Sulawesi.

In 2010, Sambawa community members protested against the actions of several local palm oil mills, including one supplying ADM and Bunge: PT Sultra Prima Lestari (SPL). They claimed that PT SPL gained control of over 12,000 hectares of community-owned land, a mix of forest and shared agricultural land. The presence of the company since 2004 has altered the community's way of life significantly. Women who have turned to

**86 mills**  
had allegations of  
**land grabs and**  
**other land disputes**  
against them



**19 mills**  
were accused of  
**violations of**  
**indigenous rights**



A palm oil mill surrounded by plantations in Riau Province, Sumatra.

*Credit: Greenpeace/Oka Budhi*

oil palm cultivation since losing access to agricultural land report having difficulty making enough money to feed their families. They also report no longer being able to harvest as many shellfish from the turbid murky river water, which they attribute to pollution from the mill.<sup>43</sup>

After years of direct action by the community, including the destruction of the palm plants owned by PT SPL and other palm companies, the Sambawa continue to struggle to have their customary land rights respected.<sup>44</sup> In their response to Global Witness, the parent company of PT SPL, Capitol Group, stated that 100% of Sambawa indigenous people had signed a memorandum of understanding with the company as part of a palm oil production sharing agreement. The Capitol Group deny the community's land grab claims and state that PT SPL has brought improvements to the local communities.

Despite the protests against these mills in ADM and Bunge's supply chain, there is no evidence that either company engaged with PT SPL to resolve, prevent or address the adverse impacts of the alleged land

grabbing on the Sambawa indigenous community's way of life. ADM responded to Global Witness that it would investigate all cases raised in this report.

Our findings on the high number of mills with allegations of land rights abuses suggest that not only have ADM and Bunge failed to comply with their own policies, they are also potentially falling short of global standards such as those outlined in the United Nations Declaration on the Rights of Indigenous Peoples (see above).

## UPHOLDING RIGHTS OF HUMAN RIGHTS DEFENDERS TO OPERATE FREELY AND SAFELY

**What ADM and Bunge should be doing: company obligations under Indonesian law, international standards and their own corporate policies**

The Indonesian constitution guarantees freedom of association and expression, the right to the protection of person,



Demonstrators rally against the omnibus law in Jakarta.  
Credit: Anton Raharjo/Anadolu Agency via Getty Images

dignity and property, and the right to protection from threat of fear in the exercise of human rights.<sup>45</sup> As already noted, Indonesian law specifically protects land and environmental defenders through article 66 of Law No. 32/2009. It states that: ‘Every person who fights for the right to a good and healthy environment cannot be charged with criminal or civil offense.’

Company responsibilities under international standards include:

➤ Under the United Nations Guiding Principles on Business and Human Rights (UNGPs), businesses have a separate and independent responsibility to respect human rights, which exists in addition to state obligations.<sup>46</sup> Under this guidance, the business responsibility to respect includes refraining from harming human rights defenders, restricting their rights or interfering with their activities. The UNGPs also require companies to engage with human rights defenders to identify, mitigate and remedy any adverse human rights impacts arising from their operations. Companies should exert leverage through their business and supplier relationships to address these impacts.

➤ The UNGPs state that because ‘business enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights, their responsibility to respect applies to all such rights.’ This includes respecting land and environmental defenders’ rights, as laid out in the UN Declaration on Human Rights Defenders.<sup>47</sup>

➤ Michel Forst – UN Special Rapporteur on Human Rights Defenders from 2014-2020 – has outlined the role of businesses in actively supporting and promoting the role of human rights defenders working in their sectors in his reports to the UN General Assembly.<sup>48</sup>

As regards to the traders’ own policies, neither of the two companies publicly

state any specific commitments in relation to protecting human rights defenders or preventing reprisals against them. However, the 2018 version of Bunge’s Sustainable Palm Oil Sourcing Policy commits the company to mill-level verification assessments, with ‘independent experts’ and ‘stakeholder alerts’, which include human rights risk alerts.<sup>49</sup> Moreover, Bunge’s Labour Policy makes reference to ‘frequent human rights assessments’ required by the company’s Sourcing Policy. It states: ‘We block any supplier that has been credibly accused of human rights violations, and we work with industry associations to scale this approach across the wider sector.’<sup>50</sup> Bunge did not respond to Global Witness’ request for clarification on its due-diligence processes but reaffirmed its commitment to the principles in its Sustainable Palm Oil Sourcing Policy and Global Labour Policy.

While ADM does have a human rights policy, it mostly concerns labour rights in its supply chain. However, in its ‘Supplier Expectation’ guidance, ADM states that on human rights and the environment, it does expect suppliers to respect freedom of association.<sup>51</sup> Over the past few years, ADM has also developed a 2018-2019 Palm Oil Action Plan with not-for-profit organisation the Earthworm Foundation.<sup>52</sup> This was part of ADM’s efforts to ‘reduce and mitigate palm supply chain risks through transparency & traceability, supplier engagement & risk identification, transformation, and monitoring & verification.’<sup>53</sup> However, the plan does not contain any specific commitments on human rights defenders.

ADM told Global Witness that it conducted a third-party supplier assessment of all of its direct suppliers. It reports that 97% of its direct suppliers were scored as top performers, including on their policies to prevent and address exploitation. The company reports that it implements a supplier engagement strategy to continuously ensure compliance with its policy.



Workers load palm fruits onto a truck at a plantation in North Sumatra. Credit: Jefri Tarigan /Anadolu Agency/ Getty Images

## What is actually happening? Our investigation findings

Unfortunately, our investigation revealed that land and environmental defenders raising issues with the mills in our sample have all too often faced restrictions to their right to operate freely and safely. In particular, we found numerous instances of the alleged criminalisation of, and alleged violent attacks against, defenders and members of the communities that they represent. Our findings are detailed below:

**Criminalisation:** Our investigation found that in disputes involving 9 mills, members of local communities have reportedly been arrested, put on trial or otherwise subjected to judicial processes and fines for protesting against palm oil company activity.

One such ongoing conflict pits palm oil company PT Erasakti Wira Forestama (EWF) against residents and farmers' groups in Jambi province, Sumatra, and involves the criminalisation of their legal representative. PT EWF claims that it purchased 406 hectares of land in Merbau village.<sup>54</sup> However, a number of villagers reject this claim, stating that they never sold their land to the company. A 2012 investigation into the PT EWF case by the Tanjung Jabung Timur Regency Dispute Settlement Team reportedly determined that the villagers were legal owners of the contested land.

Struggling to have their grievances heard, the villagers granted power of attorney to Thawaf Aly of the Jambi Farmers' Association (PPJ). In January 2018, the villagers reoccupied their lands and Aly filed a complaint with the land office requesting the cancellation of PT EWF's licence and asking for mediation. Nevertheless, the company continued to submit a permit (HGU) request to plant palm, which the National Land Agency office (BPN) of Tantajim reportedly granted in July 2018, despite ongoing mediation between PT EWF and the

community. Villagers consider the process to have been marred with "irregularities such as the falsification of data".<sup>55</sup> Already accused of land grabbing and possible fraud, PT EWF was also confronted by accusations that it was jeopardizing fish stocks by dumping waste into the Batang Hari river, and that its embankments were depriving the communities of water and destroying local peat ecosystems.<sup>56</sup>

The case came to a head in October 2019, when the villagers' advocate Thawaf Aly was summoned by the Tanjung Jabung Timur Police as a suspect for allegedly violating Law No 39/2014 against unlawful use or occupancy of plantation land.<sup>57</sup> His February 2020 trial was met by protests and accusations that PT EWF had relied upon witnesses who presented 'false' testimony that PT EWF's HGU permit had been granted prior to community members' construction of a hut (*pondok*) on the contested land.<sup>58</sup> Aly was acquitted in June 2020. The Indonesian Consortium for Agrarian Reform (KPA) and PPJ vow to continue the villagers' struggle to regain control of their land. PT EWF did not respond to Global Witness' request for comment.

PT EWF supplied both ADM and Bunge at the time of the trial and the pollution accusations. There is no evidence that Bunge or ADM were aware of the land dispute involving PT EWF and communities in Jambi, nor that they took any action on the case, though ADM has since stated that it will investigate all cases raised in this report. Both Bunge and ADM have committed in their own policies to respect human rights, as already noted. However, targeted criminalisation of land and environmental defenders violates these policies, and contradicts the UNGPs and the fundamental human right to peaceful protest. ADM and Bunge should not only have been aware of the persistent allegations of impropriety involving their supplier. They also should have investigated the community's claims and the circumstances surrounding

Members of local communities protesting against **9 mills** have reportedly been **arrested, fined or put on trial**



the criminalisation of Thawaf Aly and suspended PT EWF from their supply chains until the conflict is resolved.

**Violence/violent attacks:** Beyond criminalisation, defenders have also frequently been subject to violence by private or state security forces. Violent confrontations between communities and mill or state security forces were reported in conflicts involving 13 mills, usually resulting from a long-standing land dispute.

One example of this relates to plantation and mill-owning company PT Bumi Sawit Kencana II (PT BSK). In 2017, defenders' groups demanded that police take action against Mobile Brigade Corps (BRIMOB) officers responsible for an alleged shooting incident in the plantation of PT BSK, on 18 December 2017 in Central Kalimantan.<sup>59</sup> The company, a plantation owned by international commodity trader Wilmar, had seized their land without paying compensation, according to Indonesian groups working with residents surrounding the plantation.<sup>60</sup> As previously noted, Indonesian law requires permit-holders of new forestry and agricultural projects to pay compensation to local communities for loss of access to land.

Wilmar attributes the December 2017 shooting of two individuals to an escalation of force in response to workers' theft of palm fruits. Wilmar's security forces, unable to control the situation, sought the assistance of the BRIMOB who Wilmar claim first shot up in the air and then at the individuals, allegedly with rubber bullets.<sup>61</sup> Wilmar denies that the individuals were local community members. Wilmar referred to the prison sentences of eight months that had been imposed upon the two victims of the shooting – one for 'abuse' and the other for having 'carried a machete'.<sup>62</sup> It is unknown if security staff involved in the shooting incident were prosecuted.

Allegations of violent confrontations over PT BSK's activities had been going on for several years. In 2013, four people were reportedly injured during a protest against PT BSK's construction of canals.<sup>63</sup> Replying to Global Witness, Wilmar attributes the incident to villagers' attacks on PT BSK security officers and security posts following failed initial engagement efforts, and the conflict was resolved following successful mediation between Pantap villagers and PT BSK in 2013. The defenders' groups allege two further shootings linked to the plantation, in 2014 and 2015.<sup>64</sup> Wilmar denies knowledge of these two incidents.

The affected communities and NGO Progress filed a complaint against Wilmar and PT BSK over the alleged land grabbing of 78 hectares of land at the Roundtable on Sustainable Palm Oil in July 2016. However the complaint was dismissed as unfounded.<sup>65</sup> According to a local media report, the Central Kalimantan government initiated an investigation into the legality of PT BSK's permits related to the release of forest areas and their plantation business licence.<sup>66</sup> Wilmar denies receiving any warnings or sanctions from the Central Kalimantan government.

Wilmar still faces accusations of land grabbing related to PT BSK mills. PT BSK and two other Wilmar subsidiaries are accused of having seized community land around Sebabi village in a conflict which reportedly began in 2008.<sup>67</sup> In mediation in February 2020, the community presented evidence of ownership reportedly dating to 1981. In its response to Global Witness, Wilmar encourages the complainants to pursue subsequent claims, citing land compensation processes ongoing since 2006. The company maintains that allegations of land grabbing by PT BSK are unsubstantiated and untrue. ADM and Bunge both sourced palm oil from PT BSK in 2019 and 2020 respectively.



Indonesian police at a protest against the omnibus law in Bogor, October 2020.

Credit: Feature China/Barcroft Media via Getty Images



**13 mills** had reports of **violent confrontations** between mill or state security forces and communities



Deforestation in Central Kalimantan on the island of Borneo.  
Credit: Ulet Ifansasti/Greenpeace

## PREVENTING/MITIGATING ADVERSE IMPACTS ON LOCAL COMMUNITIES AND THEIR ENVIRONMENT

### What ADM and Bunge should be doing: company obligations under Indonesian law, international standards and their own corporate policies

As discussed, the expansion of palm oil cultivation has had significant environmental impacts – including deforestation, the destruction of peatland ecosystems and the pollution of waterways with waste runoff from mills. These environmental issues damage community livelihoods and health.

In Indonesia, improper disposal of waste is an offence under Law No. 32/2009 on Environmental Protection and Management (Article 69), with articles

97 to 120 outlining implications for corporations that contravene it.

Under the UNGPs, businesses are required to: ‘(a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.’<sup>68</sup>

Commodity traders have responded to sustained criticism of their supply chains in part by adopting No Deforestation, No Peat and No Exploitation (NDPE) commitments. ADM published its human rights policy in 2014, followed by its NDPE policy in 2015. According to its NDPE action plan, the company is working to ‘address social and environmental challenges in high risk/priority sourcing landscapes’. Bunge has made public a Palm Oil Sourcing Policy, which states

that the company views sustainable palm oil as produced in a way that ‘excludes the conversion of areas of high conservation value or high carbon stock, minimizes greenhouse gas (GHG) emissions, utilizes responsible agronomic practices, and protects the rights of workers and local communities.’<sup>69</sup>

Neither ADM nor Bunge fully commit to avoiding or contributing to adverse social or human rights impacts through their, or their suppliers’, operations, or to addressing such impacts when they occur, as per Principle 13 of the UNGPs.<sup>70</sup> Both companies appear therefore to be failing to comply with the UNGPs, which require companies to have a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.<sup>71</sup>

### What is actually happening? Our investigation findings

Our conclusion from our investigation is that ADM and Bunge have demonstrated a significant failure to mitigate the potential adverse impacts of their purchases of palm oil in Indonesia. Among these impacts are the serious environmental degradations alleged of a large number of

ADM and Bunge palm oil suppliers – 73, or 22%, of sampled mills.

The most common type of alleged environmental infraction our investigation identified was waste dumping or pollution, with multiple reports of improper disposal of toxic effluent from mills into nearby river systems. Our research found 43 mills in ADM and Bunge’s supply chain were the subject of such accusations. As noted, improper disposal of waste is an offence under Indonesia law. Failure to properly dispose of waste can lead to contamination of the water and soil, ultimately affecting local people’s rights to a clean environment and/or livelihood.<sup>72</sup>

Allegations of deforestation or destruction of peat swamps were made against 27 of the mills on the list. One notable mill company supplying both ADM and Bunge in 2019 and 2020 respectively is PT Anugerah Langkat Makmur (PT ALAM). In January 2019, Indonesian police named the company’s then-director, Musa Idishah, as a suspect in the clearing of 366 hectares of protected forest for a palm oil plantation in violation of Law No. 18/2013 on the prevention of forest clearing and destruction, Law No. 39/2014 on plantations, and Law No. 32/2009 on environmental protection and



**22%**  
of mills supplying ADM and Bunge have been accused of causing significant environmental damage

ADM and Bunge are **addressing only a small number of the ongoing cases** we identified through their respective grievance processes.



An aerial photograph shows the scale of land cleared for a palm oil plantation in Central Kalimantan province.  
Credit: ROMEO GACAD/AFP via Getty Images

management.<sup>73</sup> Idishah is the younger brother of Musa Rajekshah, the deputy governor of North Sumatra, who was also previously a director of the company. Police raided PT ALAM's offices and director Idishah's home; Deputy Governor Rajekshah cooperated with police investigations.<sup>74</sup> In a press conference on 2 February 2019, Idishah reaffirmed his respect for the legal process and his lawyer refused to comment on the legal status of the allegedly deforested land.<sup>75</sup> PT ALAM and Musa Rajekshah did not respond to Global Witness' requests for comment.

Residents of Sukamakmur village near PT ALAM's plantation have long protested against the company's alleged incursions into forest lands. In 2012, several residents burned company equipment during a protest in which they erected a signpost warning PT ALAM employees not to cut down the Sukamakmur community's forest.<sup>76</sup>

PT ALAM is only one of several companies accused of land grabbing in north Sumatra – and local communities have had enough. In February 2019, peasant groups including the Komite Tani Menggugat and the Agrarian Revolution Committee held a demonstration in front of the North Sumatra Regional People's Representative Council office in Medan City.<sup>77</sup> Their complaints focused on the existence of a "land mafia" and cited the PT ALAM case.<sup>78</sup> Some of the hundreds of protestors asked for Idishah to be jailed.<sup>79</sup> The words "Land for the people, not for developers, thugs and land mafia" adorned one sign, according to media reports.<sup>80</sup> Protest coordinator Unggul Tampubolon was quoted in the media as saying: "Land, earth, water and all the wealth contained within are fully controlled by the State and as much as possible for the prosperity of the people," citing Article 33 of the Indonesian constitution at a gathering of thousands of protesters in September 2018. Tampubolon alleged that farmer groups have often received threats from thugs in fighting for and defending

their land.<sup>81</sup> As for the deforestation allegations against PT ALAM and Musa Idishah, the police dropped their investigations in January 2020, citing incomplete information provided by the prosecution.<sup>82</sup> Defenders' group WALHI fears the implications of this for future investigations of deforestation and land rights abuses.<sup>83</sup>

## FAILURE TO INVESTIGATE AND PROVIDE REMEDY

### What ADM and Bunge should be doing: company obligations under Indonesian law, international standards and their own corporate policies

Under the UNGPs, companies have a responsibility to identify and account for how they address their impacts on human rights, through a robust due-diligence process. Where adverse impacts are identified, companies must provide or cooperate with appropriate measures to remedy them.

Global agricultural commodity traders like ADM and Bunge investigate and address complaints of illegality or abuse made against their suppliers through their internal grievance mechanisms. These mechanisms usually activate when the trader becomes aware of an allegation, often in response to media or NGO reports. The first step of the grievance mechanism typically involves communication with the accused supplier. Then comes a decision to suspend or monitor the supplier, or close the complaint as groundless.

### What is actually happening? Our investigation findings

Our investigation, however, indicates that the two traders' procedures for investigating and remedying human rights issues in their supply chains, and at mills specifically, are insufficient. ADM and



Illegal burning of Tanjung Puting National Park in Sumatra to make way for palm oil plantations. Credit: Jami Tarris/Barcroft Media via Getty Images

Bunge are addressing only a small number of the ongoing cases we identified through their respective grievance processes. Of the 129 mills linked to reports of conflict in our sample of 330 mills, only seven were subject to ADM's grievance process in 2020 and 15 were subject to Bunge's.

Moreover, even in these limited cases, neither trader appears to have considered reports of human or land rights abuses associated with most of these mills. All seven mills on ADM's grievance list had been monitored for deforestation-related allegations alone, without mention of any human rights concerns; ADM had closed investigation on two of these. Of Bunge's mills, most are listed as 'subject to monitoring for allegations of deforestation' in the trader's grievance processes – only two of 15 were being monitored due to human rights concerns.

The traders appear to have ignored evidence of conflicts between the scrutinised mill companies and land and environmental defenders. One such example is the Capitol Group's PT Medcopapua Hijau Selaras (MPHS) palm oil mill in West Papua province. Both ADM and Bunge are 'monitoring' the mill due to evidence of deforestation and/or peatland development within the mill's concession area – evidence presented in successive NGO reports throughout 2020.<sup>84</sup> Capitol Group, the parent company of PT MPHS, claims this area was cleared legally. However, the grievance process appears to omit defenders' accusations (detailed below) that MPHS took community land without adequate consultation or compensation.

In 2008, MPHS (then a subsidiary of the Medco group) set up a palm oil plantation in West Papua's Sidey district, buying land at a flat rate for a 30-year lease from a village chief, according to investigative campaigners Awasmifee.<sup>85</sup> In 2011, Papuan human rights group JASOIL Tanah Papua alleged that other customary land rights holders in the village had never been

notified of the sale of the land, and they opposed it.<sup>86</sup> A few years later, nearby villages suffered major floods, which community members attributed to MPHS' clearing of forest lands up to the banks of the Wariori river.<sup>87</sup> A reported 700 people were displaced from flooded properties and lost livestock.<sup>88</sup> According to media reports, local residents said that previously, when the only palm plantation in the area was that of PTPN II Prafi, flooding was uncommon. By contrast, they reported that flooding had become 'a constant threat' and source of worry.<sup>89</sup>

In early 2020, MPHS came under fire again.<sup>90</sup> Residents complained about fly infestations and organic waste stench and wastewater coming from the mill site, reportedly causing crops to fail and prompting an investigation by the Environmental Agency of the Manokwari Regency government.<sup>91</sup> The Capitol Group, responding for PT MPHS, deny improperly disposing of mill waste. Regarding the land dispute, Capitol Group characterise the community's claims as a 'liability' inherited from PT MPHS' previous owner. The company denies the communities' land claims and states that it has commissioned a study of 'high conservation value' (HCV) and 'high carbon stock' (HCS). The Capitol Group reaffirms its commitment to the principles of openness and free prior and informed consent.

In another example, Bunge is monitoring PT Delima Makmur – a palm oil mill operator in Aceh, which is on its grievance list – along with 11 other mills, for alleged deforestation in the protected Leuser ecosystem.<sup>92</sup> However, Bunge again appears to have overlooked the land and human rights dimension – the grievance list does not note that the company was also criminally investigated for land grabbing.

These allegations date back to 2017, when PT Delima Makmur sought and obtained authorisation to extend its cultivation area in Aceh Singkil district by 2,581 hectares.<sup>93</sup> Residents and Indonesian



**Only 2 mills** in our sample were being **monitored** for human rights concerns by Bunge.

**ADM were not monitoring** any mills in our sample for human rights concerns



environmental NGO WALHI pointed to alleged irregularities in the licensing procedures and urged law enforcement to investigate the matter.<sup>94</sup> In November 2018, the Singkil District Court ordered the seizure of the over 2,500 hectares of land as part of a criminal investigation. PT Delima Makmur's director was also named a suspect in the case, with potential violations of Article 385 of the Criminal Code which penalises unlawful use of land being cited.<sup>95</sup> Asian Agri, reported parent company of PT Delima Makmur, did not respond to Global Witness' request for comment. Trading partners of PT Delima Makmur should review their relationship with the company, and stop sourcing from them if the company or any of its officers is found criminally liable for deforestation or other offences.

As a starting point, even a cursory search of the mills subject to ADM and Bunge's grievance mechanisms would have alerted these traders to the litany of alleged land and human rights abuses within their supply chains, reported by communities and defenders' groups. This apparent

blind spot, when reviewed alongside the numbers of reported conflicts we were able to identify quickly and easily, demonstrates a failure by these two traders even to adequately investigate credible allegations of land and human rights abuses in their supply chains, let alone provide effective remedy.

Bunge acknowledged that the alleged incidents referred to by Global Witness are in Bunge's indirect supply chain, but did not elaborate on Bunge's due-diligence process. Bunge stated that credible instances of human rights violations are included in its grievance list.

ADM disputes Global Witness' evidence base in general and rejects Global Witness' characterisation of its due-diligence and grievance processes as flawed, stating that its grievance process has been reviewed favourably by external experts. ADM further stated that it had launched investigations into each of the allegedly problematic mills identified by Global Witness' analysis.



Workers from the Leuser Conservation Forum or Forum Konservasi Leuser (FKL) cut down illegally-planted oil palm trees in the Leuser ecosystem, Aceh. This area is home to endangered wildlife such as orangutans, Sumatran tigers and elephants. Credit: CHAIDEER MAHYUDDIN/AFP via Getty Images

# THE RISKS OF INACTION



Pollutants rise from a palm oil mill in Riau.  
Credit: AHMAD ZAMRONI/AFP via Getty Images

As well as the devastating human and environmental costs incurred by affected communities and the disregard for international standards, ADM and Bunge's failure to respect rights and defenders in their supply chain also exposes them to significant business risk.

In Indonesia, evidence shows that palm oil producers experience substantial operational, 'stranded land' and market-access risks from social conflicts.<sup>96</sup> However, both ADM and Bunge's own policies and due-diligence practices fall well short of identifying and mitigating against human rights and defender risks. As recently highlighted by Chain Reaction Research, a sustainability risk analyst, such lack of mitigation can result in complaints and conflicts. One study estimated 'tangible costs of five company-community conflicts in Sumatra and Kalimantan ranged from US\$70,000 to US\$2.7 million, while intangible costs might have reached US\$9 million per case'.<sup>97</sup> This research also indicates that these financial, legal and reputational costs are increasing, with the estimated costs of social conflict rising by 114%

from 2017-2018, according to Chain Reaction Research. Unless companies and governments take action to mitigate against such risks, coupled with efforts to reduce global consumer demand, it is likely that conflicts caused by oil palm plantation expansion will continue.

Such costs to companies and investors in the palm oil industry have presented themselves in very real ways, both in Indonesia and elsewhere. These include:

- > Wilmar International incurred over three years' worth of legal costs in its defence against a community land dispute in West Sumatra, Indonesia. The Kapa community filed a complaint with the Roundtable on Sustainable Palm Oil (RSPO) in October 2014, stating that Wilmar had established a plantation in their area in violation of RSPO standards; the case was settled and closed as of September 2018.<sup>98</sup>
- > In January 2020, the Dutch National Contact Point of the OECD accepted a complaint from NGOs alleging that ING Bank has 'contributed to' palm oil abuses through its financing of various



companies.<sup>99</sup> At the same time, a network of NGOs from Korea and Indonesia filed a complaint against Posco International, a Korean multinational, at the OECD. The NGOs allege that Posco International failed to adhere to fundamental human rights standards by violating residents' right to free, prior and informed consent, among other abuses, at the site of its palm oil operations in Papua, Indonesia.<sup>100</sup>

➤ In 2012, Malaysian palm oil giant Sime Darby agreed to pay US\$1 million in compensation to communities in Liberia after bulldozing sacred sites. Sime Darby, the world's largest producer of certified sustainable palm oil, cleared farmlands, cash crops and shrines without the prior consent of local communities.<sup>101</sup>

Neither ADM nor Bunge's current palm oil sustainability policies, levels of transparency and due-diligence processes meet a number of their investors' requirements, exposing them to further financial risk. ADM and Bunge also risk jeopardising commercial relationships with important global brand buyers. Both traders have supply chain links to The Coca-Cola Company, General Mills, Kellogg's, Mondelez, Nestlé, PepsiCo and Unilever. Many of these global brands have positioned themselves as sustainability leaders and have policies that require their suppliers to identify and address human rights impacts.<sup>102</sup> These brand companies provide long-term contractual stability to ADM and Bunge, which is at risk if their own sourcing policy requirements are not met.

The evidence in this report indicates that neither ADM nor Bunge is operating in line with international standards, leaving them susceptible to reputational and operational risk, and exposed to formal or legal grievance processes. ADM rejects Global Witness' analysis of ADM's due-diligence processes as flawed. ADM investigated all mills identified in this report as linked to land and human rights abuses. ADM replied to Global Witness that it would be monitoring 9 mills identified in our report, and continuing investigations on a further 36 mills. It closed investigations or otherwise declined to investigate the remaining mills. Responding to Global Witness, Bunge reaffirmed its commitment to its Sustainable Palm Oil Sourcing Policy and Global Labor Policy, adding that it is continuously evaluating its human rights risks, and expects to review its human rights approach in 2021.

Failure to meet international standards and corporate policies are also leaving ADM and Bunge vulnerable to regulatory risk. In April 2020, the European Commissioner for Justice announced the introduction of EU rules on corporate accountability and corporate due-diligence scheduled for early 2021.<sup>103</sup> Such regulation could, once enforced, require that businesses, including financial institutions, undertake Responsible Business Conduct Due-Diligence to identify, prevent, mitigate, monitor and account for adverse human rights, environmental and governance risks in their value chains. Given that both ADM and Bunge have significant operations in Europe, this raises a regulatory risk for them if they fail to meet these standards.

# CONCLUSION AND RECOMMENDATIONS

The evidence presented in this report indicates that both ADM and Bunge are failing to live up to their responsibilities towards local communities and those who defend their land and environmental rights, as enshrined under national and international standards. In particular, we found that nearly 2 in 5 of our sample of shared ADM and Bunge mills had received credible allegations from local communities of land rights abuses, environmental degradation and/or human rights abuses against land and environmental defenders. Moreover, according to available evidence, the two traders' grievance mechanisms are inadequate for resolving these disputes. Community and defenders' human, land and environmental rights are upheld in both national laws and international standards, so ADM and Bunge should ensure that their suppliers are not contravening them.

**Our report shows that the traders' existing policies and procedures on these issues are inadequate.** While both companies have made some relevant public statements, our evidence strongly suggests these commitments are not being met and that effective systems of oversight and implementation appear to be inadequate.

## What ADM and Bunge should do:

To address these failings, Global Witness calls on both companies to:

- **Adopt a public policy position on human rights defenders** that includes a zero-tolerance stance on threats and violence against defenders. The policy should explicitly state what steps will be taken to identify, prevent, address and account for such abuses against defenders and their communities on an ongoing and proactive basis.
- **Adopt a public policy position on the prevention of land rights abuses** across their supply chains, including a zero-tolerance stance on illegal land acquisition, as well as to ensure the right of free, prior and informed consent for local communities and indigenous peoples.
- **Adopt and implement effective systems to implement these policies** in their supply chains and operations. In doing so, the companies should:
  - > develop systems for and conduct regular risk assessments of threats against defenders at country, supplier and production-site level
  - > prioritise implementation in countries where there is the highest risk to defenders, also taking into account where the company can exert most leverage to achieve positive change
  - > publicly disclose risks faced by defenders and the due-diligence measures used to identify and address these risks, for example through annual, sustainability or corporate responsibility reports.
- **Ensure effective mitigation and remedy processes.**
  - > Where adverse impacts on defenders are identified, implement effective mitigation measures – including stopping operations or sourcing where necessary. Affected communities and human rights experts should be consulted to ensure that the measures taken are appropriate and effective.



Palm oil plantation in West Sumatra.  
Credit: Donal Husni/NurPhoto via Getty Images

- > Review and strengthen existing grievance mechanisms, ensuring alignment with relevant guidance such as the UNGPs and the OECD-FAO Guidance for Responsible Agricultural Supply Chains. This review should assess whether existing grievance mechanisms are accessible to, and cover the types of abuses faced by, defenders and the communities they represent. It should also assess whether the existing mechanisms are able to respond rapidly enough to prevent the escalation of threats to those who raise a grievance. If not, the company should establish a separate, rapid response mechanism that deals specifically with complaints from human rights defenders.
- > Cooperate where required with other legitimate grievance mechanisms such as state judicial processes.

Finally, ADM and Bunge should champion land and environmental defender issues with governments, including the Indonesian government. The two companies can use their commercial and political leverage to press for greater respect for defender rights, make public statements on the importance of defenders in promoting human rights and sustainable development, and push governments to ensure that those responsible for attacks and threats against them are brought to justice.

### **What governments should do:**

While the focus of this report is on the specific responsibilities of global agribusiness companies, governments also have a duty to act. Voluntary corporate responsibility measures have not been sufficient to prevent significant environmental and human rights abuses throughout global company supply chains. Governments therefore need to strengthen regulations on corporate accountability and responsible business conduct. The European Union's current move towards enacting mandatory corporate due-diligence legislation is a welcome development. However, to ensure that the types of alleged abuses highlighted in this report are addressed, this legislation must include clear requirements to respect the rights of human rights defenders.

National governments also have an important role to play. In relation to our investigation's findings, it is clear that the Indonesian government must more effectively protect the rights of its citizens. Global Witness supports Indonesian civil society in their calls on the Indonesian government to:

- Strengthen the recognition and protection of indigenous territorial and customary rights through:
  - > introducing, passing and implementing the Recognition and Protection of Indigenous Peoples' Rights Bill, and ensuring this is in line with the principles set out in the United Nations Declaration of the Rights of Indigenous Peoples and that it is enacted in cooperation with indigenous groups
  - > ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and legislating to guarantee indigenous peoples the right to free, prior and informed consent over their territory.
- Respect, protect and fulfil the rights of human rights defenders in line with the UN Declaration on Human Rights Defenders, including through:
  - > developing legislation that prevents and addresses intimidation, repression or violence against human rights defenders, through amending Human Rights Law No.39/1999 to include protections for human rights defenders, and/or by enacting separate legislation focusing on human rights defenders
  - > in consultation with human rights defenders, review and address the use of existing legislation to criminalise legitimate protest and ensure the implementation of current protections, including Article 66 of Law No. 32/2009 on Environmental Protection and Management
  - > investigate and prosecute perpetrators of violations against human rights defenders, including the intellectual authors of these crimes.
- Repeal the so-called Omnibus Bill on Job Creation in recognition of serious concerns from civil society on the implications for the deregulation of environmental licencing and safeguards contained in the bill. At a minimum, ensure that future bills are subject to due consultation procedures mandated in the Constitution.
- Effectively implement the current moratorium on issuing new oil palm plantation permits – including through increasing transparency of information and ensuring civil society participation in its implementation. Commit to extending the moratorium beyond its current three-year remit.<sup>104</sup>
- Develop, in consultation with all stakeholder groups, a National Action Plan on Business and Human Rights outlining gaps in the existing legal framework and its implementation in relation to the protection of human rights defenders, and commit to addressing these.

# METHODOLOGY

To find evidence on the extent of land and human rights abuses in ADM and Bunge's Indonesian palm oil supply chains, Global Witness analysed a random sample of the mills supplying both companies for evidence of conflicts with land and environmental defenders. Commodity traders largely do not publish data about the plantations where the palm oil they acquire is grown. At the time of this analysis, ADM and Bunge only published their sourcing list of palm oil mills. We therefore chose to analyse the mill-level data because of its accessibility and comprehensiveness. However, many land conflicts centre on the plantations where the palm is grown or being prepared, and the absence of publicly available data on the plantations supplying either trader may have led to an underrepresentation of the true scale of alleged land and human rights abuses in the traders' supply chains.

We adopted an intentionally limited search method for each mill we analysed. This was in order to replicate an open-source, desk-based research process that a company employee could easily and reasonably carry out to identify risks of conflicts with land and environmental defenders in a company's supply chain, particularly at the mill level.

A comparison of the two most recent palm oil mill lists for ADM and Bunge available online in August 2020 yielded an overlap of 658 mills in Indonesia supplying both commodity traders. We then selected a random sample of around half of the overlapping mills (330 mills) for analysis. We assessed each of these mills for evidence of alleged land rights abuses and conflict by running simple internet searches in English and Bahasa Indonesia for relevant key indicator terms. In English, these were '*conflict, land dispute, eviction and land grab*'. The equivalent Indonesian terms used were '*konflik, sengketa tanah, tergusurnya and perampasan tanah*'. We also searched '*grievance*' to capture any conflicts included in the traders' grievance lists.

For each mill, we searched the full mill name against each of the above terms separately, and limited our analysis to the first page of search results. For English searches, we used English-language google.com in Mozilla. For Indonesian searches, we used google.co.id in Chrome to enable instant translation. To disambiguate mill names, we occasionally searched for the parent company name instead of or alongside the mill name.

When the first page of results for any of the searches above yielded evidence of conflict between the mill and land and environmental defenders, we 'flagged' the mill and documented the sources.

**Exclusions:** We counted mills as 'problem-free' for the purposes of our analysis where there were insufficient sources of information from media, academic or NGO reports. We also disregarded cases where disputes appeared primarily or exclusively related to labour conditions or to land claims of smallholder palm oil farmers, as these were out of the scope of our assessment.

We then returned to each of the 'flagged' mills to research the alleged land and human rights abuses more deeply and find supporting evidence. To illustrate the kinds of abuses taking place, we researched six cases in further detail based on publicly available information, which we then verified with Indonesian civil society organisations supporting those communities.

We conducted additional research to assess the operating environment for palm oil companies in Indonesia in relation to legislation on land rights, indigenous rights, environmental standards and protections for human rights defenders, and its implementation.

The recommendations for ADM and Bunge are based on those in Global Witness' recently published briefing *Responsible Sourcing: The business case for protecting land and environmental defenders and*

*indigenous communities' rights to land and resources.*<sup>105</sup> These were developed with reference to the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, and guidance published by other international organisations working on corporate accountability and human rights defenders. The recommendations for the Indonesian government were developed in consultation with a broad range of national civil society organisations including those focused on land, indigenous and human rights, and environmental protection.

## DEFINITION OF LAND AND ENVIRONMENTAL DEFENDERS

Land and environmental defenders are a subset of human rights defenders and, as such, their work is specifically protected under the United Nations Declaration on Human Rights Defenders. Global Witness defines a land and environmental defender as anybody who takes peaceful

action to prevent or oppose the unjust, discriminatory, corrupt or damaging exploitation of natural resources that severely impacts individuals' or communities' quality of life or cultural identity, or that seriously harms the environment. Land and environmental defenders can act publicly or privately, in their own personal capacity or professionally, individually or with others.

This covers a broad range of people. Defenders often live in communities whose land, health and livelihoods are threatened by the operations of mining, logging or agribusiness companies. Others will be defending our biodiverse environment. Others will be supporting such efforts through their work – as human rights or environmental lawyers, politicians, park rangers, journalists, or members of campaigns or civil society organisations, for instance. What unites these people is that they all speak out against the harm done to people or the planet through the exploitation of land and natural resources.

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- > **WALHI Jambi**

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