Policy, practice, pride and prejudice

Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)

A joint publication of Milieudefensie (Friends of the Earth Netherlands), Lembaga Gemawan and KONTAK Rakyat Borneo
July 2007

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Milieudefensie (Friends of the Earth Netherlands)	**Netherlands**
Lembaga Gemawan	**Indonesia**
KONTAK Rakyat Borneo	**Indonesia**

June 2007

Foreword

This report presents a review of the environmental, social and legal policies and actual practices of three oil palm plantation companies related to the Wilmar Group.

The Wilmar Group is a large corporate conglomerate with its origins in Indonesia. Its primary activities involve palm oil production, refining and trade. In recent years, the Wilmar Group has rapidly expanded its plantation land bank and in 2006, it publicly listed a large share of its member companies under Wilmar International Ltd. in Singapore. In the course of 2007, Wilmar International intends to merge with the palm oil interests of the Malaysian Kuok Group, which will result in the formation of the biggest palm oil trading company in the world.

The sustainability of palm oil production is of great importance to a growing number of buyers, financiers and governments especially now that the recent biofuel boom has triggered renewed concerns about the possible negative environmental and social impacts of palm oil expansion.

A report published by Milieudefensie in conjunction with this report demonstrates that the largest Dutch commercial banks, electricity producers and food products producers are involved as financiers and buyers of the Wilmar Group. Indirectly, the Dutch government supported Wilmar's expansion plans through its (MEP) subsidies in support of green (biomass-based) electricity production.

Wilmar prides itself as being a responsible corporate citizen and gained a reputation in the market place as having a good environmental record. Underlining this, Wilmar International announced in its Annual Report 2006 that the company was awarded a certificate representing that "crude palm oil from Wilmar's plantations and used by its refineries in producing refined products, are sustainably produced and traceable for the entire production process and chain."

Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo have been monitoring Wilmar for some time. Contrary to sustainability claims in the marketplace, we have found quite a different reality on the ground. This report is about that reality. Our study on three Wilmar related companies operating in Sambas District in West Kalimantan (Indonesia) since 2005 demonstrates evidence of illegal burning with the intention to clear land, illegal plantation development without approved Environmental Impact Assessments, land rights conflicts resulting from encroachment outside areas allocated and the absence of due consultation with relevant local communities, illegal encroachment in river buffer zones, (facilitating) illegal removal of forest products and deforestation without a proper assessment of High Conservation Values which may result in the further destruction of the habitat of, among other endangered species, the orangutan.

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Summary

Brief background

Through the takeover of the oil palm-related subsidiaries of the Malaysian Kuok Group in 2007, the Indonesian/Singaporean Wilmar Group is transforming itself into one of the world's largest palm oil companies. Upon completion of this transaction, the Wilmar Group will handle at least a quarter of all global palm oil output. In addition, with the delivery of three biodiesel factories presently under construction, the Wilmar Group will also be the world's biggest producer of palm based biodiesel.

As a result of the merger, Wilmar's oil palm plantation land bank will encompass over 570,000 hectares in Indonesia, Malaysia and Uganda, at least two-thirds of which is yet to be cleared and planted with oil palms. The Wilmar Group considers itself a responsible corporation whose policy is to conduct its operations with due regard to environmental and social responsibilities.

Objective and methodology

Although industry proponents try to counter the decline of the palm oil industry's image in the marketplace, there is an ongoing worldwide debate on the sustainability of oil palm expansion, associating the industry with an array of sustainability concerns: tropical deforestation, fires and haze, peat and carbon emissions, illegality, social conflicts and human rights violations, and misleading market claims.

This study contributes to that debate. It does so through comparing policies with the practice on the ground. For this purpose, the practices of three oil palm plantation companies were studied: PT Wilmar Sambas Plantation (PT WSP), PT Buluh Cawang Plantation (PT BCP) and PT Agro Nusa Investama (PT ANI) in Sambas District in West Kalimantan, Indonesia. These companies have been owned or managed by the Wilmar Group since 2005.

Gathering the data for this study involved numerous field visits, working with local communities, partner NGOs and government representatives, review of media clippings, participating in and reviewing the minutes of public meetings and court hearings regarding the activities of the Wilmar Group in Sambas District. In comparing policy and practice, this study analyzed:

1) The public Corporate Social Responsibility (CSR) policies of the Wilmar Group;
2) Indonesia's legislation and
3) The Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO), to which Wilmar has been a member since 16 August 2005.

Main findings

This review identified significant gaps between policy (Wilmar's CSR policy, Indonesia's laws and RSPO) and the practices of the three Wilmar plantation companies studied:

1. Land clearing by the use of fire

- Policy: Wilmar's policy states that the company has in place a zero-burning policy. Such land clearing practice is also required by Indonesian law and the RSPO Principles and Criteria.

- Practice: PT WSP and PT BCP in Sambas District and PT ANI in Landak District are presently being sued by the Indonesian authorities for "intentional and systematic burning with the purpose to clear land for plantation development". Some main arguments in support of this case are that PT BCP reported the outbreak of fires to the wrong authorities and PT WSP did not report the outbreak of fires at all. During field investigations, it was furthermore observed that newly burnt areas were immediately planted with oil palms. In such areas, the ash fertilizes and neutralizes the acidity of the soils, making the otherwise poor and acid soils suitable for oil palm growth. No recently planted areas were destroyed in the fires. See Chapter 3.

2. Environmental Impact Assessments

- Policy: Wilmar's policy stipulates that forest land is cleared for its oil palm plantations in accordance with all Indonesian regulations, which is also a primary requirement of RSPO. One of the legal requirements is that plantation companies must obtain approval from the Provincial government for their Environmental Impact Assessment (EIA) reports before large-scale land clearing commences.
- Practice: Review of the PT WSP and PT BCP EIA reports showed that these documents have some important gaps as regards environmental and social impacts of the envisaged operations. Because PT BCP and PT WSP were clearing land and planting oil palms without the legally required approval of its EIA report, the Ministry of Environment in Jakarta ordered PT BCP and PT WSP on April 11, 2007 to halt all their physical activities on the ground and complete the environmental audits. PT ANI continues to expand its plantation area and operate a crude palm oil mill without having completed its EIA. See Chapter 4.

3. Community relations and free, prior and informed consent

- Policy: Wilmar is committed to improving community and social relations and recognizes that community welfare is a key part of oil palm plantation management. Indonesian legislation requires plantation companies to settle land acquisition with local communities prior to the start of land clearing. RSPO requires that no new plantings be established on local peoples' land without their free, prior and informed consent.
- Practice: The three Wilmar subsidiaries in Sambas commenced land clearing in customary rights land and other villagers' land without prior consultation and a due land acquisition process in relevant areas and affected communities. PT WSP and PT ANI cleared community land outside of the areas allocated to them. This triggered various land rights conflicts in the Wilmar areas which hamper the companies' ability to expand as foreseen. See Chapter 5.

4. Forest conversion

- Policy: Wilmar's policy is to ensure that forest land is cleared for oil palm plantations in accordance with all Indonesian regulations. RSPO does not endorse conversion of High Conservation Value Forests (HCVF) after November 2005.
- Practice: PT WSP, PT BCP and PT ANI are clearing tropical forests without having secured the legally required endorsement and permits required to do so. The companies convert these forests without having conducted independent HCVF assessments, which renders the companies non-certifiable under RSPO. See chapter 6.

Is the study representative?

The three subsidiaries studied in this report represent 7% of the Wilmar Group's total land bank after its merger with the oil palm interests of the Kuok Group. The study briefly looks at past practices in older Wilmar plantation developments in Sumatra as well as new developments in other parts of Kalimantan and Uganda. These brief case studies suggest that our findings in Sambas District may not be an exception (see Chapter 7).

Public funds and misleading claims

The trust that the World Bank's IFC and other companies in the market place have put in the Wilmar Group has resulted in various false and misleading claims about the group's sustainability performance. This culminated in Wilmar claiming in its Annual Report over 2006 that the "crude palm oil from Wilmar's plantations and used by its refineries in producing refined products, are sustainably produced and traceable for the entire production process and chain." It is understood that Wilmar has been requested by the auditing company to rectify this statement (see Chapter 8).

Wilmar's response

Wilmar responded in a timely and constructive manner to the draft main findings of this study and a number of additional questions (see Annex 4 and 5). Wilmar's responses led to some minor adjustments in the main text but did not require major revisions. Some of Wilmar's anwers were remarkable. For example, its claim that it has no major rivers in its concession areas is contrary to all of the concession maps issued by the District government, which clearly indicate the presence of major rivers and their tributaries. In addition, Wilmar also provided leads to revealing that one of the companies (PT WSP) had been awarded a 500 hectare plot of land by the District Head when he had no legal authority to do so (see also Chapter 9).

Main conclusion

The main conclusion of this report is that current plantation development practices of Wilmar's subsidiaries in Sambas District are, on several accounts and several localities, in conflict with: 1) the public CSR policies of the Wilmar Group; 2) Indonesia's legislation and 3) the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO). This gap between policy and practice leads to environmental damage and social unrest and undermines good governance of the palm oil sector.

Recommendations

Chapter 10 presents a series of recommendations for Wilmar, its immediate stakeholders (shareholders, banks, buyers, and affected communities), intermediate stakeholders (RSPO, auditors) and governments.

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Acronyms and abbreviations

ADM	Archer Daniels and Midland Company
AMDAL	Analysis Mengenai Dampak Lingkungan, Environmental Impact Assessment
ANDAL	Analisis Dampak Lingkungan Environmental Impact Statement
ANI	Agro Nusa Investama, a Wilmar International subsidiary
APL	Areal Penggunaan Lain, other land use (land use category)
Bapedalda	Badan Pengendalian Dampak Lingkungan Daerah, Regional Environment Impact Management Board
BCP	Buluh Cawang Plantation, a Wilmar International subsidiary
BKI	Badan Koordinasi Investasi Daerah, Regional Investment Coordination Board
BPN	Badan Pertahanan Nasional, the National Land Body.
CDM	Clean Development Mechanism
CEO	Chief Executive Officer
CPO	Crude Palm Oil
COFCO	China National Cereals, Oils and Foodstuffs Corporation
CSR	Corporate Social Responsibility
CU	Control Union Certifications
DPRD	Dewan Perwakilan Rakyat Dearah, provincial or district level parliament
EIA	Environmental Impact Assessment
EU	European Union
FFB	Fresh Fruit Bunches
Ha	Hectare
HCVF	High Conservation Value Forest
HGU	Hak Guna Usaha, Land Use Rights Permit
HP	Hutan Produksi, Production Forest. (land use category)
HPK	Hutan Produksi Konversi, Production Forest (land use category)
HPT	Hutan Produksi Terbatas, Limited Production Forest (land use category)
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFI	International Finance Institutions
IPB	Bogor Agricultural Institute
IPK	Ijin Pemanfaatan Kayu, Timber Harvesting Permit
IUCN	World Conservation Union
IUP	Izin Usaha Perkebunan, Plantation Operation Permit
JJP	Jatim Jaya Perkasa
KASABA	Kalimantan – Sarawak – Sabah border area
MEP	Milieukwaliteit Energie Production, Environmental Quality Energy Production
MPOA	Malaysian Palm Oil Association
MT	Metric Tonnes
NFA	National Forestry Authority (Uganda)
OPUL	Oil Palm Uganda Limited
PAD	Pendapatan Asli Daerah, Local Revenue Fund
PERDA	Peraturan Daerah, Local (Government) Regulation
PPB	(Formerly) Perlis Palm Oil Berhad, now PPB Oil Palm
P&C	Principles and Criteria
PT ANI	Agro Nusa Investama (Limited)
PT BCP	Buluh Cawang Plantation (Limited)
PT BPK	Bumi Pratama Khatulistiwa ((Limited)
PT JJP	Jatim Jaya Perkasa (Limited)
PT PHP	PT Permata Hijau Pasaman
PT WSP	Wilmar Sambas Plantation (Limited)
RKL	Rencana Pemantauan Lingkungan, Environmental Monitoring Plan
RPL	Rencana Pengelolaan Lingkungan, Environmental Management Plan
RSPO	Roundtable on Sustainable Palm Oil
SOB	Save Our Borneo
SPO	Sustainable Palm Oil
WIL	Wilmar International Limited
WSP	Wilmar Sambas Plantation, a company under the Wilmar Group.

1. Introduction

1.1 Concerns over the sustainability impact of oil palm expansion

The expansion of oil palm plantations in Southeast Asia over the past 10-15 years has brought about deforestation, the loss of habitat of rare and endangered species, land fires and haze, conversion of sensitive soils, water pollution and persistent conflicts between plantation companies and local communities. These environmental and social problems are of great concern to many parties within and outside the palm oil industry as they have local, regional and global outreach.

Companies in the palm oil industry and NGOs have entered into a formal multi-stakeholder dialogue through the Roundtable on Sustainable Palm Oil (RSPO) since 2004. The RSPO has grown rapidly in membership and now represents about 40% of global palm oil production and trade. RSPO aims to promote the production and use of palm oil from responsibly managed sources. In its preamble RSPO acknowledges the sector faces serious sustainability challenges. Some new challenges have recently emerged for those involved in the debate on sustainability in the palm oil industry.

1.2 The rise of the biofuels market

In the past couple of years, the world has seen the rise of an entirely new sub-sector: the biofuels industry. Biofuels are derived from renewable resources, as opposed to fossil fuels. Industrially produced biofuels are already used as fuels for transportation and electricity generation in many countries. The rapid emergence of this market is driven by a variety of motivations, in particular the perceived need to increase energy security in countries with limited fossil fuel reserves, agricultural and forestry interests in search of new business opportunities, the fading price differential between fossil fuel and "*renewables*" and, not least, efforts to dampen the impact of global warming through the reduction of carbon emissions.

Governments play a strong role in the rise of the biofuel industry. The United States strives to replace 75% of its oil imports from the Middle East with alternative fuels by 2025, with a 30% biofuel target by 2030.[1] Early in March 2007, all 27 Members of the European Union agreed to a binding target of a 20% share of renewable energies in overall EU energy consumption by 2020 and a 10% binding minimum target to be achieved by all Member States for the share of biofuels in overall EU transport petrol and diesel consumption by 2020.[2] Indonesia aims for 10 per cent biofuel use in the transportation sector and Malaysia has set a 5% target to replace petroleum-based fuel consumption with biofuel.[3]

To some extent, these policy targets are linked to the Kyoto Protocol, by which developed nation signatories have committed themselves to a 5% reduction of greenhouse gases compared to 1990 levels.[4] The EU's recent commitment to increasing the consumption of biofuels goes beyond even the Kyoto Protocol targets. The EU policy stipulates that the production of biofuels must be sustainable and that second generation biofuels become available.[5]

The growing global demand for biofuel is boosting the production and global trade in palm oil, a vegetable oil that is considered to have good potential to become a leading biofuel in the world, as it is cheap, widely available and delivers high yields per hectare. According to FAO, EU palm oil imports

have already doubled during the 2000-2006 period, mostly to substitute for rapeseed oil diverted from food to fuel uses.[6]

Palm oil producer countries, notably Indonesia and Malaysia, are eager to supply the expanding market. To do so, in 2006 the governments of Indonesia and Malaysia committed to set aside nearly 40% of their 2006 Crude Palm Oil (CPO) output for biofuel production.[7] This translates into an equivalent of 12 million tons of CPO and a plantation acreage of around 4 million hectares. Because demand for palm oil in the global food market continues to grow as well, a dramatic increase in total oil palm acreage is to be expected.

It is estimated that around 10 million hectares of land needs to be opened up to meet the global demand for (palm oil) biofuel.[8] In view of the existing economic infrastructure, there is no doubt that the bulk of this expansion would take place in Indonesia and Malaysia (notably Sarawak) so that in effect, **the total oil palm acreage in Malaysia and Indonesia is set to double from 10-11 million hectares at present to around 18-22 million ha in the coming decade(s).**[9]

This forecast obviously provides new grounds for concern in the debate over the impacts of oil palm expansion on nature, the environment and people. This debate is not exclusively limited to palm oil; similar concerns arise over the expansion of other (potential) biofuel crops such as soy, sugar cane, corn, rapeseed, wood, etc.

1.3 Listings and mega-mergers in the palm oil sector

According to a report by Credit Suisse, biofuel production is still unprofitable without government subsidies and other incentives. Only companies with a large enough scale would be able to survive in the emerging market, through the integration of their estates and production plants.[10]

Hence, the realization of government targets for biofuel consumption has been and will be backed by an array of financial incentives to the private sector (e.g. subsidies, tax breaks and binding legislation). Furthermore, companies have begun to expand their size and integrate their businesses through new acquisitions and mergers. This trend was especially visible in 2006, and will continue for some time.

In August 2006, a large number of subsidiaries under Wilmar Holdings were listed on the Singapore Stock Exchange through a Reverse Take Over of Ezyhealth which then was followed by a name change, resulting in the listed company, Wilmar International Limited (WIL). This event was, followed by Indofood Agri Resources in January 2007 (which later merged with London Sumatra later in the year).

Two land mark mergers in the palm oil industry were also announced in 2006. The first merger, valued at US$ 9 billion, involves the merging of three government-controlled Malaysian plantation groups (Golden Hope, Guthrie and Sime Darby) into a single company, Synergy Drive. After the merger, this company will hold a plantation land bank of 600,000 hectares in Malaysia and Indonesia.[11] The second merger was announced by Wilmar International in December 2006 and involves the takeover and merging of three divisions of the Kuok Group (PPB Oil Palms, PGEO Group and Kuok Oils and Grains) by the edible oils, grains and related businesses of its parent company Wilmar Holdings. This transaction is valued US$ 4.3 billion and will result in a joint land bank of 573,000 hectares, mostly in Indonesia.[12]

The newly listed and to be merged company groups have ambitious plans to further expand their plantation land banks, and to become major players in the globally emerging biofuel industry, with land banks that could grow to 1 million hectares each, i.e. the size of a small country such as South Korea. To facilitate this expansion, in February 2007 the Indonesian government issued a new decree that lifts former limitations to the land bank size that plantation companies may apply for.[13]

The emergence of the biofuel market thus is also driving the creation of a new type of "big oil" companies, one of which is the expanding Wilmar Group.

1.4 Background of the Wilmar Group

The business empire of the Wilmar Group was created by the Malaysian national Mr. William Kuok Khoon Hong, and the Indonesian national Mr. Martua Sitorus.[14] Mr. Sitorus started his palm oil business in 1978 with the palm oil refinery PT Karya Prajona Nelayan (PT KPN) in Medan. In 1991, he and Mr. Kuok entered into partnership, and created and expanded the Wilmar Group.

Wilmar International Ltd. and the broader Wilmar Group
As mentioned above, Wilmar Holdings listed a significant number of its subsidiaries on the Singapore Stock Exchange in August 2006. The assets of the listed division of the group, Wilmar International Ltd. (WIL), were valued at US$ 1.8 billion in 2006. The company's turnover amounted to US$ 5.3 billion in the same year.[15]

This report is not limited to a review of the listed company Wilmar International but also takes into account the business activities of whole Wilmar Holdings as well as the business activities of the immediate relatives of Mr. Martua Sitorus. His wife (Rosa Taniasuri Ong), sisters (Bertha, Mutiara, dan Thio Ida), brother-in-law (Suheri Tanoto dan Hendri Saksti) and brother (Ganda) are all involved in some manner in the palm oil business. As will be discussed in paragraph 7.3, there are intricate linkages between the business activities of the Wilmar Group and the businesses of his relatives.

Wilmar will become one of the world's largest palm oil traders
After the merger with the Malaysian Kuok Group (owned by Mr. Kuok Khoon Hong's uncle, Mr. Robert Kuok), Wilmar International will become the largest trader of palm and lauric oils in the world, the largest edible oil refiner in the world, one of the largest palm biofuel manufacturers and one of the largest plantation companies in Indonesia and Malaysia in terms of the total land bank of 573,000 ha (an area larger than the combined surface area of the Dutch provinces North and South Holland). **According to a study by Credit Suisse, upon completion of the merger Wilmar International will handle about a quarter of global palm oil output**.[16]

Wilmar will become the world's largest producer of biodiesel
In August 2006, the company announced it planned to expand the capacity of a palm oil based biofuel mill, "PT Wilmar BioEnergi Indonesia", under construction in Pekanbaru (Riau) and to build two additional plants in Indonesia to develop a production capacity of 1,050,000 Metric Tonnes (MT) per year. Palm oil for this mill would be sourced from both Riau and Kalimantan.[17] According to a Goldman Sachs report, these investments will also make Wilmar the largest palm bio-diesel producer in the world, once its three plants in Indonesia have started their operations.[18]

With its investments in the biofuel industry, the Wilmar Group aims to serve the commercial, geopolitical and environmental goals that drive the rising biofuels market:

> *"In view of the growing global consciousness on environmental benefits in terms of lesser greenhouse emissions and reduced dependence on fossil fuels, there is an increasing need and interest in biofuels. (..). Palm diesel has long been proposed as a renewable source of energy, an alternative to the world's depleting reserves of fossil fuels."*[19]

Wilmar commissioned its first biodiesel plant in January 2007, while the other two mills are expected to come online later in 2007. The bulk of Wilmar's biodiesel production for FY2007 has been pre-sold to buyers in Europe and the USA.[20]

Wilmar will open up large tracts of land for new oil palm plantations

As of December 2006, only 98,449 ha or less than half of Wilmar's total land bank of 210,000 ha had been planted, leaving the balance yet to be opened up. Of the planted land bank 32,132 ha were plasma (oil palm smallholder) estates, thus not 'owed' by Wilmar.[21]

As of 31 December 2005, PPB owned a total land bank of 363,238 hectares, of which approximately 80,017 hectares are in East Malaysia and 283,221 hectares are in Indonesia. Of PPB's Indonesian land bank, only 24,019 ha were actually planted by the end of 2005.[22]

Upon completion of the merger of the Wilmar and the Kuok/PPB Oil Palm Groups, Wilmar will have increased its plantation land bank from 210,000 to 573,000 hectares.[23] **Two-thirds (370,000 ha) of the land bank held by the enlarged Wilmar Group in Indonesia has yet to be cleared and planted with oil palms.**

Table 1. Land bank of Wilmar International and PPB Group.

	Malaysia	Indonesia			Total
		Planted	*Unplanted*	*Plasma*	
Wilmar Group	0	66,317	111,551	32,132	210,000
PPB Group	80,017	24,019	259,202	0	363,238
Expanded Wilmar Group	80,017	90,336	370,753	32,132	573,238
Share of total (%)	14%	16%	65%	6%	100%

Note: excluding subsidiaries under the Wilmar Group not listed under Wilmar International.

Most of the new expansion by the enlarged Wilmar Group will take place in West Kalimantan and Central Kalimantan, Indonesia.

Wilmar's CSR policy

Wilmar perceives itself as a "responsible company" and a "responsible corporate citizen".[24] For the purpose of this review, core elements of Wilmar's Corporate Social Responsibility (CSR) policy from the company's circular to investors (July 2006) and its website were used are cited below:

> *Wilmar's environment and social policy*
> "As a responsible corporate citizen, we regard our social obligations seriously by complying with environmental and pollution standards that promote environmentally and socially sound operating practices, thus ensuring the safety and quality of our products and the socio-economic development of the community."
>
> "The Wilmar Group considers environmental compliance to be an important factor in the conduct of its operations and it is committed to achieving high standards of environmental management. Each of the Wilmar Group's oil palm plantations and processing plants has implemented environmental management plans to help reduce the environmental impact of its operations and to monitor the production and the disposal of waste products. As part of its internal environmental and social development policies, the Wilmar Group:
>
> - is committed to complying with environmental and pollution standards;
> - ensures that forest land is cleared for its oil palm plantations in accordance with all Indonesian regulations;

- builds medical clinics, schools and places of worship for its plantation workers and their families
- is committed to managing its oil palm operations in a manner consistent with internationally recognized management practices;
- has in place an active no-burn policy; and
- is committed to improving community and social relations and has recognized that community welfare is a key part of its oil palm plantation management."[25]

Wilmar's Annual Report over 2006 partially expands on the above CSR policy and makes ample reference to RSPO. Wilmar Trading Pt. Ltd. has been a member of RSPO since 16 August 2005.

In the market place, the Wilmar Group has gained a reputation of being an environmentally and socially responsible company. There is a general feeling in the market place that Wilmar is a responsible company whose plantation management practices could be fairly easily certified as supplying sustainable palm oil.

1.5 Objective of this study

The primary objective of this review is to compare the legal, environmental and social policies and practices of the Wilmar Group, in particular in reference to three Wilmar-related companies in Sambas District, West Kalimantan (Indonesia). More in general, this report aims to contribute to the public debate about legality and sustainability in the oil palm industry in general, and to provide input to the question of whether Wilmar's practices justify its reputation as a responsible company.

1.6 Case studies

This case study focuses on three oil palm plantation companies directly owned or managed by Wilmar International in West Kalimantan:

- PT Wilmar Sambas Plantation (PT WSP), Sambas District
- PT Buluh Cawang Plantation (PT BCP), Sambas District
- PT Agro Nusa Investama (PT ANI), Sambas District

The latter two companies, PT BCP and PT ANI, are subsidiaries of the listed company Wilmar International Ltd. Wilmar International stated in its response to the draft main findings of this report that it is responsible for the management of PT WSP. It did not mention, however, that PT WSP is also very closely related to the Wilmar Group (see the box below). In this study, therefore, PT WSP is considered to be part of the broader Wilmar Group, i.e. a Wilmar-related company, whose plantation development practices fall under the responsibility of the listed arm of the Group, Wilmar International Ltd.

Who owns PT Wilmar Sambas Plantation?

PT Wilmar Sambas Plantation (PT WSP) was founded by two members of the Sitorus family on 7 January 2005:
1. Martua Sitorus, on the behalf of PT Karya Prajona Nelayan (his first palm oil refinery company of which he is president director) owns 237,500 shares (95%) and
2. Suheri Tanoto (the brother-in-law of Martua Sitorus), on the behalf on PT Kartika Prima Nabati owns 12,500 shares (5%). Suheri Tanoto is the president director of PT Kartika Prima

Nabati, of which 19.1% is owned by Martua Sitorus and 62.6% owned by his brother, Ganda Sitorus.
Although Martua Sitorus co-founded PT WSP on behalf of PT Karya Prajona Nelayan (PT KPN), the latter company was sold to Technique Holdings in the British Virgin Islands in October 2004. Technique Holdings is also owned by Martua Sitorus, Kuok and ADM. This company sold its assets partly to Wilmar International and stopped all its activities before July 2006.[26]

PT Buluh Cawang Plantation is also active in South Sumatra, while PT ANI has operations in several other parts of Kalimantan.

The approximate location of the concession areas of the three Wilmar companies in Sambas is shown on Map 1.

Map 1 Approximate location of the study area

1.7 Methodology

The bulk of the facts and data presented in this report was primarily collected and analyzed by local organizations in Indonesia, notably Lembaga Gemawan (Pontianak, Sambas), Walhi Kalbar (Pontianak), KONTAK Rakyat Borneo and Sawit Watch (Bogor). Walhi is a member of the Friends of the Earth International network. Walhi Kalbar is a member of the national Walhi office; Lembaga Gemawan is a member of Walhi Kalbar. Case material was furthermore supplied by Save Our Borneo (Central Kalimantan), Jikalahari (Riau), SudeWatch (Uganda) and Forest Peoples Programme (UK).

These organizations gathered data from government institutions at the District, Provincial and National level, participated in a range of public meetings, conducted field investigations and collected information through interviews and discussions with local communities. In addition data were collected from a variety of local, national and international newspapers, company websites, annual reports, circulars, EIA reports and Notary Acts. Sawit Watch processed most mapping data. Valuable input to this study was furthermore provided by Sawit Watch (Indonesia), Forest Peoples Programme (United Kingdom), AIDEnvironment (Netherlands), Profundo (Netherlands), Friends of the Earth Finland and the International Institute for Environment and Development (United Kingdom).

A draft version of the main findings of this report was shared for comment with Wilmar International on 13 April 2007. Wilmar responded in a timely, comprehensive and constructive manner on 25 April

2007 (see Chapter 9 and Annex 4). Based on an analysis of Wilmar's reply, Milieudefensie made some adjustments in the summary and main text, but generally maintains its initial findings. During the consultation process with Wilmar, local NGOs conducted additional field investigations, between 13 April and 1 May. Milieudefensie then presented the key findings and questions to Wilmar International on May 24, to which a reply was received on June 9 (see Chapter 9 and Annex 5).
In describing the problems identified, care was taken to assure that facts and statements are referenced to identifiable sources where reasonably possible.

1.8 Target groups of this report

The findings in this report are of interest to numerous decision-makers and stakeholders involved in the debate about palm oil and sustainability:

- The CEOs of the Wilmar and PPB Oil Palm Groups and its main significant shareholder ADM: Mr. Martua Sitorus, Mr. Kuok Khoon Hong and Ms. Patricia Koertz respectively;
- The CSR, public relations and plantation estate managers in the Wilmar and PPB Oil Palm Groups, and other plantation groups;
- Palm oil buyers and food producers/retailers, notably those having a relationship with Wilmar such as Unilever, COFCO, Cargill, Proctor & Gamble and others;
- Palm oil buyers in the biofuels industry, notably those having or being interested in a relationship with Wilmar, such as Essent, Elektrawinds and Fortum;
- Commercial banks, especially those involved in the Wilmar Group and having oil palm/forestry investment policies such as Rabobank, ING Bank, ABN Amro Bank and Fortis;
- Public International Financial Institutions, especially those having funding relations with the Wilmar Group, notably IFC and IFAD;
- Investment analysts, especially those dealing with the merger of the Wilmar and Kuok Groups;
- Relevant departments of the local and national governments in producer countries, notably in Indonesia, Malaysia and Uganda;
- Relevant government policymakers in market countries, notably the Dutch government and the European Union;
- The Executive Board and membership of the Roundtable on Sustainable Palm Oil (RSPO) and the Roundtable on Sustainable Biofuels (RSB);
- Consultants, notably AMDAL/EIA assessors;
- Auditing companies, notably Control Union Certifications;
- Conservation and development NGOs in producer and in market countries.

1.9 Structure of this report

This report is structured as follows:
- Chapter 2 provides an introduction to Wilmar's oil palm plantations in West Kalimantan and provides a background on the three companies studied;
- Chapter 3 discusses the issue of land fires in the Wilmar areas in Sambas in 2006-2007;
- Chapter 4 zooms in on the Environmental Impact Assessments, their approval procedures and the status of these EIAs in the studied Wilmar related companies;
- Chapter 5 elaborates on conflicts between local communities and the Wilmar related companies in Sambas;
- Chapter 6 touches on forest conversion, High Conservation Values and legal aspects of forest conversion;
- Chapter 7 looks at the question of how representative the Sambas case is, based on information from Indonesia and Uganda. This chapter looks at practices of some subsidiaries under Wilmar's merging partner, the Kuok/PPB Group in Central Kalimantan.

- Chapter 8 describes the role of public International Financial Institutions, notably the International Finance Corporation (IFC), and analyses market claims of sustainability performance of the Wilmar Group;
- Chapter 9 discusses Wilmar's response to the draft main findings of this report, and gives our response, partly based on some new facts.
- Chapter 10 presents the recommendations to the target groups of this report
- The postscript highlights a number of recent new developments.

In comparing policies and practices, the Chapters 3 to 6 are structured into the following headings:
- Existing policies and regulations (Indonesian legislation, Wilmar's CSR policy and the RSPO P&C);
- Facts and observations on Wilmar's activities in Sambas;
- An indication of the environmental and social impacts of Wilmar's activities;
- Analysis and conclusions.

2. Wilmar in West Kalimantan

2.1 Recent acquisitions in West Kalimantan

Since 1991, the Wilmar Group plantation estates have been located on the Indonesian island of Sumatra, specifically West Sumatra, South Sumatra and Riau provinces. The group made its entry into Kalimantan in 1980 through a shareholding in the specialty fats factory PT Cahaya Kalbar in Pontianak, and in 1990 through the plantation subsidiary PT Bumi Pratama Khatulistiwa. Four to five years ago, the company succeeded in finding new land with the help of the Investment Coordination Board (BKI) and the District governments of Sambas, Landak and Sanggau Districts in West Kalimantan, as well as through taking over dormant plantation companies from the Sinar Mas and Latief groups.

By early 2007, the Wilmar Group had access to at least 10 new plantation companies in West Kalimantan with an aggregate acreage of over 166,000 hectares. Furthermore, Wilmar also obtained a majority shareholding in the specialty fats producer PT Cahaya Kalbar in 2006.[27]

In the coming seven years, Wilmar intends to develop its new plantation estates at a rate of 15,000 ha per year.[28]

Wilmar Group's expansion activities in West Kalimantan require the improvement and extension of West Kalimantan's existing infrastructure. For one, there are plans to build an international shipping port in Sebubus (sub-district Paloh, in Sambas) which is planned to start operations in 2008. The central government has also begun with the improvement of roads, including the 150 km road from Keramat, Sejangkung and Galing (where PT WSP and PT BCP have begun operations), through the forests of Keliau sub-district to link Sambas to Biawak and Kuching across the border in Sarawak, Malaysia.

In addition to the companies listed in Table 2, PT Agro Nusa Investama (PT ANI) also holds uncertified land plots in Kumai Hulu and Kumai in West Kotawaringin (Central Kalimantan). Another Wilmar subsidiary**,** PT Mekar Bumi Andalas, also holds uncertified land plots in Jenebura in Balikpapan (East Kalimantan).[29] In Jambi (Sumatra), Wilmar purchased PT Asiatic Persada from the Cargill group, as well as other assets.

Though shareholdings in companies not immediately associated with its listed arm, the Wilmar Group has access to a much larger area of oil palm plantations in Kalimantan. For example, during the research for this report it was found that the Ganda Group, owned by the brother of Martua Sitorus, made an entry into Sambas District in 2006 through three oil palm companies and one castor oil (*jatropha*) company (see also paragraph 7.3).

2.2 Wilmar in Sambas District

Sambas is a fairly poor district, predominantly inhabited by Malay communities and to a lesser extent Dayak communities who live in scattered villages and settlements throughout the district. The main commodities produced in the district are rubber, coconut, pepper, coffee, rice and oranges (*jeruk*). Most agriculture is community-based. In 2006, about 80,000 hectares of land in Sambas provided sub-

Table 2. Companies under the Wilmar Group in West Kalimantan, as of early 2007.[30]

No.	Wilmar companies	Sub-districts	District	Land bank (ha.)	IUP permit as per June 2006
1	PT Wilmar Sambas Plantation (PT WSP)**	Galing, Sajingan Besar, Sejangkung	Sambas	14,100	yes
2	PT Buluh Cawang Plantation (PT BCP) *	Paloh, Teluk Keramat, Galing, Sajingan Besar	Sambas	14,400	yes
3	PT Agro Nusa Investama (PT ANI) *	Sejangkung, Sajad, Subah and Sajingan Besar	Sambas	12,500	yes
4	PT Daya Landak Plantations (PT DLP) * ^	Ngabang	Landak	15,000	yes
5	PT Agro Nusa Investama (PT ANI) (ex PT Aimer Agro Mas) *	Sengah Temila, Sebangki	Landak	15,000	yes
6	PT Indoresin Putra Mandiri (PT IPM) * ^	Ngabang, Kuala Behe	Landak	18,000	yes
7	PT Pratama Prosentindo (PT PP) * ^	Ngabang, Menyuke	Landak	20,000	yes
8	PT Putra Indotropical (PT PIT) * ^	Ngabang	Landak	20,000	yes
9	PT Tritunggal Sentral Buana (PT TSB) * ^	n.a.	n.a.	12,000	n.a.
10	PT Agro Palindo Sakti (PT APS) *	Tayan Hulu, Balai	Sanggau	20,000	yes
11	PT Bumi Pratama Khatulistiwa (PT BPK) *	Sei. Ambawang, Sengah Temila	Pontianak	4,815	yes
	Total			166,015	139,345@

The acreage listed here may have been subject to changes.

* Subsidiaries under Wilmar International Limited.

** Managed by Wilmar International Ltd.

^ 30% owned by ADM Asia Pacific Ltd.

sistence and employment for 207.350 small farmers. By contrast, 199,200 hectares of land in Sambas held by 15 large-scale plantation companies employed only 1.944 people in the same year.[31]

The total surface area of Sambas District is 639,570 hectares. According to data from the Sambas Forestry Department in 2004, there are some 572,475 ha of primary and secondary forests in Sambas (89% of the land area). About 136,230 ha comprise peat swamp forests. Without doubt, far less forest remains on the ground at present.

Sambas is part of the Indonesian national government's Kalimantan – Sarawak – Sabah (KASABA) development zone, a project that received a lot of national and international media attention in 2005 when information was leaked that the state-owned plantation company PTPN was preparing plans to develop oil palm plantations along the 1,800 km border with Sarawak and Sabah, crossing mountains and several national parks.[32] Following criticism from NGOs, research organizations and international donor agencies, the original project scenario has been replaced by a more modest plan proposing the establishment of several small to medium-sized oil palm plantations (see Figure 1).[33]

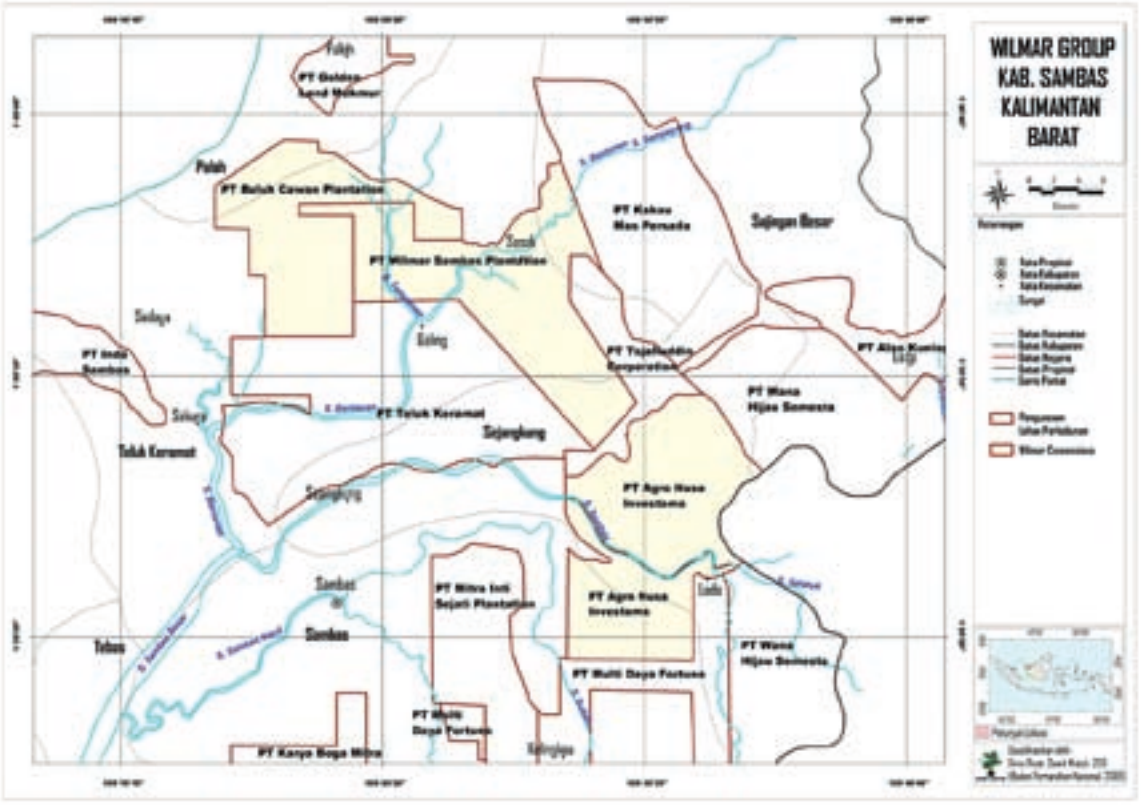
Nevertheless, numerous oil palm concessions had already been and continue to be granted in the border districts of West Kalimantan covering much of the remaining lowlands of Landak, Sanggau, Sintang, Bengkayang and Sambas. Up to 2004, the Sambas District government had issued 25 Location Permits to oil palm companies, with a total area of 199,200 ha, or 30% of the district's land area. By mid 2006, already **at least 50% (319,000 ha) of Sambas District land area has been allocated for oil palm expansion.** [34]

The most recent (2005) oil palm concession map available shows that plantation development permits have been allocated to a range of companies, including the Wilmar companies discussed in this study.

The concessions areas show on Map 1 and most other maps presented in this report merely represent indicative shapes and sizes.[35] Apart from changes in ownership, shape and size of some of the concessions Map 1, the District Head has allocated several new areas to plantation companies (not shown on this map) in 2006.

The area boundaries are determined by the Regional Investment Coordination Board (BKI) based on closed meetings with investors interested in opening up land for oil palm plantations. Individual applications for land are then submitted by BKI to the office of the District Head through a land application document (*Informasi Lahan*). At that time, the concession size, its precise location and shape is still subject to changes mainly because the land allocated to a company is rarely fully suitable and rarely truly "empty". Proposed concession areas usually comprise numerous villages and their entire

Map 2.Oil palm concessions in Sambas, West Kalimantan (2005).



The Wilmar companies in Sambas District are: PT Buluh Cawang Plantation, PT Wilmar Sambas Plantation and PT Agro Nusa Investama (marked in light yellow). Based on 2005 BKI Map. The actual shape and size of the concessions is approximate and has been partially adjusted.

Figure 1. Demonstration against the oil palm mega-project in Kalimantan. (Jakarta 5 December 2005).

customary rights land, including natural forest areas. Officially, concession boundaries are adjusted during the follow up process based on the advice of the Environmental Impact Assessment (EIA) and consultations with communities. **In reality, land clearing for oil palm plantations is a "trial and error" process. Revisions of the concession map are considered only when communities vigorously resist the development as it encroaches on their customary rights land**. (See also Chapter 5.)

The boundaries of individual concession areas are fixed only after having been delineated and marked in the field by the National Land Body (*Badan Pertahanan Nasional*, BPN) and a Land Use Permit (HGU, *Hak Guna Usaha*) is issued. A HGU can be issued only if all previous stages of licensing have been completed and any legitimate land rights conflicts have been resolved. As of mid-2006, not a single Land Use Permit (HGU) had been issued to any oil palm company in Sambas District, **in the past few years at least 50% (319,000 ha) of Sambas District land area has been allocated for oil palm expansion**.

3. Land clearing by use of fire

3.1 Relevant policies and regulations

3.1.1 Policy Wilmar Group

In its circular to investors of July 2006 and on its website, Wilmar International states:

"As part of our internal environmental and social development policies (..), we have in place an active no-burn policy". [36]

In addition, the company's Environmental Impact Assessment (EIA) reports also stipulate that land clearing shall be done without the use of fire.[37]

3.1.2 Indonesian legislation

Open burning by plantation companies with the intent to clear and prepare land for planting is prohibited according to various Indonesian laws and governmental decrees. The 1997 Environment Management Act No.23 first recognized corporate liability for environmental crime, which includes causing forest and land fires. The Act implies that every concession or plantation company is responsible for fire outbreaks in its concession area. This applies to both intentional and systematic burning and outbreak of fires due to neglect. Depending on the law and articles applied (Environment Act No. 23 or Plantation Act No. 18), offenders may be charged with 5-10-year jail sentences and US$ 5,000 to US$ 1,000,000 fines.

In addition, as of February 2001, Government Decree No. 4/2001 Act on Environmental Pollution related to Forest Fires and/or Land Burning explicitly prohibits all persons and their businesses to cause forest fires and use fire for land clearing in their locations. They are obliged to extinguish all fires and take fire prevention measures including monitoring of fire outbreak and reporting based on satellite images) on a half-yearly basis to the Governor's Office, District Head, the mayor and other relevant technical institutions (Art. 13-15).[38]

Furthermore, Ministry of Agriculture Decree No. 357/Kpts/HK.350/5/2002 on Guidance regarding the Licensing of Plantation Businesses stipulates that Plantation Operation Permits (IUPs) may be revoked as an administrative sanction imposed on any plantation investors who fail to (..) conduct land clearing without fire.[39]

In addition, the Location Permits issued by the head of Sambas District to PT WSP and PT BCP also stipulate that land clearing shall be done without the use of fire.

3.1.3 RSPO

Criterion 5.5 Use of fire for waste disposal and for preparing land for replanting is avoided except in specific situations, as identified in the ASEAN guidelines or other regional best practice.

Criterion 7.7 Use of fire in the preparation of new plantings is avoided other than in specific situations, as identified in the ASEAN guidelines or other regional best practice.[40]

3.2 Practices on the ground

3.2.1 Overview

Each year, thousands of land and forest fires occur in Indonesia's rural and forested regions and, depending on the season and place, a significant share of these fires occur inside the concession areas of plantation companies. These fires have various causes. Although some companies do have in place zero-burning policies, systematic and intentional burning with the aim of clearing and preparing land for planting oil palms still occurs in many locations. Poorly controlled fires may easily run out of control, and this risk is aggravated when peat soils are drained due to construction of canals during the land clearing process. The dried peat burns easier and reduces the moisture content of woody debris. Peat drainage and flooding may also speed up the release of methane (CH4), which is a powerful greenhouse gas and may promote the spread of fires, as it is a highly inflammable peat gas.[41]

Land clearing by fire is attractive to plantation companies for the following reasons:

- The use of heavy land clearing equipment is problematic in peatlands where the soft, soggy soil hinders the use of bulldozers. Therefore, manual labor and selective use of excavators is generally preferred but without the use of fire, land preparation will be slower.
- According to the police testimony by PT WSP's Agricultural Officer, Muhibbi Bin M. Nasir, BS, the cost of land clearing by use of an excavator is Rp. 4,000,000 (US$ 440), using a bulldozer costs Rp. 3,500,000 (US$ 380) and hiring local communities to clear land with chainsaws and axes comes at a cost of Rp 750,000 (US$ 83) per hectare.
- The low cost of land clearing by communities is in part to be explained by the fact that the company would usually allow them to harvest any remaining commercial timber. Once the vegetation is cut and merchantable timber is removed and, where necessary remaining debris is stacked, a quick burn will clear the land and reduce the size of wood rows.
- Burning furthermore eases the removal of weeds and grass and reduces the risk of pests.
- Burning also saves on the cost of alkaline (basic) fertilizer or Rock Phosphate which is otherwise required to increase the fertility and reduce the acidity of peat soils to levels that are better suited for oil palm growth. This knowledge came out in the open during a court case against a subsidiary of the Kuala Lumpur Kepong group, PT Adei Plantation in Riau province in 2002.
- Overall, the risk of legal prosecution has been negligible in Indonesia since laws, most notably Environment Management Act No. 23, prohibiting open burning by plantation companies, were introduced from 1997 onwards. Ever since, only in the PT Adei case was the company found guilty of intentional and systematic burning with the aim to clear land for plantation development.[42]

Despite these powerful incentives, it remains a challenge for the prosecution to prove, after the fact, who set the fire and who ultimately ordered that person to do it. In his testimony to the police, Dr. B. Saharjo of the Laboratory Forest and Land Fires of the Bogor Agricultural Institute (IPB) therefore defines open burning as setting spreading fire in a controlled manner in forests and on land with the aim to achieve certain targets. This definition implies that the question is not so much about who set the fire but who benefits from the results of the fire, such as in the ways described above.

3.2.2 Fires in Wilmar's estate areas

In the past few years, a significant number of Wilmar's subsidiaries in Sumatra and Kalimantan have been reported as having fire hot spots in their areas. The company usually does not deny that fires have taken place, but typically blames these fires on neighboring plantations and local farmers.[43] In July and August 2006, satellites images, local communities, NGOs and fire experts found that fires also occurred in Wilmar's newly acquired subsidiaries in West Kalimantan where land clearing was on its way. Again, the company did not deny that fires occurred in its areas, but denied any wrong-doing.

Figure 2. PT BCP: burning tracks and nursery (May 2007).

Note: picture taken from a newly constructed fire watch tower. The burnt area is very close to the PT BCP staff housing complex which was unaffected by the fires. Note that the nursery shows no signs of burning damage.

However, when villagers from Tempapan Hulu, Sange (Semustida), Mentibar and Tanah Hitam were forced to flee their houses due to fires in coming from the PT BCP area in August 2006, the Provincial Environmental Monitoring Agency (Bapedalda) was alerted. This then resulted in the formation of an investigation team including representatives of the Agribusiness Service (Dinas Perkebunan), the Forestry Service (Dinas Kehutanan), the District Police and the renowned fire expert from the Laboratory Forest and Land Fires of the Bogor Agricultural Institute (IPB), Dr. Bambang Hero Saharjo. The team conducted ground-checks not only in PT WSP, but in the concession areas of 11 plantation companies in the period September – October 2006.[44]
The investigation team concluded that PT WSP, PT BCP and PT ANI (in Landak District) were guilty of burning land intentionally and systematically with the intent to clear land for plantation development. In November 2006, three lawsuits were filed against the Wilmar subsidiaries in the District Courts of Sambas and Landak.[45]

Regarding the PT WSP and PT BCP case, **Dr. B. Saharjo of the Laboratory Forest and Land Fires of the Bogor Agricultural Institute (IPB) concluded and testified in court that Wilmar had been burning intentionally and systematically with the intent to clear land for plantation development.** For PT WSP, his findings were based on the following arguments:

- The area burned was also the area prepared for planting by the company (in 2006, PT WSP cleared and prepared about 1,000 hectares of land for planting, of which around 800 ha were burnt);
- Stacked snags, branches and logs were burnt, which otherwise hinder the systematic planting of oil palm (the area contained a fairly high level of wood biomass – approximately 70-80 ton/ha – including logs and larger diameter logs);
- In the planting holes in the PT WSP area, IPB found no traces of rock phosphate, although the company's EIA report prescribes its use. Instead, the ash that has the same effect as chalk fertilizer neutralizes its acidity and fertilizes the poor soils at minimal operational cost to the company. [46]

According to initial estimates of the Provincial Environmental Monitoring Body (Bapedalda), a total of around 2,300 hectares of land in the three Wilmar areas burnt in the July-August 2006 period (see Table 3).

Table 3. Fires in plantation areas of the Wilmar Group in West Kalimantan (2006).

Nr.	Wilmar company	Location (District)	Approximate area burned in 2006
1.	PT WSP (Wilmar Sambas Plantation)	Sambas	800 ha
2.	PT BCP (Buluh Cawang Plantation)	Sambas	1,000 ha
3.	PT ANI (Agro Nusa Investama) [47]	Landak	500 ha

Evidence of burning areas of unknown size was also observed in PT ANI's operations in Sambas (see 3.3.5 below), but this was not reported by Bappedalda.

Source: Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006; Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witness statement by Dr. Ir. Bambang Hero Seharjo, 18 September 2006.

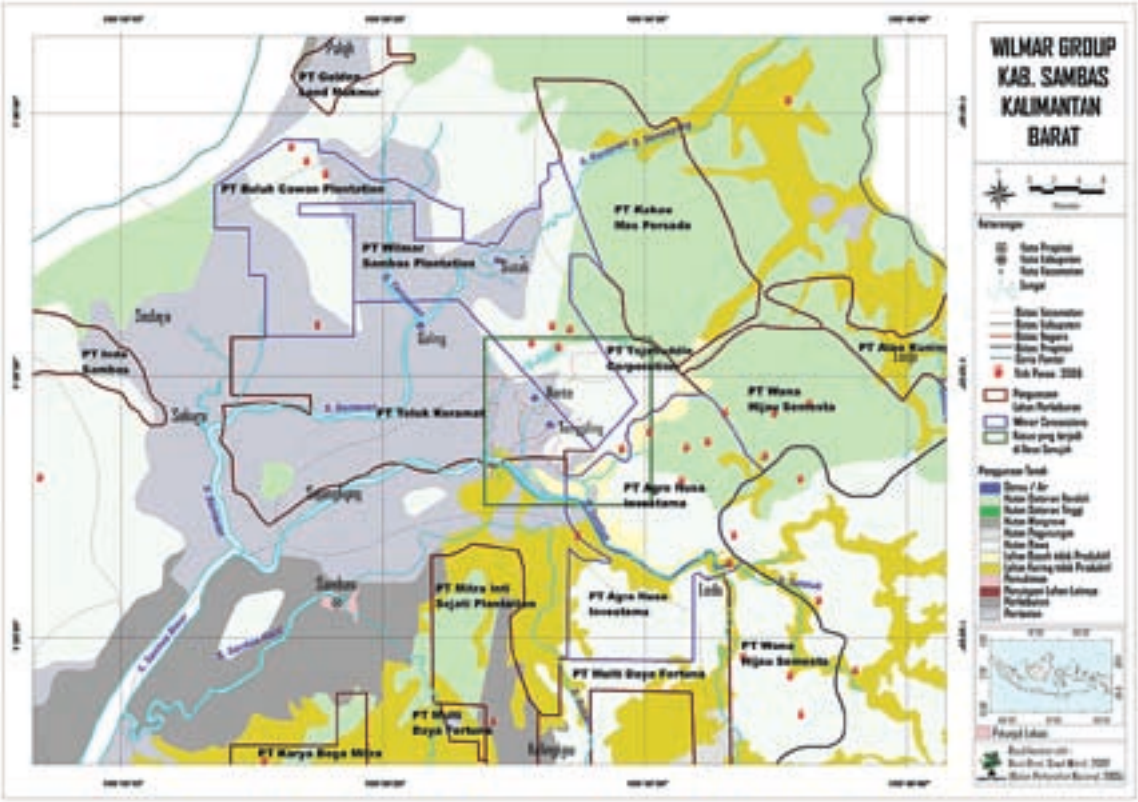
Although the company acknowledges that fires did occur in the PT WSP and PT BCP areas, Wilmar stated in its response to the main findings of this report that it considers the estimates presented in Table 3 as a gross misstatement. In its response, Wilmar provided some alternative figures of the areas burnt, but these were found to be inconsistent with figures reported by various company staff members during police hearings (see Chapter 9).

Figure 3. PT WSP: burned wood stacks (Desa Sijang, August 2006).

3.2.3 PT WSP

The case of fire at PT Wilmar Sambas Plantation (PT WSP) attracted much media attention in 2006, as the fires that occurred in the PT WSP area had spread into the adjacent community forests and rubber gardens.

The fires burnt for several days in the PT WSP area before the company brought in borrowed water pumps and other equipment to put out the fires. Like PT BCP, the company did not have a fire squat at the time when the fires broke out. PT WSP never reported the fires to the relevant authorities in charge (the District Forestry Office and the District of Environment Office). The locations of the fire hot spots are shown in Map 4.



Map 3. Fire hotspots in 2006, oil palm concessions and vegetation types in Sambas.

Notes: Red flame: fire hotspot; blue lines: Wilmar concessions. Light green: thinly stocked forest; light blue/gray: swamp forest; brown: dryland, unproductive; blue: agriculture; yellow/crème: lowland, unproductive. Red marks represent recorded fire hot spots in 2006.

Based on 2005 BKI Map. The actual shape and size of the concessions is approximate and has been partially adjusted.

Map 4. Fire hotspots on 25-28 July 2006 in PT WSP.

Dark green: peat swamp forest, light green rice fields and rubber plantations. The yellow line represents the approximate boundaries of the PT WSP concession based on the 2005 BKI map.

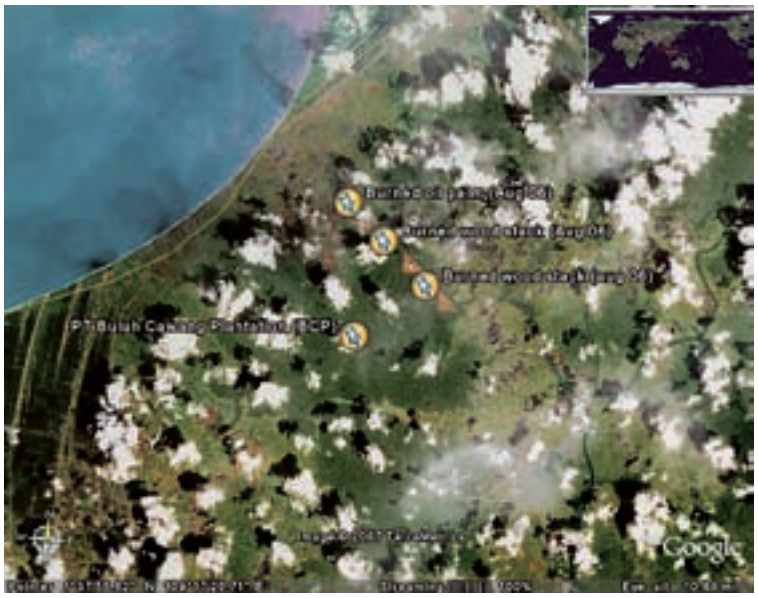
Source: Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006; Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witness statement by Dr. Ir. Bambang Hero Seharjo, 18 September 2006; Google Earth (image 2002-2003).

3.2.4 PT BCP

According to the provincial Environmental Monitoring Body (Bappedalda) and the police investigation team, an estimated 1,000 hectares of land was burnt in the PT BCP area (Paloh sub-district) in July and August 2006.[48] PT BCP was sued on the same grounds as PT WSP: intentional and systematic burning with the purpose to clear land.

Figure 4. PT WSP: Burning traces and oil palm seedlings (Desa Sijang, August 2006).

The biggest fires in the PT BCP area came from various sources locations and burnt for 25 days between from 12 July onwardsto 4 August., with the largest fire burning A new fire broke out on on 123 August and lasted until the end of the same month-15 August 2006, which forced villagers from Tempapan Hulu, Sange (Semustida), Mentibar and Tanah Hitam to flee their houses.[49] PT BCP never reported the fires to the relevant authorities in charge (the District Forestry Office and the District of Environment Office).



Map 5. Fire sites in the PT BCP area in July-August 2006.

Dark green (around the marker indicating the PT BCP location): swamp forest, light green: agricultural land, pink/brown: large scale land clearing; white: clouds and possibly haze.

Source: GPS records gathered by Lembaga Gemawan, Google Earth (image 2002-2003).

PT BCP is charged for the second fires only and not for the bigger first fire in July. During the court hearings, PT BCP stated 200 ha of land within the company's area were burnt, of which 32 hectares comprised largely oil palm plantations planted by PT Aldina and 168 ha of land newly opened up by PT BCP. In addition, PT BCP stated that 217.5 ha of community land were burnt. The company claimed it suffered financial damages up to Rp. 1.3 billion (US$ 150,000, or US$ 4,600/ha burnt plantation) but Dr. Saharjo of the Bogor Agricultural Institute (IPB) suggested during the hearings that the company may have allowed the fires to rage as it may have planned to replant the poorly maintained plantings anyway. Dr. Saharjo furthermore noted that no new oil palm plantings in the PT BCP area were affected by the fires, which provided another lead to argue that PT BCP had burned with intent.

3.2.5 PT ANI

In 2006, fires occurred in the PT ANI areas, both in Sambas as well as in the Landak Districts. According to the investigation team, an estimated 500 hectares of land was burnt in the PT ANI area in Landak District.[50] The police investigation team led by Bappedalda found evidence of systematic and intentional burning in the PT ANI area in Landak and in November 2006, the company was sued by the provincial government. However, due to limited human resources, the case has yet to be brought to the courts.

Meanwhile, there are also ample indications that PT ANI in Sambas District has been involved in intentional and systematic burning with the aim to clear land for plantation development.

In February 2007, clear evidence (burning marks on logs and tree snags) of intentional and systematic burning between the Sentimok River and the PT ANI CPO mill in Sambas was observed by a team from Gemawan. It was evident that the area was first cleared with chainsaws and subsequently burned (see Figure 3). At the time of the visit, the location had already been newly planted with oil palm seedlings.

Figure 5. PT ANI: burning tracks near the CPO mill (Sungai Sentimok, February 2007).

The tree snags on the hill behind PT ANI's storage tanks suggest that this land was burned: if it was bulldozed (i.e. as by zero-burning land clearing techniques), these snags would certainly not remain standing.

Black marks on stumps and logs cut with chainsaws leave no doubt that this patch of land was further cleared by the intentional use of fire. Possibly the oil drum on the foreground (right) contained the fuel to light the fire.

Oil palms have recently been planted on this site, which are located within the recommended 50-100 meter river buffer zone.

Figure 6. PT ANI: Open burning (Semanga, April 2007).

The picture on the left shows an active land clearing fire at the forest edge; the picture on the right shows the land clearing, burning traces (note the stump) and drainage of peat land in the PT ANI area in Sambas.

During field investigations in the second half of April 2007, new tracks and traces of land clearing, drainage of peat soils and open burning were documented by local NGOs in the PT ANI area in Semanga village in Sambas.

3.3 Environmental and social impacts

According to Dr. Saharjo of the Bogor Agricultural Institute (IPB), the intentional and systematic burning practices with the intent to clear land for plantation development caused significant environmental damage. For example, the environmental cost of the fires in the PT WSP area were as follows::

- The total volume of peat burnt was 800,000 m^3;
- Based on this figure, IPB calculated that about 12,600 tons of carbon, 4,410 tons of carbon dioxide (CO_2), 45.86 tons of methane (CH_4), 20.29 tons of nitrogen oxide (NO_x), 56.45 tons of ammonia (NH_3), 46.75 tons of ozone (O_3), 815.85 tons of carbon monoxide (CO) and 980 tons of dust particles were released into the atmosphere, thereby contributing to the regional haze and global warming;
- The loss of water retention capacity of the burnt peat may contribute to easier flooding in the region.[51]

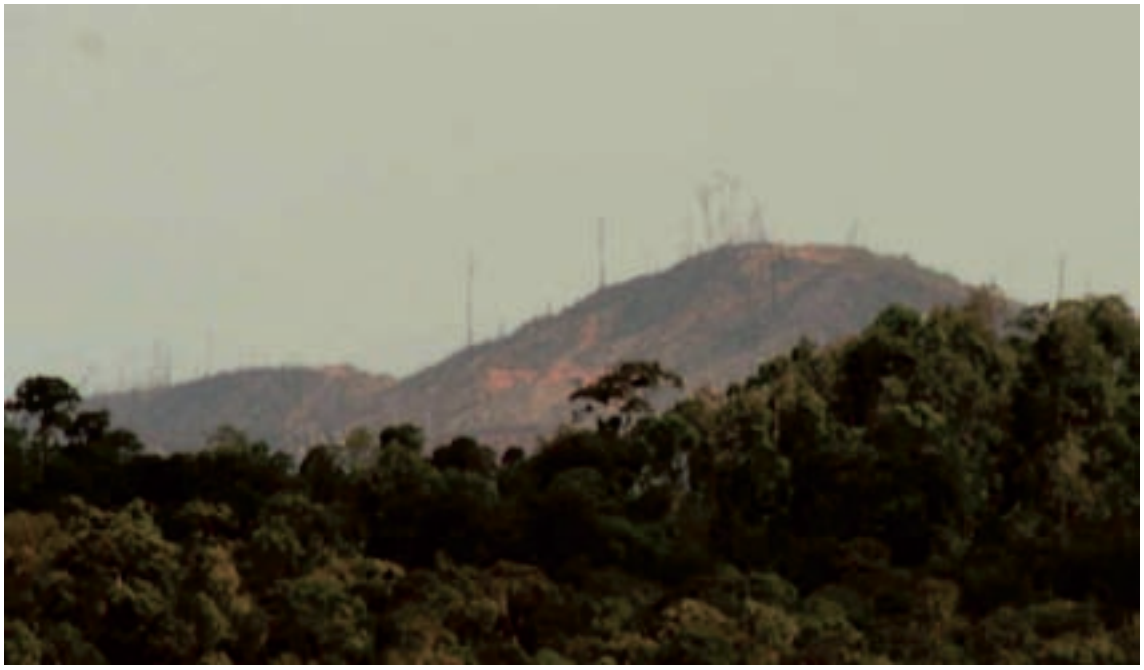
Converting these damages into monetary terms through a method developed by Seiler and Crutzen based on the biomass burnt, the area burnt and the efficiency of the fire, **the Bogor Agricultural Institute (IPB) established that the economic costs incurred on society as a result of environmental damages from intentional and systematic burning by PT WSP amounted to Rp. 283,456,235,200 (US$ 28 million) in total.**[52]

In addition, the fires in the PT WSP area destroyed part of the community-owned rubber plantations in Sejangkung and very likely contributed to the first haze that spread out over Malaysia and Singapore in August 2006. Similarly, fires nearby the PT BCP area burnt 217.5 hectares of community land, 168 ha of which was planted with rubber and other crops.

In its lawsuit, Bappeldalda seeks financial compensation from PT WSP, amounting to Rp. 9 billion (US$ 1,0160,000). Because a local government regulation in Sambas (PERDA) has set the maximum charge for burning at Rp. 50 million (US$ 6,100), the prosecution have to pursue the three Wilmar related lawsuits in the provincial or national courts.

NGOs in West Kalimantan are concerned the court case against the Wilmar subsidiaries may "mysteriously" end up being shelved as has happened with many other lawsuits against plantation companies over the past 10 years. To encourage the district attorney to pursue the Wilmar case, local students

Figure 7. PT ANI: Deforestation and burning tracks (February 2007).



PT ANI's land clearing in Rayon Utara as seen from the West ("Letter S") with a 600x lens. The forest in the foreground illustrates the excellent quality of the (previously logged) tropical rainforest that is at present being converted into oil palm plantations in Sambas. Various tree snags are visible on the denuded hilltop in the background, which is an indicator of burning with the intent to clear land for oil palm development.

from Sambas staged a peaceful demonstration in support of the NGOs on February 14, 2007. In response, the prosecutor's office replied that it was committed to taking the case to the highest level if the sentence of the district court in Singakawang was deemed too light.[53]

3.4 Analysis and conclusions

Zero-burning land clearing techniques are available, prescribed in Indonesia's law, Wilmar's permits, the RSPO P&C and the company's own policy. Fires can be prevented by proper monitoring (watch-towers) and swift action of fire squats in case of fire outbreak. Nonetheless, in 2006, considerable tracts of land were burnt in the envisaged oil palm plantation areas of PT WSP, PT BCP and PT ANI in Sambas and Landak Districts.

There is no doubt that the fires took and take place and there is no doubt that these fires have significant environmental impacts. In the court process, the key issue considered is whether PT WSP and PT BCP are guilty of intentional and systematic burning with the aim to clear land, or thatthe companies are guilty of gross neglect, or that the fires were entirelyaccidental thus leaving the companies without any guilt?

Possibly some of the fires could have been accidental, but there are ample credible indications to believe that fires were set, intentionally and systematically, with the aim to clear land for oil palm planting. The economics of land clearing and the way in which land clearing are organized in Indonesia are just too much in favor of a quick-and-dirty burn. The fires burnt in land that was just about to being planted with oil palms, while nurseries, company housing and new plantings remained unaffected. In its response to the draft main findings of this report, Wilmar states that its own plantations in PT BCP were affected by the fires, but according to IPB, the 32 ha plantation affected comprised poorly maintained older plantings that are better of replanted. Furthermore, the fires were either left burning, or

Figure 8. PT ANI: oil palm seedlings ready for planting in a recently burned site (Semanga, April 2007).

Regardless of the question of intent, the fires that occurred in the Wilmar areas contributed to emissions of greenhouse gasses, haze, increased risk of flooding and burning of community forests and gardens.

reported to the wrong authorities. So, in the unlikely case that all fires were indeed accidental or set by parties not under the companies' control, then it must be concluded that the Wilmar companies do not have adequate capacity in place to prevent and fight land fires (watch towers, water pumps, fire fighting squads).

Clearing land through intentional and systematic burning with the purpose to clear land is in conflict with Indonesian law, Wilmar's CSR policy and the RSPO Principles & Criteria.

The legal proceedings have been ongoing over the past months and the outcome remains uncertain as of yet. The cases may ultimately have to be taken to the highest level. Meanwhile, the legal process poses an obstacle to the Wilmar companies, as the formal evaluation of their Environmental Impact Assessment reports has been stalled pending the outcome of the court process.

4. Environmental Impact Assessments

4.1 Relevant policies and regulations

4.1.1 Policy Wilmar Group

"As part of its internal environmental and social development policies, the Wilmar Group (..) ensures that forest land is cleared for its oil palm plantations in accordance with all Indonesian regulations."[54]

In its circular to investors (July 2006), Wilmar notes that it is aware of the need to follow the AMDAL/ EIA procedure and its directors were *"not aware of any incident of suspension or revocation of any of its Indonesian companies' plantation business permits in the last three financial years or any fact or circumstances which will cause its plantation business permits to be suspended or revoked"*.[55]

4.1.2 Indonesian legislation

Between the moment that the application for land by a plantation company has been notified by the District Head office (Informasi lahan) and the moment that it is awarded a full Land Use Permit (HGU, Hak Guna Usaha), the company is required to obtain various other intermediate permits and the documents required for the issuance of each permit. This process should take about 3 years. If the company commences land clearing activities on the ground without having obtained the appropriate permits and the underlying documents the legality of its operations is in question and permits previously issued may be revoked. A great part of the licensing process was decentralized in Indonesia since 2001 but widespread graft and corruption at the District level now feed strong calls for re-centralisation.

In Indonesia, an Environmental Impact Assessment (EIA or Analisis Mengenai Dampak Lingkungan, AMDAL) procedure is required for any plantation project beyond 20 hectares and for various activities such as relocations of factories and plantation expansion not previously covered by the EIA.
The assessment is to be undertaken by the project proponent and involves the formulation of an environmental impact analysis report (*Analisis Dampak Lingkungan, ANDAL*). The approval of this document is subject to review and approval by a special EIA Commission (*Komisi AMDAL*) at the district or provincial level whose members are comprised of various government officials at different levels and relevant ad hoc parties from NGOs, academic institutions and local communities.[56] Upon satisfactory review of the ANDAL report, the EIA Commission issues an EIA Certificate.[57]

A plantation company must submit (among other documents) a copy of an EIA Certificate when it applies for a Plantation Operation Permit (*Izin Usaha Perkebunan, IUP*).[58] **Without an EIA Certificate, no valid Plantation Operation Permit can be issued by the District Head.**

Based on the Environment Act Nr. 23 (1997), the Ministry of Environment may call for an environmental audit, which is a review of the company's possible violation of the Environmental Act and legislation referring to the Act. This measure is rarely applied and if the audit is approved, the company is relieved from its obligation to submit an EIA for approval. If the audit is not approved, this may result in legal action and possibly the cancellation of permits previously issued to the company.

Another relevant regulation in this context is the Ministry of Agriculture regulation No. 357/2004, of which Article 4 specifies that each and every plantation of 25 hectares or more must have a Plantation Operation Permit (IUP).

Furthermore, Regulation No. 382/Menhut-II/2004 issued by the Ministry of Forestry Decree stipulates that any company that removes forest products (timber or non-timber forest products) from an area, is required to have obtained a Timber Removal Permit (Izin Pemanfaatan Kayu, IPK) regardless of the land use type (i.e. be it Production Forest or other land use etc). A company must obtain such permit from the Forestry Department before it applies for a Plantation Operation Permit (IUP). Based on the Forestry Act (UU No. 41, 1999), article 50, paragraph 3, point e, cutting trees or harvesting forest products without harvesting permits equates to illegal logging.

In addition, a relevant law is the Labour Act No. 13/2003, Article 93, para. 1 and 2, f; which states that companies should continue to pay salaries to their workers if the latter are willing to work but unable to do so because the company is at fault or is unable to operate due to conditions that the company could have prevented.

4.1.3 RSPO

Criterion 7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.

4.2 Practices on the ground

To understand the situation that has developed in Wilmar's plantations in Sambas District, in which (the absence of) approved Environmental Impact Assessments plays a central role, it is necessary to unravel the package of permits that the companies hold (and not hold) and the preconditions that need to be met by the company before it can obtain these permits. Table 5, Permits of the three Wilmar companies in Sambas, gives an overview of the relevant permits.

Table 4. Permits of the three Wilmar companies in Sambas.

Permit	PT WSP	PT BCP	PT ANI
Exceptional release of land	Requested by company on 20 February 2005. 500 ha released by District Head on 11 May 2005.	n.a.	n.a.
Registration of application for land (*Informasi Lahan*)	2 March 2005 for 18,700 hectares.	12 September 2005 for 14,400 ha.	None (take over from PT Bantanan Eka Jaya and PT Ivo Mas Tunggal).
EIA Certificate (pre-requisite for an IUP)	As per May 2007: none. Review by EIA Commission suspended in September 2006.	As per May 2007: none Review by EIA Commission suspended in September 2006.	As per May 2007: none. PT ANI submitted the EIA Certificate obtained by the previous owner supporting its application for an IUP (which was granted on 10 March 2005).
Plantation Operation Permit (IUP, *Ijin Usaha Perkebunan*)	Requested by company on 2 December 2005. Issued on 16 March 2006 for 14,100 ha.	Requested by company on 8 March 2006. Issued on 16 March 2006 for 13,000 ha.	10 March 2005, unknown area
Location Permit (IL, *Ijin Lokasi*)	7 April 2006 for 14,400 ha.	7 April 2006 for 13,000 ha.	Takeover of IL from PT BEJ approved by District Head on 4 February 2005. 17 April 2005 for 12,000 ha.
Revision Location Permit (IL)	None	None	On 23 December 2005, PT ANI sold 1,500 ha of disputed land to PT WDPM. On 14 March 2006, PT ANI's request for an extension from 12.000 ha to 12.500 ha was approved.
Land Clearing Permit (IPK, *Ijin Pemamfaatan Kayu*)	None (see Chapter 6)	None (see Chapter 6)	None (see Chapter 6)
Land Use Right Permit (HGU, *Hak Guna Usaha*)	None	None	None
Commenced activity on the ground	November 2005	April 2006	2005
Estimated land area cleared by September 2006	At least 1,500 ha[59]	At least 400 ha[60]	As per 26 September 2006: 2,500 ha cleared 4,200 ha planted
Present status	On 11 April, 2007, PT WSP was ordered by the Deputy Minister of Environment in Jakarta to stop all operations in the field.	On 11 April, 2007, PT BCP was ordered by the Deputy Minister of Environment in Jakarta to stop all operations in the field.	PT ANI presently operates a CPO Mill and expands its plantation without an approved EIA compiled for the company.

Note: The permits listed in the table represent only the key permits and documents relevant for this study.
Source: various district government letters and provincial government data.

4.2.1 PT WSP

PT WSP was registered as an applicant for land (*Informasi Lahan*) by the District Head of Sambas on 2 March 2005. On 11 May 2005, a recommendation was given to open up a 500 ha area for the establishment of a nursery, infrastructure and initial plantings; PT WSP was subsequently issued a Plantation Operation Permit (*Izin Usaha Perkebunan*, IUP) for 14,100 ha on 16 March 2006 and a Location Permit (*Izin Lokasi*) for 14,400 ha on 7 April 2006.[61]

- At the request of PT WSP (dated 20 February 2005), the District Head, through his recommendation of 11 May 2005 released 500 hectares of land to PT WSP. According to Wilmar's local public relation officer who testified to the police in September 2006, PT WSP had already cleared about 1,500 ha;

- The recommendation of the District Head on 11 May 2005 to release 500 hectares of land to PT WSP contravened Indonesian regulations, notably Environmental Management Act No. 23 that stipulates nurseries, infrastructure development and plantation development as risk-prone activities that must be subject to an EIA. The EIA report must be approved by the EIA Commission before such activities may commence.

- At the time when PT WSP requested the land (February 2005) and when the District Head released the land (May 2005), the company did not have an Environmental Impact Assessment report, let alone that this report was approved by the EIA Commission. PT WSP's EIA report was only completed in May 2006.

- On 11 November 2005 the Governor of West Kalimantan instructed all district governments in the province not to review or approve any EIA reports of companies that had started land clearing without approved EIA reports.[62]

- On 2 December 2005, PT WSP requested a Plantation Operation Permit (IUP) from the district government although it had not yet obtained all legally required documents, among which a completed EIA report and a certificate of approval by the EIA Commission.,

- On 16 March 2006, when the district government issued the Plantation Operation Permit (IUP) to PT WSP, despite the fact that PT WSP did not have a legally required EIA report, or the legally required EIA Certificate/approval. In fact, various other legally required documents were missing as well. The decision was therefore irregular and in contravention of Article 5 of Government Regulation No. 51 (1993) on Environmental Impact Assessments.

- The PT WSP EIA report was completed in May 2006. The district government organized an EIA Commission meeting on 21 September 2006, despite an order by the governor of West Kalimantan on 11 November (2005) not to do so. Not all relevant local communities were invited to participate in the EIA Commission.

- After the police investigation team assessed the burning case in PT BCP in September, the processing of the PT BCP EIA report by the EIA Commission was suspended. On 20 September 2006, the provincial government ordered the district government to stop processing the PT WSP and PT BCP EIA reports.

- On 11 April 2007, the Ministry of Environment in Jakarta ordered the director of PT BCP to halt all physical activities on the ground and conduct an environmental audit.

- On 19 April 2007, local NGOs observed that the activity in the PT WSP nursery, land clearing and planting of oil palms continued as normal. In its response on June 9, Wilmar states that it stopped land clearing and planting but continues to maintain its nursery.

- On 23 April 2007 a pro-oil palm demonstration was staged by 300 villagers from Sijang (Galing sub-district) to put forth their aspirations to the local parliament. They demanded that the company's activities would not be suspended as they depend on the company for their income (see also Chapter 9).

PT WSP accused of illegally smuggling oil palm seedlings into Indonesia (2005)

In September 2005, the Jakarta Post reported that PT WSP smuggled oil palm seedlings into Kalimantan from Malaysia via the border town Entikong.
The local customs service in Entikong confiscated a truckload full of seedlings. Makmur Barus, chief of the Plant Quarantine Station in Pontianak reported that "a few weeks later the smuggled seeds resurfaced, finding their way back to the Wilmar plantation in Sambas regency". The government officer reported the case to the Agriculture Quarantine Agency in Jakarta and urged it to investigate the case, while also initiating legal proceeding against the smuggler.
S.M. Damanik, director for seed development at the Agriculture Ministry's Directorate General of Plantations, stated that PT WSP held a license to import one million palm seeds from the Golden Hope supplier in Malaysia through Supadio Airport in Pontianak. But the firm needed to fulfill all the import procedures and the requirements imposed by the National Quarantine Agency for plant disease control and by the plantation director general for verifying the quality of seeds, he was quoted as saying.[63]
At the time, none of PT Wilmar's executives in Pontianak were willing to comment on the alleged smuggling case. The case has never been heard of again. With hindsight, the incident still raises interesting issues.
At the time of the incident, PT WSP held a permit to develop *only* 500 hectares (a permit of which the legal status is disputed) for infrastructure, a nursery and initial plantings (*demplot*). The planting density for oil palms varies but assumes a 150 trees per hectare average, PT WSP's licensed imports would enable the company to plant over 6,600 hectares or an area 13 times larger than the land area that the District Head had permitted it to develop.

4.2.2 PT BCP

PT BCP was registered as an applicant for land (Informasi Lahan) by the District Head of Sambas on 12 September 2005.[64] PT BCP was issued a Plantation Operation Permit (*Izin Usaha Perkebunan*, IUP) on 16 March 2006 and a Location Permit (*Izin Lokasi*) on 7 April 2006.[65]

It is estimated that as of early 2007, PT BCP had cleared and partially planted with oil palms at least 400 hectares of land.

- On 11 November 2005 the Governor of West Kalimantan instructed all district governments in the province not to review or approve any EIA reports of companies that had started land clearing without approved EIA reports.[66]

- On 8 March 2006, PT BCP requested a Plantation Operation Permit (IUP) from the district government although it had not yet obtained all legally required documents, among which a completed completed the EIA nor had it obtained the EIA Certificate/approval.

- On 16 March 2006, when the district government issued a Plantation Operation Permit (IUP) to PT BCP, it did so despite the fact that PT BCP did not have the legally required EIA report, or the legally required EIA Certificate/approval. The decision was therefore irregular and in contravention with Article 5 of Government Regulation No. 51 (1993) on Environmental Impact Assessments.

- PT BCP submitted its EIA report for review on 1 May. The EIA Commission reviewed the report and recommended that the report be amended. It was re-submitted on 29 September 2006.

- After the police investigation team assessed the burning case in PT BCP in August-September, the Provincial Environment Office ordered the District Government on 20 September 2006 to stop processing the PT WSP and PT BCP EIA reports. On 2 October the Head of the District Environment Office informed PT BCP that the EIA Commission would suspend the review of the report by orders of the Provincial Environment Office (Bappedalda) until the legal procedure against the company was concluded.

- On 11 April 2007, the Ministry of Environment in Jakarta ordered the director of PT BCP to halt all physical activities on the ground and conduct an environmental audit.

- On 16-17 April 2007, local NGOs observed that the activity in the PT BCP nursery, land clearing and planting of oil palm seedlings continued as normal. In its response on June 9, Wilmar states that it stopped land clearing and planting but continues to maintain its nursery.

4.2.3 PT ANI

On 4 February 2005, the District Head approved the transfer of the Location Permit held by PT Bantanan Eka Jaya since August 1999 to PT ANI. On 10 March 2005, PT ANI was issued a Plantation Operation Permit (IUP).[67] It was then granted a Location Permit on 17 April 2005 for 12,000 ha. In December 2005, PT ANI sold 1,500 ha of land to PT Wirata Daya Bangun Persada (PT WDBP) because this area extended into the concession of the latter company in Bengkayang District.[68] On 14 March 2006, PT ANI's concession was extended from 12,000 ha to 12,500 ha.

As of August 2006, PT ANI had cleared about 2,500 ha of land and planted 4,200 ha with oil palms in Sambas District. [69]

The validity of the issuance of the Plantation Operation Permit (IUP) by the District government on 10 March 2005, in relation to the EIA procedures, requires further research. Rather than revising the old EIA documents and adjusting them to new legislation and the policies and practices of the new owner, PT ANI used the EIA Certificate obtained by the previous owner (PT Bantanan Eka Jaya). This is a questionable practice considering that new legislation – relevant to the EIA analysis – has been developed since PT BEJ compiled its EIA.[70] Furthermore, the Sinar Mas Group and Wilmar have different plantation development policies and practices, resulting in different impacts, different management plans and monitoring needs. Another issue is that PT Batanan Eka Jaya has cleared large tracts of rainforest, and was entangled in severe social conflicts with local communities in 2004.

Furthermore, PT ANI's concession was extended by 500 hectare in April 2005, after it had been issued an IUP (in March 2005). The new land is therefore not included in the initial EIA assessment compiled by PT BEJ.

PT ANI presently operates a CPO Mill and expands its plantation without an approved EIA compiled for the company.

4.3 Environmental and social impacts

Without a review by the EIA Commission, there is no external legal and quality check of the impact analysis or the management and monitoring plan. An oil palm company that commences land clearing and planting without an approved review by the Commission violates Indonesian law. Without a

proper EIA review and approval, the company's operations can easily result in negative environmental and social impacts.

A review of the (unapproved) PT WSP and PT BCP Environmental Impact Assessment reports (dated: May 2006) revealed a number of serious shortcomings:

- The reports (repeatedly) state that land clearing shall be conducted without the use of fire, but the reports do not assess the impacts of zero-burning, nor do they provide guidance on how this is to be conducted;
- The extent of deforestation of natural forests within the concession areas is poorly described and analyzed. There are no recommendations on (legally required) reserves, buffers and riparian zones;
- The reports provide no recommendations on how to protect endangered species. The PT WSP report merely states that after land clearing, "nature will just run its course through adaptation and selection";
- There is no risk or cost assessment of carbon releases as a result of conversion of peat, peaty soils and deforestation, drainage and other activities;
- River water quality assessments reveal that a range of maximum (legal) values are exceeded (excessively in some cases), but do not provide insight into the cause of these excess loads;
- The PT WSP report provides no evidence of socialization and participatory consultation with local communities. The PT BCP report contains a questionnaire for a survey of community perceptions but the report provides no meaningful insights in the results of this survey;
- There are strong indications that the EIA consultant for PT WSP, CV Senayan Pembangunan, never took into account the March 2006 Location Permit for the May 2006 EIA report which only contains 2 extremely small-scale maps. The shape of the approximate concession boundaries suggests that the EIA report was using the oldest BKI maps, whereas the map attached to the Location Permit has excised the Sekunjung sub-district;
- Whereas it is recommended that the company respects customary rights (law), no analysis is made of what this means in practice, in particular where local communities are unwilling to surrender their land within, or outside the (proposed) concession or where they set conditions that the company may not be willing to meet;
- The reports (repeatedly) recommend that plasma estates be developed to improve local communities' perception of the company, but the reports provide no analysis of environmental and social impacts of plasma/smallholder schemes.

Soil types in the proposed PT WSP concession

In its response to the main findings of this report, Wilmar states that it is competent in managing soils, including Histsols (organic soils).Still, the PT WSP EIA report provides no proper analysis of the data collected and drawing of conclusions regarding land use potential, and constraints.

The soil types identified in the proposed PT WSP area that the EIA report show that very careful management of soils is required because 77% of the proposed concession area is composed of poorly drained soils with high to extremely high carbon storage, including peat soils:

- Fluvaquentic Humaquepts (peaty gleysoils with sand and clay deposits): 57%
- Histic Humaquepts (peaty gleysoils): 10%
- Hemic Haplosaprists (young peat soil): 10%

Furthermore, 19% of the area consists of poorly drained Typic Sulfaquepts (cat clay).

The EIA report failed to analyze the potential environmental impacts of the development of oil palm plantations on these soil types. Once drained, the peat soils are highly sensitive to fires. All high-carbon storage soils listed above will release large amounts of carbon dioxide due to oxidation, even without fire. They also appear to be infertile soils, although the data provided in the EIA report are not complete enough to do a full assessment.

Drainage of cat clay is disastrous for soil quality; once drained, the acidity (pH) of this soil type will fall dramatically, which will impede growth of any crop including oil palm. The EIA report does not identify this risk, or how it is to be averted.

Based on the soil types identified in the EIA report, only 4% (834 hectare) of the proposed area would be able to sustain oil palm plantations without serious environmental impacts resulting from drainage. The soil type found in this area, Arenic kandiudult (sandy clay), is nevertheless also an infertile soil type and requires ample fertilization to promote oil palm growth.

In 2006, PT WSP started constructing drainage canals in parts of the peaty soils in the proposed concession area. If the August 2006 fires in the area were not intentional, then it is likely they were the result of illegal land clearing on the basis of a poor and unapproved environmental impact assessment.

Despite their voluminous size and superficial level of detail, the PT WSP and PT BCP EIA reports poorly assess the key impacts and fail to come up with meaningful recommendations which would prevent the companies from causing the environmental and social impacts of "business as usual" plantation development.

According to Indonesian NGOs, this practice is widespread: EIA reports are mere "*copy-and-paste*" exercises whereby an EIA report compiled for one company is used as a mold for any other plantation company. Evidence of "copy and paste" practice was also found in the EIA report prepared for PT WSP. **The EIA report prepared for PT WSP lists elephants as one of the possible pests that may affect the company's oil palm plantations. Elephants are neither pests, nor are they found in West Kalimantan.**

Workers' unrest

On April 11, 2007, both PT WSP and PT BCP were ordered by the Ministry of Environment in Jakarta to halt all physical activities on the ground until the EIA process is completed. In its second response to Milieudefensie, Wilmar highlighted the fact that a workers demonstration was held because they feared loss of income as a result of the Ministry of Environment instruction. In principle, the companies' workers should need not to be concerned, for Indonesia's Labour Law requires companies to continue payment of salaries in case they are willing to work, but unable to do so when the company is in fault. In practice, the Labour Law will have minimal financial impacts on the company: according to Wilmar's own information (see Appendix 4), PT BCP and PT WSP only 19 out of 442 workers where hired on a permantent basis.

4.4 Analysis and conclusions

The land development activities of PT WSP, PT BCP and PT ANI are not in accordance with all Indonesian regulations.

Early 2007, local media reported that apart from PT WSP, PT BCP and PT ANI there were 6 other plantation companies that were irregularly awarded a Plantation Operation Permits (IUPs) by the District Head of Sambas. None of these 9 companies had secured the legally required approval from the EIA Commission but were awarded IUPs regardless.[71]

Both PT WSP and PT BCP submitted their application for a Plantation Operation Permit to the district government even before the completion of their EIAs. In the case of PT BCP, the IUP application was approved within a week. Within just weeks later, PT WSP, PT BCP and PT ANI received their Location Permits from the district land office as well. In view of the above, the parliamenent of Sambas District is now considering to set up a special commission (Panitia Khusus) to investigate any irregularities in the issuance of permits by the District Head.

Review of two of the three EIAs commissioned by PT WSP and PT BCP revealed that these assessments are of poor quality and provide no meaningful guidance to understanding the real impacts of the companies' activities; neither do they allow for proper planning and monitoring.

Clearing land without having completed the EIA process is in conflict with Indonesian law, Wilmar's CSR policy and the RSPO Principles & Criteria. Working without a comprehensive and participatory independent social and environmental impact assessment undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations" is furthermore in violation of the RSPO P&C.

No EIA report:
Cargill ordered by the courts to close down its grain terminal in the Amazon

Failure to comply with Environmental Impact Assessment regulations led the Brazilian courts in 2007 to order the closure of a US$ 20 million grain terminal in Santarém, Brazil. The terminal was built by Wilmar's competitor cum buyer, Cargill, who had failed to produce a proper Environmental Impact Assessment (EIA).

Located in the heart of the Amazon region, the facility triggered a rapid expansion of soy cultivation in the region, which is economically feasible only due to the presence of the terminal. Cargill's failure to produce the legally required EIA report led the federal court to decide in 2004 that the local government had issued an operating permit on false grounds.

In early 2007, the sentence was confirmed in the Brazilian Supreme Court who ordered the Cargill terminal to be shut down and stay closed until a proper EIA was approved. According to Brazilian Law, the EIA includes a plan for compensation and mitigation of indirect impacts, such as the loss of biodiversity caused by the deforestation for soybean cultivation.

5. Community relations and free, prior and informed consent

5.1 Relevant policies and regulations

5.1.1 Policy Wilmar Group

Wilmar is "*committed to improving community and social relations and have recognized that community welfare is a key part of oil palm plantation management.*"[72]

This policy is not further qualified, other than a reference to a Community Development Programme in the company's 2005-2006 Annual Progress Report to RSPO:

"*As part of our social initiatives, we have 'Community Development Programme' in place in all our plantation operating units to promote the social wellbeing and welfare of the local communities.*"[73]

In its Annual Progress Report to RSPO (2005-2006), the company stated:

"Wilmar will be putting more emphasis on 'Community Development Programme' that are sustainable using participatory methodology."[74]

5.1.2 Indonesian legislation

The Indonesian Constitution respects the existence of customary law communities, acknowledges their right to be self-governing and recognizes their customary rights in land. The highest law regulating agrarian and natural resources management is Article 28H of the Indonesian Constitution, which protects the right to property. Paragraph 4 notes: "*Every person has the right to own property and this property can not be taken… from them by anybody*". Article 28I of the constitution specifically protects the right of customary communities. Paragraph 3 notes: "*The cultural identity and the rights of traditional societies shall be respected in accordance with this age of progress and human civilization.*"[75]

After having secured a Plantation Operations Permit (IUP), a plantation company needs to secure a 'Location Permit' (*Izin Lokasi*) from the District Land Office so as to allow land acquisition. Land acquisition should then be based on an agreement with the rights holders or concerned parties through selling and purchasing, giving compensation, land consolidation or other methods based on the existing regulations.[76] Until the relevant land is acquired, the Location Permit holder is obliged to respect the other party's interests in the land until it is released. Thus all existing rights and interests of other parties on the relevant land remain recognized, including the authority of the rights holders to secure land titles, to use and exploit the land for their personal or business interests, and to transfer the right to other parties. The Location Permit holder is also prohibited from closing or restricting community access to the land and must keep and protect public interests. Only after the relevant land has been acquired does the Location Permit holder have the authority to use the land in accordance with the purposes mentioned in the investment plan.[77] **Should a plantation company fail to manage the plantation professionally, transparently, participatively, efficiently and effectively, its plantation permit may be revoked as an administrative sanction.**[78]

5.1.3 RSPO

Criterion 2.3 Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.
Criterion 7.5 No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.
Criterion 7.6 Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.

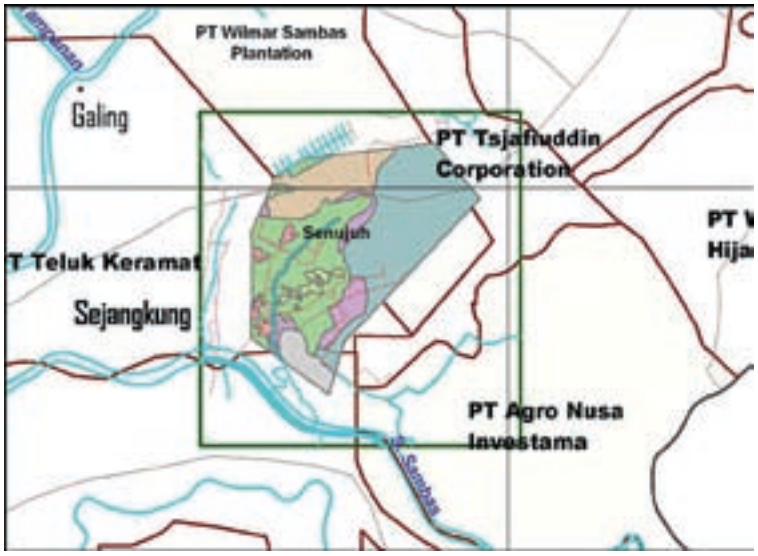
Based on the Guidance document for national interpretation of the RSPO Principles & Criteria, Free, Prior and Informed Consent (FPIC) implies:

- The company's rights to land are not contested by local communities with demonstrable rights;
- The company's use of the land for oil palm does not diminish the legal rights, or customary rights, of other users without their consent;
- Where the company's new plantings are to be established on local peoples' land this is to be dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions;
- Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreement;
- Local people (can) represent themselves through their own representative institutions;
- Consultations take place with the objective of achieving agreement or consent based on the local communities' rights to decide their own priorities, retain their own customs and resolve offences according to customary law.[79]

5.2 Practices on the ground

5.2.1 Overview

PT WSP and PT BCP obtained their Location Permits in April 2006 (their issuance was based on irregularly issued Plantation Operation Permits), whereas PT ANI obtained a Location Permit a year earlier (April 2005). **The Wilmar companies commenced land clearing without following the proper land acquisition procedures, and without properly informing and consulting local communities about the plantation projects, locally known as sosialisasi. This is one major reason why at this moment the three Wilmar subsidiaries are all involved in serious social conflicts** (Table 5).



Map 6. Map of Senujuh and the approximate boundaries of the PT WSP area.

The boundaries of the concession areas are based on a preliminary map published by BKI in 2005.
Note: the blue drainage canals represent the disputed land clearing by PT WSP.
Source: Sawit Watch

Table 5. Land disputes faced by subsidiaries of the Wilmar Group in Sambas.

Wilmar company	Hamlet (*dusun*)	Village (*desa*)	Sub-district (*kecamatan*)	Approximate disputed area (ha)
PT WSP	Tenggiling	Senujuh	Sejangkung	400-450 (cleared outside of Location Permit)
	Nante			
	Sasak	Santaban	Sajingan Besar	1,500 (land sold off to Duta Palma Group)
PT ANI	Sidodadi	Sepantai	Sejangkung	Company encroached 3 km into village land
	Satai			
	Jambu	Beringin	Sajad	230
	Semakuan		Sejangkung	700
	Senabah			72
	Sajingan Kecil			2,800
PT BCP	Semanas	Tempapan Hulu	Galing	Hundreds of hectares

Source: Catatan Proses Pertemuan Antara Masyarakat, Kepala Desa, Camat, PT Wilmar Group, BKI dan Instansi Terkait di Kabupaten Sambas Yang difasilitasi oleh DPRD Kabupaten Sambas.Hari Kamis tanggal 11 Januari 2007; Lembaga Gemawan and Sawit Watch.

During a meeting facilitated by the district government between Wilmar and local communities on 11 January 2007, a Pontianak-based representative of Wilmar and the company's facilitator BKI publicly apologized for the fact that Wilmar had failed to "socialize" its projects with a number of communities affected by the company's operations. Furthermore, it was acknowledged that the company had no clear knowledge about sub-district and customary rights land borders, particularly in reference to the Desa Senujuh case.[80]

5.2.2 PT WSP

In 2006, land rights conflicts emerged between the communities of Desa Senujuh, in the sub-district Sejangkung, and PT WSP. The sub-district's land area is about 6,100 hectares with 275 families living in Tenggiling, Nante and Malebar who primarily depend on rubber tapping and wetland agriculture. There are few facilities for schooling, the road to the villages was destroyed during flooding and average family cash income is as low as Rp. 300,000 (US$ 34) per month.

From November 2005 onwards, PT WSP started opening land into Senujuh village. A villager noticed the clearings in the community rubber gardens in December 2005, and reported the case to the village leaders. The company continued its land clearing activity and on 19 March 2006, the villagers of Senujuh stopped 31 company workers, and confiscated an excavator and 5 chainsaws used by the workers to clear the community forest. Together with members of the local parliament and the Forestry Department, village officials wrote a letter to the company to remove its workers and equipment from Senujuh.

In response, PT WSP manager Agus Pamungkas acknowledged that the workers were unaware of the border between Senujuh and Sijang. The manager apologized and a traditional sanction set by the community, approximately US$ 550, was paid. The community returned the land clearing equipment by the end of March.

The approximate land area opened up by PT WSP under dispute covers about 450 hectares. Fortunately for the community of Senujuh, the conflict was not merely one of traditional (*adat*) rights claimed by the community versus land rights claimed by the company: it appeared that the land clearing had crossed the sub-district border from Galing into Sejangkung (where Senujuh is located).

Sejangkung was not mentioned in the May 2005 approval for 500 ha (this was for Galing), nor the March 2006 Plantation Operation Permit (this is for Galing and Sajingan Besar) or the April 2006 Location Permit (this was for Galing, Sajingan Besar, Teluk Keramat and Sejangkung). In short: **PT WSP was clearing land not only without the appropriate permits, but was even clearing land outside of the areas allocated to it.**

When PT WSP started land clearing in November-December 2005 without a legal permit, its contractors worked with preliminary maps prepared by BKI in 2005. Interestingly, the disputed area was already excluded from the map attached to PT WSP's Location Permit as of 16 March 2006.

In January 2007, a Wilmar representative (Mr. Haryono) apologized for the case, but argued that the company had obtained permission from the village head of Senujuh to open the land. He, however, also acknowledged the company had not been aware of the village borders and the borders of the sub-districts allocated to the company for that matter. He argued that the map (that was prepared by the Investment Coordination Board and attached to the initial letter of recommendation to the District Head) was not detailed enough to determine the exact boundaries of the project. [81]

Although the March 2006 map attached to the PT WSP Location Permit appears to have excluded Sejangkung sub-district, tensions remained high. Villagers reported to Lembaga Gemawan that the company had opened another 25-30 hectares in Senujuh in January 2006.

Fed up with the situation, the villagers of Senujuh came out with a public statement in February 2007, which was signed by 516 villagers from 267 families. It stated that the community had decided to stop oil palm expansion in their area because of its environmental impacts. They expressed their regret that their village head had allowed the company to work in the area, because this permission was granted without the community's consent. [82] In response to the community statement, Wilmar replied that the company would not intrude if the community does not want oil palm, but added that Senujuh may regret its decision when it sees the progress made by other villages involved in the company's plasma programme. "*When that happens, then don't blame Wilmar*", the company representative was quoted as saying.[83]

According to the map attached to PT WSP's Plantation Operation Permit a chunk of land in Senujuh was excluded from the concession area (although the company's EIA report, which is dated after the IUP, does not show this boundary adjustment). In its response to the main findings of this report, Wilmar replied that it was aware of a boundary conflict and that it paid for the demarcation of the sub-district boundary.

However, it remained unmentioned in Wilmar's response that in April 2006 most of Senujuh sub-district had been given to a company called PT Sentosa Asih Makmur (PT SAM). This is a subsidiary of the Ganda Group, a company group owned by Mr. Ganda who is the brother of Wilmar's founder and CEO, Mr. Martua Sitorus. During several public hearings in Sambas at the end of 2006 and early 2007, the community of Senujuh was not informed about this "arrangement" made between the Ganda Group and the District Government by any of the government and Wilmar representatives.

Map 7. Prodding along: three versions of the PT WSP area.

Left: the PT WSP area according to the BKI map 2005 (left); PT WSP according to the May 2006 EIA report (centre) and PT WSP according to the March 2006 Plantation Operation Permit (right).

5.2.3 PT ANI

PT ANI also encountered stiff resistance from communities unwilling to surrender their land without proper socialization, consultation and negotiation. When the communities persisted in their resistance, the company sent a letter to the District Head of Sambas (dated 28 September 2006) in which it requested facilitation by the local government because its operations were "*obstructed by limited information about the borders of customary rights land and administrative sub-district borders*".

In its letter, PT ANI reiterated that it had received from the District Head a Location Permit for an area covering approximately 12,500 hectares, of which it had opened up and partially planted 6,700 ha, while 5,800 ha had not yet been surrendered by the local communities. In particular, PT ANI was hindered by the claims and demands from communities who refused to surrender their land, either altogether or under the terms and conditions set by the company. As of September 2006, the total area of land under dispute was about one-third (3,800 ha) of the area allocated PT ANI.[84]

5.3 Environmental and social impacts

In Senujuh, PT WSP cleared some 450 hectares of the customary rights land of a community, which lives on the poverty line. In the illegal land clearing, it destroyed part of this community's source of subsistence and cash income sources: rubber trees, fruit trees and other agro-forestry products. The company compensated the community with US$ 550. No effort is being made by the company to restore the land.

5.4 Analysis and conclusions

PT WSP and PT ANI have begun to open up land for the development of new plantings without the required permits. In addition, they did so without having made significant efforts to seek the affected communities' Free, Prior and Informed Consent (FPIC). In addition, PT WSP's contractors worked with preliminary maps and thereby illegally crossed a sub-district border. These practices are in conflict with Indonesian law, Wilmar's own CSR policy, the RSPO Principles & Criteria. Wilmar has now become entangled in various land rights conflicts and its land development plans in Sambas District are now restrained.

Having experienced that the communities in Sambas do not accept the companies' land clearing activities, Wilmar has apologized for some of the misconduct, paid some compensations and has committed to undertake consultations ("*sosialisasi*") with the communities. It also committed to review the relevant maps. Unfortunately, the way in which this will be done is not yet clear to the communities.

If Wilmar wishes to prevent further social conflicts, should (continue to) halt operations on the ground while proper and thorough EIAs are conducted combined with a transparent consultation process that seeks to gain the communities FPIC for land acquisition. In view of the fact that a plantation company may be licensed to work in the area for 30 years and with extensions up to 99 years, it is not too much for communities to ask that they are treated fairly by a company that prides itself to be a member of RSPO.

Figure 9. The prosecutor of Sambas District commits to take the burning law suits against Wilmar to the highest courts. (January 26, 2007)

6. Deforestation

6.1 Policies and regulations

6.1.1 Policy Wilmar Group

In its circular to investors, Wilmar states:

"*We ensure that forest land is cleared for oil palm plantations in accordance with all Indonesian regulations.*"[85]

6.1.2 Indonesian legislation

Indonesian legislation stipulates that only forests in the land use categories "Production Forest deemed for Conversion" (Hutan Produksi Konversi, HPK) and forests under the category "Other Land Use" (Areal Penggunaan Lain, APL) may be converted to other land uses, such as oil palm plantations. However, Decision Nr. 382/Menhut-II/2004 of the Ministry of Forestry requires any company that removes forest products from Production Forest, Conversion Forest and APL to obtain a Forest Product Removal Permit (IPK).

Land clearing is furthermore subject to two decrees of the Indonesian government dated 1986 and 1990 and the 1999 Forestry Act, which stipulate that entrepreneurs should protect forests on either side of rivers. Along major rivers, 100 meters should be left protected, 50 meters for smaller rivers and 200 meters for lakes.[86]

6.1.3 RSPO

Criterion 7.3 New plantings since November 2005 (which is the expected date of adoption of these criteria by the RSPO membership), have not replaced primary forest or any area containing one or more High Conservation Values (HCV).

6.2 Practices on the ground

Data and statistics in the May 2006 EIA reports suggest that PT WSP and PT BCP alone will convert approximately 10,000 hectares of forest, mostly peat swamp forest. Wilmar refutes this (see Annex 4), stating that the forest area to be cleared is much less, but does not provide an alternative figure. In the PT ANI area in Sambas District, the extent of remaining peat swamp forest and lowland tropical rainforest is not known.

6.2.1 PT WSP

The PT WSP area overlaps with natural swamp/peat forests on the eastern side of the proposed concession. According to the EIA study, natural forest remained in 25% (almost 5,000 hectares) of the area assessed.

Table 6. Land use in the PT WSP area.

Land use	Area (ha)	Area (%)
Rubber gardens	9,796.4	52.39%
"Thick forest"*	4,825.1	25.80%
Brush wood	1,680.5	8.99%
Rice fields (*sawa*)	1,504.0	8.04%
Swidden (shifting cultivation land)	356.1	1.90%
Bushes	205.5	1.10%
Mixed gardens	184.7	0.99%
Villages	128.7	0.69%
Pepper plantations	12.6	0.07%
Orange (*jeruk*) plantations	6.4	0,03%
Total	17,598	100%

Source: EIA study PT WSP (2006).

* The EIA report does not define what "thick forest" (hutan lebat) is. Presumably, this would be mostly previously logged natural peat swamp forest.

Of the total proposed area (14,100 ha), the May 2006 PT WSP EIA study recommended that only 4,000 ha is to be developed in view of land suitability. However, the 7 April 2006 Location Permit issued by the District government to PT WSP had already allocated 14,400 ha to the company.

PT WSP started clearing the peatforests in the eastern sections of its area without having conducted an independent High Conservation Value Forest assessment.

6.2.2 PT BCP

Satellite imagery shows that initial forest clearings were already made by PT Aldina Wisata Nusakarya (Latief group) before the takeover by Wilmar in 2005 (see also Map 5).

Of the total proposed area (14,400 ha), the May 2006 PT BCP EIA study recommends that only 6,000 ha is to be developed in view of land suitability. However, the Location Permit issued to on 7 April 2006 by the District government to PT BCP had already allocated 13,000 ha to the company.

The proposed PT BCP area envisaged for plantation development is adjacent (east and northeast) to the PT WSP proposed concession. Based on the maps provided in the EIA study, approximately 30-40% of the PT BCP area is thickly forested (swamp forest). This is also the main area deemed suitable for oil palm plantations. In April 2007, illegal logging activities by local villagers in the PT BCP area were recorded (see Figure 11).

Figure 10. Illegal timber in the PT BCP area (April 2007).

PT BCP started clearing the forests without having conducted an independent High Conservation Value Forest assessment.

6.2.3 PT ANI

The northern block of the PT ANI concession (i.e. the section above Sambas River or *Rayon Utara*) is situated on the fringe of a large, fairly intact contiguous block of lowland tropical forest. The block situated south of the Sambas River extends over, mostly, peat land.

- A new clearing that was both burned and thereafter planted with oil palms was observed near the PT ANI CPO mill 50- meter river buffer area. (see also Figure 8. PT ANI: Deforestation and burning tracks (February 2007).).
- In April 2007, local NGOs documented illegal logging activities in Semanga village, which is located in the PT ANI area. Logs are used by the company itself as a foundation for roads on swamp soils (see also Figure 14) and timber is being harvested by locals, whereby PT ANI's contractor assists in the transportation of the wood out of the concession area. None of the Wilmar companies or their contractors own Timber Removal Permits (IPK, *Ijin Pemanfaatkan Kayu)*. Considerable volumes of rattan are also harvested in, and moved out, of the PT ANI area.

PT ANI started clearing forests without having conducted an independent High Conservation Value Forest assessment.

Figure 11. PT ANI seen from the air.

Left: the northern block, right: southern block. Image: Google Earth (2005)

Dark green: natural forest; light green: oil palm plantations and community plantations.

Grey and brown: cleared areas with roads. The white streaks of clouds appear to be haze from land fires.

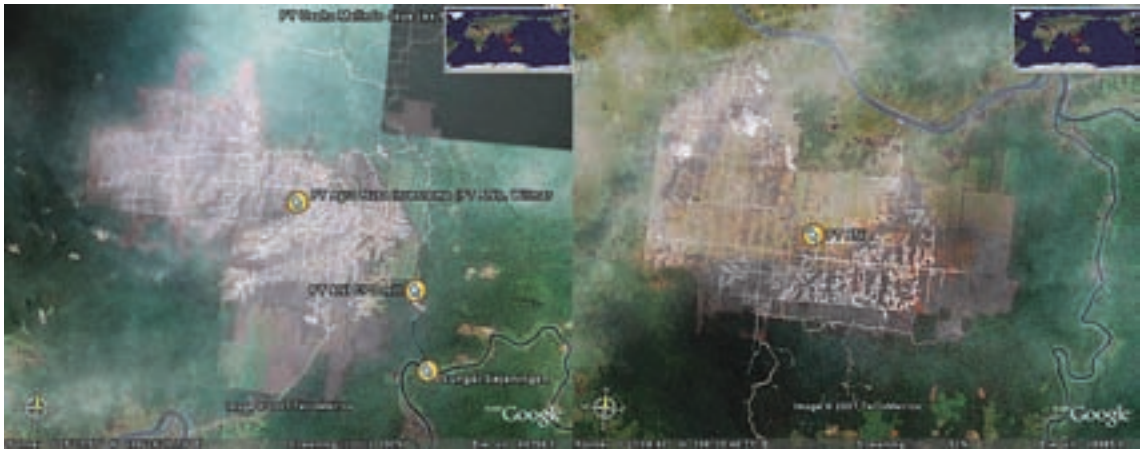


Figure 12. Road in the PT ANI area constructed with swamp forest logs (April 2006).

6.3 Environmental and social impacts

The PT WSP and PT BCP EIA reports touch on issues such as species but by no means does the information gathered and represented in the reports approach an HCVF assessment as used in the context of RSPO. The information in the EIAs is also incomplete. According to data from the Natural Resources desk in Singkawang there may be over 62 endangered species (birds, mammals and reptiles) in the vicinity of the Wilmar areas.[87] Therefore, it is likely that there are more species in these areas than those reported in the PT WSP EIA study, which identified 31 species of mammals, reptiles and birds.[88] Villagers in Nante reported that the protected white-handed gibbon still occur in the nearby natural forests where PT WSP cleared forests for plantation development.

The EIA reports propose no actions to protect endangered and protected species, or to respect the socio-economic values of these forests. For example, no conservation actions are proposed to protect the habitat of the endangered civet cat or *Musang* (*Paradoxurus hermaproditus*) and Slow Lori or *Kukang* (*Nycticebus coucang*), two species that occur in the forest areas slated for conversion and

Figure 13. Orangutan in Tengguli, originally from the PT ANI area.

which are classified by the IUCN Red Book as Vulnerable.[89] In fact, **with regard to the flora and fauna that occur in the area, the PT WSP EIA report merely suggests that Wilmar does nothing:**

"The changes in the environment that will occur in the study area form an opportunity for the fauna for adaptation and (natural) selection to use the new habitat and to shape a new equilibrium".[90]

Villagers reported in 2004 that during a major flooding event four orangutans were captured in, what was at the time, the PT BEJ concession and presently the PT ANI area. It was assumed that the orangutan had since gone as good as extinct in Sambas District. However, during a field trip by KONTAK Rakyat Borneo last May 2007, a young orangutan was found in the village of Tengguli, about 8 kilometers from the PT ANI area. The orangutan was captured by illegal loggers working in the PT ANI area in Sungai Sentimok at the end of 2005 and have kept it in the village ever since. This means that the forests in the PT ANI area (as well as other areas presently held by the Wilmar group in Sambas and Landak) may harbor more orangutans. Because no serious HCVF assessments were commissioned and because the company has no meaningful forest conservation activities in place, **orangutan habitat is being destroyed by Wilmar's ongoing deforestation activities in Sambas**.

According to the recently United Nations released report "*The Last Stand of the Orang Utan*". Today, the rapid increase in plantation acreage is one of the greatest threats to orangutans and the forests on which they depend. In Malaysia and Indonesia, it is now the primary cause of permanent rainforest loss. The huge demand for this versatile product makes it very difficult to curb the spread of plantations."[91] The UN reported that the remaining population of orangutans in Sambas District is at present unknown since a last population pocket in Sambas was reported in 1999 and no more formal observations were recorded in the past few years. Review of the Sambas District's land use plan shows that the District government has not allocated any forest area that coincides with orangutan habitat. Instead, it appears to have allocated the little orangutan forest habitat that remains to PT ANI and other oil palm companies.

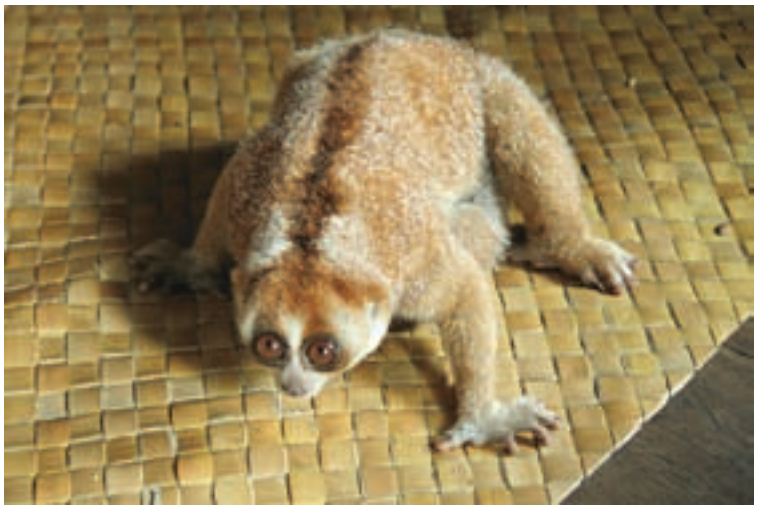


Figure 14. Slow Lori, an endangered species not identified in PT WSP's EIA.

As for the socio-economic value of the forest cleared by PT WSP, villagers from Senujuh reported that they depend on these forests for a variety of non-timber forest products (honey, rotan, illipe nut (*tengkawang)* oil, various sorts of fruit and game) as well as timber to build houses. A village member in Nante reported he was shocked by the reply of a Wilmar employee when he asked how the community was expected to build and renovate their houses once the company had cleared all their forest. According to him, the company representative crudely brushed off the question by suggesting that the community should "*just use concrete*".

Deforestation is furthermore linked to a range of other impacts that have not been well studied in the areas at hand. They include carbon emissions and more severe and less predictable flooding, which is assumed to be aggrevated as a result of illegal clearing of river buffer zones.

6.4 Analysis and conclusions

In all three Wilmar areas natural tropical forests are being cleared for the planting of oil palms. It appears that the legality of the forest clearing may be contested on the grounds of the fact that the Ministry of Forestry has not yet released forestlands for conversion, as proposed by the district and provincial government. Also, **there is evidence that illegal logging and removal of forest produce (timber, rattan) is taking place without the legally required Forest Product Removal Permits**. In fact, Wilmar states in its second response to Milieudefensie that is is not required to obtain such a permit, which is not true.

Again, the companies' EIA reports are problematic as they provide little or no useful guidance on conservation and protection of remaining forest habitats in the Wilmar areas. The Wilmar companies have not commissioned independent HCVF assessments, but forest clearing took place after November 2005. This is RSPO's pragmatic "cut off date" (Criterium 7.3) which implies that any conversion of HCVF after that date is non-certifiable. **By clearing forests after this cut-off date without having conducted HCVF assessments, Wilmar disqualifies the three areas for certification because it is actively destroying forests where such values may exist that may not be identifiable after deforestation.**

Figure 15. Rattan transport from the PT ANI land clearings (Sekelalang, February 2007).

7. How representative is the Sambas District case?

7.1 Beyond Sambas

The three Wilmar companies in Sambas represent approximately 7% of the Wilmar Group's future total land bank. To allow for an assessment of the validity of the findings within the Wilmar Group, this chapter looks into some other cases in Kalimantan, Sumatra and Uganda.

7.2 West Kalimantan

Initial investigations by Walhi Kalbar into the practices of Wilmar-related companies in other parts of West Kalimantan suggest that the situation in Landak District is no different from Sambas District. Further investigations will need to be conducted, but Figure 19 illustrates the poor state of the environment in the PT ANI concession in Landak District, where the company is clearly also involved in forest clearing and burning.

Figure 16. PT ANI: deforestation and burning (Landak District, 2006).

According to Walhi Kalbar, Wilmar's subsidiary PT Daya Landak Plantation in Landak District (West Kalimantan) is also believed to have burnt land for plantation development in 2006.
Wilmar's oldest plantation subsidiary in West Kalimantan, PT Bumi Pratama Khatulistiwa (PT BPK) in Pontianak District, has been a campaign target for Walhi Kalbar for several years. Walhi documented a fire case in 2000, which was reported to the West Kalimantan police, but was never followed up. According to the International Finance Corporation (IFC), the fire in PT BPK resulted in the partial loss of its plantation area.
According to (IFC), the fire in PT BPK was caused by local farmers due to dry conditions and high winds.[92] However, the head of Enau Village (Pontianak district) maintains that the company cleared land by use of fire in the 1990s.[93]

7.3 PT Jatim Jaya Perkasa: "All in the family"

A field study in the Wilmar subsidiary PT Jatim Jaya Perkasa in Riau (Sumatra) found that the company had been:

- converting natural tropical rainforests which is also the habitat of the endangered Sumatran tiger;
- tolerated illegal logging within its concession,
- illegally burned land for conversion;
- illegally planted oil palms in peat soils of 3 meters and deeper and
- entangled in a conflict with smallholders who have been waiting for their plasma plantations to be transferred to them since June 2003.[94]

Figure 17. PT Jatim: deforestation and burning tracks (Riau, 2004).

Left: An approximately half-year-old land clearing site in the PT Jatim Jaya Perkasa concession ("inti" part). A clear case of conversion of natural forest. Right: Recent intentional burning of a land clearing site in Jatim Jaya Perkasa's plantation ("inti" part), just beside the employee housing barracks.

In response to the report, Wilmar wrote a letter to Unilever in the Netherlands:

"We would like to assure you that Wilmar is a responsible corporation and it is our policy to conduct our operations with due regard to environmental and social responsibilities. We have earlier studied the report but found its contents incomplete and inaccurate. The report has been circulated without clarifying with us prior to its publication. The plantation had also been sold in last year.
We would also like to inform that we are in the process of engaging a consultant to do an independent assessment of our plantation's environmental and social performance and will make any improvements arising there from. We would let you know the outcome of the assessment in due course".[95]

The company never responded to the content of this criticism. During meetings with Milieudefensie, Rabobank Netherlands said the company refused to say to whom the company was sold. Moreover, no records of the sale could be found in the Riau Province registrars for months after the alleged sale. **When Wilmar was preparing to be listed in Singapore, the company was required to publish the background of the mysterious sale of PT Jatim Jaya Perkasa. It turned out that the controversial "loss-making" oil palm plantation was in fact sold to PT Ganda Dinamika and PT Inecda Plantation, two companies in which the wife and brother of Wilmar Indonesia's CEO, Mr Martua Sitorus, in aggregate own more than a 30% equity interest.**[96]

Wilmar and the Ganda Group: new insights into the dealings of the Sitorus family

Mr. Martua Sitorus' brother, Mr. Ganda, was previously employed by the Wilmar Group but has now built his own plantation group through the holding company PT Gandaerah Hendana (the Ganda Group). Subsidiaries under the Ganda Group include:

1. PT Kartika Prima Nabati (Jakarta)
2. PT Patiware (Bengkayang, West Kalimantan)
3. PT Sumatera Unggul Makmur (Sambas, West Kalimantan)
4. PT Sentosa Asih Makmur (Sambas, West Kalimantan)
5. PT Putralirik Domas (Sambas, West Kalimantan)
6. PT Inecda Plantation (13,000 ha, Indragiri Hulu, Riau)
7. PT Jatim Jaya Perkasa (Riau)
8. PT Wawasan Kebun Nusantara (18,500 ha, Bengkayang, West Kalimantan)
9. PT Perkebunan Kaltim Utama I (20,000 ha, Kutai Kartanegara, East Kalimantan)
10. PT Ganda Dinamika (previously: PT Karya Musi Lestari)
11. PT Karya Agung Megah Utama (Agam, West Sumatra)
12. PT Perkebunan Anak Negeri Pasaman (West Pasaman, West Sumatra)
13. PT Sumatra Agro Nusa Plantations Prima
14. Jumbo Glory Holdings
15. PT Enviro Mitra Abadi (Riau)

Of these companies, four are active in Sambas District:

PT Patiware: a castor oil plantation company of 10,500 hectares in Jawai and Teluk Keramat sub-districts. The company was granted a Location Permit (*Ijin Lokasi*) by BPN, number 05/IL-BPN/Bky/2003, dated 23 September 2003 (last update on July 2006).

PT Sumatera Unggul Makmur: an oil palm company of 16,000 hectares in Tebas, Semparuk, Selakau and Pemangkat sub-districts. The company was granted a Plantation Operation Permit (*Ijin Prinsip*) by the District Head, number 82/2006, dated 3 April 2006.

PT Sentosa Asih Makmur: an oil palm company of 18,000 hectares in Galing, Sejangkung and Teluk Keramat sub-districts. The company was granted a Principal Permit (*Ijin Prinsip*) by the District Head, number 81/2006, dated 3 April 2006.

PT Putralirik Domas: an oil palm company of 3,100 hectares in Subah sub-district. The company was granted a Plantation Operation Permit (*Ijin Prinsip*) by the District Head, number 83/2006, dated 3 April 2006.

None of these companies have approved EIA reports, but all of these companies have already and irregularly, been granted a Plantation Operation Permit by the Sambas District Head.

In essence, the Ganda and Wilmar Groups are very closely related businesses. For example, several subsidiaries under the Ganda Group (PT Sumatera Unggul Makmur, PT Sentosa Asih Makmur and PT Putralirik Domas) appear to share the same office address as the Wilmar Group in Jakarta. In addition, the Ganda Group is a supplier to the Wilmar Group.

7.4 PT Permata Hijau Pasaman: West Sumatra[97]

The Wilmar Group also has substantial holdings in West Sumatra Province, including the company PT Permata Hijau Pasaman, which operates in West Pasaman District. Originally owned by PT Kartika Prima Nabati of Jakarta, in 1999, PT PHP became a foreign direct investment company owned by Keiflow Limited (British Virgin Island), HVS Investment Limited (British Virgin Island), Bonoto Investment Limited (British Virgin Island), and Wilmar Investment Limited (British Virgin Island). PT PHP was set up as a palm oil company with a mill that was designed to produce 28,600 tonnes of CPO per year, of which about 25% was for the domestic market and the rest for export.

A detailed study of PT PHP carried out in 2006 by a multi-disciplinary research team including anthropologists, land tenure specialists, lawyers and environmental scientists from Sawit Watch, the World Agroforestry Centre, the legal reform bureau, HuMA, and the human rights organization, Forest Peoples Programme revealed serious irregularities and disputes over the way the company acquired lands for its plantations.[98]

PT PHP initiated procedures to acquire land for its plantations and associated smallholdings in 1992 but it took several years before development permits were finally issued. Negotiations between the State Government and the Minangkabau indigenous people for release of their lands to the oil palm companies led to the affected Minang communities being given assurances that they would be fairly treated by the company, while for their part the communities recorded their insistence that their rights to the customary lands be respected. However, these commitments would not be honored. Only days after an agreement for the relinquishment of lands to the company was signed between certain community leaders and the district regent in February 1997, community members contested the transaction noting that they had not been informed and that the land transfer carried out by these 'delinquent' (*oknum*) leaders was contrary to customary law and therefore invalid. The disquiet of the community members has grown now that they have realized that by transferring rights to the government for the issuance of the lease to PT PHP they are considered to have surrendered their rights to the land in perpetuity, something that was not made clear to the leaders who signed the original agreement.

Since neither the local government nor the company have been prepared to renegotiate these agreements with the wider communities, there have been a series of community protest actions, which have led to violence, police reprisals, beatings, hospitalization of community members, arrests and imprisonment.

Disputes have also arisen because the government and the company carried out land acquisition without first clarifying the extent and the boundaries of communities' lands and the precise ownership of each area taken over. As a result, the company has been accused of paying (nugatory) compensation to the wrong land-owners and for the wrong pieces of land. In one instance, the company cleared a patch of forests to which a locally incorporated cooperative made up of Minang non-timber forest product collectors had been given clear rights in a written contract by the local authorities, yet these members claim they received no benefits from the plantations and smallholdings established on their lands.

Further disputes have arisen because the company developed a smaller area as smallholdings than was originally agreed and these smallholdings were developed later than the nucleus estate. This has led to fewer community members getting smallholdings than was anticipated, meaning that many community members who have had to give up their lands to the estate have received nothing in return. Complaints about the slow and insufficient development of smallholdings were filed first with the company established cooperatives, then with the company and then with the local government and legislature, yes, despite interventions by the local government to resolve the dispute the conflict has persisted. Faced with this intransigence, in 2005, community members decided to physically take over productive areas of the nucleus estate while blockading the road to the mill.

As of April 2007, disputes over land in the PT PHP area remained unresolved.

The situation in PT PHP is far from exceptional. A detailed long term study of land conflicts in West Sumatra, carried out by Professor Afrizal of Andalas University, Padang, shows how these are frequently caused by the way lands have been acquired by oil palm companies without respect for the Minang communities' customary rights.[99]

7.5 Uganda: controversy over promised land in Bugala Island

With a US$19.9 million loan from the United Nations International Fund for Agricultural Development (IFAD), public funds are also being used to subsidize the activities of a Kenya-based subsidiary of the Wilmar Group, Bidco, which intends to develop 40,000 hectares of oil palm plantations in Central Uganda.[100]

On 4 April 2003, the Government of Uganda signed a cooperating agreement with Bidco Oil Refineries Ltd. spelling out that the Ugandan government would provide 10,000 ha of land for oil palm on Bugala island in Kalangala district (6,500 ha for the nucleus estate and 3,500 ha for smallholders) as well as 20,000 hectares on the mainland for the nucleus estate. According to the agreement, the government would deliver the promised land within one year after signing the agreement and the actual onset of activities by Oil Palm Uganda limited (OPUL), Bidco's plantation company in Uganda.[101]

Bidco's oil palm project is further backed by a US$12.3 million subsidy from the Ugandan government and US$50 million in government funds set aside for payment of land owners who are reluctant to sell their land to the company. In addition, other fiscal incentives like a 25-year corporate tax concession and a 12-year deferral of value added tax on the project's products were extended to Bidco "*to make the investment more attractive*".[102] Furthermore, Bidco would gain the right of access for a 90 year period.

At present, 6,000 ha are being planted with oil palms but in the course of the past two years it appeared that the Ugandan government would not be able to fulfill its part of the deal, i.e. to release 10,000 ha of land to the company, because not all land owners were willing to sell their land to the company and because **the National Forestry Authority (NFA) refused to degazette several protected forest reserves for conversion into oil palm plantations, notably on Bugala Island in Lake Victoria.**

Bugala Island has 11 forest reserves, of which three Core Conservation area harbor 13 species (8 trees, 1 mammal, 3 butterflies and 1 moth) which are found in no other Ugandan forest. According to Ugandan law, no human activity is allowed in these reserves. Nevertheless, to enable the government to release the promised land for Bidco's core plantation, it has been proposed to lift the protected status of Banga Central Forest Reserve (184 ha), Towa (1,506 ha), Gala (894 ha) Namatembe (241ha) and Mugoye (945 ha).[103] In addition, in an effort to find land for the company, it has also been suggested that the company be allowed to clear 750 ha in a protected 200-meter buffer zone bordering the shores of Lake Victoria.[104]

The Bidco project is strongly backed by Uganda's President Yoweri Museveni, who has ordered that forestry officials lift the protected status of the forest reserves for Bidco's plantation development. In doing so, the president sparked a mass resignation of forestry officials: first the executive director of the National Forestry Authority (NFA) resigned in December 2006, followed by the resignation of the NFA's board and four senior technical officers, who opted to sacrifice their jobs rather than be party to the forest clearance. On behalf of Bidco's interests, the president is now pushing hard for an amendment of the 2003 Ugandan National Forestry and Tree Planting Act, to clear the path for a Presidential Directive dispensing forests to private investors at no cost.[105]

According to a media report, Bidco's partners – Wilmar Group, Archer Daniels Midland (ADM) and Josovina (Malaysia) are keen to avoid controversy over the environmental impact. Bidco's officials have said the company would not encroach on forests. The media report also stated that "as a member of the International Roundtable on sustainable palm oil which promotes the growth and use of Sustainable Palm Oil, the company is governed by compliance with certain principles like the environmental responsibility of projects it is engaged in." Bidco's director furthermore stated that the company and its partners are taking proper precautions and mitigation measures pointed out by the environmental impact assessment that cleared the project in 2003, and have made recommendations that will conserve the areas' biodiversity. "We are mindful of the biodiversity, and that is why we do not burn trees – we clear and bury. We also leave small pockets of the original forest in our plantations."[106]

Bidco seems entirely confident that the government of Uganda will fulfill its promise to deliver 30,000 hectares of land. On its website, the company is already planning further expansion: "*at its peak operations the project will cover a total of 40,000 hectares*".[107]

The Mabira case in Uganda

The Wilmar/Bidco case on Bugala Island resembles another case in Uganda, the Mabira case.

In his drive to economically develop Uganda, President Yoweri Museveni pushed for the release of 7,000 hectares of the 30,000 ha Mabira Forest Reserves by the National Forestry Authority, for the expansion of sugar cane plantations by the Sugar Corporation of Uganda (Scoul), part of the Mehta Group. The Mabira Forest Reserves, which are located in the watershed of the River Nile and feed into Lake Victoria, have been protected since 1932.

Local environmentalists, together with local peoples have for some time been organizing boycotts against the Mehta Group, setting up cyber-petitions and text messaging via cell phones to organize protests. On 12 April 2007, 500 people started a quiet demonstration against the project in the streets of Kampala. Citing widespread corruption, the public demanded greater accountability in respect of the disposal of national resources. Apparently, misunderstandings between the demonstrators and the police sparked a wave of violence. As a result, security guards and the riot police killed three people, including an Asian national.

This ugly turn of events resulted in a bittersweet victory when the Parliament of Uganda decided on the Mabira case in favor of communities and environmentalists a month later. Their decision was confirmed by the Ugandan cabinet in May.[108] Soon after, the Ugandan Cabinet announced that it would also not issue permits to BIDCO for the conversion of protected forests into oil palm plantations on Bugala Island.

7.6 Central Kalimantan: forecasted trouble from taking over PPB Oil Palm

With the merger of Wilmar International and the Malaysian PPB Oil Palm Group, Wilmar is likely to take over a number of plantation companies recently acquired by the PPB Group.

Like Wilmar, the PPB Group is gearing up to enter the emerging biofuels market. PPB Oil Palms has been a member of RSPO since 29 September 2004.

Recent acquisitions in Central Kalimantan

With its first plantation subsidiary (PT Mustika Sembuluh) in Seruyan District, the PPB Group has been active in Central Kalimantan since 2000. The Group acquired several more concession areas in 2003 and 2004, while in the latter half of 2005 it took over 9 plantation companies with undeveloped land, and also embarked into a major expansion of PT Mustika Sembuluh. According to the 2005 and 2006 Annual Reports, the PPB Oil Palm Group now has 15 subsidiaries in two districts in Central Kalimantan (Kotawiringin Timur and Seruyan) (see Table 8):

Table 7. PPB Oil Palm's subsidiaries in Central Kalimantan (2006).

Company name	District	Area (ha)	Lease*
PT. Bumi Sawit Kencana	Kotim	11,472	Yes
PT. Karunia Kencana Permaisejati	Kotim	19,650	Yes
PT. Metaya Sawit Mas	Kotim	16,371	Yes
PT. Malindo Lestari	Kotim	10,400	Pending
PT. Hamparan Sawit Eka Malan	Kotim	19,680	Pending
PT. Kerry Sawit Indonesia	Seruyan	19,139	Pending
PT. Sarana Titian Permata	Seruyan	19,266	Pending
PT. Pukun Mandiri Lestari	Seruyan	19,000	Pending
PT. Bulau Sawit Bajenta	Seruyan	15,000	Pending
PT. Eka Keharap Ita	Seruyan	20,000	Pending
PT. Alam Sawit Permai	Seruyan	16,160	Pending
PT. Benua Alam Subur	Seruyan	16,160	Pending
PT. Bawak Sawit Tunas Belum	Seruyan	16,800	Pending
PT. Petak Malai Sawit Makmur	Seruyan	19,680	Pending
PT. Mustika Sembuluh	Seruyan-Kotim	20,738	Yes, for 5,227 ha only
Total area		238,778	

* Lease does not necessarily refer to a final land use permit (HGU), but also to interim permits (IUP, Location Permit etc.) not specified by PPB Oil Palm.

Source: PPB Oils Palms Bhd. Annual Report 2005, 2006; PPB Group, Investor Update 4th Quarter Report, 31 December 2005.

In the second half of 2005, PPB acquired 8 plantation companies in Seruyan through 8 Singapore-based wholly owned subsidiaries of the PPB Group. These are now all majority owned (75-95%) by PPB. The Group reported that it purchased these 8 companies for a consideration of 4.563 billion rupiah (approximately US$ 519,000).

It is remarkable that PPB Oil Palm boldly purchased these companies when it surely must have known that the envisaged concession areas of the 8 plantation companies contain 109,100 ha Production Forest (Hutan Produksi, HP) and Limited Production Forest (Hutan Produksi Terbatas, HPK), or at least 82% of the joint area of the 8 subsidiaries (132,880 ha).[110]

Table 8. PPB Oil Palm's subsidiaries overlap with protected production forest in Central Kalimantan.

No.	Company name	Buyer on behalf of PPB	Shareholding PPB Oil Palm	**District**	**Area applied for [ha]**	**Overlap with protected forestland (ha)**
1	PT. Pukun Mandiri Lestari	Richdelta Ptd Ltd	95.0%	Seruyan	19,000	19,000
2	PT. Bulau Sawit Bajenta	Maxillion Ptd Ltd	75.0%	Seruyan	15,000	6,800
3	PT. Alam Sawit Permai	Stephigh Pte Ltd	95.0%	Seruyan	16,160	16,160
4	PT. Benua Alam Subur	Maxceed Pte Ltd	95.0%	Seruyan	16,160	16,160
5	PT. Bawak Sawit Tunas Belum	Quanta Pte Ltd	95.0%	Seruyan	16,800	11,440
6	PT. Hamparan Sawit Eka Malan	Rosevale Pte Ltd	95.0%	Seruyan	19,860	20,000
7	PT. Petak Malan Sawit Makmur	Ampleville Pte Ltd	94.3%	Seruyan	19,680	19,680
8	PT. Malindo Lestari Plantations	Gadsen Pte Ltd	95.1%	Seruyan	10,4000	n.a.
Total					132,880	109,100 (82%)

Source : BPN Kabupaten Seruyan; PPB Group Bhd. Annual Report 2005, PPB Annual Reports 2005, 2006.

In Indonesia, land under the categories "Production Forest" and "Limited Production Forest" cannot merely be released by the district government. If land under these categories is to be released for conversion into oil palm plantations, approval by the Ministry of Forestry and the provincial government is required. At the time when PPB invested over half a million of dollars for the acquisition of the 8 plantation companies, PPB had not secured such approval.

Since May 2000, the Indonesian Ministry of Forestry has repeatedly stated it would stop the release of forestland for oil palm plantations.
An initial review by Save Our Borneo, an NGO in Central Kalimantan, into the ownership of the plantation companies taken over by the PPB Group suggested that several of these companies were owned by the children, brother and grandchildren of the District Head in Seruyan, Mr. Darwan Ali.

The District Head commenced his lobby for the release of the protected forestlands in Seruyan District in June 2005. In a letter to the governor of Central Kalimantan, Mr. Darwan Ali requested the governor of Central Kalimantan on 10 June 2005 to facilitate the release of 357,710 hectares of Production Forest and Limited Production Forest for 23 oil palm companies through adjustment of the Provincial Land Use Plan. The 23 (16 of which are Malaysian/Singapore-owned) companies would be allocated a total area of 389,680 ha.[111]

It is not known whether the conversion has already been approved and formalized but according to Save Our Borneo, PPB has commenced land clearing in several of its new plantation estates and the organization was able to look at the provincial land use plan. According to one version of this plan that was not publicly available "colors on the map of Seruyan had already been changed from green for "permanent production forest" into orange, "land available for conversion into plantations".

In July and August 2006, Save Our Borneo (SOB) also recorded the burning of wood stacks in 4 of PPB Oil Palm's new estates in Seruyan and East Kotawaringan.

Table 9. PPB Oil Palm subsidiaries in Central Kalimantan and fire locations.

No	Company name	Location	GPS coordinates of fire locations
1.	PT. Kerry Sawit Indonesia Estate III	Seruyan	■ 49m 0669300 ; UTM 9686389
2.	PT. Sarana Titian Permata	Seruyan	■ 49m 0669300 ; UTM 9682780 ■ 49m 0673010 ; UTM 9689435 ■ 49m 0672229 ; UTM 9679298
3.	PT. Hamparan Sawit Eka Malam I	Seruyan	■ 49m 0658769 ; UTM 9706538 ■ 49m 0659594 ; UTM 9706228
4	PT. Hamparan Sawit Eka Malam II	Kotim	■ 49m 0690815 ; UTM 9718333

Source: Save Our Borneo, 2006.

Figure 18. PT Serana Titian/PPB Oil Palm: open burning of wood rows (Seruyan, August 2006).

Save Our Borneo observed that the land clearing method employed by the PPB subsidiaries and other companies in Central Kalimantan is to set fire to a 20-hectare block where the trees and undergrowth have already been brought down by heavy machinery. Usually the burnings are done at night and on new blocks that are close to forests. When the fires spread to the forests, residents in the surrounding area end up being blamed.[112]

Furthermore, large tracts of land acquired by the PPB Group in Seruyan contain peat soils, some of which are likely to be deep peat. The conversion and drainage of such soils, especially when forests are also cleared and debris is burned, contributes to the emission of large amounts of greenhouse gasses.

7.7 Analysis and conclusions

Based on review of various other cases involving the Wilmar-related companies and its envisaged merger partner PPB Oil Palms, it is obvious that the Sambas District case is not merely an unfortunate exception. Ilegal practices, legal but environmentally and socially destructive practices, as well as ethically questionable practices by the Wilmar and PPB Groups have been observed and documented by local NGOs in various locations and countries.

8. Public funds and market claims

8.1 Subsidized fortunes

In the previous chapter, two public financial institutions were mentioned as supporting Wilmar's business activities:

a. The United Nations International Fund for Agricultural Development (IFAD), which has co-financed Wilmar's smallholder development in Uganda since 1998 and
b. The International Finance Corporation (IFC), which provided a first generic credit facility to the Wilmar Group 2004.

IFC

The International Finance Corporation (IFC with its mission "*reducing poverty, improving lives*") is the commercial investment arm of the World Bank. The IFC is an international financial institution that is ultimately governed by its member countries and its financial reserves are ultimately guaranteed with public funds (tax money).

In December 2003, the International Finance Corporation (IFC), the commercial banking arm of the World Bank, announced that it was considering a proposal for a partial guarantee for Wilmar with a value of US$ 33.3 million. This facility was categorized by the IFC staff as "C" under IFC guidelines ("likely to have minimal or no adverse environmental impacts").

NGOs in the Netherlands and Indonesia challenged IFC's proposal on the basis that:
a. the project should have been categorized as having potential (cat. B) or significant adverse environmental impacts (cat. A).
b. that there was ample evidence that Wilmar's operations had adverse environmental impacts (particularly the PT Jatim Jaya Perkasa case was highlighted) and
c. the NGOs argued that the facility competed with the commercial financial sector and that IFC did not need to provide subsidized loans to the Wilmar Group.[113]

In its response of April 2004, IFC replied that since Wilmar was 90% dependent on the open market for its CPO supply, it therefore focused on the environmental aspects of one Wilmar refinery. IFC found that the refinery complied with the IFC Environmental and Social Guidelines. It then went on to dismiss the NGO concerns on deforestation, burning and social conflicts associated with various companies under the Wilmar Group, quite evidently on the basis of information solely provided by the company.

IFC argued that the US$ 33.3 million facility would merely help fund part of the Wilmar Group's working capital needs but would "not support the expansion of oil palm plantations".[114] **Interestingly, a year after the IFC approval of the facility, Wilmar had commenced the large-scale expansion of oil palm plantations in West Kalimantan.**

Lastly, IFC justified the provision of the facility to the Wilmar Group because commodity prices had increased and Indonesia's risk profile required the company to obtain working capital and "*even some relationship banks are reluctant to increase financing to Wilmar*".Thus, acting as though Wilmar

should be isolated from a country's risk profile, IFC undermined market functioning and by extending credit to Wilmar for the facility, in the process competing with commercial banks who charged higher interests for their loans to the Wilmar Group. Meanwhile, the Wilmar Group was already working on addressing the problem of increasing CPO prices, by significantly expanding the land bank owned by the Group and the companies owned by Martua Sitorus' immediate family members.

In May 2004, the IFC Board approved the proposed facility to Wilmar.

In 2006, Wilmar was in need of more working capital. IFC justified a new facility saying that: "*the company will face major funding requirements for the 2007 and 2008 seasons because CPO world market prices recover, due to increased demand for CPO from consumers in Asia.*" On 20 December 2006, IFC again agreed to underwrite Wilmar Trading through a loan guarantee to allow it to raise up to US$80 million for buying CPO.[115]

Through its Biodiversity and Agricultural Commodities Programme (BACP), IFC will (in 2007) also provide approximately US$ 375,000 subsidy to a project to be managed by Wilmar in an effort to train smallholders to protect biodiversity. The total budget of the 2 to 3 year project is US$ 1.5 million, whereby Wilmar and other IFC funds are expected to cover the remaining budget.[116] With 34,000 ha under Wilmar-related smallholdings, the project budget translates into US$ 88 per smallholder family.

Wilmar: run by the world's richest and most powerful business people

In essence, NGOs fail to see the logic in allocating public funds to a company with a US$5 billion annual turnover, a conglomerate that is controlled by some of the world's richest people:

- Mr. Martua Sitorus, CEO of Wilmar International and co-founder of the Wilmar Group, ranked number 14 on Forbes' list of Indonesia's richest 40 people in 2006. His assets were valued US$ 475 million[117];
- Mr. Kuok Khoon Hong, CEO and Chairman of Wilmar International's board of directors is officially listed as individual shareholder of Wilmar Holdings. It is generally assumed that Mr. Kuok is actually representing the Malaysian Kuok Group. This Group, which will be merged with the Wilmar Group in 2007, is headed by Mr. Kuok's uncle, Tan Sri Robert Kuok Hock-Nien.[118] According to Forbes Magazine's List of the World's Billionaires Robert Kuok has a net worth of US$7 billion, putting him at no. 104 out of Forbes' 946 billionaires around the world.[119]
- Fortune Magazine listed Patricia Woertz, CEO of Archer Daniels Midland (ADM USA) as one of the four most powerful women in the corporate world in 2006.[120] Through Archer Daniels Midland Asia-Pacific Limited, ADM is a substantial shareholder of Wilmar International.

8.2 Misleading public claims

IFC

As it did previously in 2004, IFC justified its 2006 loan to the Wilmar Group by stating it anticipates that "*this project will have minimal or no direct, adverse social or environmental impacts. This investment provides continuing support for a company which is committed to high standards of sustainability and corporate social responsibility throughout its palm oil supply chains (..).*
"*IFC has recently reviewed Wilmar International's Indonesian operations. Wilmar's Indonesian plantation operations and crude palm oil (CPO) mills that were evaluated as part of IFC review appear to be managed appropriately and are in line with good international practice.*"

In slightly different wording, this claim was repeated in the 2006 Wilmar International Annual Report published in May 2007. It stated:

Page 36-37: *"In May 2006, three E+S experts from the International Finance Corporation visited Wilmar's plantations and mills in South Sumatra and West Kalimantan to assess its E+S management and performance. They reported that the Group's Indonesian plantation and mill operations that were physically evaluated appeared to be managed appropriately, in line with best international practice. Overall, social and occupational health and safety performance met applicable IFC guidelines. Corporate labor policies and practices followed, and in many areas exceeded, national legal requirements. Corporate relations with the community, government, plasma cooperatives, and other stakeholders were strong."*

IFC furthermore claimed:

"Overall, social and occupational health and safety performance (of the Wilmar Group, eds.) meets applicable IFC guidelines, as well as the Roundtable on Sustainable Palm Oil (RSPO) Principles and Criteria."[121]

This latter claim, which helped the IFC staff to justify the proposed facility for Wilmar to the IFC Board, is false and misleading because:

1. Firstly, RSPO had no system in place to verify compliance to its Principles and Criteria (P&C) in 2006. IFC did not clarify that its claim is exclusively based on its own assessment and its self-designed verification approach. The claim misleads other parties to believe that RSPO agreed with IFC's findings. RSPO was never requested to make such judgment.

2. Secondly, IFC's claim refers only to the social and occupational health and safety aspects of the RSPO P&C and not to legal, environmental and conservation criteria. This is a type of "partial certification" (endorsement on the basis of only some RSPO P&C) that RSPO does not endorse.

3. Thirdly, IFC's claim is false because it is broadly formulated (the claim referred to the whole of Wilmar International thus the overall performance of its entire plantation, processing and trading subsidiaries). In reality, only estates in South Sumatra and West Kalimantan were assessed. At the time when IFC's consultants conducted their review of Wilmar's operations in West Kalimantan, PT WSP, PT BCP and PT ANI were already actively land clearing on the basis of an irregular Plantation Operations Permit. Had the consultants investigated these Wilmar companies, they may not have reached the same conclusion.

Milieudefensie therefore concludes that IFC, as a member of RSPO, violated the RSPO Code of Conduct (adopted during the General Assembly of 22 November 2006). **The RSPO Code of Conduct Article 2.1 stipulates: "Members will not make any misleading or unsubstantiated production, procurement or use of sustainable palm oil."**[122]

Control Union Certifications

At the RSPO Roundtable Meeting (RT4) of 21-22 November 2006, the Dutch auditing company Control Union Certifications (CU) stated in the plenary meeting that "*Wilmar complies with 90% of the RSPO Principles & Criteria*".[123] When this claim was further discussed during a RT4 supplementary meeting, it surfaced that CU had primarily tested the extent to which the RSPO P&C and also the Dutch "Cramer Criteria"[124] would be suitable for conducting certification audits. For this purpose, a draft check list was designed and tested. No auditing and certification took place that justified the sweeping conclusion that (the) Wilmar (Group) meets 90% of the RSPO P&C. Despite this acknowledgement of the misleading nature of the statement by CU representatives, the presentation by CU

remains posted on the RSPO website. On June 2nd, 2007 Control Union had a correction placed on the RSPO website stating that "This figure was unqualified, based upon pilot projects, and therefore misleading. The verification (certification) working group has since worked on a framework for the verification of the principles and criteria, with compulsory verifiers and national interpretations; therefore it will not be possible to fully assess the compliance of any company until a full audit has taken place in accordance with the RSPO framework and assessment requirements.[125]

Wilmar in Sambas

Possibly encouraged by the positive assessments by IFC and CU, Wilmar has made false and misleading public claims in relation to RSPO both at the "field" (plantations) level and at the level of the international product and capital market.

In February 2007, the Pontianak Post newspaper quoted a local Wilmar employee as saying that Wilmar "*is being audited by international independent foundations from England and the Netherlands*" and that "*from November 2007 onwards, all CPO (Crude Palm Oil) exports have to have an environmental certificate*".[126]

This claim is false (no English foundations have been auditing Wilmar for environmental certifications, Wilmar does not have a policy stipulating that from November 2007 onwards all of its CPO exports will have to have an environmental certificate) and the claim can mislead local decision-makers (local communities and policymakers) to believe that Wilmar in Sambas is a "good" company and therefore should be supported in its (controversial) oil palm expansion plans.

Wilmar in Uganda

When confronted with this statement, Wilmar International commented that the staff member quoted by the Pontianak Post is not known to the company. However, Bidco staff in Uganda were reported to have made similar claims in apparent efforts to convince local decision-makers to accept Wilmar's plantation expansion plans (see paragraph 8.4).

Wilmar in the market

In its recently published 2006 Annual Report, Wilmar International claims::

Page 30 and 37: "*In November and December 2006, Control Union Certifications (The Netherlands) conducted a chain of custody audit on Wilmar's plantations, mills, refineries and bulk storage facilities in Indonesia. The audit was commissioned by Essent, a Netherlands-based power company. The findings indicated that crude palm oil from Wilmar's plantations and used by its refineries in producing refined products, were sustainably produced and traceable for the entire production process and chain. As a result of the study, a Green Gold Label Certificate for Chain of Custody and Processing Standards was awarded to Wilmar in January 2007.*"

Comment: The Control Union website confirms that Wilmar International is certified under "GGLS1: Chain of Custody and Processing Standards" under licensee number PRJ 806997.[127] However, based on field observations in various locations, involving several Wilmar-related companies Milieudefensie believes Wilmar's claim in its Annual Report 2006 is false and misleading:

- A GGL "Chain of Custody and Processing Standards" certificate makes a statement about the certified company's Chain of Custody and Processing in relation to the GGL standards. It says nothing about the sustainability of the product that goes into the chain of custody.

Milieudefensie therefore concludes that Wilmar, as a member of RSPO, violated the RSPO Code of Conduct (adopted during the General Assembly of 22 November 2006). **The RSPO Code of Conduct Article 2.1 stipulates: "Members will not make any misleading or unsubstantiated production, procurement or use of sustainable palm oil."**[128]

Wilmar's claim is especially serious because the claim was globally distributed by Wilmar among the thousands of shareholders, bankers, buyers and other stakeholders through its 2006 Annual Report. Milieudefensie understands that Control Union has requested Wilmar International to rectify its claim on sustainability.

The Green Gold Label

The GGL was set up by the Dutch electricity producer Essent and Skal International (now Control Union Certifications) a few years ago. According to an article posted by the European Green Electricity Network (Eugene), the GGL system is now managed by CU and Peterson Bulk Logistics. Although the Green Gold Label standard is already open for use by third parties, the standard was intended to be turned into a fully independent system by the end of 2005 (..). "*An independent organization has been created, with companies or organizations – like Essent, Unilever and Solidaridad – in the advisory council.*[129]

Control Union states that the Green Gold Label (GGL) is "a certification system for sustainable biomass."[130] The GGL Agri-source criteria (v.2005.5) standard, which are the standard against which sustainability is tested under the GGL does not nearly approach the required level of performance by the RSPO P&C as they evaluate policy rather than practice and do not include key issues covered by RSPO (HCVF, FPIC, other social criteria etc.). In Milieudefensie's view, the GGL provides unsufficient guarantee for sustainability in the context of oil palm production.

Criterion 5 of the GGLS1 standard states: "5.1. In order to become part of the Green Gold Label Program, by volume or weight, a part of the material produced has to be from a GGL approved or certified origin (..)."[131] At the time when the certificate was issued (January 2007), Wilmar could not supply palm oil from a GGL approved or certified origin. The issuance of the GGLS1 certificate for Chain-of-Custody and Processing Standards by Control Union to Wilmar International was therefore in conflict with the the GGL standard.

Essent

On 13 December 2006 Essent publicly stated that it would stop using palm oil for electricity generation, pending further investigation by a commission (known as the "Commission Blok") who would determine whether it is possible to implement a certification system for palm oil products in the short term which enables sourcing of palm oil from proven sustainable sources. Essent's decision was based on renewed public debate about the environmental and social impacts of palm oil production (see box below). One factor in play was that Essent had lost a formal complaints procedure initiated by Milieudefensie with the Dutch Advertising Code Commission. Milieudefensie had submitted a complaint against the company in October 2006 on the grounds that Essent misled consumers into believing that they contribute to a better environment by using the company's electricity, which is partly produced with palm oil. Essent has 800,000 customers who use Essent's green electricity. Milieudefensie's complaint referred specifically to Essent's claims regarding the Green Gold Label, a system developed and used exclusively by Essent and Control Union. According to the complaint submitted by Milieudefensie, Essent claimed:

"*This system provides a safeguard based on strict criteria that biomass production meets strict sustainability criteria and has no negative impacts on the local environment and living conditions. Every batch of biomass is awarded a certificate which illustrates that the full trajectory from sustainable source to energy plant is controlled, including transportation.*"[132]

Early December 2006, the Dutch Advertising Code Commission concluded the case in favor of Milieudefensie.

Dutch regrets on the subsidized use of palm oil for electricity generation

In August 2006, the Dutch government phased out a subsidy facility – the so-called MEP programme – for green electricity production designed to help realize the Dutch "9% green electricity by 2010" target. Partly as a result of this programme, about 45% of all biofuel used for electricity generation in the Netherlands in 2006 was vegetable oil, mostly palm oil.[133]

In December 2006, former Dutch Environment Minister Van Geel publicly stated that he regretted that the government had spent hundreds of millions of euros to subsidize palm electricity. Van Geel referred to carbon releases resulting from peat land drainage and deforestation resulting from the expansion of oil palm plantations. "We should not cause one environmental problem by solving another", he was quoted as saying.[134]

In May 2007, the Dutch policy-monitoring institute ("Algemene Rekenkamer") published a damning evaluation of the MEP-programme. The institute found that the programme had failed to take into account environmental risks associated with biofuels, such as carbon emissions resulting from peatland development and deforestation for the expansion of oil palm plantations. The institute also noted that the MEP stimulated conflicting targets, i.e. climate versus biodiversity.[135] In response to a draft version of the report, the Minister of Economic Affairs Van der Hoeven stated that in the future, the Cramer Criteria for sustainable biomass would be applied to evaluate proposals.[136]

Misplaced Belgian optimism

Meanwhile, on 8 May 2007 the Belgian "green electricity" producer Elektrawinds announced in the De Tijd newspaper that it had entered into a 50:50% joint venture with Wilmar, under the name EW Green Power Pte. Ltd. With this joint venture both companies aim to supply green electricity to the European market (ultimately various projects valued US$50 million each would have a joint capacity of 400MW) which is so desperately seeking to meet the targets of the Kyoto Protocol. The article noted that Wilmar had "committed to producing palm oil only/exclusively in a sustainable manner and had signed up to the RSPO. This means, the article continued, that "Wilmar does not any longer cut tropical forests for the development of oil palm plantations".[137]

Illegal palm oil: as serious as illegal tropical timber?
It is generally accepted that of all timber production in Indonesia, somewhere between 70-90% is probably from illegal sources or illegally traded. The idea that palm oil may also be surrounded by illegality has until now not yet had much attention in the policy debate in Europe, which is merely limited to deforestation, peat soils and (the solution) reallocation of development into grasslands. Up to date, only limited analysis has been conducted but initial research suggests that *"the legality of the procedures used by both the government and the companies to acquire lands is extremely contentious*".[138]

In Indonesia, nearly all plantation companies are entangled in social conflicts and land disputes: the Indonesian NGO network Sawit Watch had recorded 500 conflict cases throughout the country. A great number of these cases are related to land rights. It is often said that local communities have numerous claims but no documents to prove their legitimate land rights. The reverse is equally true. **Sawit Watch estimates that at present, no more than 30% of all oil palm plantations in Indonesia operate on, and produce palm oil, on the basis of a HGU (Hak Guna Usaha), the final Land Use Permit that allows companies to go into full commercial production. A prerequisite for the issuance of a HGU is that that all legitimate land claims or conflicts over the lands are resolved.**

The legality of palm oil is not only a question of "clumsy land rights legislation" due to the colonial era; this study shows that the illegality of the industry is also in question because basic national laws on Environmental Management are flouted by a major player in the industry.

While on the one hand, Wilmar has already pre-sold its biodiesel production for the fiscal year 2007 mostly to Europe and the USA, **M. R. Chandran, retired head of Malaysian Palm Oil Association (MPOA) was recently quoted as saying that "direct burning of palm oil for power generation in Europe has been reduced by 50 percent mainly because of environmental concerns."**[139]

9. Review of Wilmar's response

On 15 April 2007, Wilmar International Ltd. was requested to comment on the main findings of this report (the summary). On April 25, tThe company responded in a timely and constructive manner. The full text of this reply is presented in Annex 4. Milieudefensie subsequently checked some new information derived from field work, to which Wilmar replied on June 9. Wilmar's full response is represented in Annex 5.

Wilmar's response led to some minor changes in the draft report, but overall there were no grounds to overhaul the main findings. Wilmar's full response is represented in Annex 4. The table below presents a review of some of Wilmar's main responses.

Issue	Wilmar International Ltd (WIL)'s response	Comment Milieudefensie
Ownership of PT WSP	PT Wilmar Sambas Plantation (PT WSP) is not owned by us but is under our management.	In the introduction to its response, WIL states: "We believe in open and transparent business practices". This comment was integrated in the report. In its response, Wilmar International failed to clarify how closely PT WSP is connected to WIL. PT WSP is in fact 95% owned by two members of the Sitorus family, among which Mr. Martua Sitorus, founder, shareholder and CEO of Wilmar International.
Burning	The total area of 2,300 ha affected by fire, as claimed in your report is a gross misstatement.	The information on the area burnt is referenced to the Provincial Bappedal office in the main text. The figures quoted are estimates.
	In PT BCP, 90 ha of the acquired plantings were burnt.	The figures in WIL's response do not match those reported by the company's own field staff, namely Assistant Division Manager of PT BCP, Mr. Basuki Joya Jali (engineer), Mr. Bina Mitra (from Public Relations) and Mr. Iqbal Rayhan. In their testimonies which were recorded by the Sambas Police on 28 August 2006 they stated that 200 hectares of land were burnt in PT BCP of which 168 ha were (acquired) land clearing areas and 32 ha were burnt on land previously opened up by the former owner, PT Aldina. PT BCP claimed to have lost Rp. 1.3 billion (US$ 150,000), but according to Ir. Bambang Hero Seharjo, the acquired plantations were poorly maintained and largely unproductive.According to the Sambas District Forestry and Plantations Service, three villages (Mentibar, Tanah Hitam and Malek) were affected by fires covering a total area of 519 ha.
	Several spots of accidental fires affected about 50 ha in PT WSP	The agricultural officer of PT WSP, Mr. Joko Susilo, testified to the Sambas police that fires occurred on 70 ha of land.Dr. Bambang Hero Seharjo of IPB estimates that 800 ha of land in PT WSP was burnt.
	All the fires above were accidental or set by the carelessness of outside parties, which is not within our full control.	This issue is now subject to ruling by the courts. See also Chapter 3. Assistant Division Manager of PT BCP, Mr. Basuki Joya Jali (engineer), testified to the Sambas Policy on 9 November 2006 that fires occurred for 24 days between 12 July and 4 August 2006 in the land clearing areas of PT BCP as a result of forest clearing.
		Mr. Muhibbi Bin H. Nasir, Agricultural Officer of PT WSP, claimed that the fires came from the community rubber plantations on the border of the community area and the land recently cleared by PT WSP. The community in the area, however, insists it did not clear their rubber plantation area in that area in 2006.

	We went to great lengths to put out the fires day and night, prevent them from spreading, appeal to the surrounding communities not to carry out open burning and report fire outbreaks to Kalposek/local authorities. This is evidence of our commitment to the zero-burn policy.	According to the testimony of the Assistant Division Manager of PT BCP, Mr. Basuki Joyo Jali on 9 November 2006, the company does not have a fire watchtower; it only has 7 water pumps. According to the testimony of the Agriculture Officer of PT WSP, Mr. Muhibbi Bin H Nasir, BS in police's BAP on 26 August 2006, the company has no fire watchtower; it has only 2 water pumps. A serious zero-burning policy would require the companies to have a water pump for every 20 hectares of land. Based on the testimonies, PT BCP and PT WSP had opened up about 10,000 ha of land, this then means that around 500 water pumps for both concessions as well as fire watchtowers would be required.
Environ-mental Impact Assessments	For PT BCP, we have not initiated any operations except for the rehabilitation of plantings which were planted by the previous owners and some replanting in the burnt areas.	The testimony of Mr. Bina Mitra of PT BCP (public relations) and Fauzan bin Zainal Abidin (surveyor of PT BCP) on 16 August 2006 as in the police investigation report, says: "We have cleared about 600 ha" (in PT BCP).
	For PT WSP, the district government head (Bupati) had permitted us to initiate 500 ha of land clearing pending final approval of the EIA. For PT WSP, the district government head (Bupati) had permitted us to initiate 500 ha of land clearing pending final approval of the EIA to show our sincerity and seriousness in the project as evidenced in Bupati's letter of recommendation dated 20 April 2005.	The testimony of Joko Susilo and Bina Mitra (public relations) of PT WSP on 26 August 2006, in police investigation report said that: "We have cleared about 1,500 ha of land" (in PT WSP). At the time that PT WSP requested the land for a nursery and infrastructure (14 February 2005) and at the time of the district headDistrict Head's approval (11 May 2005), the company only had applied for land (Informasi Lahan) and held no Plantation Operation Permit no Location Permit, and no approved EIA report. At the time when PT WSP requested the land and the district permitted it to start land clearing (early 2005), there was no "pending final approval of the EIA". PT WSP's EIA report was not completed until May 2006! In fact, on 11 November 2005, all district governments were instructed by the provincial governor not to review AMDAL/EIA of companies that had already started land clearing. In a recorded interview, the Sambas District Head stated that he issued permits for only 20 ha to companies that only have a Land application Information (Informasi Lahan) document. Was PT WSP given preferential treatment merely by virtue of its "sincerity and seriousness"? According to Environmental Management Act No. 23 (art. 15, 18 and 19), the development of nurseries, road construction and demonstration plantings are all considered activities with environmental risks. The allocation of 500 ha of land by the District Head to PT WSP, without an approved EIA, was therefore irregular and in conflict with Indonesia's Environmental Management Act.
	For PT ANI, an Environmental Impact Assessment (ANDAL) had already been carried out by the previous owners and the EIA Commission had requested us to review the ANDAL in view of our intention to change the location of the mill there.	The previous owners (PT BEJ of the Sinar Mas Group) had a different estate management and different environmental and social policy. Hence, the impacts of Wilmar's activities cannot be assumed to be the same as that of the previous owner. This is illustrated by the land conflicts currently faced by PT ANI. A Wilmar representative, Mr. Haryono, suggested at the public meeting in Sambas of 11 January 2007 that the previous owner had not socialized its project with the local communities. The EIA for the relocated PT ANI mill at KM2 in Dusun Sentimok has not been approved by the EIA Commission but despite this, the mill is already in operation. How could this have happened? The Plantation Operation Permit (nr. 37/2005) issued to PT ANI on 10 March 2005 was issued by the district headDistrict Head in contravention with the Environment Act No.23.

	We strongly believe that our EIA reports are professionally carried out by accredited and competent consultants.	See the main text. Based on an anonymous member of the EIA Commission in Sambas, the consultancy company that developed the EIA report for PT WSP, CV Senayan, has a poor record. When reviewing the EIA report for another company (a company belonging to the Ganda Group: PT Sumatera Unggul Makmur), the commission observed that CV Senayan compiled EIA reports merely through "copy and paste" from a previous EIA report, namely that of PT WSP. In the main text of this report, it is explained that similar evidence of "copy and paste" was found in the PT WSP EIA report. For the PT WSP EIA report, the consultant most likely used an EIA report compiled for a Sumatra-based plantation company.
	Pertaining to your assessment of soil properties contributing to the spreading of fires and significant carbon emission (..) Soil per se does not have any relationship to the spreading of fire (..) The statement made is thus misleading and irrelevant.	We have observed that drainage of histosols is a standard management practice in Wilmar's oil palm plantations. Whereas drained histosols will not burn spontaneously, they are susceptible to increased oxidation (resulting in significant and faster carbon releases) and peat fires through fires,fires and such fires will result in significant/faster carbon release.Once drained, histosols will – through oxidation – slowly release carbon dioxide to the atmosphere. This happens with all drained organic soils in the world regardless of management.
Community relations and FPIC	On no account will the company clear land without prior consultation and due land acquisition process in the project area. We have carried out a series of socialization projects with the local communities and government/local officials prior to commencing any work.	On 11 January 2007, the chair of the public meeting in Sambas, Mr. Mas'ud Abdullah (member of the local parliament), reminded the participants that during a previous meeting on 29 November 2006 it was noted that the company is responsible for socialization. During the 11 January meeting, the village leaders of Senujuh, Semangak and Sepantai reiterated that the company had not socialized its plans despite the fact that the Wilmar companies in their areas had commenced operations. The Wilmar representative, Mr. Haryono, at the public meeting in Sambas of 11 January 2007 replied: "We from the management of PT ANI or Wilmar seriously apologize about the socialization system and we will fix this right away because there are also obstacles in conducting socialization (a basic form of consultation, eds.) and we have gotten a 12.500 ha Location Permit from the District Head and indeed securing the release of land has faced obstacles". And: "I also apologize that our management has not yet done socialization when activities had already commenced."During the 11January meeting, Wilmar committed to start the socializations as soon as possible. Other facts recorded on video: Mr. Pendis, traditional village leader in Dayak Kenayatan Banua Santaban stated on 20 April 2007 that PT WSP never socialized or informed the community about its plans and activities in their area. Mr. Arifuddin, village head of Desa Semanga stated 28 April 2007 that PT ANI had never socialized or informed the communities about its plans and activities in their area. The company visited the village in January 2007 and promised payment but until today no such promise has been fulfilled.See also Chapter 5.
	In cases where the communities are not supportive of the project, we will not proceed to develop the area.	The communities of Dusun Sasakm, Desa Sentaban and Desa Senujuh did not support the project of PT WSP but the companies proceeded to develop the area. In Senujuh, the activities were stopped only after villagers arrestedhindered the PT WSP workers from continuing their work. See also Chapter 5.
Forest conversion	In all the three companies, there are no land areas with rivers.	There are several major rivers running through PT ANI (Sambas River), PT WSP (Bantanan River, Tamapanan) and PT BCP has several smaller tributaries of Tamapanan River. See concession maps elsewhere in this report, and also the map attached to the Plantation Operation Permit (IUP) issued to PT WSP on 13 March 2006.

	We do have areas of mostly shallow peat but not to the extent of 10,000 ha of peat swamp forest as claimed.	The figure quoted is directly derived from data and maps of the PT WSP and PT BCP EIA reports and refers to the category "hutan lebat" (thick forest). See also point 4 under Environmental Impact Assessments on qualifications of the EIA assessors. In addition, illegal logging and deforestation is taking place in the PT ANI concession, even though the previous owner cleared most of the land. Like PT WSP and PT BCP, the area of PT ANI contains large areas of peat swamps.
	As an indication of our commitment, we intend to collaborate with the Zoological Society of London on conservation buffer zones and research in one of our estates in Sumatra.	The Zoological Society of London had already been collaborating with the previous owners of PT Asiatic Persada (Pacific Rim and thereafter Cargill) on the tiger conservation project for several years.
	Contrary to your report, we will only carry out oil palm development on APL land (Areal Pengunaan Lain –Area designated for uses other than forestry) and not on primary rainforest or High Conservation Values (HCV) area.	Based on the Land Information document (Informasi Lahan) signed by the district headDistrict Head of Sambas dated 2 March 2005, part of the land to be converted by PT WSP is Production Forest with conversion status (HPK, Hutan Produksi Konversi).Based on the District Regulations of the West Kalimantan Province (Peraturan Daerah Provinsi Kalbar) number 5/2004, part of the land to be converted by PT BCP, PT WSP and PT ANI comprises Production Forest (HP, Hutan Produksi) and or Production Forest with conversion status (HPK, Hutan Produksi Konversi). Permission for the conversion of the HP and HPK forestlands in Sambas District has to be sought by the District Head from the Ministry of Forestry. The Ministry of Forestry has not approved any such request for approval. Any land clearing activity in the HP and HPK areas is therefore illegal, according to the Land Use Act. This report does not claim that the forests in the three concession areas are primary rainforests or High Conservation Value areas. It highlights potential conservation values (endangered species, legal land status, social values). This study notes that Wilmar has not conducted or commissioned an HCVF assessment of these forests but merely commenced with forest clearing. Furthermore, recently acquired information from the District Head Office, the Forestry and Plantations Service (Dinas Kehutanan dan Perkebunan) revealed that PT ANI, PT WSP and PT BCP have since 2005 cleared forests without having secured Timber Harvesting Permits (IPK, Ijin Pemanfaatan Kayu). Based on the Forestry Act (UU No. 41, 1999), article 50, paragraph 3, point e, cutting trees or harvesting forest products without harvesting permits equates to illegal logging.
Comments on Wilmar's response to public outcry over the company in the local media	We are indeed surprised by your comments made in this paragraph regarding the huge outcry on our practices, within government circles and the media. If these were true, we would not be still operating in the Sambas area. In reality, the general local acceptance of our presence and projects in Sambas attest to our credibility as a responsible plantation owner/developer.	On 11 April 2007, the Deputy Minister of Environment in Jakarta ordered PT BCP and PT WSP to stop all physical activities on the ground (nursery, land clearing, planting of seedlings) and prepare for an environmental audit.The Sambas local parliament agreed to set up a "Panitia Khusus", a special committee to investigate and question the policy of the Sambas District Head in relation to the licensing of PT BCP, PT ANI and PT WSP.
	We would like to take this opportunity to clarify that we do have official spokesmen for the company who will attend to all matters concerning the company's business and operations.	Newspaper reports quoting – apparently unofficial company spokesmen and non-existing Wilmar employees – have been removed from the report.

Comments on Wilmar as a whole	Your comments concerning our modus operandi in our other project sites are unjustified and unsubstantiated. With regards to PT Jatim Jaya Perkasa (JJP), the company was sold a few years ago because it was not profitable.	As noted in the main text of this report, the unprofitable company PT JJP was sold by Wilmar's founder, Martua Sitorus, to companies owned by his wife and his brother. In the introduction of its response, WIL states: "We believe in open and transparent business practices." After the sale of PT JJP Wilmar refused to make public to whom the company was sold.
	We have been operating in Indonesia for 15 years, and if indeed we have bad practices as you alleged, surely the rest of our plantations would have received considerable bad press in Indonesia over the years and not just for the JJP case.	This statement suggests that WIL is fully aware of the legal requirements to be met in Indonesia. Thus, WIL would have been aware that the Plantation Operation Permits (IUPs) issued by the District government to WIL were irregular and illegal because they were issued without approved Environmental Impact Assessments. Even prior to the Group's listing, a fair number of bad press reports on Wilmar-related plantation companies have been published by the media throughout the years. Wilmar did not respond to reports of alleged burning and social conflicts until it was confronted with such reports via its investors.

Response to Wilmar's second reply dated 9 July 2007:

The order to stop all physical activities in PT WSP and PT BCP	We have contacted the provincial DOE on receiving the letter and been advised to stop major activities such as further land clearing to enable an environmental audit to be carried out (..). We will continue to respect the official request and await the outcome on this matter.	Upon contacting the provincial DOE, they informed us that both Wilmar companies have yet to conduct the environmental audit.
	All major activities had been discontinued since. In PT BCP, routine activities in the nursery that are required to maintain the polybag seedlings for the rehabilitation exercise, as mentioned in our previous reply, will continue until further notice.	Nursery maintenance is a physical activity but the DOE allows some basic maintenance.
	For your information, workers and the local communities/villagers in PT WSP had demonstrated and protested to the local government and the DPRD (local council) demanding that the work be continued as their livelihood had been affected	The Indonesian Labor Law (Nr.13/2003) requires the company to continue paying salaries if the workers are willing to work, but unable to do so if the company is at fault due to circumstances it could have prevented.Wilmar could have prevented the current situation by not applying for and not accepting for a Plantation Operation Permit when it did not yet have an approved EIA.
New burning sites	We again take strong exception to your allegation on land burning in Semanga. We would appreciate if you could double check the actual situation. For your information, the land alluded to is not on our property but belongs to another plantation company!	Burning of land/forest in Rayon Utara was documented with GPS coordinates (49N0340838 and UTM 0153873; see also Figure 6). Overlay of the coordinates with Google Earth shows that the fire occurred at the border of PT ANI clearings. Comparison of this site with the 2005 BKI map shows that the site is definitely inside the PT ANI area.

Removal of forest products without IPK	We are fully aware of the regulations concerning this matter. None of our estate vehicles nor contractors' assisted locals with the transportation of any timber produce from our project area as alleged. Our land clearing areas are under APL (Areal Pengunan Lain-Area for other uses) with no timber of commercial value. In the absence of timber of commercial value and as long as no timber is being extracted for commercial purposes, there is no requirement for IPK.	Ministerial Decision Nr. 382/Menhut-II/2004 requires any company that removes forest products from production forest, conversion forest and APL to obtain a Forest Product Removal Permit. Evidently, Wilmar has not obtained such permits, which are a prerequisite for the issuance of a Plantation Operation Permit. Timber and rattan removals from the PT ANI area were recorded on photos by us. In April, an interview was recorded with a villager harvesting trees in Bukit Jambol who stated that he used the truck of the PT ANI contractor PT MEG for the transportation of the sawn timber he had collected. See also picture 5, illustrating the transportation of a large volume of rattan from the PT ANI area.
Clearing of land in river buffer areas	We have not encroached on the larger Sambas River and major tributaries in our project areas (..). It is our practice to set aside buffer zones for major streams within our project areas which flow into rivers or its major tributaries.	We have documented with GPS coordinates new clearings all the way up to the Sentimok River in the PT ANI area (near the new CPO mill). This river is 15-20 m wide, an thus a major tributary of Sambas River.
	In PT. Ani Kumpai, the land beside 2 small streams <1 m width which was dry or with shallow water were cleared by the contractor during the dry season to facilitate drainage work. With the drainage system constructed, these streams especially during the wetter season will flow into Sei Anas and Sei Senapit.	Sei Anas and Sei Senapit are rivers in Bengkayang District, not in Sambas District.
Gravel and sand mining in PT ANI	The quarry in the Semanga village is not within our Izin Lokasi. It is not operated by PT ANI and we understand that it belongs to some outsiders/local villagers.	District Head Decree Nr 46/2006 stipulates that Semanga village is within PT ANI's Location Permit. Further research will be required if this gravel is being used for the development of PT ANI's infrastructure.
Benlate	Contrary to your allegation, we do not have stock of Benlate in PT BCP. We have a standard operating manual on Environmental Protection and Management System to ensure the safe handling and use of approved chemicals in the plantations and do not use any banned chemicals as a matter of policy.	We did not allege that PT BCP has a stock of Benlate fungicide but observed that this agrochemical is mentioned in the company's records of pesticide and fertilizer use. We requested a guarantee that no banned pesticides are used by Wilmar and consider the matter closed.

10. Recommendations

Milieudefensie, Yayasan Gemawan, KONTAK Rakyat Borneo and Walhi Kalbar recommend the following to Wilmar and its stakeholders:

Wilmar

- Until the relevant legal authorities have issued approval of the Environmental Impact Assessment reports, Wilmar's management should halt all nursery, land clearing and plantation development activities in all its new developments. To bridge the period of time until all relevant legal requirements are met, Wilmar should continue to pay salaries to permenent workers of PT WSP and PT BCP if they are willing but unable to work. In view of the fact that over 95% of these companies workers are hired on temporary contracts only, a fair compensation scheme for these workers has to be put in place by the company.

- Wilmar must assure that the quality of its Environmental Impact Assessment reports cover relevant assessments of applicable laws, policies and risks. The Environmental Management Planning and Monitoring reports should link directly and fully to the impact assessment report. If Wilmar is to meet international best practices, it would fully incorporate the RSPO Principles and Criteria in the EIA format, and implement these accordingly.[140]

- Wilmar should withdraw its operations where local communities refuse oil palm development or set conditions that the company does not wish or intend to meet. Damages to land and the resources on it caused by the companies should be compensated in a form that is agreeable to the affected communities, including physical rehabilitation of disputed land already cleared. Wilmar's commitment to respect customary rights of local communities and to implement its Community Development Programme should result in tangible results on the ground, such as providing clean water for communities whose drinking water sources have been affected by plantation development and restore disputed lands that the company has destroyed.

Shareholders

- As the only significant shareholder in Wilmar International, as co-owner of several Wilmar companies in West Kalimantan, as a leading manufacturer of palm oil and as a member of RSPO through its European office, Archer Daniels and Midlands Company (ADM) shares responsibility for the gaps between policies and practices identified.

Banks

- Banks having a relationship with the Wilmar Group and which were not aware of this case should review and revise accordingly the effectiveness of their due diligence and monitoring mechanisms.

- Banks should have in place publicly accessible complaints mechanisms so as to assist them in understanding and addressing the impacts of their financial services on the ground.

- No market claims on sustainability from the Wilmar Group should be accepted by commercial and semi-commercial banks until RSPO has put in place a rigid verification mechanism and until Wilmar's palm oil has been certified according to this mechanism.

Buyers

- Buyers in the food and biofuel chains having a relationship with the Wilmar Group which were not aware of this case should review and revise their purchasing policies accordingly.

- No market claims on sustainability from the Wilmar Group should be accepted by buyers in the food and biofuel sectors until RSPO has put in place a firm verification mechanism and until Wilmar's palm oil has been certified according to this mechanism.

RSPO and auditors

- RSPO should both accelerate the national interpretation process of the P&C in Indonesia and assure that the national standard at least covers all relevant Indonesian laws and policies.

- RSPO should continue to create a reliable verification system that prevents a company group, such as the Wilmar Group, to create a positive image in the marketplace as a result of certifications of just a few subsidiaries whereas malpractices as observed in this study remain unaddressed.

- RSPO should continue to formulate clear terms and conditions for members' off-product claims, not only in the marketplace but also in the producer countries/regions.

- Auditors should be prevented from competing by reducing time budgets and expertise to the lowest possible cost. In view of the great complexity of the issues on the ground, it is crucial that auditors have adequate time available to them to conduct thorough fieldwork, interviews, checks and double-checks.

Governments

- The Indonesian government should strengthen the legal rights of local communities (potentially) affected by oil palm plantation development.

- The district government of Sambas should withdraw any permits allocated to plantation companies, including those issued to Wilmar, that did not meet legal requirements at the time of issuance.

- The Ministry of Environment should assure that the environmental audit of PT WSP and PT BCP is conducted with extreme scrutiny. If and when Wilmar's revised EIA reports are submitted for review, the EIA Commission should thoroughly scrutinize content and quality, not only in Sambas but also in other districts.

- The Indonesian government should reconsider its policy to release the plantation industry from area limitations for both listed and unlisted companies. It should take into account how former legislation has been ignored and misused and instead steer the industry to deliver high value quality products, instead of bulk communities to be delivered by a few mega-sized corporate groups

- The local parliaments (DPRD) of Sambas and Seruyan are strongly encouraged to set up a special committee (*panitia khusus*) to investigate prudence in the role of the District Head and the way in which plantation companies in Sambas have been and continue to be awarded irregular licenses.

- Members of the local parliament of Sambas are to be applauded for their serious efforts to scrutinize the district government and Wilmar's practices, in their effort to promote responsible development in the district.

- Local government bodies and/or the local parliament should consider adopting binding regulations that legally require plantation companies to meet international best standards such as those set by RSPO.

- Law enforcement is crucial for successful implementation of RSPO so as to prevent the accumulation of "historical baggage" that would prevent the companies from becoming certifiable and thereby gain access to high value markets.

- The Indonesian Government, notably the Provincial Environment Management Department (Bappedal) has taken a courageous and important step towards relieving Indonesia, Malaysia and Singapore from the annually occurring haze and smog. The public prosecutor needs to take the three Wilmar cases to the highest level to assure that all relevant facts are made public.

- The Indonesian Ministry of Environment is encouraged to undertake a thorough review of the quality of and procedures by which Environmental Impact Assessments are conducted.

- The Dutch government, the European Union and other governments that aim to address global warming, biodiversity loss, human rights violations, consumer rights and good governance should adopt legally binding restrictions to investment in and subsidizing off the use and marketing of biofuels/edible oils from unsustainable sources.

- The Dutch government, the European Union and other governments should prohibit, by law, false and misleading market claims by companies aiming to *greenwash* non-sustainable practices.

Local communities

- Local communities do not need to accept oil palm plantations that are being forced on them; they do not need to let themselves be divided by the companies.

- So long as they defend their land and their rights, local communities in Indonesia can often meet their own immediate and longer-term needs. Local communities in Kalimantan deserve more recognition for their contributions to global commodity markets and global conservation goals.

Post script

In this postscript, some recent developments are highlighted:

BIDCO in Uganda
On May 24, it was announced that the cabinet of Uganda had decided not to issue the permits to Oil Palm Uganda, Wilmar's plantation company under BIDCO, to convert several forest reserves into oil palm plantations in Bugala Island:

"*Bidco pointed out that licensing one of its subsidiary companies, Oil Palm Uganda, would jeopardize the loans they are processing with various financing agencies due to negative publicity the project has suffered,*" environment minister Maria Mutagamba wrote in a letter to the Attorney General. Consequently, she wrote, the Government cancelled the license. "*We are not interested in forest reserves,*" Kody Rao, the manager of Palm Oil Uganda was quoted as saying. "*What we need from the Government is land and we are still waiting for that land.*"[141]

While a success for conservation has been achieved in Uganda, sadly at the cost of several lives during protests regarding the very similar Mehta case, the question that now emerges is how and where the land bank that was promised to the company will be identified and acquired.

Orangutan from the PT ANI area
Shortly after Wilmar's Annual Report for 2006 was released, which claimed that all of the palm oil from the Group's oil palm estates is sustainable, a young orangutan was found in the village of Tengguli, just a few kilometers away from PT ANI. It was captured by an illegal logger working in the PT ANI area in 2005.

Ganda Group fills the gaps left over in Sambas
In 2006, the company group run by Martua Sitorus' brother, Ganda, obtained initial rights to concessions for 3 oil palm plantations and one area for castor oil production. This shows that Mr. Ganda, a former Wilmar employee, is closely lining up with the Wilmar Group. For the communities in Senujuh sub-district, it comes as a shock to learn that one of the companies of the Ganda Group, PT Sentosa Asih Makmur, now has obtained initial concession rights over all lands traditionally owned by the community of Senujuh. In February 2007, this community expressed clearly and soundly to Wilmar that is does not accept oil palm on its land. Little did they know – because no one told the community – that in April 2006 the District Government had already handed their land over to Mr. Ganda.

Governments countering "NGO smear campaign"
In May 2007, the Asian media reported that the governments of Malaysia and Indonesia had unfolded their plans to expose, what they consider to be "the lies" spread by NGOs in the market place about the impacts of oil palm expansion in Indonesia and Malaysia. This campaign is related to the announcement of July 2006 that Indonesia and Malaysia had agreed to allocate 500,000 euro of public funds to pay the fees of a Public Relations Consultant to counter campaigns launched by NGOs against palm oil production in the two countries.[142]

In June 2007, government representatives from Malaysia intend to demonstrate to the United Kingdom, the Netherlands and Belgium, that oil palm expansion in Malaysia and Indonesia is "eco-friendly":

- Plantation Industries and Commodities Minister Datuk Peter Chin Fah Kui said many misleading allegations on palm oil had been widely publicized in the US and Europe, undermining the com-

modity's image worldwide as a "green" oil. "*These allegations include environmental damage, deforestation, climate change, biodiversity, the slaughtering of orangutans as well as destruction of their natural habitats to open plantation land. This is not true and it is incumbent upon the industry to provide real information on government policy and plantation practices such as zero burning and no destruction of natural forest,*" Chin told reporters in Kuala Lumpur yesterday (..) Malaysian Palm Oil Council chief executive officer Tan Sri Dr Yusof Basiron said international NGOs had misrepresented the facts and were sowing doubts about palm oil in the minds of consumers.[143]

- Indonesia's Agriculture Minister Dr Anton Apriyantono said that "*the allegations by NGOs were baseless because Indonesia does not destroy its natural forest and they only plant on land already earmarked for agriculture.*"[144]

- "*These anti-palm oil campaigns affect both Malaysia and Indonesia because we are the main producers in the world market,*" Chin told The Star in a tele-interview here after his meeting with Dr Anton. "*These campaigns are spreading very fast. Those behind such campaigns are resorting to lies and distorting issues. "These activists are harping on issues that are sensitive to the Western population. They want to stir up emotions so that consumers there would boycott our palm oil and the downstream products. "Their campaigns are getting widespread, affecting restaurants, supermarkets, food outlets and households throughout Europe and North America. "We will show them proof that we carry out our projects in an eco-friendly manner,*" he said.[145]

European concerns over the environmental sustainability of palm oil production apparently impacted exports of palm oil to the European energy producers:

- Minister Chin from Malaysia said the numerous environmental campaigns in Europe last year had halved the usage of palm oil for electricity generation to 500,000 tonnes.[146]
- "*Direct burning of palm oil for power generation in Europe has reduced by 50 percent mainly because of environmental concerns,*" said M. R. Chandran, an independent analyst and a former head of Malaysian Palm Oil Association.[147]

Dutch government monitoring body damns biomass subsidy scheme

The significant drop in European palm oil imports for electricity generation is also related to evaluation and recalibration of relevant European government policies and subsidies, such as the Dutch "MEP subsidy for green electricity".

In a critical evaluation of the Dutch "MEP subsidy scheme" for the promotion of green electricity generation, the Dutch government watch dog (*Algemene Rekenkamer*) concluded, among other, that:

- the MEP subsidy had not adequately take into account other policy targets, such as on biodiversity and that this was intentionally arranged this way;
- Excessive subsidies were granted, in some cases;
- The subsidy line was uncontrollable due to the absence of a subsidy ceiling;
- Monitoring of subsidies allocated was insufficient;
- The 2010 target, i.e. to assure that by this year 9% of all electricity generation in the Netherlands will be based on sustainable biomass, is surrounded by uncertainty.[148]

Annex 1.
Selection of relevant laws and regulations

Activity	Laws and regulations	Maximum punishment
Burning forestland systematically and with intent to clear land for plantation development	Article 41 clause (1) of Regulation Nr. 23 (1997) on Environmental Management	- 10 years imprisonment - Fine of at least Rp 500 million
	Article 78 clause (3) Regulation Nr. 41 (1999) on Forestry	- 15 years imprisonment - Fine of at least Rp. 5 billion
	Article 48 clause (1) Regulation Nr. 18 (2004) on Plantations	- 10 years imprisonment - Fine of at least Rp. 10 billion
Harvesting of forest produce without timber harvesting permit *(Ijin pemanfaatan kayu*, IPK)	Article 78 clause (3) Regulation Nr. 41 (1999) on Forestry	- 10 years imprisonment - Fine of at least Rp. 5 billion
Swapping of land that already is owned by other people.	Article 385 KUHP	- At least 4 years imprisonment
Cultivating oil palm without Plantation Operation Permit (*Ijin Usaha Perkebunan*)	Article 46 clause (1) Regulation Nr. 18 (2004) on Plantations	- At least 5 years imprisonment - Fine of at least Rp. 2 billion.
Use of Forestland for oil palm cultivation.	Article 45 of District Regulation on Land Use in Sambas (2002)	- 6 months imprisonment - Fine of at least Rp. 500,000
Clearing land within 100 meters of main rivers and 50 meters of sub-rivers	Article 78 clause (3) Regulation Nr. 41 (1999) on Forestry Decision No. 32/1990 about Organising Protected Areas and No. 145/kpts-II 1986 on Regulation for Forestland Releases to Develop Agricultural Estates.	- 15 years imprisonment - Fine of at least Rp. 5 billion
Burning of previously cleared land without sustainable management of natural resources, especially affecting protected species.	Article 21 Ministry of Agriculture Regulation Nr. 357/Kpts/HK. 350/5/2002 Directing the Licensing of Plantation Companies.	- One warning; and withdrawal of the Plantation Operation Permit if the warning is not addressed.
Undertaking plantation development, such as land clearing, nursery and planting without EIA Certificate.	Article 25 clause (5) Regulation Nr. 18 Year 2004 on Plantations.	- Withdrawal of the Plantation Operation Permit (IUP)
Any plantation company failing to: - Resolve the title to land within at most 2 years of the issuance of plantation permit (IUP); - Realize development in line with the national or regional macro plan for plantation development; conduct land clearing without fire; - Manage the plantation professionally, transparently, participatively, efficiently and effectively; - Manage natural resources sustainably; - Report any diversification of the plantation business, for example into agro-tourism, to the relevant agency and obtain a diversification permit; - Establish and empower plasma or cooperative schemes; - Report the plantation's business progress on a quarterly basis.	Ministerial of Agriculture Decree No. 357/Kpts/HK.3511/5/2002	- Withdrawal of the Plantation Operation Permit (IUP)

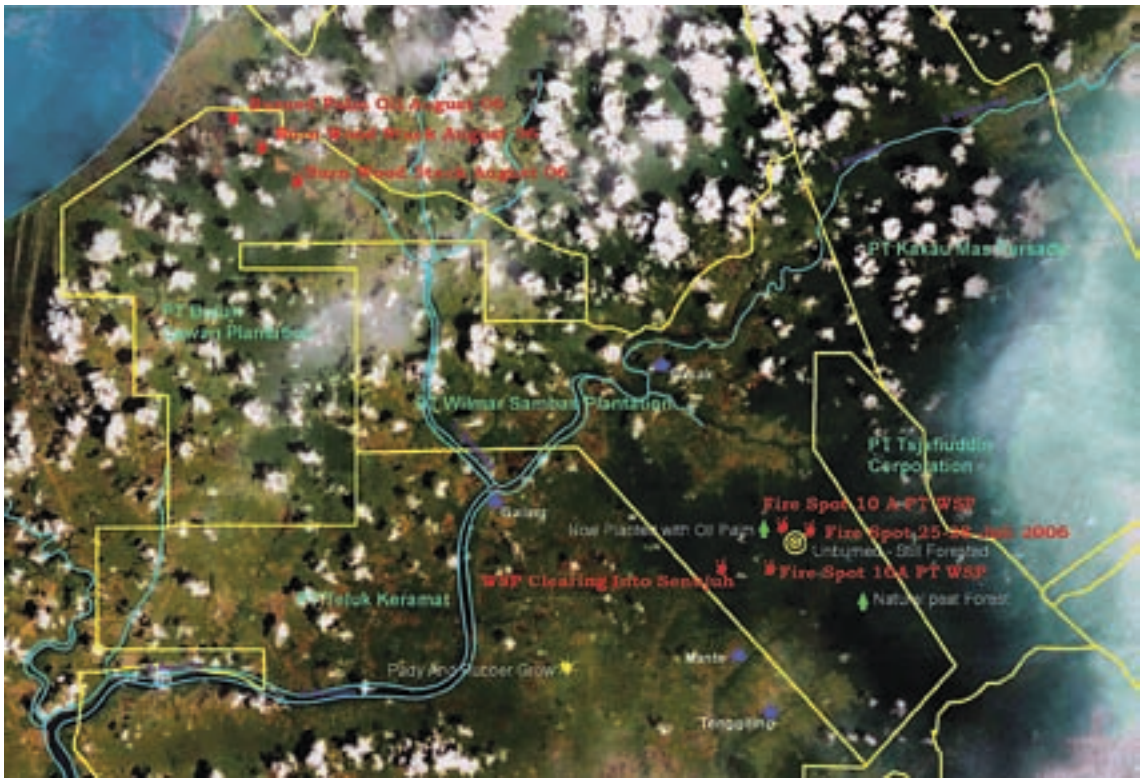
Annex 2.
Chronology of main events: from grassroots to the market

Time	Activity	Response
2004	NGOs hear rumors that Wilmar is acquiring 11 plantation companies in West Kalimantan.	
2005	PT WSP, PT BCP and PT ANI establish their presence in Sambas District. Land clearing begins.	
December 2005	A villager of Senujuh notices that PT WSP is engaged in land clearing without the knowledge and permission of the community. He reports the matter to the Village Head, and via the Village Secretary the community requests the companies to stop its activities in the community forest.	PT WSP does not respond to the villagers' request and continues land clearing.
January 2006	The community of Susun confisquates heavy equipment and an excavator used by PT WSP to clear land. The community punishes the company through hukum adat, traditional law.	PT WSP stopped its operations and paid a traditional fine of Rp. 75 million (US$ 8,500). In December 2005, PT WSP also assisted in the construction of a road in the village but relations remained tense as a result of intimidation of the village leader by the police, armed forces and company security personnel.
19 March 2006	The community of Senujuh stops the land clearing activity by 31 workers of PT WSP and confisquates 1 excavator and 5 chainsaws used by the company to open up land. Together with members of the local parliament and the forestry department, village officials write a letter to the company to remove its equipment from Senujuh and to pick up its workers.	PT WSP manager Agus Pamungkas acknowledges that the workers were unaware of the border between Senujuh and Sijang. The manager apologizes and a traditional sanction set by the community, approximately US$ 550, is paid. The equipment and workers are released by the community.
May 2006	Consultants from IFC visit Wilmar in West Kalimantan to audit the company's "E+S" performance	As far as we are aware, no major NGOs in West Kalimantan were informed about the audit, no NGO inputs were given.
July – August 2006	Land fires break out in the area of PT BCP in Mentibar and Tanah Hitam on 12-13 July 2006 and on 17 and 25-28 July 2006 in the area of PT WSP in Sijang.	Three local NGOs (Gemawan, Walhi Kalbar and KAIL) and the provincial Bappedalda office push for the burning cases to be taken up in a legal process.
28 August 2006	About 20 NGO activists and community members submit a notification to the governor of West Kalimantan calling upon the authorities to no longer disregard the environmental destruction and haze problem but instead hold the companies responsible for the fires in their areas.	An investigation team is set up by Bappedalda, the District Police and public prosecutor. Upon finding that PT WSP and PT BCP have burnt systematically and with intent, the EIA reviews of both companies are suspended in September.
November 2006	The governor of West Kalimantan orders district governments not to process EIA reports from companies that have already started activities in the field.	Land clearing in PT WSP and PT BCP continues.
20 November 2006	IFC publishes claim that Wilmar meets most RSPO Principles and Criteria.	On 20 December 2006, the IFC Board approves the new finance package for Wilmar International.

21 November 2006	Control Union claims at RPSO RT4 that "Wilmar meets 90% of the RSPO P&C"	The presentation of CU meets criticism from the RT4 participants. In January 2006, Wilmar International is granted the Green Gold Label for Chain-of-Custody.
11 January 2007	A multi-stakeholder meeting is held and facilitated by Commission B of the Sambas district parliament. Among the representatives are members of Commission A of the district parliament, the Investment Coordination Board (BKI), the field manager of PT WSP, the police, the local environmental, mining and energy service, Gemawan and the village leaders of Senujuh, Semangak and Sepantai. The villages of Sidodadi and Sepantai clarify why they stopped the operations by PT WSP in their areas. It is emphasized that Wilmar had never socialized its project with the communities and disrespected local customary traditions.	Most critical questions put forth to PT WSP are immediately answered by the government (BKI, Head of Sambas Police) representatives. A comment by the head of the Sambas Investment Coordination Board, engineer Uray Santosa, meets the astonishment from community leaders and NGO representatives when he clearly states that PT WSP already had all legally required permits in place for its investment activity. A legal policy officer of the Sambas District Head office, Rasyidin SH, stated that PT WSP had all legally required permits.
26 January 2007	Students from Sambas wave banners during a demonstration at Bundaran Tanjungpura University in Pontianak calling for a stop to the aggressive expansion of oil palm plantations in Sambas District. They insist that West Kalimantan Police should fully prosecute Wilmar for burning land and forest in Sambas District.	The district government accuses the students of seeking a scapegoat in the oil palm issue in Sambas.
2 and 13 February 2007	On 2 February the communities of Senujuh with support from village leaders gather signatures for a letter calling for a stop to oil palm development in Senujuh. The statement is signed by 516 villagers, an overwhelming majority. On 13 February, community members from Senujuh participate in the socialization meeting with PT WSP in the District Head office in Sambas. The community representative Hendri from Nante reads aloud the formal village statement calling for a stop of PT WSP's activities in Senujuh. In the statement, Senujuh calls for the withdrawal of District Head Decision Nr. 99 (2006), which issues the Location Permit to PT WSP.	The Wilmar representative states that the company will respect the choice of Senujuh but hints that the company may not meet future request for smallholder plots once and when they realize that other communities have begun to prosper.
14 February 2007	On February 14, the local NGO Gemawan and the "Students Movement To Stop Oil Palm in Sambas" stage a demonstration in front of the public prosecutor's office to assure that the burning case in taken to the highest levels.	A represantative of the prosecutor's office, Yusrin Nicoriawan.SH comments *"Of course we are committed to win the case, even if we need to take the case to the higher courts".*
20 February 2007	A pro-oil palm demonstration is staged by 5 villagers from Paloh, Galing and Telok Keramat at the District Head office and local parliament. They support Wilmar's business in their areas.	
11 April 2007	The Deputy Minister of Environment in Jakarta instructs PT BCP and PT WSP to stop all activities in the field until EIA procedures are completed.	A pro-oil palm demonstration staged by 300 villagers from Sijang (Galing sub-district) put forth their aspirations to the local parliament. Nursery management in PT BCP and PT WSP continue.

April – May 2007	Milieudefensie sends main draft findings of this study to Wilmar International.	Wilmar responds on 25 April 2007 but does not mention the letter of the Ministry of Environment. Milieudefensie seeks further clarification from Wilmar. In May 2007, Wilmar's 2006 Annual Report starts to circulate in the marketplace. Wilmar claims that all of its plantations are sustainbly managed and the palm oil from its estates is fully traceable.
May 2007	Wilmar's Annual Report 2006 starts to circulate in the marketplace. In the report, Wilmar claims that all of its plantations are certified as being sustainbly managed and the palm oil from its estates is fully traceable.	...

Annex 3.
Overlay of the Wilmar areas with Google Earth



Dark green: peat swamp forest, light green rice fields and rubber plantations. The yellow line represents the approximate boundaries of the approximate and preliminary concession boundaries.

Source: Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006; Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witness statement by Dr. Bambang Hero Seharjo, 18 September 2006; Google Earth (approximate date of image 2002-2003); BKI Dearah Sambas concession map (2005).

Annex 4.
Wilmar's response to the main draft findings of this study

25 April 2007

As a responsible corporate citizen, we strive to ensure the well-being of the communities and environment that we operate in through environmentally and socially responsible practices in accordance with national and international standards. Our Corporate Social Responsibility policies as well as our membership in the Roundtable for Sustainable Palm Oil (RSPO) reflect our commitment to sustainable palm oil production and use. We believe in open and transparent business practices that are based on ethical values and respect for the community, employees and environment. With this, we can ensure sustainability of our entire business operation, maintain the local licence to operate in our project areas and reduce the environmental footprints of our operations.

As such, we take strong exceptions to your findings and wish to correct them to avert the perpetuation of misconception of our effort and commitment towards sustainability of oil palm development and production.

With regards to the companies mentioned in your report, we wish to clarify that PT Buluh Cawang Plantation (PT BCP) and PT Agronusa Investama (PT ANI) are existing plantation subsidiaries while PT Wilmar Sambas Plantation (PT WSP) is not owned by us but is under our management.

Referring to the specifics of your findings, our replies are as follows:

1. **Land clearing by use of fire.**

   We have a zero-burning policy in place and this is also required by the Indonesian law. The total area of 2,300 ha affected by fire, as claimed in your report is a gross misstatement. Our records, together with those from the investigating team from the Province comprising the Department of Agriculture, Department of Environment and Forestry indicated that several spots of accidental fires affected about 50 ha in PT WSP. In PT BCP, 90 ha of the **acquired plantings** were burnt as evidenced by the Sub-district Government Head's (Camat) report to the Regional Government (Pemda) of Sambas whereas in PT ANI, fire occurred in 65 ha of **new plantings**. **Note that most of the fire for PT BCP, PT WSP and PT ANI occurred in our planted area and we certainly will not set fire to our plantings.**

   All the fires above were accidental or set by the carelessness of outside parties, which is not within our full control. The situation could have been exacerbated by drought which resulted in the biomass in our fields being more fire-prone. Owing to the zero-burn technique, there is substantial biomass left in the field from the proper stacking and windrowing of debris from land clearing. Due to the accidental fire, we went to great lengths to put out the fires day and night, prevent it from spreading, appeal to the surrounding communities not to carry out open burning and report fire outbreaks to Kalposek/local authorities. **This is evidence of our commitment to the zero-burn policy.**

   We have tabled all reports to the police and local authorities on these accidental fires and also called upon the local chieftains/key witnesses to testify for us in the ongoing cases. Pending the resolution of the court hearing, you comment on this matter will be *sub judis.*

2. Environmental Impact Assessments (EIA).

Consultants had carried out the EIA for PT WSP and PT BCP upon acquisition of the said project areas. For PT BCP, we have not initiated any operations except for the rehabilitation of plantings which were planted by the previous owners and some replanting in the burnt areas. For PT WSP, the District Government Head (Bupati) had permitted us to initiate 500 ha of land clearing pending final approval of the EIA to show our sincerity and seriousness in the project as evidenced in the Bupati's letter of recommendation dated 20th April, 2005. Out of the 500 ha, 100 ha each will be set aside for nursery and infrastructure, 50 ha for offices/warehouse and 250 ha for planting. We have commenced planting since July 2006 to fulfill our obligation as stipulated in the Bupati's letter of recommendation (Attachment 1). For PT ANI, an Environmental Impact Assessment (ANDAL) had already been carried out by the previous owners and the EIA Commission had requested us to review the ANDAL in view of our intention to change the location of the mill there. This is in progress.

Concerning your assessment of the EIA reports, we strongly believe that our EIA reports are professionally carried out by accredited and competent consultants. Pertaining to your assessment of soil properties contributing to the spreading of fires and significant carbon emission, we emphasise that we are an established plantation company with a Research & Development department that is knowledgeable in all aspects of best management practices in oil palm cultivation. Soil *per se* does not have any relationship to the spreading of fire. We are competent in managing soils, including Histosols (organic soils) and potentially acid sulphate soils, in a sustainable manner and it is in our interest to ensure this. Our R&D department keeps abreast with the latest development in soil management and oil palm cultivation. The statement made is thus misleading and irrelevant. Furthermore, the smooth implementations of the projects negate your comments on land rights conflicts. Kindly also refer to Issue No 3 on this topic.

3. Community relations and Free, Prior and Informed Consent.

Your comments are grossly inaccurate and misleading. We stand firmly by our policy of improving community welfare and relations. On no account will the company clear land without prior consultation and due land acquisition process in the project area. We have carried out a series of socialisation projects with the local communities and government/local officials prior to commencing any work. **We have documentary evidence of this process and are fully aware of our responsibility towards the local communities. Goodwill of the communities affected by our operations is a critical success factor in any new project.**

Minor disagreements and conflicts or disputes among villagers/villages in and around our plantation projects do sometimes arise and we spend much time and effort to assist in mediation as and when required. One instance of vague or unclear boundary between villages is noted and we have to defer land compensation pending official demarcation of the boundary. To facilitate the resolution of this issue, we are even funding a survey by the survey department as the local government does not have the necessary budget for this process. In cases where the communities are not supportive of the project, we will not proceed to develop the area.

4. Forest Conversion

In all the three companies, there are no land areas with rivers. Your comment on this matter is thus not relevant. We are fully aware and committed to the need for river buffer zones or riparian reserves. As an indication of our commitment, we intend to collaborate with the Zoological Society of London on buffer zones conservation and research in one of our estates in Sumatra.

Contrary to your report, we will only carry out oil palm development on APL land (Areal Pengunaan Lain –Area designated for uses other than forestry) and not on primary rainforest or High Conservation Values (HCV) area. We do have areas of mostly shallow peat but not to the extent of 10,000 ha of peat swamp forest as claimed. We are also fully aware of the RSPO principle 7.3 on this.

5. Comments on Wilmar's Response

We are indeed surprised by your comments made in this paragraph regarding the huge outcry on our practices, within government circles and the media. If these were true, we would not be still operating in the Sambas area. In reality, the general local acceptance of our presence and projects in Sambas attest to our credibility as a responsible plantation owner/developer. We would like to take this opportunity to clarify that we do have official spokesmen for the company who will attend to all matters concerning the company's business and operations. Notwithstanding your assertion to the contrary, we still maintain that any statements made, other than by them cannot be interpreted as company policy or practice.

1.1 We will only work within the Izin Lokasi. In this case, the Inti:Plasma ratio given is 85:15 i.e. 85% Inti and 15% Plasma and not as interpreted by you as 85% Plasma. Contrary to your statement that the three companies are exclusively 'inti', we would like to point out that PT WSP and PT BCP have 15% Plasma whilst PT ANI, which we acquired from the previous owners, has no plasma. For the latter, as part of our national service, we may consider developing plasma areas if requested by the local communities/government.

1.2 In respect of employment, it is always our policy to give preference to the local communities in line with our commitment of improving community welfare and providing employment opportunities. Contrary to your figures, at present about 90% of the workers are from the local communities. Pending the approval of the EIA, these workers are currently employed on a temporary basis, mainly in the oil palm nurseries. More workers will be employed on a permanent basis once the project is approved and development starts in earnest.

1.3 As mentioned above, such statement can only be official if announced by our official spokesman. The alleged promise that we would be awarded an 'environmental certificate' by November 2007 is probably a misquote from unofficial sources. Nonetheless, we have been internalising the RSPO Principles & Criteria (P&C) into our standard operating procedures and have conducted third-party verification of our compliance to the RSPO P&C. We are committed to the RSPO process and are making continuous improvement to further enhance our Environmental and Social (E+S) performance.

6. Comments on Wilmar as a Whole

Your comments concerning our modus operandi in our other project sites are unjustified and unsubstantiated. With regards to PT Jatim Jaya Perkasa (JJP), the company was sold a few years ago because it was not profitable. Nonetheless, we believe that it was in compliance with all regulatory requirements and internal guidelines during our years of ownership. In the Uganda project which is funded by the International Fund for Agricultural Development (IFAD) and managed by our partner, an audit by an international independent third party has not highlighted the problems/conflicts alluded to by your report. PPB Oil Palms of Malaysia which we are just in the process of acquiring, is also a responsible corporate citizen listed on the Malaysian Stock Exchange. The company has a long history of commitment to sustainability and is a member of the RSPO since 2004.

Sambas is a new area for our plantation operation and our reply here illustrates that we are not at fault in Sambas. Therefore, these "findings" should then not be used as a representation for the whole of our operations. We have been operating in Indonesia for 15 years, and if indeed we have bad practices as you alleged, surely the rest of our plantations would have received considerable bad press in Indonesia over the years and not just for the JJP case. Such sweeping statements about our total operations are not justifiable. Your allegations about burning, deforestation, social conflicts, peat land conversion contributing to global warming and political power play are unsubstantiated and we unequivocally refute these allegations.

7. Comments on Attachment 2.

The article in the Pontianak Post quoted was published on 15th February 2007. However, there is no member of our senior plantation management team by the name of Priharianto and hence, any views expressed cannot represent the views of the company.

1.1 As mentioned earlier, the plasma owners' participation in the proposed project is 15% and not 85%. As the plasma owners like to have their land separated or distinct from the Inti area, we are prepared to have them separated. Kindly also refer to Issue No 5.1 on this topic.

1.2 Based on our latest labour statistics, the breakdown of workers is as follows:

	Permanent Workers	Temporary Workers	Total
PT ANI	208	571	779
PT BCP	8	217	225
PT WSP	11	206	217

Some 90% of the workers are locals (both residential and non-residential). For PT BCP and PT WSP, the workers are mainly involved in nursery work and some maintenance of the approved planting. Upon approval of the EIA, more workers will be employed. Preference will be given to locals in the vicinity of all our project areas.

1.3 Currently, there is no certification using the RSPO P&C as they are undergoing trial implementation (we are a participant in this trial project) and the verification working group has yet to finalise the protocol or procedure (we are also in the verification working group). The mechanism for certification according to the RSPO P&C will take time and it is highly unlikely that this can be achieved by November 2007. Notwithstanding these, as a responsible corporation we have initiated several projects towards RSPO compliance including third party audits to benchmark our E+S performance. We are fully committed to the RSPO process and strive towards its compliance.

1.4 Wilmar is sensitive towards the 'hak hak masyarakat adat' (native or customary rights to land) as well as local customary practices. We concur with you that we will not develop areas where communities unanimously oppose oil palm or where communities are significantly divided on the matter.

In conclusion, we thank you for providing us with the opportunity to correct the misleading statements and factual errors concerning our E+S performance in oil palm plantation development. We would be most appreciative if you would consider and clearly reflect our response in your report.

We are always open to third party collaboration and will make continuous improvement in the spirit of RSPO to further enhance our E+S performance. For your information, we have on-going R&D collaboration with the Zoological Society of London on wildlife conservation and the International Plant Nutrition Institute (Potash & Phosphate Institute – S.E. Asian Program) on best management practices as part of the RSPO process.

Annex 5.
Wilmar's response to follow up questions

June 9, 2007
Dear Anne,

On behalf of Jeremy Goon , we thank you for sharing with us the results of your recent field investigations to assist us in enhancing our environmental and social (E+S) performance. You can rest assure that Wilmar, as a responsible corporate citizen, is fully committed to the RSPO process and will continue to make improvements in managing our E+S risks and reducing our environmental footprints in our project areas. Nevertheless, we need to comment on some of the erroneous findings. Our comments are provided in blue for your reference.

1. We have copies of letters from the Ministry of Environment in Jakarta addressed to PT BCP and PT WSP officially requesting to stop all physical activities in the field on April 11, 2007. On Sunday 22 April, activities in the nursery of PT BCP were still ongoing. Will PT BCP and PT WSP respect the order?
We have contacted the provincial DOE on receiving the letter and been advised to stop major activities such as further land clearing to enable an environmental audit to be carried out. All major activities had been discontinued since. In PT BCP, routine activities in the nursery that are required to maintain the polybag seedlings for the rehabilitation exercise, as mentioned in our previous reply, will continue until further notice. These activities are mainly the routine maintenance programme such as watering, weeding and fertiliser application.
For your information, workers and the local communities/villagers in PT WSP had demonstrated and protested to the local government and the DPRD (local council) demanding that the work be continued as their livelihood had been affected (attachment 1). Notwithstanding this, we will continue to respect the official request and await the outcome on this matter.

2. On April 26-27, 2007, we documented evidence of previous and active land burnings in the land clearings of PT ANI in Semanga. Adjacent to recently cleared and burnt lands, batches of oil palm seedlings, ready to be planted, were documented. Do you continue to insist that all fires occurring in the PT ANI area are purely accidental or caused by parties not under the company's control? (we assume that we agree that the company's contractors fall under your direct control).
We again take strong exception to your allegation on land burning in Semanga. We would appreciate if you could double check the actual situation. For your information, the land alluded to is not on our property but belongs to another plantation company!

3. In April 2007 (but also in February), significant removals of forest products (notably timber and rattan) from the PT ANI area in Sambas were documented. We understand that (at least one of) PT ANI's land clearing contractors assist "locals" with the transportation of this forest produce. Do your companies and/or your contractors hold valid forest product harvesting licenses (IPKs, Izin Pemanfaatan Kayu)? If so, what are the relevant reference numbers?
We are fully aware of the regulations concerning this matter. None of our estate vehicles nor contractors' assisted locals with the transportation of any timber produce from our project area as alleged. Our land clearing areas are under APL (Areal Pengunan Lain-Area for other uses) with no timber of commercial value. In the absence of timber of commercial value and as long as no timber is being extracted for commercial purposes, there is no requirement for IPK.

4. Land clearings and oil palms within 50 meters of the larger Sambas River and tributaries were documented by us in the areas of PT WSP and PT ANI as of April 2007. Do you insist that there are no rivers

in the areas of these companies as well as that of PT BCP, and that the government regulations regarding riverside strip buffers are respected throughout the areas owned and managed by Wilmar?
We have not encroached on the larger Sambas River and major tributaries in our project areas. In PT. Ani Kumpai, the land beside 2 small streams <1 m width which was dry or with shallow water were cleared by the contractor during the dry season to facilitate drainage work. With the drainage system constructed, these streams especially during the wetter season will flow into Sei Anas and Sei Senapit. The drainage from field drains in low-lying areas to collection drains and then out to natural waterways is an accepted practice in agriculture. It is our practice to set aside buffer zones for major streams within our project areas which flow into rivers or its major tributaries.

5. In the PT ANI concession, i.e. in Semanga village, gravel mining was observed last April 2007. Can your company inform us which permit allows the company to undertake this activity?
The quarry in the Semanga village is not within our Izin Lokasi. It is not operated by PT ANI and we understand that it belongs to some outsiders/local villagers.

6. We documented files from PT BCP that clearly list the banned pesticide Benlate. Although the actual use of this pesticide is not recorded in this particular list, we seek your absolute guarantee that no banned pesticides are being used in the Wilmar estates.
Dupont did not renew their 'Izin Tetap' for the manufacture and distribution of Benlate on 15 November 2006. A representative from Dupont informed us that they discontinued the Izin for Benlate in Indonesia on instruction from their Corporate HQ though they can still renew their Izin if needed. For your information, the active ingredient of Benlate, that is 50% benomyl, is not banned as there are still other fungicides such as Anaconda 50WP (50% benomyl – PT Johny Jaya Makmur), Benhasil 50WP (50% benomyl – PT Timothyndo Jaya Sakti), Benlox 50WP (50% benomyl – PT Dharma Guna Wibawa), Benotop 50WP (50% benomyl – PT Fadjarpurmama Pratama Inti) and Benstar 50WP (50% benomyl – PT CAC Indonesia), which contain the same active ingredient on the market. According to the book on 'Pestisida Terdaftar 2006(Pertanian dan Kehutanan), the Izin Tetap of these benomyl only expires on 15 September 2008 (Benstar) to 8 September 2011 (Benotop).

Banned chemicals are listed only by their active ingredients and not by trade names. Also contrary to your allegation, we do not have stock of Benlate in PT BCP. We have a standard operating manual on Environmental Protection and Management System to ensure the safe handling and use of approved chemicals in the plantations and do not use any banned chemicals as a matter of policy.
In conclusion, we thank you for providing us with the opportunity to correct the misleading statements concerning our environmental and social performance in oil palm plantation development.

Sincerely yours,
Dr. Lim Chin Huat ,
Wilmar International Ltd.

Notes

1 See" [www.whitehouse.gov/stateoftheunion/2006]; Bergsma et al. 2006. Biofuels and their global influence on land availability for agriculture and nature. CE Delft.

2 The binding character of the latter target is subject to production being sustainable, second-generation biofuels becoming commercially available and the Fuel Quality Directive being amended accordingly to allow for adequate levels of blending. Council of the European Union (8/9 March 2007). CONCL 1: 7224/07. Presidency Conclusions. Brussels: Brussels European Council.

3 Ministry of Plantation Industries and Commodities (Malaysia). The National Biofuel Policy. 21 March 2006; Issuance of New Manufacturing License For Bio-diesel Put On Hold. Bernama, September 12, 2006; Companies told to build biofuel plants in set time. Business Times, September 7, 2006; Envo Diesel To Be Available At Selected Stations In Due Course Bernama, September 7, 2006; Department of Energy and Mineral Resources, Republic of Indonesia. The Government Plans to build 11 Biofuel Plants this Year. 4 July 2006.

4 Climate Change 2007: The Physical Science Basis – Summary for Policymakers. Intergovernmental Panel on Climate Change (2007). Indonesia and Malaysia have both signed the Kyoto Protocol but as developing nations, they are not obliged to meet the 5% target.

5 The Council of the European Union. Presidency Conclusions – Brussels, 8/9 March 2007 (7224/07); EC.

6 Thoenes, P., 2006. Biofuel and Commodity Markets – Focus Palm Oil. FAO, Commodities and Trade Division.

7 Malaysia, Indonesia set aside 40% CPO for biofuel. The Star, 21 July 2006.

8 Stephenson, T. The Round Table on Sustainable Palm Oil – Purpose and Progress. Symposium on Sustainable Resource Development. Institute of Directors, London May 18, 2006.

9 For now, the Indonesian government says it has set aside 6.5 million hectares of land to be allocated to investors interested in planting biofuel crops. Of that total, some 3 million hectares would be earmarked for oil palm, 1.5 million hectares for jatropha (castor), 500,000 hectares for sugarcane and 1.5 million hectares for cassava. In: Rp 13 trillion earmarked for biofuel development. The Jakarta Post, 26 September 2006.

10 Biofuel majors: Will exports be profitable enough? Business Times, 19 December 2006.

11 Malaysian government-linked palm oil entities to fuse, creating world's largest producer. Unimils website [unimills.com], 9 January 2007; Malaysian Plantation Companies Appear Set to Merge. Asian Wall Street Journal, November 23, 2006.
Also in 2007, the Indonesian group Indofood Sukses Makmur started preparations for its January 2007 listing on the Singapore Stock Exchange as Indofood Agri Resources Ltd. (Indoagri), in an effort to raise capital to expand its plantation acreage from 138,000 ha to 250,000 ha in 2015 in view of the company's plans to enter the biofuel sector.
Sources: Indofood plans S'pore share sale for edible oil unit. Reuters, 16 October 2006; PT Indofood Sukses Makmur Tbk to Takeover CityAxis Holdings Ltd-AFX Asia. Reuters, December 22, 2006.

12 Palm oil boom leads to takeover offer in Asia. Bloomberg, 15 December 2006.

13 Ministry of Agriculture Regulation No. 026/2007 (Peraturan Menteri Pertanian Nomor 026/2007). Republic of Indonesia.

14 Martua Sitorus was born in Pematang Siantar in North Sumatra. Although his name suggests that he is a North Sumatran Batak, Mr. Sitorus is from Chinese descent. His real name is Thio Seng Hap, also often referred to as A Hok. [http://www.swa.co.id/swa-majalah/sajian/details.php?cid=1&id=2872&pageNum=1]

15 Wilmar International Ltd. "Positioned for Growth". Annual Report 2006.

16 Biofuel majors: Will exports be profitable enough? Business Times, 19 December 2006; see also Wilmar International Ltd. "Positioned for Growth". Annual Report 2006.

17 Wilmar International, Press release "Wilmar Embarks on Rapid Expansion Plans". August 28, 2006.

18 More M&As seen for plantation firms. Kuali.com. December 15, 2006.

19 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006. p. A-84.

20 Wilmar International Ltd. "Positioned for Growth". Annual Report 2006.

21 Wilmar International, Announcement, 1 March 2007; Wilmar International Ltd. FY2006 Financial Results Briefing. 15 February 2007. Data for Wilmar International. Not all subsidiaries under the Wilmar Holding are brought under Wilmar International.

22 Wilmar International Ltd, Announcement. Singapore Stock Exchange, 1 March 2007.

23 "Based on information available to Wilmar International Ltd. as of 14 December 2006". Wilmar International, Announcement, 1 March 2007.

24 Letter from Chua Phuay Hee (Wilmar) to Jan Kees Vis (Unilever) dated 7 January 2005; Reply of Wilmar International to Friends of the Earth (in response to the draft main findings of this report), 25 April 2007.

25 Wilmar International, op cit. p. A-26 and Wilmar International website [wilmar-international.com].

26 Akta Pendirian Perseroan Terbatas PT Wilmar Sambas Plantation. Edy Simin S.H. (Notaris), 7 January 2005; Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006; Gandearah website (www.gandaerah.com); Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006.

27 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006.

28 Wilmar International. Wilmar Embarks on Rapid Expansion Plans. Press release, 28 August 2006.

29 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006.

30 The data are derived from the West Kalimantan Plantation Service.
Source: Perkembangan Perizinan Perusahaan Perkebunan Besar. (s/d Juli 2006). Dinas Perkebunan Kalimantan Barat; Wilmar Akuisisi 5 Perusahaan Sawit, 25 September 2006. Bakrie and Brothers website [www.bakrie-brothers.com/news.php?id=4207]; Wilmar International. Wilmar Embarks on Rapid Expansion Plans. Press release, 28 August 2006.

31 Dinas Tenaga Kerja, Transmigrasi dan Sosial. Kapubaten Sambas [http://www.sambas.go.id/data/default.asp?fraksi=22]. (undated). In its response to Milieudefensie (April 25, 2007) Wilmar says it has 1,221 permanent (26%) and part-time (74%) workers, representing 62% of all plantation workers in Sambas. The same documents by Dinas Tenaga kerja, Transmirgasi dan Sosial also reports a labor conflict in PT ANI in Sejangkung involving 131 male workers.

32 Wakker, E. 2006. The Kalimantan Border Oil Palm Mega-project. AIDEnvironment. Study commissioned by Milieudefensie – Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC).

33 Obidzinski, K., A. Andrianto and C. Wijaya, 2006. Timber smuggling in Indonesia critical or overstated problem? Forest gover-

nance lessons from Kalimantan. Center for International Forestry Research.

34 Based on: Provincial Plantation Department, data last updated per July 2006. This does not include the permits issued since that time. Sawit Watch estimates that at present only 30% of all oil palm companies in Indonesia have HGU permits. The issuance of HGU permits by Badan Pertanian Nasional also does not always involve actual boundary demarcations in the field and (re)confirmation that all land conflicts have been settled, resulting in long-lasting and persistent land conflicts

35 The shape of the PT Wilmar Sambas Plantation (PT WSP) area has been considerably altered since this map was prepared. Also note that the PT Wana Hijau Semesta area in the southeast (bottom right) of the map is actually under license by PT Wirata Daya Bangun Persada (PT WDBP, which is part of the Duta Palma Group). The 2005 sale of 1,500 ha of land by Wilmar's PT ANI to PT WDBP is probably not shown on this map. In addition, several new areas not shown on this map were allocated to companies in 2006.

36 Wilmar International, op cit. p. A-26.

37 Kerangka Acuan Analisis Dampak Lingkungan Perkebunan dan Pabrik Pengolahan Kelapa Sawit PT Buluh Cawang Plantations, May 2006; Kerangka Acuan Analisis Dampak Lingkungan Perkebunan dan Pabrik Pengolahan Kelapa Sawit PT Wilmar Sambas Plantation, May 2006.

38 See: Simorangkir, D. and Sumantri 2002. A Review of Legal, Regulatory Land Fires in Indonesia. Project Fire Fight Southeast Asia, WWF; Peraturan Pemerintah Republik Indonesia Nomor 4 Tahun Pencemaran Lingkungan Hidup yang Berkaitan dengan Kebakaran Indonesia; Environment Act No. 27, 1997. Republic of Indonesia; Plantation Act No. 18, 2004. Republic of Indonesia.

39 The full list of reasons why permits may be revoked is as follows: failing to "resolve the title to land within at most 2 years of the issuance of plantation permit (IUP); realize development in line with the national or regional macro plan for plantation development; manage the plantation professionally, transparently, participatively, efficiently and effectively; conduct land clearing without fire; manage natural resources sustainably; report any diversification of the plantation business, for example into agro-tourism to the relevant agency and obtain a diversification permit; establish and empower plasma or cooperative schemes; report the plantation's business progress on a quarterly basis." In: Colchester, M., et al., 2006. Promised Land. Palm Oil and Land Acquisition in Indonesia. Implications for Local Communities and Indigenous Peoples. Forest Peoples Programme, Sawit Watch, HUMA and World Agroforestry Center.

40 RSPO Principles and Criteria for Sustainable Palm Oil Production. Version 3. 22 September 2005. "Specific situations" could include burning to counter serious outbreak of pests, such as ganoderma. The ASEAN Guidelines furthermore suggest that smallholders may possibly be exempted as they would not have the means to apply zero-burning techniques.

41 CH4 (methane) emissions from drained peatlands are considered by most experts to be limited in comparison, but may still be significant because CH4 is a far stronger greenhouse gas (23 times stronger in 'carbon dioxide equivalents'). CH4 emissions in peatlands may originate especially where peat areas are flooded for prolonged periods after fires or after subsidence due to drainage, and reduced conditions are created in the peat soil. Source: Hooijer, A., Silvius, M., Wösten, H. and Page, S. 2006. PEAT-CO2, Assessment of CO2 emissions from drained peatlands in SE Asia. Delft Hydraulics report Q3943 (2006). The area burnt in the PT WSP area is prone to flooding.

42 The PT Adei Plantation & Industri case in Riau (2002) was settled outside court between the company (which is owned by the Kuala Lumpur Kepong group) and Bapedalda Riau. The company paid US$ 1.1 million in compensation.

43 In Riau, fire hotspots have been reported in the PT Jatim Jaya Perkasa (PT JJP) and PT Murini Samsam (PT MS) concessions for several years in a row. International Finance Corporation (IFC) claims that the fires in PT Jatim Jaya Perkasa originated from local farmers and that the company suffered millions of dollars losses due to the fires. Two employees were charged in the Dumai Court but were acquitted (IFC, 2004). While Miettinen and Zulfahmi (2004) persist in their findings as regards PT JJP, they found that fires in the consolidated areas of the PT Murini Samsam concession appeared to be lit by smallholders and remnant farmers in 2004.

In West Kalimantan, a fire case was reported to the West Kalimantan police in the areas of the Wilmar subsidiary PT Bumi Pratama Khatulistiwa (PT BPK) in Pontianak District in 2000, but the case was not followed up. According to the IFC, the fire in PT BPK was caused by local farmers due to dry conditions and high winds. The company lost part of its plantation in this fire. However, the Village Head of Enau Village (Pontianak district) maintains that the company cleared land by use of fire in the 1990s (Walhi Kalbar, 2006).

Sources: Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006; International Finance Corporation (IFC), Letter to Friends of the Earth Netherlands and Sawit Watch, 9 April 2004; Miettinen, O. and Zulfahmi, 2004. PT Jatim Jaya Perkasa. Field Assessment of Environmental and Social Impacts of Oil Palm Plantations; Miettinen O. and Zulfahmi 2004. Field survey of PT Murini Samsam, Riau Province. Unpublished document; Walhi Kalbar, 2006. "Geliat Sawit di Sungai Ambawang". Video.

44 Menghitung Kerugian Akibat Kebakaran Hutan. Republika, 6 September 2006; Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006. The other companies are: PT Mitra Inti Sejati Plantation, PT Ceria Prima, PT Megasawitindo Perkasa, PT Putra Makmur Lestari, PT Citra Kalbar Sejahtera, PT Antar Mustika Segara and PT Poliplant Sejahtera.

45 The cases against PT BCP and PT WSP were filed by the Police of Sambas District, the district level Environment Agency (Bappedalda) and the public prosecutor. The case against PT ANI was filed by Bappedalda in Landak District.

46 Wasis, B. 2006. Surat Keterangan Saksi Ahli Tnaha Perusakan Hutan dan Lahan Melalui Pembakaran PT Wilmar Sambas Plantation, Desa Sijang Kecamatan Galing, Kabubaten Sambas, Propinsi Kalimantan Barat terhadap Analisa Sampel Tanah Berita Acara Pengambilan Sampel Tanggal 31 Augustus 2006. Institut Pertanian Bogor (IPB); Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witne

47 These fires took place in the ex PT Aimer Agro Mas concession (formerly owned by the Sinar Mas Group). According to Walhi Kalbar, PT ANI (in Kuala Behe, Pahuman, Jelimpoh and Jengah Temilah, Landak district) has been burning land in 2006, converted good quality forest and opened up land without consent of the local community.

48 Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006.

49 Laporan Tim Investigasi Kebakaran Lahan di PT Buluh Cawang Plantation, Kabupaten Sambas (Kecamatan Teluk Keramat, Galing, Paloh), 13 – 15 Agustus 2006.

50 Bapedalda. Perkembangan Penanganan Kasus Dugaan Pidana Perusahaan Lahan di Prov. Kalbar. January 2006.

51 Saharjo, B.H. and B. Wasis, 2006. Perhitungan Kerugian Akibat Pembakaran di Perkebunan Kelapa Sawit PT Wilmar Sambas Plantation (PT WSP). Institut Pertanian Bogor (IPB); Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witness statement by Dr. Ir. Bambang Hero Seharjo, 18 September 2006.

52 Saharjo, B.H. and B. Wasis, 2006. Perhitungan Kerugian Akibat Pembakaran di Perkebunan Kelapa Sawit PT Wilmar Sambas Plantation (PT WSP). Institut Pertanian Bogor (IPB); Kepolisian Negara Republik Indonesia, Daerah Kalimantan Barat, Resor Sambas. Witness statement by Dr. Ir. Bambang Hero Seharjo, 18 September 2006.

53 Kejari Sambas Didemo Massa. Pontianak Post, 15 February 2007.

54 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006. p.A-26.

55 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International

Ltd., Singapore, 19 July 2006. p.F-2.

56 Environmental Impact Assessment, Regulation Regarding (Gov't Reg. No. 51, 1993). Translation by the Asia-Pacific Centre for Environmental Law (Singapore).

57 In a next step, the company must complete an environmental management plan (Rencana Pengelolaan Lingkungan, RKL) and an environmental monitoring plan (Rencana Pemantauan Lingkungan, RPL).

58 Ministry of Agriculture Regulation 357/ktps/HK.3511/5/2002; Environmental Impact Assessment, Regulation Regarding (Gov't Reg. No. 51, 1993). Translation by the Asia-Pacific Centre for Environmental Law (Singapore); Keputusan Menteri Pertanian Nomor 357/Kpts/HK.350/5/2002 Pasal 10 Untuk memperoleh Izin Usaha Perkebunan. According to Article 5 of the Government Regulation No. 51 (1993) on Environmental Impact Assessments and the updated regulation No. 27 (1999), the good implementation of the environmental management plan and monitoring plan is a prerequisite for the granting of a permit for a proposed business or activity which requires environmental impact assessment.

59 Testimony of Joko Susilo and Bina Mitra (public relations) of PT.WSP on August 26, 2006, in the police investigation report.

60 Testimony of Mr. Bina Mitra of PT BCP (public relations) and Fauzan bin Zainal Abidin (surveyor of PT.BCP) on August 16, 2006 in the police investigation report.

61 Perkembangan Perizinan Perusahaan Perkebunan Besar di Kabupaten Sambas s/d Juli 2006; Daftar Realisasi Investasi di Kabupaten Sambas Kondisi s/d Desember 2006. DPRD, 27 February 2007.

62 Letter of the Governor of West Kalimantan (Number 660.1/684/Bapedalda-A), dated November 11, 2005. ""Tidak menilai Dok AMDAL bagi kegiatan yang sudah beroperasi".

63 Oil palm seedling deficit causes import smuggling. Jakarta post, September 5, 2005.

64 Perkembangan Perizinan Perusahaan Perkebunan Besar di Kabupaten Sambas s/d Juli 2006.

65 Perkembangan Perizinan Perusahaan Perkebunan Besar di Kabupaten Sambas s/d Juli 2006; Daftar Realisasi Investasi di Kabupaten Sambas Kondisi s/d Desember 2006. DPRD, 27 February 2007.

66 Letter of the Governor of West Kalimantan instructing local governments in the province. 11 November 2005. "Tidak menilai Dok AMDAL bagi kegiatan yang sudah beroperasi".

67 Daftar Realisasi Investasi di Kabupaten Sambas Kodisi s/d Desember 2006; Surat Keputusan Bupati Sambas No. 16 (2006) tentang Revisi Areal Izin Lokasi No. 61 tahun 2005 untuk Keperluan Perkebunan Kelapa Sawit Atas Nama PT Agronusa Investama.

68 Surat Keputusan Bupati Sambas No. 16 (2006) tentang Revisi Areal Izin Lokasi No. 61 tahun 2005 untuk Keperluan Perkebunan Kelapa Sawit Atas Nama PT Agronusa Investama.

69 See: PT Agro Nusa Investama. Permasalahan Lahan Dalam Izin Lokasi PT Agronusa Investama. Letter to the Sambas District Head, 28 September 2006; Catatan Proses Pertemuan Antara Masyarakat, Kepala Desa, Camat, PT Wilmar Group, BKI dan Instansi Terkait di Kabupaten Sambas Yang difasilitasi oleh DPRD Kabupaten Sambas. Hari Kamis tanggal 11 Januari 2007.

70 The EIA report of PT BEJ or a new version compiled for PT ANI could not be retrieved from the EIA Commission and District Environmental, Mining and Energy offices.

71 Banyak IUP Sawit Dikeluarkan Mendahului AMDAL. Equator Online, 14 March 2007.

72 Wilmar International website [wilmar-international.com]; Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006. p. A-26.

73 Wilmar Progress Report to RSPO 2005-2006 [rspo.org].

74 Wilmar International. RSPO Annual Communication of Progress. 1 August 2006.

75 Colchester, M., et al., 2006. Promised Land. Palm Oil and Land Acquisition in Indonesia. Implications for Local Communities and Indigenous Peoples. Forest Peoples Programme, Sawit Watch, HUMA and World Agroforestry Center.

76 Article 8 of a joint decree from the Agrarian Minister and the Head of State Land Affairs Regulation No. 2 (1999) on Location Permits.

77 Colchester, M., et al., 2006. Promised Land. Palm Oil and Land Acquisition in Indonesia. Implications for Local Communities and Indigenous Peoples. Forest Peoples Programme, Sawit Watch, HUMA and World Agroforestry Center.

78 Based on Decree No. 357/Kpts/HK.350/5/2002 on Guidance regarding the Licensing of Plantation Businesses. The full list of reasons why permits may be revoked is as follows: failing to "resolve the title to land within at most 2 years of the issuance of plantation permit (IUP); realize development in line with the national or regional macro plan for plantation development; manage the plantation professionally, transparently, participatively, efficiently and effectively; conduct land clearing without fire; manage natural resources sustainably; report any diversification of the plantation business, for example into agro-tourism to the relevant agency and obtain a diversification permit; establish and empower plasma or cooperative schemes; report the plantation's business progress on a quarterly basis." In: Colchester, M., et al., 2006. Promised Land. Palm Oil and Land Acquisition in Indonesia. Implications for Local Communities and Indigenous Peoples. Forest Peoples Programme, Sawit Watch, HUMA and World Agroforestry Center.

79 RSPO Principles and Criteria for Sustainable Palm Oil Production. Guidance Document Format to emphasize Guidance for National Interpretation, March 2006.

80 See: Catatan Proses Pertemuan Antara Masyarakat, Kepala Desa, Camat, PT Wilmar Group, BKI dan Instansi Terkait di Kabupaten Sambas Yang difasilitasi oleh DPRD Kabupaten Sambas.Hari Kamis tanggal 11 Januari 2007.

81 See: Catatan Proses Pertemuan Antara Masyarakat, Kepala Desa, Camat, PT Wilmar Group, BKI dan Instansi Terkait di Kabupaten Sambas Yang difasilitasi oleh DPRD Kabupaten Sambas.Hari Kamis tanggal 11 Januari 2007.

82 Giliran Warga Desa Senujuh Tolak Sawit. Pontianak Post, 14 February 2007.

83 Giliran Warga Desa Senujuh Tolak Sawit. Pontianak Post, 14 February 2007.

84 See: PT Agro Nusa Investama. Permasalahan Lahan Dalam Izin Lokasi PT Agronusa Investama. Letter to the Sambas District Head, 28 September 2006; Catatan Proses Pertemuan Antara

85 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006.

86 Decision No. 32/1990 about Organising Protected Areas and No. 145/kpts-II 1986 on Regulation for Forestland Releases to Develop Agricultural Estates, Forestry Act No.44 (1999), Art. 50, par.3f.

87 Based on Government Decree Number 7, 1999. Data derived from BKSDA, Balai Konservasi Sumber Daya Alam Seksi Wilayah III in Singkawang.

88 PT Wilmar Sambas Plantation. Laporan Utama, Analisis Dampak Lingkungan Hidup (ANDAL), May 2006. The main ANDAL report of PT BCP does not present a species list at all.

89 IUCN Red List of Threatened Species. .See [iucnredlist.org]. The Slow Lori was not listed in the PT WSP ANDAL report. A live specimen was seen in Nante (Senujuh) and the species quite certainly occurs in the forest areas slated for conversion by PT WSP.

90 PT Wilmar Sambas Plantation. Laporan Utama Analysis Dampak Lingkungan Hidup (ANDAL), p. W-22.

91 Nellemann, C., Miles, L., Kaltenborn, B. P., Virtue, M., and Ahlenius, H. (Eds). 2007. The last stand of the orangutan ? State of

emergency: Illegal logging, fire and palm oil in Indonesia?s national parks. United Nations Environment Programme, GRID-Arendal, Norway, www.grida.no.

92 International Finance Corporation (IFC), Letter to Friends of the Earth Netherlands and Sawit Watch, 9 April 2004.

93 Walhi Kalbar, 2006. "Geliat Sawit di Sungai Ambawang". Video.

94 Wakker, E., O. Miettinen and Zulfahmi, 2004. PT Jatim Jaya Perkasa. Field Assessment of Environmental and Social Impacts of Oil Palm Plantations. AIDEnvironment; Miettinen and Zulfahmi 2004.

95 Letter from Chua Phuay Hee (Wilmar) to Jan Kees Vis (Unilever) dated 7 January 2005.

96 Wilmar International. Circular. Offer and Placement of Up to 375,000,000 Ordinary Shares in the Capital of Wilmar International Ltd., Singapore, 19 July 2006. p. 98.

97 Contribution by Marcus Colchester, Forest Peoples Programme.

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Judging on the information provided at the IFC website, the disputed "RSPO-claim" was not adjusted prior to the meeting of the IFC Board, who approved the proposed facility on 20 December 2006. It must be assumed that the Board's decision was also based on the disputed claim. As such, the Board was in its decision making also misled by the claim.

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