

Securing High Conservation Values in Central Kalimantan



**Report of the Field Investigation in Central Kalimantan of the
RSPO Ad Hoc Working Group on High Conservation Values in Indonesia**

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Securing High Conservation Values in Central Kalimantan: Report of the Field Investigation in Central Kalimantan of the RSPO Ad Hoc Working Group on High Conservation Values in Indonesia, July 2011, Roundtable on Sustainable Palm Oil. Authors: Marcus Colchester¹, Norman Jiwan², Patrick Anderson³, Asril Darussamin⁴, Andi Kiky⁵.



Pak Asril Darussamin discussing oil palm cultivation techniques in Tanah Putih

This report provides an account of a short investigation carried out by the RSPO's *Ad Hoc Working Group on High Conservation Values in Indonesia*. It is being circulated to promote comprehension and discussion about the legal and procedural obstacles to securing such values in the oil palm sector in Indonesia with the view to promoting changes and legal reforms in order to secure these values more effectively. This version includes detailed comments on the report by Wilmar International. Further comments are welcomed and should be sent to the Co-Chairs of the Working Group: marcus@forestpeoples.org and norman@sawitwatch.or.id

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Cover photo: Dayak gravesite in Tanah Putih. **Photos:** Marcus Colchester

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Executive Summary:

As part of the work of the *RSPO's Ad Hoc Working Group on High Conservation Values in Indonesia*, a field investigation was carried out in Central Kalimantan to review legal options for securing HCVs in oil palm development areas. This report summarises the findings from field visits and interviews with communities and government officials at all levels.

Central Kalimantan, where the majority of the population are still indigenous Dayak, contains a great expanse of once-forested, lowlying lands with mineral soils and extensive areas of peat. It has been chosen as a pilot province for the implementation of the Indonesian Government's strategy for reducing green house gas emissions from deforestation and forest degradation (REDD+). In the last ten years very extensive areas of forest and peatlands have been allocated, and much of it cleared, for oil palm.

Important legal innovations are being undertaken by the Governor and legislature in the Province which aim to make development sustainable (including securing HCVs). These include a new Decree and draft Act on Sustainable Plantations that will require protection of HCVs, respect for customary land rights and Free, Prior and Informed Consent, as well as retrospective provision of smallholdings to local communities. There are also provincial laws requiring respect for customary rights in land. The Governor has just signed an MoU with the Wilmar Group and BOS recognising a 3,100 ha. set aside for orang utan conservation within one company estate. The hand out of new concessions in the Province is currently frozen.

However, there are also severe legal challenges to a rational approach to land development in the Province. The Province lacks an agreed spatial planning process as this is being contested in the Parliament. Similarly, recent forest zoning exercises have been disqualified and officially the forest zones remain those defined in the early 1980s. Unlike other parts of Indonesia, a national requirement that at least 20% of oil palm estates should be allocated to smallholders has been little applied in Central Kalimantan. As a result oil palm expansion has had serious shortcomings.

In Kotawaringin Timur, the focus of the field visit, nearly 50% of the entire district has now been allocated to oil palm. The rapid expansion has left affected communities virtually landless and unprovided with smallholdings. There are numerous land disputes, even in RSPO member areas. The combination of landlessness and lack of smallholdings is putting intensive pressure on the small areas set aside for HCVs in some estates. HCVs are resented by marginalised communities deprived of livelihood options.

Local officials interviewed, from village level up to the Governor are unanimous on the need for a change of approach and they assert that oil palm expansion has been accompanied by widespread irregularities both in the hand out of concessions by officials and in the observation of legal requirements by developers. Much of the areas crucial for protecting HCVs have already been destroyed. While better enforcement of existing regulations and prosecutions of violators is now emphasised, the government is passing new laws to improve enforcement. National level reforms are now needed to secure these Provincial advances.

The final section draws conclusions and makes recommendations relevant to the RSPO. HCVs must be identified and secured by legally enforceable processes much earlier in the development cycle. Much more needs to be done to identify customary lands and secure local livelihoods, so that impoverished communities are not obliged to move into the only lands left, those set aside for remnant HCVs. Communities need much greater information and proper engagement in planning to make sure they understand HCVs and the RSPO process. Certification bodies need much more detailed guidance on how to audit HCV assessments. For the RSPO process to meaningfully protect HCVs and communities, legal reforms and enforcement are necessary at local and national levels. RSPO is welcomed by local government as a promoter of change.

1. Introduction:

The Roundtable on Sustainable Palm Oil seeks to ensure that palm oil is produced in ways that do not harm the environment, provide a fair deal for communities and smallholders, respect the rights of women, workers, local communities and indigenous peoples and ensure that plantings and mills are developed in transparent ways with the participation of other stakeholders. To achieve this, the RSPO requires producer members to have plans to get independently assessed in order to ascertain that they are complying with the RSPO's Principles and Criteria, which establish how this should be achieved and verified. Central requirements of the RSPO Principles and Criteria are that no lands should be acquired without the free, prior and informed consent of legal and customary land owners and that no lands should be cleared after 2005 which are primary forests or which contain high conservation values (HCVs).

A study carried out for the RSPO in 2009 showed that in Indonesia companies seeking to comply with the RSPO requirements on conserving HCVs are running into difficulties because laws do not explicitly mention or require protection of HCVs and the permitting process strongly encourages companies to rapidly develop all lands allocated to them for planting. Companies which do not develop all their permitted areas fast enough are liable to forfeit their permits which may then be allocated to other companies which may not be RSPO members. Alternatively, the study found, some companies doing HCV assessments in compliance with RSPO requirements choose to excise HCV areas from their concessions when they apply for their final leases (land use right – HGU). This then creates the risk that these excised HCV areas are allocated to other companies. The permitting process gives decisive powers to district Regents (*Bupati*) to allocate these permits, while ambiguities in the law allow the *Bupati* considerable discretion in deciding whether or not undeveloped areas (such as those containing HCVs) should be reallocated for planting or not.⁶

In February 2010, the RSPO Executive Board appointed an Ad Hoc Working Group on High Conservation Values in Indonesia to look into this issue composed of a multi-stakeholder group of companies, NGOs, the government palm oil research institute, a legal expert and a representative of the RSPO secretariat. The overall task of the Working Group is to explore means of effectively securing High Conservation Values (HCV) in palm oil development areas in Indonesia, in line with the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO), especially those HCV areas identified in *ijin lokasi* during HCV assessments, through legal and procedural reforms.

The work carried out by the Working Group between February 2010 and February 2011 shows that indeed *Bupati* have considerable discretion in deciding how to apply the law and whether or not to accept set asides for HCVs. Where *Bupati* are indifferent to HCV protection and/or have reasons for insisting on lands being allocated for development, permitted areas which include HCV set asides are

⁶ Marcus Colchester, Patrick Anderson, Norman Jiwan, Andiko and Su Mei Toh, 2009, *HCV and the RSPO: report of an independent investigation into the effectiveness of the application of High Conservation Value zoning in palm oil development in Indonesia*. Forest Peoples Programme, HuMA, SawitWatch and Wild Asia, Moreton-in-Marsh

vulnerable. However, where *Bupati* are sympathetic there are options for securing HCVs both inside and outside licensed plantation areas (HGU).

Based on interviews with Central Government officials, the discussions of the working group and a legal study carried out by HuMA,⁷ the following local level legal options were identified as possible ways of securing HCVs either through decrees of the Regent or as local legislative acts (PERDA).

- Securing HCV areas in APL designated as *Hutan Hak* (either held by the company or by the communities as appropriate)
- Securing HCV areas in *Kawasan Hutan Negara* as *Hutan Desa* (particularly HCVs 4, 5 and 6)
- Securing HCV 5-6 areas in *Kawasan Hutan Negara* as *Hutan Adat*
- Getting tax exemptions for areas of HGU set aside for maintaining and enhancing HCVs

The third meeting of the Working Group thus agreed that a field visit should be made by members of the Working Group to the Wilmar HCV site in Kotawaringin Timur followed by a visit to the *Bupati* and then a discussion with the Governor. During the February 2011 meeting of the Working Group it was proposed that this be carried out in the week of 16-20 May 2011. Wilmar accordingly contacted the *Bupati* on behalf of the Working Group and the *Bupati* initially confirmed that the dates suited him. Terms of Reference and a draft Schedule of planned activities were thus agreed in March (see Annex 1) and members of the team asked to volunteer to join the field team. A representative multi-stakeholder group put themselves forward, a budget for the trip was agreed with the Secretariat and travel arrangements made.

2. Participation:

The following Working Group members volunteered for the field investigation

Table 1: Participation in Field Investigation

Name	Organisation	Participation
Simon Siburat	Wilmar International Ltd	Initially confirmed but later cancelled due to conflicting schedule
Dr. Marcus Colchester	Forest Peoples Programme	Present
Patrick Anderson	Forest Peoples Programme	Present
Cherie Tan	WWF International	Initially confirmed but could not attend
Norman Jiwan	Sawit Watch	Present
Andiko	HuMA	Initially confirmed but cancelled to attend legal case in Papua
Dr. Asril Darussamin.	RSPO Regional Indonesian Liaison Office	Present
Fahmia Badib	Interpreter	Present

⁷ Andiko, 2010, Legal Analysis: Protection of High Conservation Value Areas in Oil Palm Plantations in Indonesia, Ms.

The team was also ably assisted by Andi Kiky of the *Pokja Sawit Multipihak Kalimantan Tengah* (the Central Kalimantan Multi-stakeholder Working Group on Oil Palm), which was the group that had hosted the RSPO training meeting on the RSPO and FPIC back in 2008 and which has led the drafting of a new local legislative act (PERDA) on sustainable plantation development. Kiky was invited to join the team given his detailed local knowledge and his contacts with senior officials.

Although Simon Siburat had to withdraw from the mission owing to conflicting work schedules, he was able to link us up with local Wilmar staff in Sampit, who later met up with the team and facilitated a meeting with the *Bupati's* assistant in Sampit.

3. Schedule:

The following schedule was followed during the course of the trip.

15 May: Arrive in Palangkaraya. Planning meeting 10 am. Logistical arrangements.

16 May: Drive to Sampit and then to site of PT Mustika Sembuluh.

- Village interviews in Pondok Damar.

17 May: Field Visit to sites of PT MAS and PT Mustika Sembuluh.

- Village interviews in Tanah Putih.
- Preliminary meeting with Wilmar staff in Sampit.

18 May: Meetings with Government Officials

- Department of Forests District Office (Dinas Kehutanan in Sampit)
- Bureau of Environmental Affairs (Badan Lingkungan Hidup in Sampit)
- Department of Plantations District Office (Dinas Perkebunan in Sampit)
- Meetings with Wilmar staff (Sampit)

19 May: Meeting with Government Officials

- Assistant III of the Regent.
- Return to Palangkaraya.
- Team meeting to review initial conclusions.

20 May: Meeting with Government Officials

- Head of the Department of Plantations Provincial Office (Kepala Dinas Perkebunan Provinsi)
- Governor
- Meeting with NGOs / IPOs: Save Our Borneo, the Kalimantan NGO Forum, Betang Borneo, and WALHI-KalTeng (Friends of the Earth-Indonesia, Central Kalimantan).

21 May: Departures.



Team photo with Regent's Assistant III: Left to right - Norman Jiwan, Marcus Colchester, Pak Yanero, Patrick Anderson, Asril Darussamin and Andi Kiky

4. Methodological limitations:

The report which follows is based on short interviews carried out with a variety of persons ranging from villagers and indigenous people, local NGOs, local government officials and company staff right the way up to the Governor of the Province. We were also able to get hold of a limited number of official documents and laws. The text which follows summarises the main issues raised in these interviews and references some of these texts. Given these limitations, the conclusions and recommendations in the closing section should be understood as of a preliminary nature. Likewise the information presented in interviews should be understood to be what it is: the personal views of, and accounts of the situations as conveyed to the team by, the interviewees. The text has been carefully scrutinised by Wilmar and Wilmar's comments are included, mostly verbatim, in the footnotes.

5. Local political and legal context:

Central Kalimantan, an Indonesian Province on the southern coast of Borneo, has a total area of some 15 million hectares and was until recently a highly forested province with extensive areas of forested peatlands. Most of the province is low-lying and relatively flat, drained by large meandering rivers, except in the north where the Schwaner and Muller Mountains rise up along the borders with East and West Kalimantan. The province still lacks much light industry and is economically dependent on the development of natural resources including coal and gold mining, forestry, timber estates, oil palm plantations and other small scale cash crops including rubber.

Despite a considerable amount of sponsored and spontaneous migration, the majority of the population in Central Kalimantan remains Dayak, a collective term for the indigenous peoples of Borneo. Resentment of preferential treatment given to non-Dayak led to widespread violence and killings of migrants, mainly Madurese, during the late 1990s and early 2000s.

Currently the dominant political parties in the Province, GOLKAR and PDIP, are both led by Dayak politicians. The current Governor who is supported by PDIP has taken steps to reassure Dayaks that their rights will be respected and has issued a Governors Regulation (PERGUB) supported by a Provincial assembly law (PERDA) which provides for the recognition of Dayak land rights. These laws which were passed some two years ago are now being processed by a Dayak Customary Council, which is starting to register all Dayak land claims with a view to their recognition. The initial stages of this process have revealed that a great deal of Dayak customary land has indeed been taken over by concessions and is contested. Land disputes are widespread.

In some important respects the legal framework in the Province is unclear. Despite some three and a half million hectares being allocated to oil palm, very little of the plantation areas have been released from the forest zone managed by the forestry ministry, as legally required before conversion and planting can ensue. Over 90% of the Province is still classified as Forest even though very wide areas have actually been cleared and degraded. We were told that all the lands in the one million hectare Mega-Rice Project in Kapuas, a notorious land clearance scheme promoted by President Suharto in the 1990s mainly on unsuitable peat soils, that is now the site of the Australian-Indonesia Kalimantan Forest Conservation Project, are still classed as forests and were never officially released for agricultural use. The Forest Classification process (TGHK) carried out in 1997-8 has been rejected as a flawed process and so the legal forest classification remains the outdated 1983 TGHK. Moreover the recent spatial planning process has also been contested by various parties and remains unapproved by the provincial parliament. There have been widespread press reports that up to half of all land use permits for logging, mining, pulp wood estates and oil palm plantations are illegal as the lands have been allocated by local authorities without due regard for national laws and land classifications.⁸

Palm oil development has been a central part of the Province's development strategy for the last decade and a very large number of plantations were developed. Already over a million hectares have been planted but the total area allotted to oil palm, including areas in earlier phases of licensing, already exceeds three and a half million hectares. However, a recent report by the Environmental Investigation Agency and Telapak, citing a Ministry of Forestry review, notes that 'of 325 plantation companies in Central Kalimantan, 282 were suspected of 'non-procedural' forest use. The report notes many other irregularities including illegal forest clearance, and lack of Plantation Business Permits.⁹

⁸ Illegal Logging, Mining Ravages Kalimantan, Costs Indonesia \$36.4b, *Jakarta Globe*, 28 April 2011.

⁹ EIA/Telapak, 2011, 'Caught REDD Handed', available at: www.eia.org and through: <http://eiainvestigator.wordpress.com/2011/06/16/redd-indonesia-moratorium-norway/> see also: http://news.mongabay.com/2011/0616-eia_telapak_menteng.html

Table 2: Areas of Oil Palm in Central Kalimantan and Kotawaringin Timur District ¹⁰

Central Kalimantan	Hectares
Total area of Central Kalimantan	15,380,000
Area considered suitable for oil palm	3,660,000
Planned and developed oil palm plantation estates	3,570,000
Oil palm plantation estates in planning	2,500,000
Developed oil palm plantation estates	1,070,000
Kotawaringin Timur District	
Total area of Kotawaringin Timur District	1,570,000
Area of planning permits for oil palm (Arahan Lokasi)	726,000
Area of location permits for oil palm (Izin Lokasi)	655,000
Area of Plantation use permits (Izin Usaha Perkebunan)	494,000
Area of forest released for plantations (Pelepasan Kawasan Hutan)	128,000
Area of Use Right permits (Hak Guna Usaha)	250,000
Area of Plasma (small holder oil palm areas)	74,000
Area of Inti (company oil palm plantations)	480,000

During the past five years, a process has been underway in the Province to develop a new law that would regulate the way plantations are developed. The law has been explicitly designed to facilitate adherence to the RSPO's Principles and Criteria and makes provisions for companies to secure HCVs and respect the right of communities to FPIC.

The law is the outcome of a long process that was started after a training workshop held in 2005 on Managing Conflicts in Oil Palm areas. As a follow up to that meeting, two NGOs, BOSF and WWF, sponsored the setting up of a multi-stakeholder team including indigenous peoples organisations, companies, NGOs, Government officials, academics and environmental assessment consultants to develop standards for palm oil development for the province. The process gained the approval of the Governor who issued a letter in support of the Multi-stakeholder Working Group on Oil Palm in Central Kalimantan, as the group came to be called. Given mixed reactions to the idea by other interests, the Group spent much of 2006-2007 engaged in trust building among different stakeholders while a small working group examined the various RSPO Principles and Criteria to assess how they could be best applied in the province.

By 2008, the Working Group had clarified how the RSPO P&C should be applied, assisted by an RSPO Training Workshop hosted by the Working Group and led by the Forest Peoples Programme and Sawit Watch. Despite flagging interest from the private sector members in 2008 and the withdrawal of BOSF support for the process, the initiative was maintained with support from WWF and Sawit Watch. In 2010, the Government itself committed funds to the process and convened a drafting meeting in Bogor (Java) so officials could be taken away from their day-to-day responsibilities and devote time to text drafting. Legal advisers from HuMA also made inputs to the

¹⁰ The Provincial and district data are official figures as at December 2010. *Perkembangan Usaha Perkebunan Besar: Provinsi Kalimantan Tengah, Posisi 31 Desember 2010*, Dinas Perkebunan, Palangkaraya, Ms.

process. The decree was passed by the Governor in May 2011 while a Legislative Act begins discussion in the Provincial Assembly in June.

The HCV investigation focused on one of the districts which has seen the greatest development of oil palm, Kotawaringin Timur, which has a total area of about 1.5 million hectares. The district extends from the hilly Schwaner Mountains in the north right down to the Java Sea. Both the middle and lower parts of the district have been intensively planted with oil palms, permits for which extend over nearly half the entire district.

6. Field surveys:

The original plan had been that the RSPO Working Group team would carry out a field visit to the HCV site in Kotawaringin Timur district on Wilmar's plantation, PT Mantaya Sawit Mas. Unfortunately, as noted, Wilmar had to cancel its participation in the field investigation owing to the scheduling of a senior management meeting on the same dates and they also cancelled the planned field visit to their orang utan conservation site. The rest of the team thus made independent arrangements through our own contacts first to visit communities in order to learn of their experiences with HCV assessments and management and then to meet with government officials.

Pondok Damar

On 16th May, the team visited the Dayak village of Pondok Damar and held an interview with two villagers including the village head, Suae Duman, for about two hours. According to the interviewees, Pondok Damar is a Dayak village of about 300 families (over 900 people) that has been in its present location for about 23 years. Previously, the villagers were living in a more traditional and widely dispersed manner including a number of them around a site called Kampung Padas. They were resettled to a new site, Pondok Damar, with the promise of a road connection, electrification, schools and services provided by the Department of Social Affairs as part of its KMT programme with 'isolated and alien people'.

According to the interviewees, PT Mustika Sembuluh began operations in their area in 2003 and finished clearing in 2010 and now has a total estate of some 7,000 ha.¹¹ They reported that the company is still acquiring land in the neighbouring district of Seruyan. PT Mustika Sembuluh was incorporated into the merged Wilmar Group in 2007.

HCV assessments and management:

According to the interviewees, the forests surrounding their village and farmlands used to include areas with orang utans and other wildlife. They noted that the company has taken measures to protect forests along river banks (HCV 4) and they moved the community's burial sites at the community's request (HCV 6). In all 42 graves were moved and the land that was thus cleared was taken for planting. The company also left lands along some of the roads for the community's use (and see

¹¹ Official statistics from the Dinas Perkebunan show that PT Mustika Sembuluh has been allocated a total of 17,500 ha. but this is divided into two estates one north and one south of the road. The southern area does look to be about 7,000 ha.

map below). After consultations with the communities an MoU was signed under which it was agreed that the company would not clear and plant alongside roads and rivers and would not touch peoples' crops. The interviewees also thought that the company left aside about 300 ha for the community's use.¹² Maps were also provided which showed the company area and the extent of community village. The status of the village lands and enclaves remains unclear. They have not been legally secured being held as customary land, as *hak ulayat*.

It is difficult to carry on as an enclave. It was different when we had room to move and could use the surrounding forest areas.

We were very naive when they first came in. Actually they should leave 500 metres on each side of the road for the villagers but they did not.¹³ We are now thinking of the future for our grandchildren.

The interviewees claimed that they were not involved in any land survey to establish the extent of HCV areas or community lands.

We were invited to come along to tell them which areas should be left aside but we never did field surveys. Maybe they said they did but they didn't. Really we are just left with the residential area.¹⁴

Land loss and land conflicts:

The interviewees expressed concerns about the extent to which they had lost lands to the development claiming that lands had been taken in exchange for as little as Rp. 150,000 (US\$20 approx.) per hectare.¹⁵

Most of the land has been planted, it is almost all gone.¹⁶ We did not really agree or disagree. When people saw all the money they lost their heads and relinquished their lands. It is now hard to find fish. There also used to be deer but now game is scarce.

¹² Wilmar notes there was no such agreement according to their records.

¹³ Wilmar notes there is no such requirement under national, provincial or district laws and regulations.

¹⁴ Wilmar notes that 'the HCV identification survey was conducted by MEC consultant (2008) and Mr. Andi Kiki who came with the HCV Ad hoc working group was also one of HCV assessor who was involved with the community to assess the HCV-4, HCV-5 and HCV-6. Moreover, the HCV public consultation which was held at the Wella Hotel in Sampit on the July 16th 2008 was also attended by 26 local participants from the various community representatives of the respective villages. A total of 50 external participants including the Regent of Kotawaringin Timur attended the public consultation.'

¹⁵ Wilmar notes that 'indeed in 2003 the compensation for Land Release was amounting to Rp 150,000/Ha only but on top of that the number of fruit trees / crops on the land was also duly compensated based on the government guidelines according to the *GRTT (Ganti Rugi Tanam Tumbuh)* which eventually add up to be more than the Rp 150,000 in total depending on the number of plants/trees present within the farmer's plot. And the amount of land compensation increase appropriately with the local government regulation over the year. The company never forced community to surrender their land. When there is a price disagreement, the land is enclaved (set aside) and until today the community still have access to these lands.'

¹⁶ Wilmar notes that 'within the area of PT. MS the community still have their own farm land in the form of "enclaves" which are left alone and we do not disturbed or stopped them from accessing to their own land. There is also a MoU on how to handle these enclaves land within the HGU with the respective individual who uses the land. They have free access to these areas. We also have a map agreed and signed by the local village head and the local representative to indicate that we respect the traditional rights of the local community within our HGU as required under RSPO 2.3 indicator number 2.'

People who relinquished their lands to the company are now landless.¹⁷ Yes, the company paid them but now they have nothing. Only some of those who hung on to their own lands have now been able to plant *sawit*. Yes, they [the company] did carry out *sosialisasi* but they explained the advantages and not the disadvantages. They said there would be jobs and education.

If you have any land left you should ask for them to stop. Here we have no land left.

If we had known that it would be like this we would have used customary means to defend our lands. But by following government rules we released our lands and now they are gone. We are now just spectators looking on.

The interviewees also mentioned that there is an unresolved land dispute between the community and the company over a plot of land that the company has taken but which the community claims it did not release. The land in question is a plot of some 100 ha. which was the original village site held by the community before the DEPSOS relocation programme. According to the interviewees, the company is disputing the validity of the community's claim to Kampung Padas.¹⁸ As the area has now all been planted with oil palms it is hard for the people to demonstrate their historical occupation of the area in terms of old fruit trees and other vegetation showing prior use. The interviewees claimed that they were using the wider area including that around Kampung Padas until immediately before the forests were cleared for oil palm. They used the area for collecting rattan and dammar resin, and for hunting and fishing. They also used to extract timber from the area to build houses and sell logs.

The head of the village noted that he had raised this particular issue with the company on 5th January 2010. The company replied 6 months later (15 July 2010) saying that the claim had been forwarded to the appropriate people and they were willing to discuss the issue. However the matter remains unresolved.

As evidence of their claim the villagers pointed to copies of letters sent by the original PT Mustika Sembuluh (before it was taken over by Wilmar in 2007/8) to its land clearance contractors in 2003 warning them not to clear the area as it was an area of community rights.

The previous company was more open. Now there needs to be partnership. They need to take on board the communities' aspirations. They have to accept workers from the village. They need to appreciate the local community. They must take into account our social and our cultural issues. We want to get compensation by non-litigation means.

¹⁷ Wilmar notes that 'the Company has valid legal documents when carrying out the Land Clearing process which took place according to the EIA documents (AMDAL) in 2003 which also described the necessary precautionary measures to reduce environmental impact during land development in PT. Mustika Sembuluh. It is difficult to gauge when the comparison was made in terms of lower fish catch or lower game animal (deer). Oil Palm was only developed in the area over the last 8 years or so.'

¹⁸ Wilmar confirms that in their view the community is 'not able to prove the legality over the 100 hectares of land which they called "Kampung Padas" and until these days the exact location of "Kampung Padas" still couldn't be identified or clarified because the community themselves are unable to ascertain the position of "Kampung Padas" administratively or physically'.

Their management style is not good. The previous company was more supportive. Now the situation is worse. For example the previous company had a pick up and drop off service so villagers could work for the estate.¹⁹ Now that has been stopped and they only employ the people who live on the estate. Not everyone who works there should have to leave their homes. As village head I used to get offered extra work but now I no longer get those opportunities.²⁰

The community members note that the villagers also have rights in the lands now being opened up by the neighbouring company of PT Rimba Harapan Santi to which some peoples are selling their lands while others are not.

Smallholdings:

A surprising aspect of the Pondok Damar situation is that the community gained very few smallholdings from the development.

Everyone wanted plasma but there was only enough for 100 families out of the 300 families in the village. Some people whose lands were enclaved by the company did not get any smallholdings.

The company was said to have allocated 250 ha to the village²¹ but because some of these smallholdings were allocated to people from neighbouring villages only 182 ha were actually allotted to the village members. The smallholdings were developed in 2006-2007 and are now yielding fruits but the areas are still being managed directly by the company and not by the smallholders, although they get some of the proceeds. The villagers are not yet managing the land and indeed no one yet knows which smallholding is allocated to which villager, though the list of smallholders is known. The titles of the land are retained by the company until debts are repaid.²²

¹⁹ Wilmar notes that ‘the first time the company did not have enough housing for all the workers and those recruited from “Pondok Damar” village who stayed in their own home was provided a shuttle service during the workdays. Nowadays, the company already has enough housing for all the workers and have requested all the workers including those recruited from Pondok Damar village to stay in the housing provided by our company for better productivity and cost efficiency reasons.’

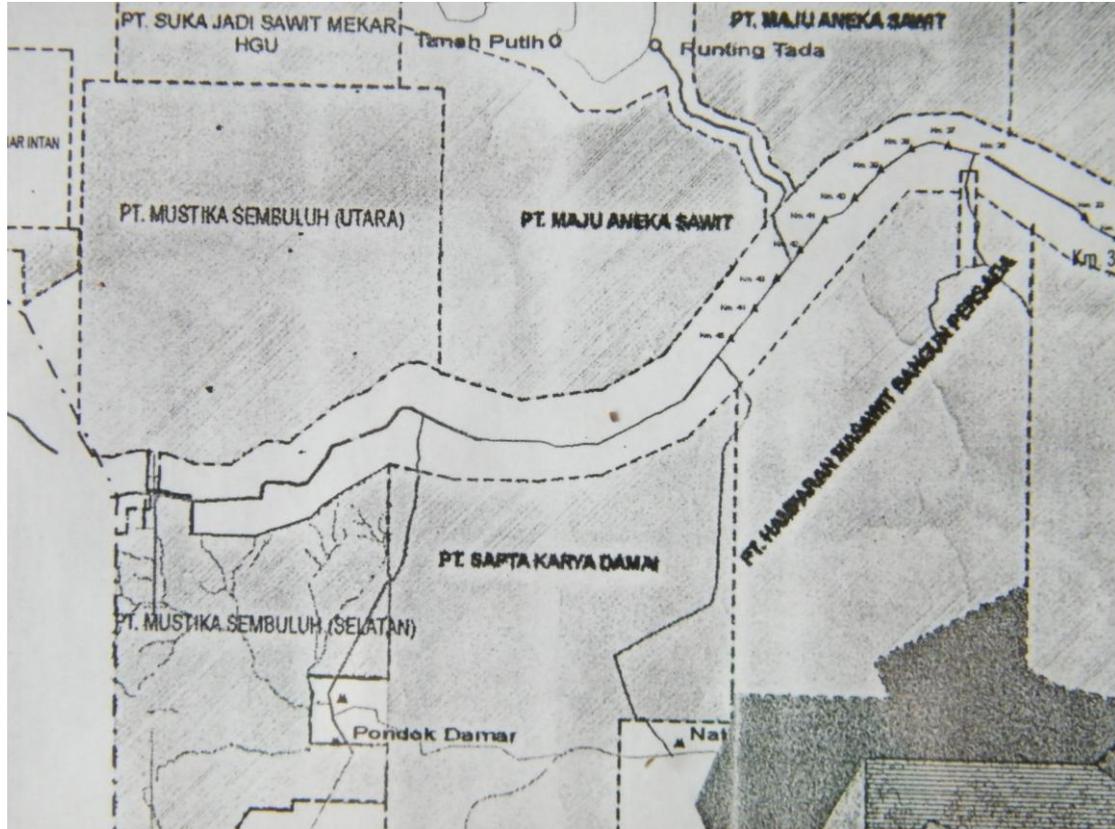
²⁰ Wilmar notes that ‘the Company has provided workers housing construction contract (industrial complex & security quarter) which has been constructed and completed by the village head concerned. The company did offer the building of the mosque contract to the village head but the latter clarified that he is unable to do the construction. We will always give offer priority on the construction of various housing and amenities to the village head and the villagers whenever the opportunity arises.’

²¹ Wilmar notes that ‘based on the agreement (MOU), the company proactively offer the plasma scheme to 125 households who were interested at that point in time and willingly accepted the plasma project with a coverage of 250 Ha of land which the villages must make available, but must be located outside the HGU of PT MS. However, there was only 182 ha available land for the plasma scheme and the remaining 68 hectares has not been realized because we understand from the villagers that there is no more land available for the remaining 68 ha. Moreover, those existing villagers who have land don’t want to release their own land for the plasma scheme.’ Wilmar further notes ‘We will still hold our promise to develop the balance of 68 ha of land for oil palm provided this group of villagers can find this land for us to develop based on the agreement.’

²² Wilmar notes that ‘according to the contents of the agreement (MOU) the plasma land must be managed by the company on behalf of the co-operative initially and temporarily and the full management will be handed over to the community when the loan is completely repaid. The community also said that nobody knew the ownership of each part of plasma because the plasma cooperative never tells them. There were sales & purchases of the plasma land by the community to other people outside the communities but without any knowledge and information to the company as it is an internal matter of the cooperative. Our company has no say on this matter and the

Employment concerns:

The interviewees noted that the community had hoped that they would get jobs with the company but that very few had actually got jobs in the end. They also noted that social jealousy had been aroused between those with and those without jobs.²³



Map from Dinas Perkebunan shows how most lands have been allocated to companies for oil palm, leaving very little land along roads for community use. In practice we found that oil palm had been planted right up to the edge of the roads further reducing the lands available for communities. The map shows the location of the two villages visited by the team.

Tanah Putih

On 17th May 2011, the team visited a Dayak village of about 400 families called Tanah Putih and carried out a group discussion with about fifteen villagers. The community visit and interviews lasted about three hours. The villagers recounted that much of their area had originally been densely forested including orang utans, four kinds of deer, gibbons, squirrels and monkeys as well as much else. Their area was used for hunting, timber felling, collecting rattan, and they also made a living from rubber, growing fruit trees, fishing in the creeks and lakes and from farming. They had both shifting cultivation (*ladang*) and permanent rice paddies (*sawah*). Their

plasma cooperative only provide the information to us after the ownership of some of the plasma land has already been sold and transferred.'

²³ Wilmar notes that 'there are quite a lot of employees working in the palm oil mill factory with the majority them were recruited from Pondok Damar village. Pondok Damar villagers tend to be choosy on the kind of work they want. They just want to work in the factories and offices and we employed them based on qualifications and capabilities and accordingly to the job availability, requirements and specifications.'

customary area was clearly defined and rights in land being held by the first person to use any plot. The majority of the community are Karingan believers and custom is still strong and they still have their *Damang* (customary village authorities).²⁴

They mentioned that three palm oil companies are now operating on their lands. PT Mustika Sembuluh started operations in 2003. PT MAS (PT Maju Aneka Sawit of the Musim Mas group) started in 2005. Just last year, 2010, PT Gading also opened up an estate overlapping their area. Most of their area has now been cleared but there are still remnants of forests and in some of the older bits there are still orang utans and gibbons, though not that many.

HCV assessments and management:

According to the interviewees, the HCV process started in 2009.²⁵ Villagers stated:

Nothing was explained to us.²⁶ Nothing was even explained to the village head (*kepala desa*). They just put up signs on any area that they have not planted and say it is HCV but we don't know what these areas are for. Of course we feel threatened.

We are anxious because we don't know what the signs mean. In PT MAS area they put up the signs and took photos of them and then not much later they took them down again.

We have asked the people [in the village] who work for the plantation companies but they can't explain what the HCVs are about either.

We feel that it is still our right to work these areas. I said to them that this is rightfully mine, because I am still here but I don't know if they plan to get me off these areas. They should come and talk to us.

Personally I don't know what HCV is all about. I think they should invite us and all the community and they could borrow our school building for a public meeting.

Clearly these lands belong to the people. They should not need to put up signs to tell us what is valued. They put up signs where we grow fruit and rubber and so on.

Many of the signs say no hunting, or no cutting trees, which means no farming. They say that the HCVs are to protect the communities but then they put up signs preventing us

²⁴ *Damang* are village level institutions introduced at the end of the 19th century by the Dutch through which they administered the area. *Damang* are now accepted as the customary authorities.

²⁵ Wilmar notes that 'the HCV identification process/study started as early as April 2007 where WWF Indonesia did an initial scoping work and identified the two major HCV areas in the North and South of the projects. An independent consultant recommended by WWF Indonesia through a MoU dated 6 September 2007 commenced in February 2008. Wilmar imposed a self moratorium not to acquire or fell natural areas while the HCV study was on going. By the time the public consultation was conducted in 16 July 2008 the company knows exactly where the "Go" and "No Go" areas are because we have a very detail mapping done through the aerial imagery for the project area. The full report on the HCV study was ready in Feb 2009.'

²⁶ Wilmar notes that 'the public consultation on the HCV identification Study in CKP which was held on the July 16th, 2008 at the Wella hotel was attended by 4 representatives of the villagers including the village head (Pondok Damar). Prior to the signing of the MOU between PT. MS with Bangkal village, Pondok Damar village and the Tanah Putih village the HCV issues have been discussed, explained and publicised including the RSPO P & C and the traditional rights of the locals were carried out on the October 16th, 2009 during a meeting session attended by many villagers and their representatives and our company representatives. This is in compliance with RSPO criteria no 6.2, 6.3 and 6.4.'

from living on our lands. I think they understand well what they are doing, they just don't want to explain it to us. We have asked them to explain but they have not. In my case they put up signs at both ends of my property.

Land conflicts:

The villagers were anxious to tell us about the land conflicts that have resulted from the plantations.

There are still a lot of land conflicts with the company and even burial sites have been taken over and there has been no resolution. The problems started in 2005. The graves were destroyed. We sent letters to the company and reported the matter to the police but there was no response. We tried to raise the matter several times. Look here is the dossier (see photos).

The company, PT Mustika Sembuluh, took my land and they have planted it. So far there has not been any effort by Wilmar to address this problem. I have been three times to the company office to try to solve the problem. The area they took from me without my agreement was 11 hectares. We will never relinquish our (remaining) lands!

In 2003, there was a land release and they took over the land in 2005. No one verified on the ground whose lands were whose. Yes, they paid for the land through *ganti rugi* (compensation). Some people agreed to sell and others not. Some of the people who were paid for the land were not the customary owners but were from Sebabi village [a nearby neighbouring village]. Actually it is very complicated. They paid about Rp, 400,000 per hectare [US\$50 approx.]. We want the disputed land to be handed back. Just the lands we are claiming not the other lands they have taken.

No we have not been provided with maps of the lands taken.²⁷ There are no maps that we know of. If there were maps we never saw them because we did not release our land.

Smallholdings:

A surprising feature of the situation in Tanah Putih is that according to the interviewees there has been no provision of smallholdings to the villagers even though this is required by the law. Just a few villagers have planted a small amount of land themselves on their own account, about five hectares in all. Really it is just to compare it with rubber.

Other disputes:

Apart from filing complaints with the local government, police and with the company itself, it was also mentioned that the some villagers have been preventing the company from harvesting fruits on their customary lands. Concerns were also raised about planting coming within five meters of their well and they are concerned that chemicals applied to the crops may get into their drinking water.²⁸

²⁷ Wilmar note that 'these confidential land release maps cannot be published and made freely available to the community unless to the parties who have a direct interest with the Land Release concern. Public revelation of this map may result in a negative social outcomes and this is in line with RSPO criteria 1.2.'

²⁸ Wilmar notes that 'PT. MS already have procedures regarding the handling of chemical usage and also has a Riparian Belt Management and Monitoring Plan which will help to reduce the possibility of chemical contamination into the water sources. The nearest distance between MS3 Estate with Tanah Putih village is about 10 km which shows that the statement of palm oil trees planted within 5 metres of community wells does not hold for PT MS.'

Solutions:

There was then a discussion about how the problems could be resolved.

I think it would be good if they socialised what they are doing. There should be mapping of the whole area and they should survey which lands belong to whom.²⁹ They should stop expansion and secure our enclaved lands.

Members of the team explained the RSPO standards and the procedures required of companies to resolve disputes, how companies were required to have grievance procedures for receiving complaints, how issues could also be raised during audits and how complaints could be lodged if certifications were granted which ignored matters of concern.

The villagers reported that someone from RSPO had come with the company to visit them in 2009. There had been open discussions and negotiations. Even the local parliament had made recommendations. ‘We even had a celebration. But although we raised the issues, now we are still living with the same old problems.’³⁰

The villagers requested that we raise their concerns with the companies.

Under the law the wildlife is protected. But those of us who are human we also want protection. We live here, we eat here and we bathe here on the outskirts of the company land.

7. Company interviews:

On the afternoon of 17th May 2011, the team met with Pak Riswantoro, the Administrative Public Relations Manager of Wilmar International Plantation’s Central Kalimantan Project and Anhar Macan, his adviser. According to the data from the District Office of Estate Crops, in the district of Kotawaringin Timur, Wilmar’s HGUs include some 63,000 ha.

Table 3. Wilmar’s holdings in Kotawaringin District, in hectares

Company name	Reserved	Core	Smallholders
PT Mustika Sembuluh	17,500	16,268	186
PT Karunia Kencana Permai Sejati	17,000	11,559	0
PT Bumi Wasit Kencana	13,050	7,189	0
PT Mentaya Sawit Mas	15,500	7,289	0

²⁹ Wilmar notes this should be a government not a company duty.

³⁰ The community may be referring to a visit in 2009 made to the village by a team from the NGOs, including RSPO members and the national Human Rights Commission. According to the NGOs in Palangkaraya, KOMNASHAM offered to mediate to resolve the conflict but Wilmar did not accept the offer (Meeting in FOKER 20 May 2011). Wilmar notes that ‘the team referred to is not KOMNASHAM. It’s the TUV Rheiland auditors’ team conducting the RSPO final audit for PT Mustika Sembuluh. KOMNASHAM offered to mediate the conflict on the graveyard claim only in 2010 but this case was already referred to the DPRD (Peoples representatives’ council – local district assembly) by the community lawyer. Now the verdict is pending Regent decision. We have been advised by the customary court and local government department not to proceed with the individual community claim of USD 100,000 and USD 70,000 on the graveyard matters.’

Progress with HCVs

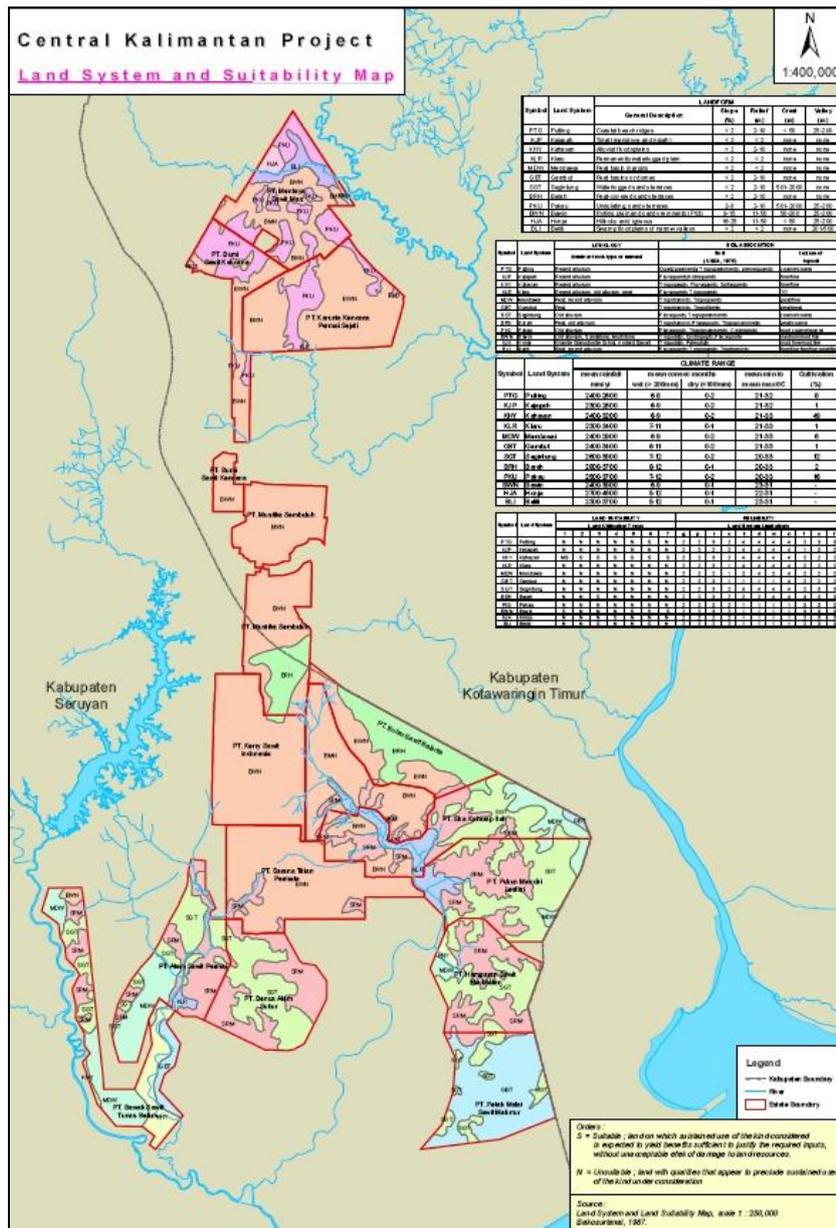
In relation to the challenges of conserving HCV, Mr Riswantoro noted:

It is also a matter for the communities to understand the value of conservation. They keep asking us why are calling it HCV. They feel this is restricting their livelihoods. They want further compensation of unused areas that are not being used for planting and yet they can't use them. It is very difficult. There is no arrangement with the government to look after these areas.... We don't manage the areas that are excised. We don't have responsibility for such areas.

To meet the challenge of securing lands within their HGU, the Wilmar staff informed the team that on 4th May 2011, they had signed an MoU with the Governor which recognises that they have set aside some 3,100 ha. of one of their HGUs, PT Mentaya Sawit Mas, as a conservation zone for orang utans. The MoU shares responsibility for the management of the area with BOS and the Provincial Government although the initial financing will be put up by Wilmar. The company has informed the National Land Agency (BPN) that the set aside is not abandoned land but is in line with the Plantations Act (Law 41/1999), which requires companies to look after areas that must be conserved. The details of the management plan are still being developed, and the government will play a role in monitoring.

Mr Riswantoro noted that while there has already been socialisation with the local communities, further work will be done to involve the local communities. Limited forest use for natural forest products such as rattan, dammar resin collection and small scale timber collection for housing will be permitted but will require careful monitoring. Exploitation of timber for commercial purposes would however not be allowed. Not all the issues of compensation of the local people for restrictions on their livelihoods have yet been resolved. (Indeed, the press report community dissatisfaction with the consultations to date.³¹)

³¹ PT MSM dukung penyelamatan orangutan Kotim, *Kalteng Pos*, 16 Mei 2011; Keluarga Loling merasa kecewa Kotim, *Kalteng Pos*, 18 Mei 2011.



2009 Map of Wilmar holdings in Kotawaringin Timur and Seruyan Districts Source: www.aidenvironment.org/.../A1836_Verification_Greenpeace_Report_Burning_up_Borneo.doc

Dispute with communities in relation to PT Mustika Sembuluh

The team then reported to the Wilmar staff the complaints of the villagers of Pondok Damar and Tanah Putih, noting that they did so both as responsible RSPO members in line with Principle 1 but also because the communities had so asked them. Mr Riswanto noted that some of what had been reported was true but that the company had been actively trying to seek a resolution of the issues and that some of the claims for compensation were exaggerated, such as several billions of rupiah claimed for damages to gravesites. Mr Anhar Macan also agreed that the problems reported to the team in Pondok Damar and Tanah Putih were much as summarised although the situation was more complicated. Mr Riswanto noted that PT Mustika Sembuluh came under the joint management of the newly created Wilmar Group (created from a

merger of two large companies) in 2007 and actual full management was only completed from the beginning of 2008. The HCV assessment was carried out in 2009.³²

Mr Riswantoro noted that the dispute about the graves in Tanah Putih was now resolved and they felt that relations with the community were improving in line with RSPO Principle 8. After further discussions among the team and Wilmar staff it was agreed that more needed to be done to resolve such complaints. Andi Kiky, noting that he had actually been part of the HCV assessment team for PT Mustika Sembuluh, emphasised that socialisation should be a continuous process and integral to HCV and plantations management.

8. Government Meetings:

The team was able to meet with a large number of officials at all levels of government from village head right up to the Governor. This included separate meetings with the Head of the District Office for Estate Crops, the Head of the District Office for Environmental Affairs, the Head of the District Office for Forestry, the Regent's Assistant in Sampit, the Head of the Provincial Office for Estate Crops, the First Assistant to the Governor and the Governor himself. The notes below summarise these discussions.

Head of District Forestry Office

On 18th May 2011, the team met with Pak Hanif B., the Head of the District Forestry Office along with two of his staff. Mr Hanif noted that in Kotawaringin Timur Estates Crops and Forests were handled separately while in his view the issues should be treated together. Referring to a topical land dispute where transmigrants were being displaced by a plantation (see below), he noted that the district had multiple social problems. As for the environmental HCVs he stated that the current situation was hard to reverse.

All the areas that should be conserved have already been chopped down. They were all chopped down too soon... Companies often take over more land than they are given. Now we are just trying to conserve the little that remains. We do monitoring to find out where people's own conservation areas are but we are still a long way from doing what is really required.

Until now we have never legally established customary forests (*hutan hak*) as there are no regulations (to do so). Of course, from the community point of view they may

³² Wilmar further notes that 'the two-stage HCV assessment in the 7 PTs began in April 2007 with a scoping assessment conducted by WWF Indonesia. Then it was decided that in September 2007 primate specialist team from APAPI conducted a more detail survey of primates in these two identified conservation areas. The result of the study was presented in a public consultation organized and facilitated by WWF Indonesia in 29 November 2007 in Palangkaraya. The MoU signing with WWF Indonesia was done in 6 September 2007 followed with an independent HCV consultant recommended by WWF Indonesia; the consultant commenced the fieldworks in February 2008. To safeguard ourselves from clearing natural areas post November 2007, Wilmar initiated a self imposed moratorium in the same month to ensure that no natural areas were cleared without any HCV assessment.'

well recognise such areas. The trouble is that there is no middle ground between the communities' views and the government view.

Mr Hanif expressed the view that local people were not very concerned to secure habitats and rare species but were more concerned to secure their livelihoods. He noted that almost all the people in the region live alongside waterways - lakes, streams and rivers – but that the companies use these waters and channel them, so often these streams dry out making people's lives hard.

All the streams are destroyed and only the bigger rivers have conservation along the banks. Most communities live along the river banks and on either side the lands up to two to three kilometres belong to the communities. But the *ijin lokasi* go right down to the river banks. And along the roads, the State roads, the concessions should leave out one kilometre either side for the communities, but the companies plant right up to the edges of the road because it is cheaper to develop these areas.... I like what the RSPO and ISPO are doing. It is good they report who is doing what... It is also a good idea to come up with a law-making process (to assert these standards). The companies don't want to protect HCVs, they want only to plant. They don't want to set aside large areas suitable for monkeys. In a small five hectare area you might get only one monkey. That is not effective.

Asserting effective management of HCVs in plantations would first of all require that the government was much stricter in the hand out of permits and releasing land, Mr Hanif painted a challenging scenario in which to seek to conserve HCVs.

Right now they (senior authorities) don't follow procedures but let them (permits) out anywhere. They hand out initial permits (*ijin prinsip*) and location permits (*ijin lokasi*) but before they have completed procedures the companies chop them down anyway. Actually three Ministries are meant to coordinate to release lands and that is when conservation areas should be defined, only after that should they (the companies) start land clearing and secure a HGU. That is what they should do. But they just get an *ijin prinsip* and release of land and they start clearance. The processes are there but they are not applied. Out of 77 *ijin lokasi*, held by 52 companies, only 17 have done their release properly.

We need to enforce these procedures if we are to achieve conservation. We need to test the peatland, check against satellite images, to see (who are) the people who cut everything down. How can we monitor when we have no data? Companies don't pay any attention. There are quite a lot of lands being chopped.

We do have documents on the process but it is the police and prosecutors who are meant to prosecute the companies. It is not in our authority to actually take cases to court. We give them (the police and prosecutors) the data but nothing is done. The law enforcement and prosecutors don't act. We provide services but we are not law enforcement. The companies are not reporting what they are doing either. They burn and make smoke and it is all destroyed... They chop down everything, even though it is against the rules. They don't even stay within their HGU, they plant outside their areas.

Mr Hanif also noted that the District Forestry Office lacked the technology to map and monitor what was happening to the forests and does not have an accurate map of the concession boundaries against which to assess compliance.

The Secretary of the District Forestry Office, Pak Rihel, noted that some of the companies are now complaining about the PERGUB on *adat* rights and that the Forestry Office may need to look into this. 'The communities still need forest'.

Mr Hanif also expressed the view that while AMDALs (Environmental Impact Mitigation Plans) come too late and HCVs should get identified before permits are handed out, unfortunately the Spatial Planning for the Province has been blocked by a dispute in parliament.

Mr Rihel noted:

There needs to be a new regulation for HCVs in HGU so that the Forestry Office, which does monitoring, has a legal basis to work in a long term and sustainable manner. Maybe a joint (inter-ministerial) decree would be necessary.

It was suggested that an NGO forum should help to draft such.

Discussing the lack of smallholdings in many estates Mr Hanif and Mr Rihel noted that companies were not required to develop smallholdings with their plantations until 2007. Now they are required to establish 20% of their land as smallholdings.

But here in Kotim (Kotawaringin Timur) there is no land left.

The officials did mention that they have documented the case of one company, PT Tunas Agro Sumber Kencana (which was PT Bintang) which had violated procedures on peatland conversion and river side restrictions and that they were waiting of the case to be prosecuted.

District Office of Environmental Affairs (BLH):

The team also interviewed the Secretary of the Office of Environmental Affairs, Ibu Darini and her staff. BLH is the agency that coordinates between Mining, Agriculture, Forestry and Estate Crops and provides them with technical advice on how the environment should be protected and taken into account during the permitting process. The agency also has responsibility to monitor compliance with environmental regulations but notes that it has a limited budget. They noted that because so much forest has now been depleted, HCV areas are now highly fragmented and species find it hard to move around.

Discussing the legal situation the view was expressed

I think the laws are there, it is just the execution of them which is deficient. For example, the companies are often planting along the rivers when they should not.

In response to the question whether they can stop companies planting, BLH staff noted that RSPO members had been persuaded to remove their plantings and restore natural vegetation. The BLH staff thought that there had been improvement in the performance of companies since the RSPO was created but they also emphasised that their own authority was limited.

We can report violations but we are not decision-makers. We are just asked to provide inputs based on environmental science.

Asked what would happen if large areas for HCVs were excised from permits for conservation by the government or the communities, the BLH staff expressed the view that they could not imagine that happening round here as all the companies want to plant all of it.

I think it is safer if these areas are looked after by the companies. If they cut them out then the communities will degrade these areas by farming and illegal logging. Sometimes when communities are in conflict with companies they will clear these conservation areas. Communities do need land for agriculture. It is the culture here to clear land for farming by burning.

Head of the District Office of Estate Crops:

Also on the 18th May 2011, the team met with Pak Sugian Noor, the Head of the District Office for Estate Crops. At the same time we met two of his staff, his technical Assistant Subiyanta and his adviser, Ichilas Semesta. Mr Sugian had previously been a sub-district head (*camat*) in Kuala Katingan and said he thus has a good knowledge of what actually happens when estates are developed. After being informed of the purpose of the investigation Mr Sugian noted:

I was administrator of a sub-district and while I was there we did want to maintain such values, especially livelihoods and cultural values. Quite honestly I am new to this subject of 'HCVs' but we are concerned to conserve the wildlife in our region.

Mr Sugian noted that there are currently 60 active HGU in the regency and 20 palm oil mills. He noted that really there are 5 or 6 big palm oil groups in the regency with their numerous subsidiaries. The task of his Office is to provide recommendations to the *Bupati* (Regent) who is the one who actually issues permits. He noted that some companies such as PT Mustika Sembuluh had set aside areas in their estates for HCVs. However he noted that a lot of companies did also clear areas that they should not.

Some of these companies have cleared and destroyed a lot of things. So much of what we want (to conserve) has been destroyed, much has already been destroyed. There are no conservation areas, it is all just oil palm. There should be some conservation areas. There is only oil palm. So, for example, in accordance with the AMDAL,) there should be 500 metres each side of the rivers but in reality the companies here still clear these lands. Here there are no longer any streams, no more river buffers, unlike in Kalimantan Timur where these are maintained. The companies just want to plant oil palm as much as they can. There are some that have set aside areas for wild pigs, monkeys and deer but only a few have (so) conserved. In reality there is nothing left to protect anymore.

His adviser Mr Ichilas noted:

In the past there was also timber but if we look in the field now the timber has also all been logged out. So now they have become strict on logging but the development of oil palm is still going ahead in the way my colleague explained. If you look along the

rivers it has all been planted, not all but most. There are little bits of nature but not much. Actually the previous spatial plans were the problem. Now we have some orang utans but there is no habitat left for them.

Mr Sugian noted:

The ones who have authority are the Regents. He should not – those of us at the lower levels – we just follow the rules (sic.). If companies have just got *ijin prinsip* and *ijin lokasi*, they feel they must clear as fast as possible. If they don't they are seen not to be serious and if so they then lose their permits. So they don't take time to consult organisations like BAPEDALDA (the previous name for the BLH). So regulations don't get implemented. The higher ups should ensure a situation whereby we can apply the rules seriously, and we would get hit on the head if we did not apply them. When you look at customary rights – they just bulldoze and plant it. We don't go against our superiors. This has happened in the past but they have not acted. We should be given scope to apply the laws and get RSPO certified. A lot of community lands have been sacrificed and now it is difficult for them to get a livelihood. So these companies will not get certified and instead the Malaysians will get the benefit by being able to sell in the international market.

Mr Ichilas noted:

Yes, we need to get support from our leaders. Here that would be the Regents. We do want to look after the environment, species and habitats. There are a lot of challenges. Many animals are now (locally) extinct. Some plants however can be conserved. If they have a chance we can work with the indigenous peoples to help them conserve them. It is hard but we can come up with solutions and we can replant (threatened species) if there are still some hectares left over. But it is hard with the animal species. We need strong support from the government to work together with the communities so they don't then destroy what we have built together. We need to build partnership. Signs saying 'no fishing', 'no farming', and 'no hunting' are not effective if the people are not socialised and if they have no sense of ownership.

Mr Subiyanta agreed that leadership is needed:

We support what you are saying about HCV. In connection to that, the highest level of policy-makers need to be committed to conservation in the future. For example, if we look at permits, what percentage (of the areas) should be allocated to conservation? So far this is just defined by the AMDAL.

Mr Subiyanta noted that the combination of pressure on land by both nucleus estates and by smallholdings outside the estates was pushing communities into conservation areas.

Where are we going to put our people? Do they just go into the forest? It is difficult for us to deal with the communities and the companies are shrewd, they manipulate the situation as the regulations are quite vague. To achieve the 20% target they open up land in virgin forest which they then allocate to the communities.... There is actually no forest left in the area... Some communities want to use land but then they sell and the companies take advantage of that. I don't want the communities to sell their productive land. What are they going to live on? Then they will ask for more land and will have to go into the forest. They create farmers groups to do that. We have tried to show that that is not a good thing to do. Some people move in and clear land, sell it and then move on. Most of the communities used to work on timber. Now

they mainly work on the estates. They become part of the *plasma* and then outsiders come in and buy up the smallholdings, like people from Medan. So then it is all gone.

The Dinas Perkebunan also explained that there were indeed many companies which had allocated very little of the land in their *ijin lokasi* to smallholdings. In comparison to a total area of 726,000 ha. allocated to oil palm companies (of which 347, 232.41 ha. have been planted), only 57,685.15 ha have been allocated to villagers as smallholdings in the whole district.³³

Demonstration in Sampit:

While we were in the district capital, Sampit, there was a public demonstration by transmigrants contesting the take-over of their land by the oil palm company, PT Buana Artha Sejahtera, a member of the Sinar Mas group. The villagers allege that a few years ago the company took 300 ha. of their lands without their agreement. Recently their village head was arrested and charged with criminal trespass for harvesting oil palm fruits from the contested land.



Transmigrants demonstrating at the gates of the district parliament in Sampit in protest at the take-over of their land by the palm oil company PT Buana Artha Sejahtera of the Sinar Mas Group (18th May 2011).

³³ *Perkembangan Pembangunan Perkebunan Kelapa Sawit dan Karet Kabupaten Kotawaringin Timur*, Dinas Perkebunan, Sampit, March 2011. This data from Dinas Perkebunan in Sampit is at variance with the data provided by the Province in table 2 above.

The villagers mounted a peaceful protest, accompanied by loud drumming, outside the local parliament calling for the return of their lands and the release of the village head as he was only taking fruits from lands that were rightfully theirs. Spokespersons from the villagers were allowed into the Parliament to present their case to the Representatives.

The local press reported a senior police officer as saying:

Such land conflicts have been going on for years and are not just happening in Kotim (Kotawaringin Timur) but in almost all large-scale privately-owned plantations. It is regrettable that during this meeting the company was not present, so that the chronology of the complaint could be clarified.³⁴

Nevertheless the police said they planned to prosecute the village head in the criminal court

Regent's Assistant:

Our final meeting in Sampit, joined by Pak Riswantoro and Anhar Macan from Wilmar, who had kindly organised it, was with the 3rd Assistant to the Regent, Pak Yanero, whose principle responsibilities are with the district education programme. Mr Yanero conveyed the personal regrets of the Regent, Pak Supian Hadi, that he was not able to meet with us but that he had had to go to Palangkaraya for a Central Kalimantan ExPo which was then taking place. Mr Yanero noted that he would make a report of the meeting to the Regent.

Admitting that there were serious challenges in securing HCVs, he noted that the new Regent, who had been in office for only a few months, was now insisting that no more permits should be handed out until the spatial plans were resolved. He noted also that the District Head of Forestry was quite indignant about the situation.

It is difficult to get everyone together since they are all very busy but the Regent is quite stubborn. What's done is done, but he won't issue any more permits. The new Regent is very concerned. Also land is being taken over for transmigration, at least until 2010, but I think it was the last batch as there is no more land.

Mr Yanero mentioned that the Governor is having a 'tug-of-war' with the parliament to get the provincial spatial plan approved and that he is angry at these delays. Until this plan is issued no more permits can be given out.

Noting that there had been irregularities in permitting, Mr Yanero mentioned that the District Parliament had established a Special Committee (*Panitia Khusus – Pansus*) which had been holding hearings over the past three years about the legality and governance of the permitting process and palm oil expansion. The results of the enquiry are now being discussed in the Parliament and are not yet public. They focus on three companies and specific problems. The Committee has investigated the issue of disputed lands that have been planted on by the companies. Some of the companies

³⁴ 'Kades Ditahan, Demo Ke DPRD', *Radar Sampit*, 19 May 2011.

are also alleged to be planting outside their boundaries. The Committee has carried out hearings with the communities as well as field visits.

According to the Head of Forestry a lot of these companies are going beyond their HGU and are planting in production forests.

Mr Yanero also mentioned that six officials from the district are also under criminal investigation by the National Corruption Eradication Commission (KPK) and face prosecution by the police in the criminal courts.

There are lots of missteps in terms of permitting.

In discussing the pressure on communities who not only gave up land to the estates but also got no smallholdings and so were now pressing for access to HCV areas, Mr Yanero agreed that there were companies that offered no smallholdings and did not involve the communities. This was another issue that the Pansus was investigating as companies were meant to set aside 20% of their areas for *plasma*. He expressed a personal opinion.

What is happening is very complicated. Communities don't have land because they have been released to the companies. I am a native Dayak. I said back then that if this goes on the Dayak are going to end up as spectators. I told the companies that it would be hard if they did not involve the communities. It will be a time bomb, because the people know that the areas being planted are their lands which belonged to their ancestors. They won't know that their parents or grandparents sold the land but they see it has been taken over. The Dayak have unwittingly released all their lands... The communities do own the land but they are selling it off.

Provincial Office of Estate Crops (Dinas Perkebunan):

Back in Palangkaraya, the team met the Provincial Head of Estate Crops, Erman P. Ranan, himself a Dayak, on the morning of 20th May 2011. He noted that protection of High Conservation Values should first of all be effected by adequate spatial planning so that large areas of HCVs can be identified and would not then be handed out as concessions for development.

If large HCV areas are not identified in spatial planning and are handed out as concessions then it is too late.

While nationally there has been a requirement that 20% of estates should be allocated to smallholders, this has not been followed through in the Province. Accordingly the Governor and others have been developing a local legislative act (PERDA) preceded by a Governor's Decree (PERGUB), which is meant to ensure sustainable plantation management, effectively in line with the RSPO and ISPO.³⁵ These laws have been carefully framed to be in compliance with national social, environmental and estate crop laws and are designed to regulate the way permitting is carried out by the Regents.

³⁵ ISPO = Indonesian Sustainable Palm Oil the standard for which was made mandatory by a Ministerial Decree in March 2011. The RSPO Secretariat is currently carrying out a comparison of the RSPO and ISPO standards.

He emphasised that under current law, the Governor only has the authority to issue estate crop permits for estates that overlap district boundaries. All other permits for estate crops are handed out by the Regents.

The Provincial Head of Estate Crops noted that this new law was designed to complement the PERGUB and PERDA issued in 2009 which provided recognition of indigenous communities' rights to land. Mr. Erman further noted that communities also have rights on State lands such as the enclaved areas within the PT Mustika Sembuluh HGU where areas have been set aside for ritual sites.

In discussing HCV assessments, Mr Erman explained that the new laws will require that such areas are either enclaved or excised from the HGU. We queried what legal status can be given to these enclaved or excised lands and after some discussion the Head of Estate Crops agreed that their status could be a problem.

Speaking about the situation that the new laws are meant to address, Mr Erman pointed out that there are sometimes inconsistencies in the permitting process in not following the regulations. He noted that AMDALs are often quite weak especially with regard to the social and cultural aspects. Thus, when implemented, they fail to empower the indigenous peoples who in facing large scale plantation companies find that their rights are denied.

Speaking about the PERGUB and PERDA which recognise adat rights, Mr Erman expected that village heads would be able to give such areas interim legal protection by issuing a Letter of Record of Customary Land (*Surat Keterangan Tanah Adat*).

We know that, even though it is late, something has to be done.

Meeting with the Governor:

The Governor of the Province with whom we had an audience on our last day in Central Kalimantan was clear in his discussions with us that a more balanced approach to plantations is now needed in the province. Although under the Indonesian decentralisation laws authority to hand out (and rescind) permits for plantations lies principally with the Regents, the Governor noted that he is just about to issue a new decree which will require much higher standards from plantations companies operating throughout the province in acquiring lands, protecting high conservation values, respecting customary rights and insisting on respect for the right of communities to Free, Prior and Informed Consent.

The Governor noted that communities had so far benefited little from plantations but the new decree will make it a requirement that within two years at least 20% of all estates, including existing ones, are allocated to smallholders. This has long been a national requirement but it was not implemented through provincial regulations. The Governor noted:

I am not against investment but we want investment that does not disturb the lives of the local communities who for generations have been living in these areas.

My first initiative is to secure the lands of indigenous peoples. Companies should work with communities to develop their lands so that they benefit the people. The concept is simple but challenging in implementation... communities are easily led astray by promises of compensation payments. We don't want local communities to lose their rights to land.



Members of the team meeting with the Governor of Central Kalimantan, Agustin Teras Narang SH, flanked on his right by the Provincial Head of Estate Crops, Erman P. Ranan SH.

The Governor argued that this will not only benefit the communities in that it will provide them more certainty to secure income, education, health care and livelihoods but will also make the companies feel more secure. In speaking of HCVs, he emphasised that livelihood security was paramount if environmental values were to be sustained.

He noted that what are now needed are complementary regulations at the national level which secure such an approach and ensure that it does not contravene other higher level laws enacted at the central level.

Our target it that these local laws (PERGUB and PERDA) will be a model for national reforms to secure the social-cultural aspects of communities and environmental aspects too.

9. Conclusions and Recommendations:

Oil palm development in Central Kalimantan seems to be at a critical juncture. The interviewees appear unanimous that there has been a too rapid development of the sector in a rapid scramble for land. All the officials interviewed agree, indeed many assert forcefully, that there have been serious irregularities in the way permits have been allocated and some appear to be illegal. There have been delays in getting these matters addressed by the courts. These matters are now under investigation and prosecution by both a District Parliament Commission and by the Corruption Eradication Commission. Some persons or companies have apparently been charged.

As far as HCV is concerned, such irregularities have apparently caused major problems and yet there have also been encouraging, precedent-setting advances in the Province. On the one hand, the lack of spatial planning coupled with the haste with which permits have been allocated and lands cleared has made it difficult to secure HCVs. According to what we were told much has been irrevocably destroyed. On the other hand, some companies and now the Governor have taken steps on the ground and in the law to start to secure what HCVs are left.

Communities are caught up in this process but for lack of formal rights in land, are mainly responding to imposed developments and conservation initiatives rather than being party to plans and able to proactively take responsibility for the management of their lands. The loss of land to the expanding palm oil sector, without compensatory provision of oil palm smallholdings, inevitably means that communities put pressure on High Conservation Areas identified by RSPO plantation companies. Arguably not enough land is being set aside that is 'essential to the livelihoods of local communities' (HCV 5). Much more needs to be done to ensure communities understand what both the RSPO and HCVs are.

Legal Findings:

The following legal insights derive from the study

- No reference is being made to *hutan hak* by officials. None seemed familiar with the legal option. However, *hak ulayat* (collective customary rights in land) referred to as *tanah adat* in the Governor's Decree (PERGUB 16/2009) and Provincial Legislative Act (PERDA 13/2010), once recognised through SKTA, may be amenable to later recognition as being within *hutan hak*.
- *Hutan desa* is not being applied in the province and no interviewees were familiar with the legal option.
- *Hutan adat* is not being used either, although this is less surprising given that there is a lack of implementing regulations.
- Tax exemptions on HCV set asides cannot be offered by the Regents or regional officials but require the approval of the Ministry of Finance in Jakarta. HCV areas in some instances already attract a low land tax grade.
- Widespread legal irregularities and the lack of an effective spatial planning law are reported to be undermining efforts to secure HCVs in the province.
- The new Governor's Decree on Sustainable Plantations in Central Kalimantan will make FPIC, respect for community rights and securing HCVs legal

requirements for all growers in the province (not just RSPO members). This should help routinize procedures required to secure HCVs and will provide scope for coordination between estates to secure populations of rare, threatened and endangered species and landscapes values (HCVs 1 and 3).

- Further regulations will be needed in the province to provide legal security for HCV areas excised from company permits.

Implications for RSPO procedures:

The RSPO Principles and Criteria are designed as an integral package of best practices that if observed should ensure sustainable land use. When communities are being asked to relinquish lands for oil palm development they need to be given far more complete information about how their livelihoods will be affected and could be sustained, what areas will be allocated for each villager or family as smallholdings, where it is proposed that HCV set asides will be established and what benefits will be provided. Principles and Criteria related to transparency (P1) legality, land acquisition, free, prior and informed consent and dispute resolution (P2), and participatory social and environmental impact assessments (P5 and P6) all create the conditions in which the specific requirements relating to HCVs (P&C 5.2 and 7.3) can be implemented effectively. Without such conditions, HCVs areas even if identified and set aside will be at risk.

The study suggests that companies should work with communities to develop much more detailed land use management plans to ensure that communities' needs for land for their basic needs are accommodated so that they are not obliged to move into other HCV areas.

Recommendations:

The following recommendations flow from these findings:

- More needs to be done to provide both local officials and communities with good information about what High Conservation Values are, how they are identified and how they should be managed
- Growers must provide more information about HCVs to smallholders and local communities, including involving them closely in identification of conservation values and in planning how those values can be maintained
- Realistic assessments are needed of how much lands need to be left aside from plantation development to meet the basic needs of local communities (HCV 5)
- Grievance procedures and conflict resolution processes must be activated quickly to avert a breakdown of relations between communities and companies
- Certification Bodies (CBs) should check the results of HCV identification and management, and the extent to which workers and communities have been involved with and informed of these plans
- CBs should ask top management to clarify how HCVs are being secured in their HGUs and what provisions there are in the SOPs for HCV management

- Growers must work with the communities in setting up and managing HCV areas, especially those relating to HCVs 4, 5 and 6
- Growers should provide a copy of the HCV identification assessments to DisBun, DisHut and BLH
- Growers in neighbouring plantations should share plans to manage HCVs, and where appropriate, develop joint plans to manage HCV's that straddle their holdings (ie establishing corridors for populations of rare threatened or endangered species).

**Annex 1: Terms of Reference for the Field Investigation of the
RSPO Ad Hoc Working Group on High Conservation Values in Indonesia
Kalimantan Tengah, 15th – 20th May 2011**

Purpose:

As established in the TORs of the Working Group itself the task of the working group is to explore means of effectively securing HCVs in palm oil development areas in Indonesia, in line with the RSPO P&C, especially those HCV areas identified in *ijin lokasi* during HCV assessments, through legal and procedural reforms and taking into account the recommendations set out in the report.

The work so far carried out by the Working Group shows that *bupati* (regent) have considerable discretion in deciding how to apply the law and whether or not to accept set asides for HCVs. Where *bupati* are indifferent to HCV protection and/or have reasons for insisting on lands being allocated for development, HGU which include HCV set asides are vulnerable. However, where *bupati* are sympathetic there are options for securing HCVs both inside and outside HGUs.

Based on the discussions of the working group and the legal study, the following local level legal options have now been identified as possible ways of securing HCVs either through decrees of the regent or as local legislative acts (PERDA).

- Securing HCV areas in APL designated as *Hutan Hak* (either held by the company or by the communities as appropriate)
- Securing HCV areas in *Kawasan Hutan Negara* as *Hutan Desa* (particularly HCVs 4, 5 and 6)
- Securing HCV 5-6 areas in *Kawasan Hutan Negara* as *Hutan Adat*
- Getting tax exemptions for areas of HGU set aside for maintaining and enhancing HCVs

The third meeting of the Working Group agreed that a field visit should be made by members of the Working Group to the Wilmar site in Kota Waringin Timur followed by a visit to the *bupati* and then a discussion with the governor. It was agreed to explore dates with the *bupati* but after consulting their diaries the Working Group meeting proposed that this field visit be carried out in the week of 16-20 May 2011. It was agreed that Wilmar would contact the *bupati* to ask if the dates suited him. Wilmar has now confirmed with the *bupati* that he can receive us during this week. The following schedule is thus proposed.

Schedule:

15 May: Arrive in Palangkaraya

16 May: Drive to field site in Kota Waringin Timur

17 May: Field Visit and team discussions: exploration of challenges and possible legal solutions

18 May: Discussions with Bupati of possible legal solutions

19 May: Return to Palangkaraya. Draft Report.

20 May: Meeting with Gubernur to present and discuss findings. Departures.

Composition of Team:

The team is self-chosen from among willing members of the Working Group who have volunteered to participate. It includes Industry, Social, Environmental and Legal NGO expertise and a representative of the RSPO Secretariat.

Name	Organisation	Position
Simon Siburat	Wilmar International Ltd	Group Sustainability Controller
Dr. Marcus Colchester	Forest Peoples Programme	Director
Patrick Anderson	Forest Peoples Programme	Policy Advisor
Cherie Tan	WWF International	Manager of Responsible Finance
Norman Jiwan	Sawit Watch	Head, Department for Social and Environmental Risk Mitigation Initiatives
Andiko	HuMA	Legal Advisor
Dr. Asril Darussamin.	RSPO Regional Indonesian Liaison Office	Indonesia Smallholder Affairs Technical Manager
Famia Badib	-	Interpreter

Reporting:

A draft report will be written up in the field. A revised report will be written up shortly after and agreed by the full team through email consultation. This document will then be shared for discussion with the full working group.

Annex 2:

<http://www.thejakartaglobe.com/nvironment/illegal-logging-mining-ravages-kalimantan-costs-indonesia-364b/437911>

Jakarta Globe

Illegal Logging, Mining Ravages Kalimantan, Costs Indonesia \$36.4b
April 28, 2011

The Ministry of Forestry says illegal logging, land clearance, forest fires and mining has devastated Indonesian Borneo and cost the country an estimated Rp 311.4 trillion (\$36.4 billion).

Raffles Panjaitan, director for forest investigation and protection at the ministry, said an estimated 1,236 mining firms and 537 oil palm plantation companies were operating illegally in Central, East and West Kalimantan on the Indonesian half of Borneo.

The companies had caused losses put at Rp158.5 trillion in Central Kalimantan, Rp 31.5 trillion in East Kalimantan and Rp121.4 trillion in West Kalimantan, he said.

The figures for the number of companies were supplied by district heads and governors.

Forestry Minister Zulkifli Hassan said the names of the companies, including a number of large operations with thousands of hectares of concessions, were not being released because they were still under investigation by the ministry in conjunction with the Judicial Mafia Eradication Task Force.

Also involved in the investigation were the AGO and the Environment Ministry, as well as the Corruption Eradication Commission who were investigating alleged abuses by authorities regarding the issuance of licenses.

He said the investigation would take three months.

Antara & JG