

UNDER THE CANOPY

**THE RAINFOREST
FOUNDATION UK**
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THE RAINFOREST FOUNDATION UK

233A Kentish Town Road,
London NW5 2JT, United Kingdom

Tel +44 (0) 20 7485 0193
Fax +44 (0) 20 7485 0315

info@rainforestuk.org
rainforestfoundationuk.org
mappingforrights.org
youtube.com/theRFUK

facebook.com/rainforestfoundationuk
twitter.com/RFUK – @RFUK

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FEBRUARY 2013

SEEDS OF DESTRUCTION

**EXPANSION OF INDUSTRIAL OIL PALM IN THE CONGO BASIN:
POTENTIAL IMPACTS ON FORESTS AND PEOPLE**

UNDER THE CANOPY

**A series of special reports by
The Rainforest Foundation UK.**

These reports closely examine issues affecting indigenous peoples and traditional populations of the rainforest. *Under the Canopy* reports provide recommendations for international and local governments, the private sector, institutions and NGOs to innovate for positive change.

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This report is based on research by Earthsight Investigations on behalf of Rainforest Foundation UK (RFUK). Earthsight specialises in using in-depth research, investigations, undercover work and filming to document environmental and social crime and injustice. The conclusions and recommendations and any views expressed within the report are those of RFUK only.



KEY MESSAGES

HUGE FUTURE DEVELOPMENT PLANNED

New industrial oil palm expansion projects currently underway cover 0.5 million hectares in the Congo Basin, which will result in a fivefold increase in the area of active large-scale palm plantations in the region. The area of projects announced since 2009, but not necessarily underway, covers 1.6 million hectares and palm oil companies are searching for larger areas. Approximately two-thirds of the total forest area of the Congo Basin's forests – 115 million hectares – has suitable soil and climate for growing oil palms. Some of the projects are associated with wider agro-industrial developments, such as for rubber production or biofuels.

LACK OF TRANSPARENCY

The terms of the agreements between palm oil companies and Congo Basin governments have mostly been conducted and concluded in secrecy. Those agreements and contracts that have found their way into the public domain indicate that very generous investment terms are being offered; the potential benefits to local and national economies are much less clear.

PROJECTED INCREASE OF EXPORTS

Although current exports of Congo Basin palm oil to major global markets are minimal, they may increase markedly from 2020.

RISK OF MAJOR SOCIAL AND ENVIRONMENTAL PROBLEMS

There is a real and growing risk that some of the serious, negative environmental and social impacts resulting from rapid expansion of palm oil production in Indonesia and Malaysia, such as widespread deforestation, social conflict and dispossession, could be repeated in the Congo Basin. However, practical steps can be taken to minimise such impacts if action is taken quickly (see Recommendations).

INFORMATION GAPS

Details of many of the new oil palm developments – including even geographical locations and agreements/contracts – are missing from publicly available information sources. Governments and investing companies may not have records of the presence of local and indigenous communities or important natural resources within the concessions earmarked for development. A key recommendation of this report is that this information needs to be collected as a matter of urgency, and incorporated into government planning of new developments in order to increase transparency and minimise negative impacts on people and the environment.

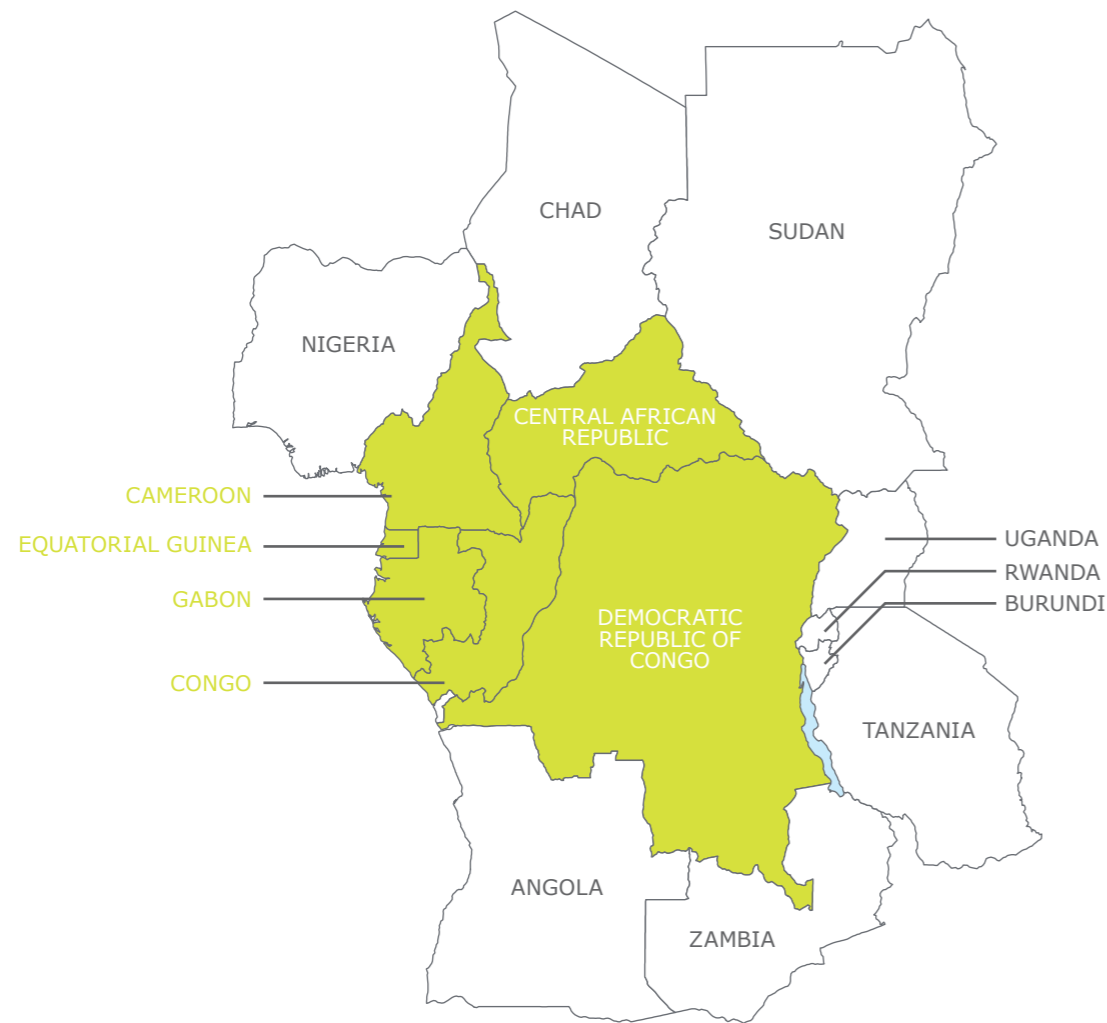
ABSENCE OF STATE PLANNING

For most of the new projects included in this report, there is little evidence that they form part of national land-use plans or socio-economic development strategies, or that alternative development options have been considered.

CONFIRMED AND POTENTIAL OIL PALM DEVELOPMENTS IN THE CONGO BASIN

“Approximately two-thirds of the total forest area of the Congo Basin’s forests – 115 million hectares – has suitable soil and climate for growing oil palms.”

THE CONGO BASIN



CAMEROON

PALM CO
Reportedly seeking 100,000 ha

CDC
Started planting 6,000 ha in 2009

SMART HOLDINGS
Seeking 25,000 ha

CARGILL
US\$390m deal close to signature, 50,000 ha

GOOD HOPE
Believed to be looking for 6,000 ha, plan to invest 'hundreds of millions' of dollars

BIOPALM ENERGY
Secured 53,000 ha, seeking at least 200,000 ha

HERAKLES FARMS
Agreement for 73,000 ha, 60,000 ha to be planted

See Case Study 3.3, Section 3

SIME DARBY
Reportedly seeking up to 600,000 ha



GABON

OLAM
100,000 ha of planting started

See Case Study 3.2, Section 3

SIAT
In possession of 6,000 ha for expansion of current operation



CONGO

BIOCONGO GLOBAL TRADING
24,200 ha planted as part of a 60,000 ha, US\$150m deal

FRI-EL GREEN
40,000 ha agreed for biofuel production

ENI
70,000 ha 'protocol' agreement signed

ATAMA PLANTATIONS
180,000 ha to be developed in a 470,000 ha deal

See Case Study 3.1, Section 3



CENTRAL AFRICAN REPUBLIC

PALMEX
Agreement to develop 8,701 ha

KEY

Figures listed in hectares (ha)

*For more detailed information on each development, Please see Annex 1

EXECUTIVE SUMMARY

“CONFIRMED PROJECTS IDENTIFIED WILL RESULT IN 0.5 MILLION HECTARES OF NEW PLANTING IN THE CONGO BASIN - A STARK NEW THREAT TO THE SECOND LARGEST RAINFOREST IN THE WORLD.”

The cultivation of palm oil at an industrial-scale has wreaked havoc with the rainforests and forest peoples of South-East Asia and is now threatening rainforests in the Congo Basin.

In Malaysia and Indonesia, the (often illegal) expansion of oil palm between 1990 and 2005 resulted in the deforestation of 1.1m hectares and 1.7m hectares respectively. Fifty to sixty per cent of all oil palm expansion in the two countries during this time occurred at the expense of natural forests. The human cost of palm oil production has been alienation of forest peoples from their land, land conflicts and the pollution or over-use of water sources. Oil palm expansion on peat forests has been a major contributor to increased climate change emissions. Oil palm companies in Indonesia have cleared habitat of endangered Orang-utans and Sumatran tiger.

This report shows that some of the same major players behind oil palm production in South-East Asia (such as Sime Darby, Goodhope, Wilmar and FELDA) are now turning their attention to Africa. In addition, new players - some with questionable backgrounds - are entering the market along with agricultural commodity traders seeking to break into the industry. Whilst new oil palm investments in Liberia have received attention, developments in the Congo Basin have been largely unremarked. Confirmed projects alone identified by this study will result in 0.5 million hectares of new planting in the Congo Basin - a fivefold increase in the current area of productive industrial oil palm in the region. This is a stark new threat to

the second largest contiguous rainforest in the world.

The projects surveyed in this report are significant. They include a project to create the largest oil palm plantation in the Congo Basin, which would catapult its owners,

“THE HUMAN COST OF PALM OIL PRODUCTION HAS BEEN ALIENATION OF FOREST PEOPLES FROM THEIR LAND, LAND CONFLICTS AND POLLUTION OF WATER.”

a Malaysian ‘pipe-coating specialist’ firm, into the top ten global palm oil producers, and another that would increase the area of large-scale agriculture by 85 per cent in one country, while doubling its annual greenhouse-gas emissions. The projects featured are financed or serviced by regional development banks, high-street banks, major investment funds and sovereign wealth funds, and often implemented by firms that have found to be in breach of national regulations in other countries related to logging or plantation development.

Congo Basin governments are welcoming oil palm developers with open arms, seeing them as potential new sources of prosperity and jobs in one of the world’s poorest regions. Although palm oil production has

the potential to boost growth and generate foreign exchange earnings, this needs to be balanced against the cost to the environment and the replacement of diverse farming and forest-based livelihoods with an export-orientated monoculture. In practice, the contracts signed between governments and oil palm developers are being kept secret, reducing transparency and democratic accountability. Those contracts that have come to light show that governments have already signed away some of the potential economic benefits, by granting developers extremely generous tax breaks of 10 to 16 years and land for “free” or at highly-discounted rates. It is far from clear that national economic benefits of palm oil will be shared equitably or compensate for local livelihoods lost by communities in the Congo Basin due to development, or that granting large land concessions to foreign companies is a real solution to rural poverty and food insecurity in the region. There is little or no evidence that host governments have undertaken such ‘cost-benefit’ analyses, and they certainly haven’t allowed any such analysis to be subject to public debate.

Areas newly allocated for conversion to oil palm plantations include habitats for rare, threatened or endangered species. For example, studies have shown the presence of great apes (including chimpanzees and gorillas), forest elephant, buffalo and manatees in one palm oil concession or adjacent wetland ecosystems. Another concession even overlaps with a National Park. The areas allocated also often play an important part in local peoples’ livelihoods, including hunting, collection of important ‘non-timber forest products’, and subsistence

farming. These are likely to be significantly impacted by the development.

Most developments appear to be progressing without an overall vision or national plan for the total area of land to be allocated to oil palm, what proportion of that land will or could be dedicated to smallholder production, and how to balance the demands for land for local community subsistence, mining, logging, and other agriculture. Furthermore, all countries in the region are engaged in the ‘Reducing Emissions from Deforestation and Degradation’ (REDD) process, but it is not clear how any ambitions to reduce greenhouse gas emissions can be reconciled with ambitions to become significant palm oil producers.

This report, the result of original research commissioned by The Rainforest Foundation UK (RFUK), lifts the lid on the new expansion of oil palm developments in the Congo Basin. It demonstrates that the negative impacts of oil palm developments seen in South-East Asia over the last twenty years are already starting to be felt in the countries of Central Africa. After providing a detailed overview of all projects announced in recent years, this report focuses on three major projects, in the Republic of Congo, Gabon and Cameroon respectively, which are among the most advanced. Though all are at an early stage of development, these three plantation developments already demonstrate the potential environmental destruction and social conflict that the expansion of oil palm development in the Congo Basin is likely to bring unless lessons from elsewhere are learned.

'PYGMIES' AND BANTUS

Box 1

'Pygmy' is the term used (sometimes pejoratively) in relation to a number of different but related groups of indigenous peoples that inhabit various parts of the Congo Basin rainforest. They were originally fully nomadic hunting-gathering people, but in recent decades many have become at least partly sedentarised, partly as a result of government policies.

Western Bantu farming people migrated into the Congo Basin, where 'Pygmy' people were probably already present, 3,000-4,000 years ago. Bantu people, which are sub-divided into many different ethnic groups, represent the dominant population in all the region's countries.

Typically, Pygmy 'camps', consisting of around 100 people from two to three large 'family clans' are located at the edge of, or nearby, a larger Bantu village. Very few of these settlements (usually termed 'campements') are officially recognised. Because of the lack of documents such as birth certificates or ID papers, and the lack of formal title to the land they occupy, Pygmy people and their settlements may be completely absent from government censuses, maps and planning documents.

It is believed that there are around 500,000-700,000 Pygmies throughout the Congo Basin. Although they have been present within the Congo Basin for many millennia, they are universally landless, heavily discriminated against, are victims of violence and racism, and often living in conditions of 'indentured' labour to their Bantu farming neighbours.

In forest areas, Bantu people generally practice subsistence rotational farming systems in small 'forest gardens', which are temporarily cleared of lower vegetation by slashing and burning and planted with short rotation crops, accompanied by selection and retention from the natural vegetation of plants producing fruits, nuts, rattans and medicines. Because land might need to be left fallow for 15-20 years, it can sometimes appear 'unoccupied' or unused, even if it is part of an integral farming system. Bantu people are also responsible for almost all of the farming of permanent cash crops, such as cocoa, within the forest zone.

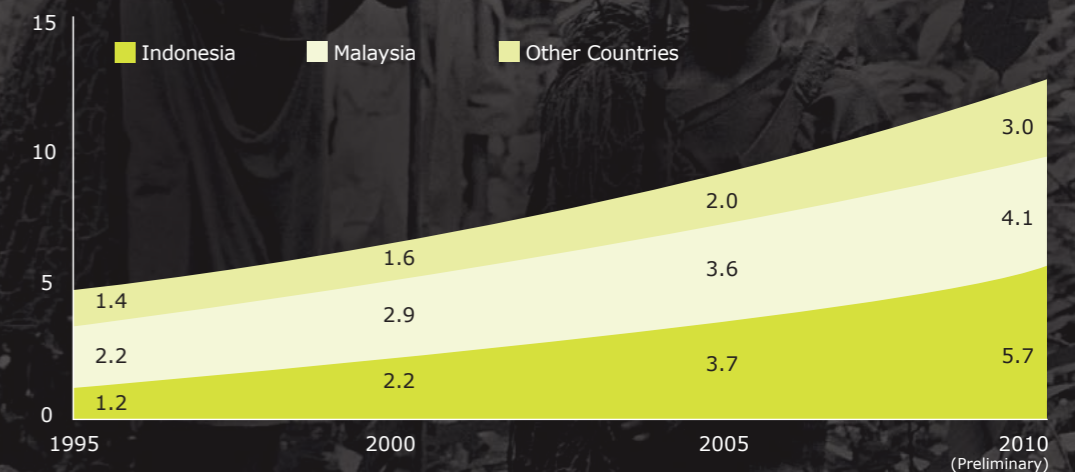


Aka woman in a village in the Central African Republic, RFUK

"THERE ARE AN ESTIMATED 500,000 INDIGENOUS FOREST PEOPLES IN THE CONGO BASIN."

BACKGROUND ON OIL PALM AND PALM OIL

FIGURE 1
Growth of oil palm planted area in Indonesia, Malaysia and other countries, 1995-2010²



ISTA Mielke 2010, in MVO (2010). Fact sheet Palm Oil, Productschap Margarine, Vetten en Oliën, November 2011

For more on the environmental, climate and human cost of expansion of industrial oil palm plantations in Indonesia and Malaysia, and some attempts to mitigate those impacts, see Section 4.

The oil palm (*Elaeis guineensis*) is native to tropical Africa and its fruit has provided useful edible oils for local people there for many centuries. During the 20th century however, governments and large companies began planting oil palms on an industrial scale in monoculture plantations. Though such plantations have been established in many tropical countries, by far the largest growth has taken place over the last twenty years in Malaysia and Indonesia.

Oil palms produce a much greater yield of oil per hectare than other oil seeds such as soy or rapeseed, and have therefore been increasingly favoured by producers. In the ten years from 1999-2009, for example, the area of oil palm plantations in Indonesia more than doubled (see Figure 1).¹ Much of the expansion in South-East Asia has taken place at the expense of forests, and it has resulted in dramatic negative impacts on the environment and on local people (see Section 4).

The primary consumers of palm oil include China, India and the European Union. Palm oil is mostly used as a frying oil, but is also an

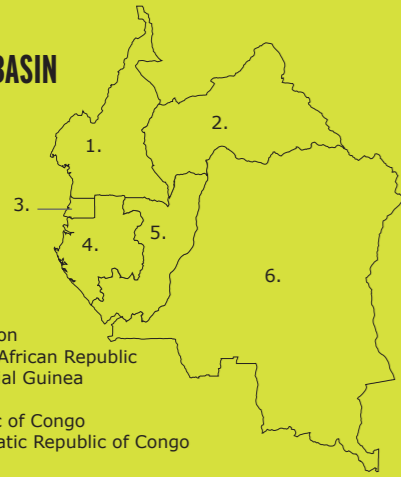
ingredient in a vast array of processed food and pharmaceutical products such as soap, chocolate, ice-cream and cosmetics. Over the last few years, driven by increased crude oil prices and government policies intended to reduce greenhouse gas emissions from vehicles, an increasing (though still relatively small) proportion of palm oil has been destined for use as biodiesel.

At present, 85 per cent of global palm oil production happens in Indonesia and Malaysia.³ There are wide expectations that global demand will continue to grow substantially for the foreseeable future, but there is limited new capacity for expansion of oil palm plantations in Malaysia, and growth in Indonesia has slowed. Whilst there is believed to be the potential for substantial increases in yields from existing (or renewed) plantations (such as through better plantation management practices, and selection of planting stock, for example⁴), palm oil developers are looking farther afield for large-scale expansion - including to Africa (see Section 2.2).

WHO OWNS THE CONGO BASIN RAINFOREST?

Box 2

CONGO BASIN



All forest land in all countries of the Congo Basin region is considered to be the property of the state.

Parcels of land are leased out for specific purposes over defined periods of time (typically, for timber extraction, over 20-30 years) under concession agreements. Such agreements should accord with both the national forest/land zoning plan, where this exists, and also with national forest legislation, which usually determines different types of forest land, in particular whether they are part of the 'permanent' forest estate, or are convertible to other uses. Even at official zoning level, forest land allocations can be erratic and inconsistent with national policies; overlaps and multiple allocations are not uncommon, such as between different types of commercial concessions, or between such concessions and, for example, designated national parks or other protected areas.

Another major problem in ensuring clear and uncontested land rights is that probably the vast majority of forest land in the Congo Basin region is claimed under customary 'ownership' of usage rights by at least one ethnic group or community (see Box 1 on Pygmies and Bantus). Such claims

exist through very long occupation, custom and practice. They are often recorded only in verbal history and agreements between communities and have mostly not been formally recorded or officially recognised. Large areas of land inhabited by forest-dependent communities and claimed by them under customary regimes have been allocated to other forest users and exploiters - a continuing high level of conflict between customary forest 'rights-holders' and those allocated new rights, such as logging companies, is a consequence.

"LARGE AREAS OF LAND INHABITED BY FOREST-DEPENDENT COMMUNITIES HAVE BEEN ALLOCATED TO OTHER FOREST USERS AND EXPLOITERS."

The absence of formal (written) land ownership titles over any land does not necessarily indicate that the land is unoccupied, unused, or is unclaimed by communities. Government agencies responsible for confirming agreements with oil palm developers may have few or no records of such customary rights and claims, though some legislative frameworks, such as in the Democratic Republic of Congo (DRC), in principle recognise customary possession and oblige all investors to undertake prior consultation with indigenous peoples and other local communities, and to compensate for any loss of customary usage rights. 'Pygmies' have been excluded from legal processes determining rights to land, and sedentarisation has often meant settling on land that is already either claimed, owned or used by settled Bantu farmers.

OIL PALM IN THE CONGO BASIN: RECENT DEVELOPMENTS AND TRENDS

2.1 HISTORIC & CURRENT EXTENT OF PALM OIL PRODUCTION

Most existing oil palm concessions in the Congo Basin were originally developed many decades ago. Large areas date back to colonial or early independent governments. As oil palms become commercially unproductive about 20-25 years after planting, many have now fallen into disrepair or are past prime production. As a result, the total area of commercially operated oil palm in the Congo Basin was at about the same level in 2010 as it was 50 years earlier. There are some regional variations: the area in the DRC has declined since colonial times and

that in Gabon has increased - but the overall picture has been static and at a relatively low level, until now⁵.

Figures for the current area of productive plantations, collated from information on the individual companies identified in this report, are provided in Table 1. This table does not include the area of planting within new developments, which is addressed in the following section. The data in Table 1 suggests that productive industrial plantations in the Congo Basin, excluding dilapidated large-scale plantations and community oil palm plots, currently cover approximately 100,000 hectares.

TABLE 1

Existing large-scale commercial oil palm plantations in the Congo Basin⁶.

COUNTRY	EXISTING PRODUCTIVE OIL PALM PLANTATION AREA (HECTARES)	COMPANIES
Cameroon	57,520	Pamol, CDC, Bollore Group
CAR	1,000	Centrapalm
DR Congo	28,127	Feronia Inc, SOCFIN (Brabanta), Groupe Agro Pastorale (Blattner Group)
Gabon	7,300	SIAT
Republic of Congo	4,000	Fri-El-Green
Total	97,947	

Source: Earthsight Investigations for Rainforest Foundation UK

The Congo Basin is thus currently a small player globally in terms of palm oil production. The region has less than 2 per cent of the world's oil palm-planted land and accounts for less than 0.5 per cent of global palm oil production.⁷ Even within Africa, Nigeria, Ivory Coast and Ghana are larger palm oil producers than any Congo Basin country. Both Malaysia and Indonesia dwarf the entire region's production.

Cameroon, DRC and Gabon all currently export palm oil, but up to now the amounts have remained very small in global terms (see Table 2). The largest exporter in the region, Cameroon, exported just 4,000 tonnes in 2010, worth \$7.4 million. Most existing palm oil produced in the Congo Basin is consumed domestically. Significantly, all countries in the region are net importers (see Table 2). Cameroon, for instance, is

the largest producer in the Congo Basin, but domestic consumption in the country exceeds this.⁸ Some have used this argument to justify the development of new industrial palm oil plantations in the Congo Basin, but as this report argues, the business models behind new developments seem to be based on exports to lucrative markets, similar to the region's timber industry.

Currently, nearly all palm oil exports from DRC and Gabon go to other countries in Central Africa. Just 60 tonnes of palm oil were exported by Congo Basin countries to Europe in 2010, with Belgium (34 tonnes), France (13 tonnes) and the UK (9 tonnes) the largest European destinations.¹⁰ Exports from the region to the UK represented less than 0.01 per cent of the UK's total palm oil imports. Almost all of these exports were from Cameroon.

TABLE 2

Summary data on commercial palm oil in Congo Basin countries.⁹

COUNTRY	PALM OIL PRODUCTION 2010 (TONNES)	PALM OIL EXPORTS 2009 (TONNES)	PALM OIL IMPORTS 2009 (TONNES)
Cameroon	111,440	6,052	29,847
Central African Republic	No Data	0	5,188
Democratic Republic of Congo	187,000	500	74,000
Gabon	2,800	1,684	23,606
Republic of Congo	25,500	0	9,250
Total	326,740	8,236	141,891

Source: Earthsight Investigations for The Rainforest Foundation UK



Tristan tan - Shutterstock

2.2 PLANNED EXPANSION

2.2.1 POTENTIAL & DRIVERS

Since as early as 2009, media reports on the oil palm industry have been noting increased attention by major companies to tropical Africa for future expansion.¹¹ There are various reasons for this. The principal one is that the amount of land available for expansion in the two main producing countries - Malaysia and Indonesia, which between them account for 85% of global production - is rapidly diminishing, while demand for palm oil is expected to continue to grow. Investment bank Nomura has predicted that these countries will run out of suitable land by 2020-2022.¹² By the end of the current decade, assuming 'business as usual', and continued expansion in both countries, it is expected that global demand for palm oil will significantly outstrip supply.¹³ It is estimated that to meet anticipated demand will require around 7 million hectares of additional planting¹⁴, and \$20 billion in investment¹⁵.

"LAND AVAILABLE FOR EXPANSION IN MALAYSIA AND INDONESIA - WHICH ACCOUNTS FOR 85% OF GLOBAL PRODUCTION - IS RAPIDLY DIMINISHING, WHILE DEMAND FOR PALM OIL IS EXPECTED TO CONTINUE TO GROW."

Labour costs are increasing in Malaysia and Indonesia - and in the same way that this became a limiting factor for the rubber industry, so it will affect palm oil production. As well as plentiful and cheap labour, West and Central Africa also have the advantage of being closer to key palm oil markets in Europe and the Middle East, reducing shipping costs. There is also growing domestic demand in Africa itself, which imported 3 million tonnes of palm oil in 2010, an increase of 15 per cent on the previous year.¹⁶ Oil palm development in the Congo Basin is being encouraged by new investments in road and port infrastructure in key countries (often linked with other

commodity development, especially minerals), which is opening new areas to possible investment. Land is cheap and seemingly plentiful, and taxes low. Recent investments indicate that land which typically costs up to \$500 per hectare in Indonesia can be obtained for free (at least in terms of officially declared and recorded payments) from pliant African governments, along with incredibly generous tax breaks. (see case studies in Section 3).

FIGURE 2

What's driving oil palm production in the Congo Basin?



SECTION 2: OIL PALM IN THE CONGO BASIN: RECENT DEVELOPMENTS & FUTURE TRENDS

TABLE 3

Forest areas potentially suitable for oil-palm production in the Congo Basin.

COUNTRY	TOTAL FOREST AREA POTENTIALLY SUITABLE FOR OIL PALM PRODUCTION (MILLIONS OF HECTARES) ²⁵	OTHER DATA/ESTIMATES
Cameroon	8.3	
CAR	14.5	64% of forests potentially convertible to oil palm ²⁶
DR Congo	77.8	Potential conversion of forest to oil palm in 'near future' estimated at 1.6 – 3m ha ²⁷
Gabon	8.1	5m ha of potentially 'farmable' land ²⁸
Republic of Congo	6.6	92% of forests potentially convertible to oil palm ²⁹
Total	115.3	

Source: Earthsight Investigations for The Rainforest Foundation UK

The potential for expansion of oil palm production in the Congo Basin is undoubtedly very large. It has been estimated that up to 115 million hectares of the Congo Basin's forests have the necessary soils and climate for growing oil palm¹⁷ – or almost two thirds of the total forest area¹⁸ (see Table 3). Consultancy company McKinsey & Co has claimed that there are 5 million hectares of farmable land in Gabon¹⁹, and estimates that 1.6-3 million hectares of forested lands in the DRC could be converted to industrial oil palm in the near future.²⁰ In its 2009 'REDD+ strategy' for DRC, McKinsey & Company suggested that large amounts of carbon emissions could be avoided if oil palm companies in the country were paid to develop on non-forested land instead.²¹ Governments of Congo Basin countries are actively promoting large-scale expansion of oil palm, which they see as a key potential driver of economic growth. Gabon, for instance, is aiming to have 200,000 hectares planted by 2017²², while Cameroon is looking to double palm oil production by 2020²³. The Republic of Congo has a target of one million hectares of new tree plantations, including an unspecified area of oil palms.²⁴

(See endnote³⁰ for information on areas of forest in the tropics with suitable climate for growing oil palm across the world.)

The analysis in this report shows that the area of planned planting covered by announced projects in the Congo Basin has risen sharply in recent years (see Section 2.2.3). This expansion can be expected to continue, since numerous other companies are known to be seeking similar investments in the region. For example, the Singapore-based palm oil company Biopalm has listed DRC as one country which it is targeting for large-scale oil palm expansion³¹. World-leading oil palm company Wilmar is reported to be scoping out various African countries for expansion opportunities.³² Olam, which already has a large oil palm project in Gabon, is reported to be negotiating with the DRC government over a large-scale agricultural investment³³, and has also expressed interest in developing oil palm in The Republic of Congo.³⁴ Malaysian state-owned plantation company FELDA, the third largest oil palm company in the world by planted area³⁵, is targeting large scale expansion in Cameroon but has yet to announce any specific deals. Cameroonian government officials told WWF/CIFOR recently that there are a number of companies negotiating large oil palm deals in the country, in addition to those already announced³⁶, and the same is also very likely the case in Gabon, Republic of Congo and DRC.

In DRC, a new agricultural code³⁷ passed in December 2011 prohibits foreign individuals or companies from owning farms in the country outright, and may serve to restrict agricultural investment in forest areas. At least three large-scale agricultural investment plans have reportedly been abandoned as a result of the new law³⁸, though Feronia (which is currently re-planting 107,892 hectares of oil palm in DRC) has claimed that its legal analysis and discussions with the government suggest that the law does not apply in cases where developments are leased concessions on land still owned by the government.³⁹

Exports to European Union (EU)

Given that all Congo Basin countries are net importers of palm oil and consume more than they produce, one might expect that much new development production would be consumed domestically. However, as with the timber industry in the region, it is likely that production from large-scale commercial operations will be destined for more lucrative export markets, despite a dearth of supplies for domestic use. Anecdotal evidence suggests that one of the drivers behind the expansion of palm oil production in Africa is the expected growth of demand for biofuels in European markets (even though such markets now appear to be less promising than they were five years ago)⁴⁰. The twenty-seven member states of the EU have committed to sourcing 10% of transport energy from biofuels by 2020, which is likely to include bio-diesel from palm oil. In the face of concerns about negative environmental and social impacts, they have adopted a 'Sustainability Criteria' for biofuels, which may exclude the produce of 'greenfield' developments in the Congo Basin. However, the EU biofuels target might still increase demand for palm oil

indirectly, but drawing other edible oils (such as rape seed) into biofuels and hence providing a gap in the market for palm oil to replace these oils in food and cosmetics. While production from new plantations planned or under development may be targeted towards the European market, it will however be some years before imports into the EU from the Congo Basin increase substantially. It takes 3-4 years for oil palms to become productive, so even limited new planting which has already taken place will not result in increased trade before 2016 at the earliest. Significant increases are unlikely before 2020, though thereafter there is the potential for Congo Basin palm oil exports to Europe to increase dramatically. Congo Basin countries have one additional advantage over Malaysia and Indonesia, that they are part of the African, Caribbean and Pacific Group of States (ACP), which have preferential access to the EU, including import duty exemptions.

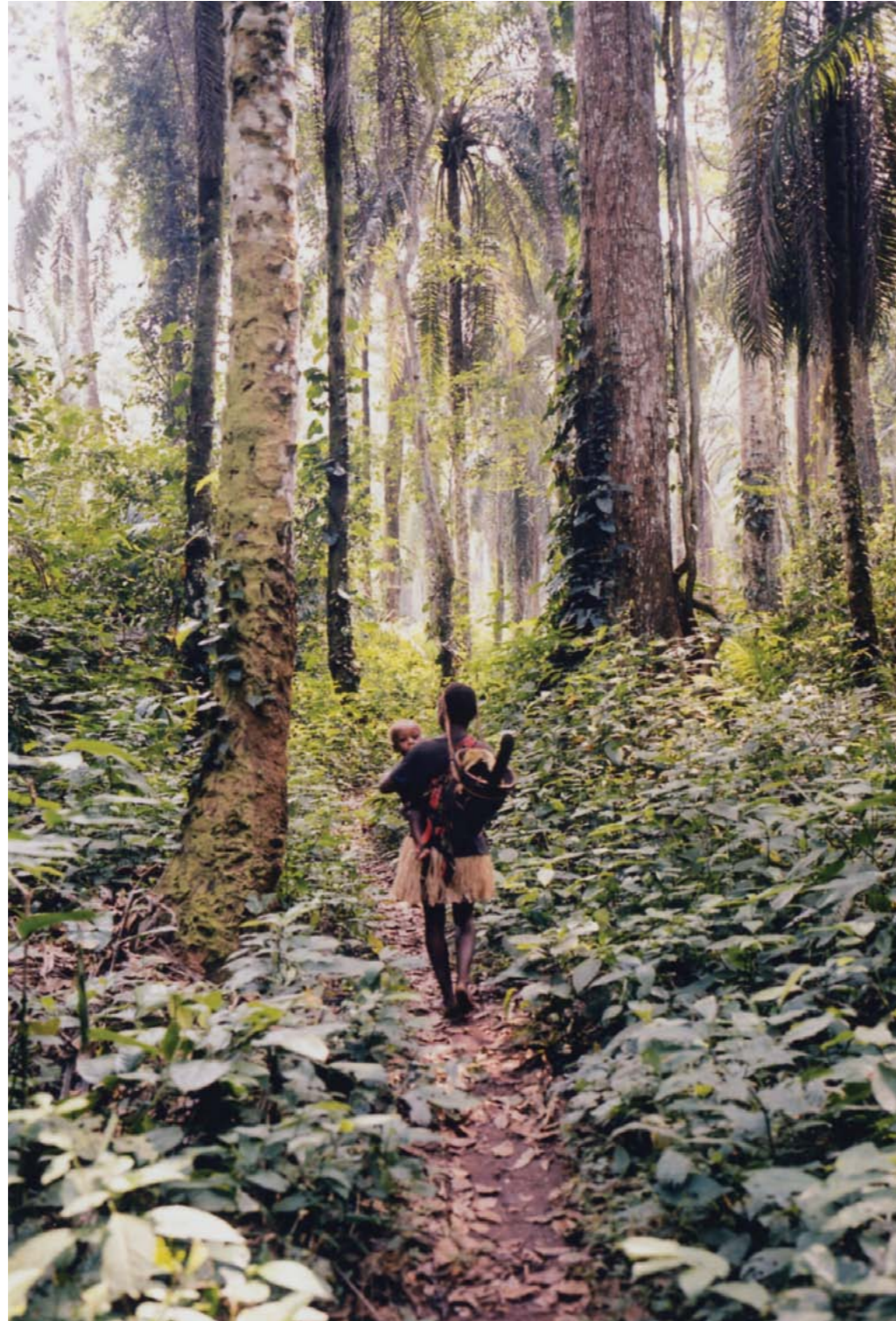
2.2.2 SUMMARY INFORMATION ON KEY ACTORS INVOLVED

Malaysian, French, Belgian, Italian, Chinese, Singaporean, US, Canadian and Spanish companies are involved in operating existing oil palm plantations or planning new ones in the Congo Basin.

There are four broad categories of company involved.

1. First, there are existing plantation companies looking to expand (e.g. CDC, SIAT). These represent a very small percentage of the potential total expansion, their focus largely being on re-planting abandoned colonial-era plantations.
2. Second, there are large Asian companies already producing palm oil that are looking to expand into Africa. This group includes two of the three largest oil palm companies in the world: Sime Darby, which is already developing a large new plantation in Liberia and is negotiating another in Cameroon; and Wilmar, which has not announced any specific new planned developments in the Congo Basin but is reported to be seeking large deals in the region.⁴¹
3. Third, there are new and relatively unknown companies moving into oil palm for the first time, usually with Asian backing. Examples include Biopalm in Cameroon and Atama in Congo.
4. Fourth, there are global agricultural commodity traders which are seeking to break into the top ranks of oil palm producers through development of plantations in Africa. This group includes agricultural giants Olam and Cargill.

“IT IS LIKELY THAT PRODUCTION FROM LARGE-SCALE COMMERCIAL OPERATIONS WILL BE DESTINED FOR MORE LUCRATIVE EXPORT MARKETS.”



Kate Eshelby

Various government entities are involved in the expansion of oil palm in each Congo Basin country. Agriculture or Forest ministries do not always take the lead. In Congo, the Minister of Industrial Development has signed large oil palm deals⁴², while in Cameroon the Minister of Economy, Planning and Regional Development has been a signatory.⁴³ In Gabon, the Ministry of Agriculture and Rural Development has led, but the President's office has had significant involvement.⁴⁴ Often an 'investment promotion agency' is involved alongside relevant ministries.

Foreign governments are also involved, albeit indirectly. Malaysia's state-owned oil palm plantation company, FELDA, is involved in promoting expansion of oil palm in Cameroon, having dropped plans for expansion in Brazil in the face of opposition from environmentalists.⁴⁵ The company floated on the stock market in June 2012, and was expecting to use US\$680 million of the proceeds to help fund new palm planting, including in Africa.⁴⁶

At an industry conference in 2011, Malaysia's Plantation Industries and Commodities Minister made a public offer of assistance to African countries in expanding oil palm plantations, including through the Malaysian Palm Oil Board, a government agency which promotes and supports oil palm within the country. The Minister implied

“FOREIGN GOVERNMENTS ARE ALSO INVOLVED, ALBEIT INDIRECTLY. MALAYSIA'S STATE-OWNED OIL PALM PLANTATION COMPANY, FELDA, IS INVOLVED IN PROMOTING EXPANSION OF OIL PALM IN CAMEROON.”

that the government had already had some engagement with existing oil palm developments in Congo, Liberia and Sierra Leone involving Malaysian companies.⁴⁷ Singapore's sovereign wealth fund, Temasek Holdings, is a major shareholder of Olam, which is developing a large new plantation in Gabon. (see Section 3.2)

The development of large-scale oil palm plantations is capital intensive, with zero cash-flows in the initial years (apart from sales of timber from cleared forests), so most new developments are dependent on outside finance, either through commercial loans, investments from wealth funds or assistance from multilateral development banks. Belgian company SIAT received a €10 million loan from the African Development Bank in 2007 to improve and expand its oil palm & rubber developments in Gabon, including the planting of a new 4,250 hectare oil palm plantation at Bindo.⁴⁸

“LARGE ASIAN COMPANIES ALREADY PRODUCING PALM OIL ARE LOOKING TO EXPAND INTO AFRICA. THIS GROUP INCLUDES TWO OF THE THREE LARGEST OIL PALM COMPANIES IN THE WORLD.”

Olam has borrowed \$228 million from the Central African States Development Bank (BDEAC in French) to fund its 300,000 hectare oil palm and rubber plantation development in Gabon.⁴⁹ The World Bank lifted its short-lived suspension of oil palm investments in 2011, but has yet to make any such loans in the Congo Basin. The large new oil palm plantation in Cameroon being established by the SG Sustainable Oils Cameroon (SGSOC) is being funded with capital from US investment house Herakles Capital.

It is very likely that a number of major international commercial banks are providing finance for oil palm developments in the region, but hard evidence is difficult to come by. Citibank, for instance, is listed as a 'principal banker' for Wah Seong Corporation⁵⁰, which is in the process of purchasing a majority stake in a new plantation development in the Republic of Congo, with half the purchase cost funded through debt (see Section 3.1), but it is not clear whether Citi or another bank is providing the funds.

SECTION 2: OIL PALM IN THE CONGO BASIN: RECENT DEVELOPMENTS & FUTURE TRENDS

2.2.3 SUMMARY INFORMATION ON SPECIFIC DOCUMENTED PROJECTS

Specific planned new palm oil development projects announced thus far in the Congo Basin cover an area of over 1.6 million hectares, of which planned planting confirmed under signed agreements represents around 0.5 million hectares. (see summary figures in Table 4).

Many of the announced development projects are still at an early stage, and very few have broken ground. Some remain in negotiation. The agreement covering at least one large potential investment (by ZTE in DR Congo) appears to have expired.⁵⁶ Even once agreements are finalised, it can take a long time to identify suitable land, carry out environmental and social impacts assessments, bring in equipment and hire workers.⁵⁷ As a result, the rate of actual new planting is advancing more slowly than planned growth in planting (see Figure 3 and Table 5).

FIGURE 3

Planned and planted hectares of commercial oil palm in the Congo Basin⁵¹.

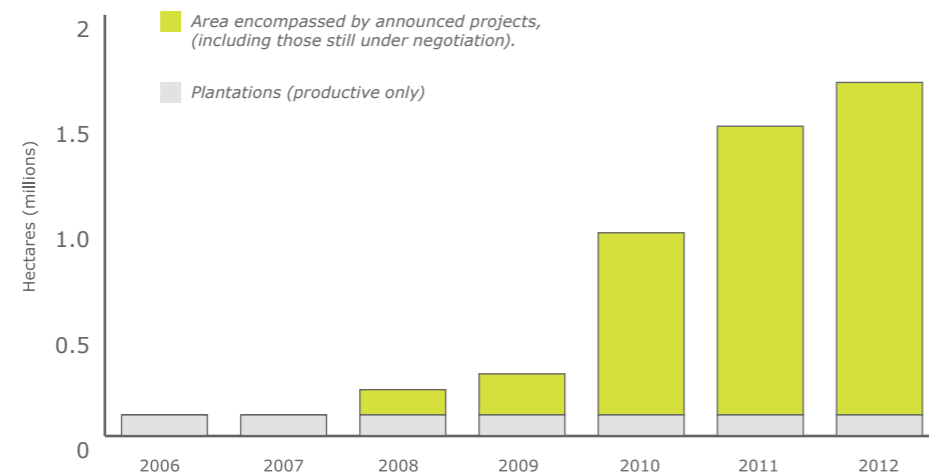


TABLE 4

Summary data on existing and planned industrial oil palm in the Congo Basin, by country.

COUNTRY	EXISTING (PRE 2006) PRODUCTIVE AREAS ONLY	AREA COVERED BY ANNOUNCED EXPANSION PLANS (includes unplantable areas, deals still under negotiation or which may have expired)	OF WHICH SIGNED AGREEMENTS ARE IN EFFECT, EXCLUDING UNPLANTED AREAS WITHIN CONCESSIONS	DECLARED TARGETS
Cameroon	57,520	760,086	66,000	Plans to double palm oil production by 2020 ⁵² ; investment proposals already cover 1.2 million hectares ⁵³
CAR	1,000	8,701	8,701	–
DRC	28,127	100,000	0	–
Gabon	7,300	206,000	106,000	200,000 ha planned by 2017
Republic of Congo	4,000	604,280	314,280	Area currently sought 1.0 ⁵⁴ - 1.75 m ha ⁵⁵
Total	97,947	1,679,067	494,981	

Figure 3, Table 4 and Table 5 Source: Earthsight Investigations for The Rainforest Foundation UK

In terms of geographical distribution of new plantings, the largest announced expansion plans are in Cameroon, while Gabon and Republic of Congo also have significant expansions underway. The only new investment announced for DRC covered a smaller area than originally stated, and has now expired. So far there is only one small project in CAR, which also has a very limited existing planted area.

Summary data on the 15 oil palm plantation expansion projects in the Congo Basin identified for this study is provided in Table 5 below.

Additional details on these cases and the companies involved, plus two projects which have apparently expired, are provided in a table in Annex 1.

Of the companies which have been identified as being behind specific developments, or are otherwise known to be seeking oil palm land in the Congo Basin, three – Cargill, Sime Darby and Wilmar – have been found in the past to be involved in illegal and destructive oil palm development in Indonesia.⁵⁹

TABLE 5 Summary data on oil palm plantation expansion plans in the Congo Basin, by company⁵⁸
* EXP - Expansion

COMPANY	COUNTRY	TYPE	NEGOTIATIONS ANNOUNCED	DEAL SIGNED	AREA (TOTAL) HECTARES	AREA (PLANNED PLANTING) HECTARES	AGREEMENT SIGNED	LAND IDENTIFIED	GROUND BROKEN	AREA PLANTED TO DATE (EST) HECTARES
CDC	Cameroon	EXP*		2008?	6,000	6,000	Yes	Yes	Yes	2,000
SGSOC (Herakles)	Cameroon	New		Sept 09	73,086	60,000	Yes	Yes	Yes	500
Biopalm (Sive)	Cameroon	New		Aug 11	200,000	? ?		No	No	0
Sime Darby	Cameroon	New	May 11	N/A	300,000	? ?	No	No	No	0
Goodhope	Cameroon	New	Aug 11	N/A	6,000	? ?	No	?	No	0
Cargill	Cameroon	New	May 12	N/A	50,000	? ?	No	No	No	0
Palm Co	Cameroon	New	2012?		100,000	? ?	No	No	No	0
Smart Holding	Cameroon	New			25,000	? ?	No	No	No	0
Palmex	CAR	New		May 12	8,701	? ?	Yes	?	No	0
ENI (technical consultant)	Republic of Congo	?		May 08	70,000	? ?	Yes	?	?	0
Fre-El-Green	Republic of Congo	New		July 08	40,000	? ?	Yes	?	?	0
Atama Plantation	Republic of Congo	New		Dec 10	470,000	180,000	Yes	Yes	Yes	0
Biocongo Global Training	Republic of Congo	New		March 12	24,280	? ?	Yes	?	No	4,000
Olam	Gabon	New		Nov 10	200,000	100,000	Yes	Yes	Yes	6,000
SIAT	Gabon	EXP*		Sep 07	6,000	6,000	Yes	Yes	?	
TOTAL					1,579,067	352,000				12,500

“THESE PLANNED OIL PALM DEVELOPMENTS DEMONSTRATE WORRYING SIGNS OF THE SAME NEGATIVE IMPACTS OBSERVED IN SOUTH-EAST ASIA.”

CASE STUDIES OF NEW OIL PALM DEVELOPMENTS IN THE CONGO BASIN

There is a lack of publicly available information about most new oil palm developments in the Congo Basin. This makes an assessment of actual and potential impacts difficult. For the purposes of this study, RFUK has examined in detail three of the largest projects for which some information is available, and written to, and received replies from, companies behind the three developments. Though

little actual clearance and planting has yet occurred in any of them, and what has occurred has not been assessed through field work, these three oil palm developments (in three different countries - Republic of Congo, Gabon and Cameroon) nevertheless already demonstrate worrying signs of the same sort of negative impacts seen with oil palm in South-East Asia.



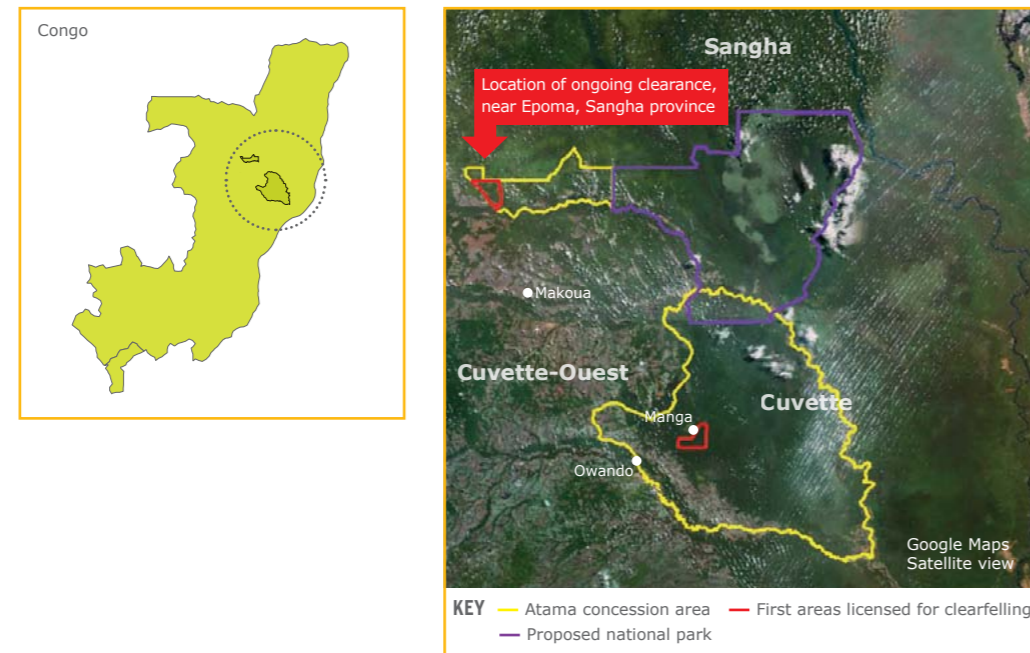
3.1 CASE STUDY: ATAMA PLANTATIONS, REPUBLIC OF CONGO

A Malaysian corporation known as a 'pipe-coating specialist' is purchasing Atama Plantations SARL, which has a concession agreement to occupy 470,000 hectares of mostly forested land in northern Congo. It plans to develop at least 180,000 hectares for oil palm, which would be the largest oil palm plantation in the Congo Basin. No publicly available maps of the concession are available, but evidence suggests that the forests designated for clearance mostly appear to be virgin rainforest that is habitat for numerous endangered species, including chimpanzees and gorillas. The area borders,

and some of it may fall inside, a planned National Park and Ramsar site. There is no evidence of social and environmental assessments having been carried out, yet logging of the area has started. Official inspectors uncovered numerous breaches of regulations in the logging which has occurred to date. The identity of Atama's original owners (who retain a large stake) is shielded through a web of 'shell' companies registered in secretive tax havens. Some of the same shell companies have been used in the past to mask illicit activity.

ATAMA PLANTATIONS' OIL PALM CONCESSION, REPUBLIC OF CONGO

FIGURE 4



3.1.1 BACKGROUND

On 17 December 2010, after 19 months of negotiations, the Minister of Agriculture and the Minister of Land Affairs and Public Domain in the Republic of Congo signed a concession agreement with a company called Atama Plantations to 'occupy' 470,000 hectares of federal land for the development of an oil palm plantation and associated industrial complexes.⁶⁰ The majority of the land (402,637 hectares) is in Cuvette Province, while the remaining 67,363 hectares are in Mokeko District in Sangha Province.⁶¹ Eventual palm oil production is expected to be 900,000 tonnes per year.

The concession agreement is for an initial, extendable, period of 30 years. The licensee has to pay royalties of CFA 2,500 (US\$5) per hectare of planted land (half the rate which will eventually be paid by Olam in Gabon, see section 3.2), from when palm oil production starts, but is exempted from customs duties or VAT on imports of equipment, and from all taxes on profits for the first five years of production. Thus far, feasibility studies have identified 180,000 hectares of plantable land, which is an area 17 times the size of Paris.⁶² The company

expects to develop this over a period of 15 years, commencing in early 2013. It is possible the final area of the plantation may be larger, if additional suitable land is found.⁶³

Atama is owned through a complex chain of companies registered in various secretive tax-havens (see Figure 5 for a representation of the company's corporate structure). The Congolese licensee, Atama Plantation SARL, which was registered in June 2008, is wholly owned by an associated company registered in Mauritius in July 2011, Atama Resources Inc, which until recently was wholly owned by a company called Silvermark Resources Inc, registered in the British Virgin Islands (BVI) in 2007. Silvermark is, in turn, wholly owned by a company called Tanaldi Ltd, of which there is almost no information. In addition, Atama Resources Inc owns a second company, Signet Plus SB, registered in Malaysia in December 2011, which provides 'management and accounting services' for the Congolese plantation company.⁶⁴ A number of questions are raised in the following text about the ultimate ownership of Atama.

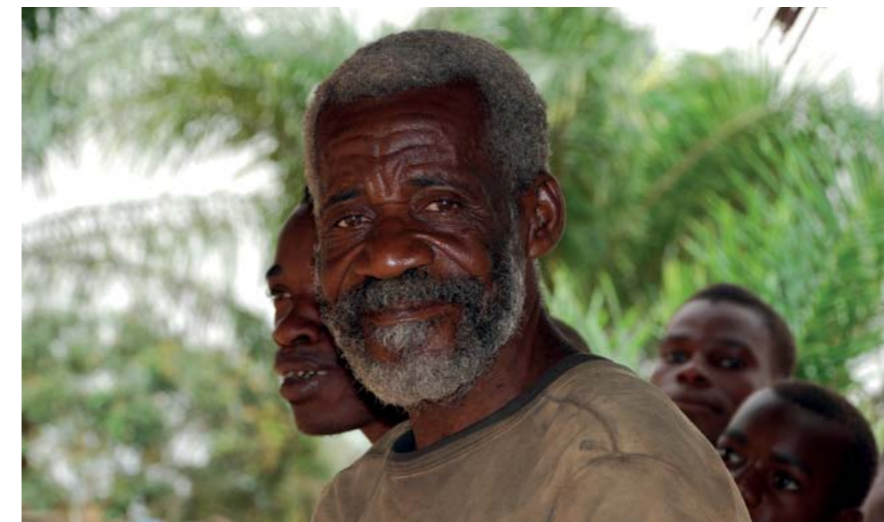
To date, Atama has begun clearfelling forests for roads and an oil palm

nursery in one area of 5,000 hectares at Epoma in Sangha⁶⁵, while a second 5,000 hectare section of forest in the concession in Cuvette has also been signed off for logging and clearance.⁶⁶

3.1.2 WAH SEONG PURCHASE

In February 2012, Wah Seong Corporation, a Bursa Malaysia (formerly the Kuala Lumpur stock exchange) listed company, announced its intended purchase of a majority 51% stake in Atama Resources Inc, thus becoming majority owners of the oil palm plantation project in Congo.⁶⁷ Previously, Wah Seong has principally been involved in the manufacturing of specialist metal pipes for the oil and gas industry. The company's only previous connection to oil palm in Africa was the supply of equipment for palm oil refineries,⁶⁸ and this will be its first venture into the oil palm plantation industry. Even if only the initial 180,000 hectares are planted, this new project would be the largest oil palm plantation in the Congo Basin and would catapult Wah Seong into the top ten largest oil palm growers in the world.

The \$25 million purchase of Atama by Wah Seong is almost as complicated as the web of companies behind Atama. When the purchase is completed, Wah Seong will, through a specially formed subsidiary WS Agro Industries Pte Ltd, own 51% of Atama's shares, while the original owner (Silvermark/Tanaldi) will retain 39% and another BVI-registered company named Giant Dragon Group will hold the remaining 10%.⁶⁹ As of December 2012, the first phase of the purchase was complete, with Wah Seong holding 41.7% of the shares.⁷⁰ More detail on the purchase and the BVI companies involved is provided in section 3.1.6 below.



Aka man, statement community forest, Samuel Dieval

3.1.3 POTENTIAL 'TIMBER GRAB'?

Stock-watchers have questioned how Wah Seong can afford the costs of developing the massive new oil palm plantation, which they estimate at US\$650 million. One analyst has suggested that the cost "could be partly offset by forest clearance such as sale of logs".⁷¹ This has often happened in the past in Indonesia⁷². Evidence obtained by RFUK suggests that the forests Atama is planning to convert are indeed primary forests with significant timber stocks. The potential profits from harvesting this timber may be one of the main driving factors behind the development.

The overall concession is split into two areas. The northern area, in Sangha province, is a 67,000 hectare zone of mixed forest and savannah between a logging concession and a major river. The much larger southern area, in Cuvette, covers 520,000 hectares and is almost entirely made up of primary forest, most of it swamp forest⁷⁵ (see Figure 4). Of this second area, large parts are flooded, so only the licensed 402,000 hectares is expected to be available for the plantation.⁷⁶

According to official reports, by October 2012 the company had already harvested almost 15,000 cubic metres of timber at its first development in Epoma in Sangha, yet had thus far only cleared 120 hectares.⁷⁷ If most of it is primary forest, by a rough yet conservative estimate, the 180,000 hectares the company plans to convert could yield timber worth more than \$500 million.⁷⁸

Wah Seong has admitted to RFUK that, "timber extraction is a necessary part of the process to make available land for an oil palm plantation"⁷⁹. The company has stated to RFUK that it has considered "the sustainability criterion" before deciding to become involved in the Atama plantation project, but has not provided further detail of what this involves.⁸⁰

No maps are publicly available for the Atama concession. Wah Seong declined to provide these documents when requested by RFUK, citing commercial confidentiality. RFUK has, however, obtained copies of official government reports which describe the boundaries of the concession⁷³ and the boundaries of the two 5,000 hectare areas for which the company has obtained authorisation to log and clear.⁷⁴ The most recent available forest maps and satellite imagery suggest that the majority of the broader area the company plans to convert is untouched, primary, closed-canopy tropical forest, much of it swamp forest.

"THE FORESTS ATAMA PLANS TO CLEAR COULD YIELD TIMBER WORTH MORE THAN \$500 MILLION."



Atama logs from forest clearance for oil palm, December 2012



Far left: Signing ceremony for the Atama plantation development, Dec 2010 | Middle: Atama Director Chua Seng Yong at second signing ceremony, July 2011 | Right: Atama oil palm nursery, July 2012: JTV Congo



Middle: Atama Director Chua Seng Yong at second signing ceremony, July 2011



Right: Atama oil palm nursery, July 2012: JTV Congo

3.1.4 HUGE POTENTIAL FOR NEGATIVE ENVIRONMENTAL AND SOCIAL IMPACTS

As explained above, documents obtained by RFUK indicate that the majority of the area slated for conversion for the Atama plantation is virgin rainforest. Much of this forest would almost certainly be classified as being of 'high conservation value' (HCV) according to standard definitions. Evidence from IUCN (International Union for Conservation of Nature) suggests it is also habitat for large numbers of endangered species, including western lowland gorillas, classified as 'Critically Endangered', chimpanzees, and elephants.⁸¹ The intact swamp forests which make up the majority of the larger southern section of the concession are part of the Western Congolian Swamp Forests Ecoregion, identified by WWF as one of the most outstanding areas of biodiversity on the planet.⁸²

Around 28,000 hectares of the allocated concession land appears to overlap with a proposed new National Park, Ntokou-Pikounda, which was announced in 2006 and is in the last stage of formal establishment.⁸³ The park is believed to contain one of the highest concentrations of great apes anywhere in the world.⁸⁴ The Republic of Congo has recently designated the Ntokou-Pikounda area as a Ramsar (wetlands of international importance) site, noting its rich biodiversity, its importance 'in maintaining the general

hydrological balance of the Congo Basin' and its, 'great cultural, historical and religious value to the resident population'.⁸⁵ Aside from the obvious devastating environmental impacts for biodiversity which would stem from destruction of the forest inside the concession, the improved transport network and migration of workers to the area associated with the plantation development bring further threats to wildlife in neighbouring areas (including the rest of the new National Park) from increased commercial poaching.

Congolese law requires an environmental impact assessment to be carried out for a project such as Atama's, yet Wah Seong declined to confirm in response to queries from RFUK whether any such assessment had been conducted. The company instead stated that it believed it was the responsibility of the Congolese government to ensure that the impacts of the plantation were considered before issuing the licence to operate.

Wah Seong also did not provide any evidence to RFUK that the social impacts of the project had been properly considered and addressed or the free, prior, informed consent (FPIC) of local people sought or obtained. It should be noted that the Republic of Congo passed progressive legislation on the promotion and protection of indigenous peoples in 2011, which may be of direct relevance here. Wah Seong

instead told RFUK that it was "invited by the Government of The Republic of Congo" to cultivate oil palm in the country, that it seeks to "alleviate rural poverty through meaningful long term employment", and that it is helping "an emerging economy to be self-sufficient in food and energy supply without trampling on the hopes and rights of the Congolese people".⁸⁶ Given Wah Seong's failure to provide evidence to the contrary, it is likely that there has been little or no consultation with local forest communities or indigenous peoples.

"WAH SEONG DID NOT PROVIDE EVIDENCE TO RFUK THAT THE FREE, PRIOR, INFORMED CONSENT OF THE LOCAL PEOPLE HAD BEEN OBTAINED."

“THE INSPECTORS FOUND NUMEROUS BREACHES OF REGULATIONS IN THE LOGGING BEING CARRIED OUT BY ATAMA.”

3.1.5 ILLEGAL LOGGING

In October 2012, a team from the Sangha province forest department made an inspection visit to the first 5,000 hectare area in which Atama had been licensed to clearfell, at Epoma. The team found that Atama had subcontracted the logging to a second company, Lawoncongo SARL, and had set up a sawmill at the site. By the time of the visit, the company had cleared around 80 hectares for roads (including in a neighbouring part of the concession, outside the initial 5,000 hectares), plus a further 40 hectares for the sawmill, log storage yards and an oil palm nursery.⁸⁷

The inspectors found numerous breaches of regulations in the logging being carried out. More than 350 trees had been cut but not recorded in official felling reports. Records were found to have been altered with tip-ex and there was evidence that multiple logs had been given the same log numbers (a method often used to launder illegal logs). The inspectors concluded that Atama was in breach of the terms of the forest clearance license, and issued official forestry infraction notices to the company.⁸⁸



Western Lowland Gorilla, Sergey Uryadnikov-Shutterstock

3.1.6 COMPANIES REGISTERED IN THE BRITISH VIRGIN ISLANDS (BVI): UNCLEAR ULTIMATE OWNERSHIP

As stated above, Wah Seong will purchase a 51% majority stake in Atama, while two companies registered in the British Virgin Islands will, once the purchase is completed, own 39% and 10% respectively of the Congolese plantation company.

The first of these two companies, Silvermark Resources Inc, was registered in the British Virgin Islands in November 2007 and prior to the Wah Seong investment was the sole owner of Atama. Silvermark stands to receive \$25 million from Wah Seong for its shares in Atama. The official stock exchange announcement for shareholders published by Wah Seong states that Silvermark Resources Inc is owned by Tanaldi Ltd and lists another company, Greenland Limited, as its sole director. The stock exchange announcement provides proper details on the intermediary companies, but it does not state where or when Tanaldi was registered, who owns it, or the identify of its directors.⁸⁹ Tanaldi and Greenland are noteworthy, as explained further below.

The second British Virgin Island registered company is Giant Dragon Group Limited, registered in May 2006. Once the purchase is complete, it is due to hold 10% of the shares in Atama (worth US\$5 million), even though there is no evidence that it was connected to Atama prior to the purchase agreement and there is no mention of it contributing to the cost of the Wah Seong purchase from which it will benefit. The official stock exchange announcement by Wah Seong states that Giant Dragon Group is owned by a company called Marston International Ltd, and lists another company - Eastern Sky Ltd - as its sole director. Wah Seong's stock exchange announcement of the intended purchase of Atama does not provide further details of either Marston International or Eastern Sky.

Wah Seong has, for the interest of its shareholders, published detailed information about the proposed purchase, but the information stops short of actually identifying the ultimate current owners of the plantation, (through Silvermark Resources/Tanaldi) or the ultimate owners of Giant Dragon Group. This information is arguably of material interest to Wah Seong's shareholders. However, Wah Seong has stated to RFUK that it has, "made all necessary disclosures to Bursa Malaysia under the Bursa's Listing Requirements in respect of its venture into the Republic of Congo".⁹⁰

Research for this report suggests that Atama's ownership structure may have been deliberately created in order to shield the identity of its ultimate owner or owners. There may be legitimate reasons for this structure, but RFUK has found evidence that the same companies which controlled Atama prior to Wah Seong's involvement (and continue to hold a large minority stake) have been used on more than one occasion to shield the identity of individuals found guilty of serious offences.

The best documented example comes from UK court papers from 2008, which relate to a case in which a British man was found guilty of falsely claiming an inheritance and holding the proceeds in a British Virgin Islands registered company named Trixilix. The sole shareholder of Trixilix was Tanaldi Limited, and the sole director a company called Greenland Limited⁹¹ (the same names identified as ultimately controlling Atama through Silvermark Resources Inc). According to the court documents for this case, the defendant was "shown a list of available companies" by a Singaporean firm which specialises in setting up offshore structures, and one was selected.⁹² There was also a separate formal document through which Greenland gave the defendant full authority to operate the British Virgin Islands registered company through his Swiss bank account.⁹³ This allowed the defendant to control the funds without being named at all in official records. Although there is certainly no direct link between a UK inheritance case and a Malaysian-Congo palm oil development, the similarities in the names and functions of the shareholder and director appear too striking to be a coincidence. In another case, a British Virgin Islands registered company investigated by Thai authorities in 2006-07 for criminal offences was also controlled through a company called "Green Land Ltd" in Brunei, and set up by the same Singaporean offshore services provider involved in the 2008 British fraud case.⁹⁴

Other sources suggest that Tanaldi Ltd might also at one time have been connected to a Mr. Rafat Ali Rizvi, a British-Singaporean businessman, who has been convicted in Indonesia for grand corruption and is wanted by Interpol.⁹⁵ An article, from 2010, on the website of the respected Indonesian news magazine Tempo lists a Brunei-registered company by the name of

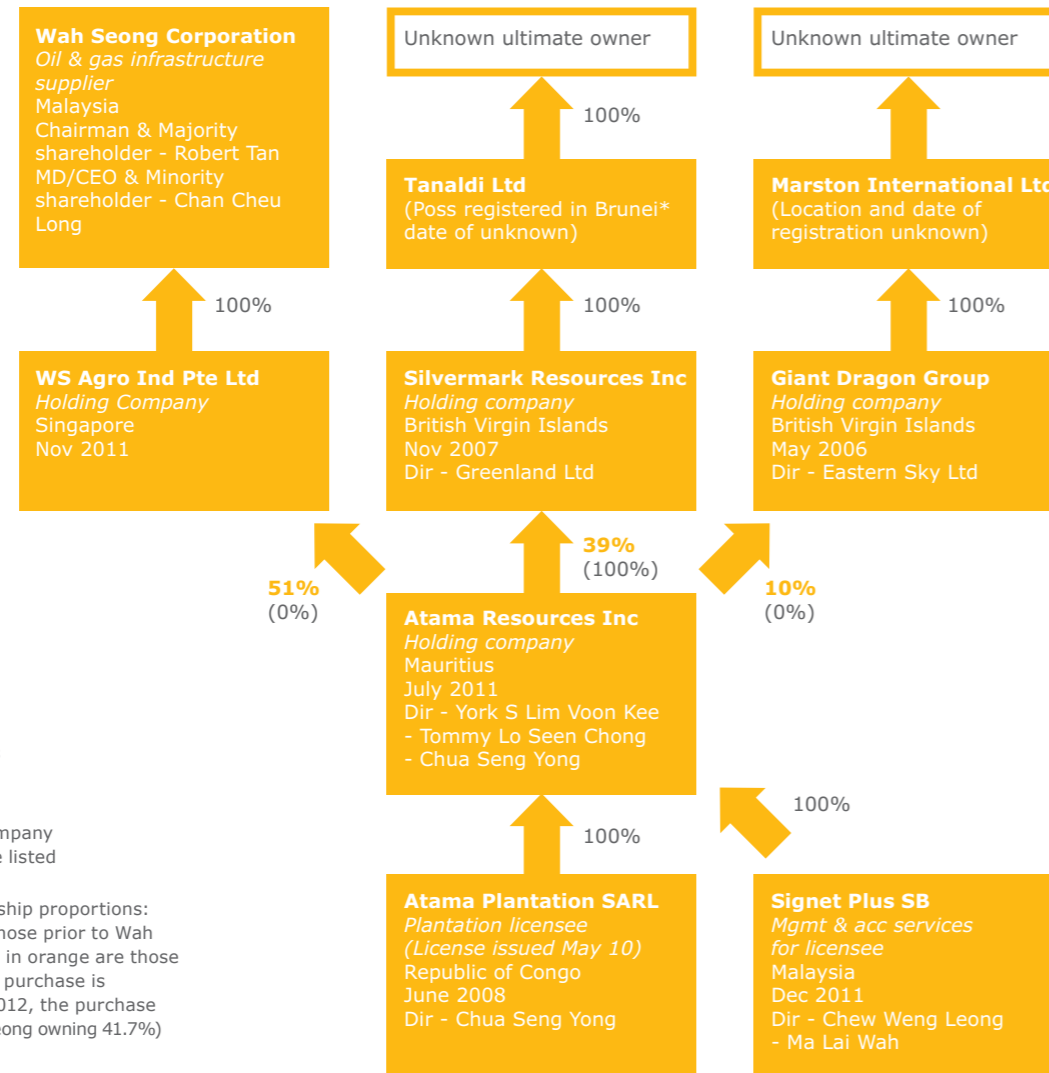
Tanaldi Ltd as being owned by Rizvi, and also mentions that a company called Greenland Ltd is connected to him.⁹⁶ In addition, a Singapore stock-exchange filing from 2007 relating to another company, states that Brunei-registered Tanaldi Ltd is "ultimately beneficially owned by Mr Rafat A. Rizvi".⁹⁷ Wah Seong strongly denies that there is any link between Atama Resources or Atama Plantations and Mr. Rafat Ali Rizvi. However, the company declined to answer a request from RFUK to identify the current ultimate beneficial owners of Atama (through Silvermark and Tanaldi) or Giant Dragon Group.

“THE SAME COMPANIES WHICH CONTROLLED ATAMA PRIOR TO WAH SEONG'S INVOLVEMENT HAVE BEEN USED TO SHIELD THE IDENTITY OF INDIVIDUALS FOUND GUILTY OF SERIOUS OFFENCES.”

In summary, the evidence from the above cases suggests that Tanaldi is a shelf company used by more than one person, on more than one occasion, and that it has been used specifically for the purpose of hiding the identity of beneficial owners of assets.

SECTION 3: CASE STUDIES OF NEW OIL PALM DEVELOPMENTS IN THE CONGO BASIN

FIGURE 5
Atama Plantation
Ownership Structure.



Notes:
Countries represent countries of registration (incorporation)
Dates are registration dates
Dir = directors of relevant company (in some cases companies are listed as directors)

Percentages represent ownership proportions:
Percentages in brackets are those prior to Wah Seong purchase; Percentages in orange are those which will exist once the WSC purchase is completed (as of December 2012, the purchase was half complete, with Wah Seong owning 41.7%)

Sources:
For information with asterisks, see report text and associated references; information on Wah Seong ownership and directors from Wah Seong Annual Report, 2012; all other information from official Wah Seong announcements to KLSE, February 2012'



Atama oil palm nursery, Epoma, 2012

3.1.7 CONCLUSION

A company with no significant relevant previous experience has begun felling tropical forests in the Republic of Congo to make way for what could be the region's largest ever oil palm plantation. Almost no public information is available about the project, and its new owners have declined to provide even the most basic information, such as concession maps. There is no evidence of any environmental or social impact assessments having been carried out for the plantation, or that the free, prior informed consent of local

populations has been sought. The evidence which is available suggests that high conservation value, intact primary forests are being converted, including habitat for endangered great-apes and forest elephants. And while Atama has only just started clearing forests, its contractors have already been found to be breaching regulations.

In addition to the serious issues regarding potential social and environmental impacts, questions must also be raised as to why Atama appears originally to have been deliberately structured to hide

the identity of its ultimate owners – even potentially from its current purchasers, Wah Seong. It could be that there are legitimate reasons for this structure, but the past circumstances noted above raise sufficient suspicions for this to be a matter of potentially serious concern to the Congolese government, to Atama's purchasers, to Wah Seong, and to Wah Seong's shareholders.



CASE STUDY 3.2: OLAM, GABON

Olam, the Singaporean agricultural commodities trading giant, has entered into a joint agreement with the Gabonese government to greatly expand palm oil plantations in this forest-rich country. Olam has committed to set aside from development areas of high environmental and social worth, but still plans to develop 130,000 hectares of palm oil in the country, with potential for significant environmental impacts, and uncertain social consequences, especially for traditional forest communities.

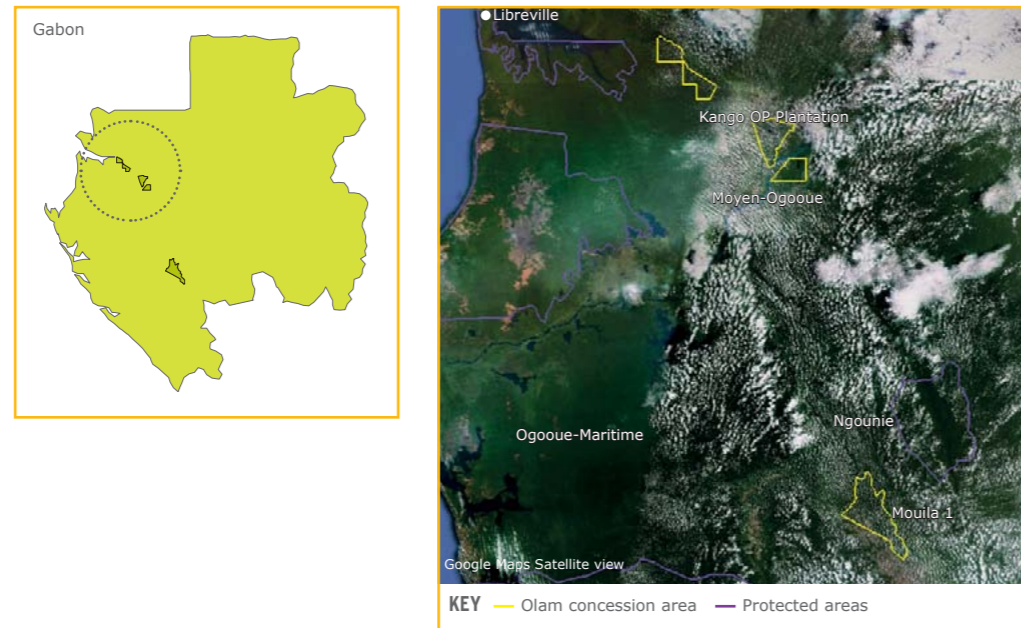
3.2.1 BACKGROUND

The official website of Gabon's President has stated that the country is aiming to develop oil palms on "hundreds of thousands of square kilometres" of land (although the surface area of Gabon is 270,000 square kilometres in total) and to become Africa's largest producer of palm oil.⁹⁸

OLAM'S KANGO AND MOUILA OIL PALM CONCESSIONS, GABON

FIGURE 6

"GABON IS AIMING TO BECOME AFRICA'S LARGEST PRODUCER OF PALM OIL."



In November 2010, Olam announced a large new oil palm investment in Gabon. The President of Gabon was in Singapore for the signing ceremony of the agreement with the CEO of Olam⁹⁹, part of a larger deal that also involved a joint venture for the building of a urea fertiliser plant and a Special Economic Zone focusing on timber processing.¹⁰⁰ The oil palm plantation agreement is a joint venture with the Gabonese government, in which the former has a 30% stake and commits Gabon to providing a 300,000 hectare land bank for oil palm and rubber plantation development. This is an area over four times the total land area of Singapore.¹⁰¹ The potential future investment is estimated at US\$236 million.¹⁰²

Traditionally, Olam has been principally involved in downstream shipping, trading and processing of agricultural commodities, including timber, palm oil, cocoa and others. Recently, however, it has expanded its role in the production of these commodities, through a strategy of 'vertical integration'. Olam is part-owned by the Singapore government through its sovereign wealth fund Temasek Holdings. News reports state that many major investment funds hold shares in Olam, including BlackRock, Hartford, Prudential, Vanguard and Fidelity.¹⁰³ Norway's Pension Fund Global also holds shares in the company.¹⁰⁴

Olam's presentation at the launch of the agreement stated that the palm oil would mostly be exported to Europe, and that it expected the project to be competitive in terms of costs with Indonesia and Malaysia, because of reduced shipping costs and lower taxes. The presentation noted that the land in Gabon was "free", in comparison to Indonesia

where it costs US\$250 - \$500 per hectare. The project will benefit from a 16-year income tax holiday, and exemptions on payment of duties or tax on machinery, gas, oil, fertilisers and other inputs. In response to questions from RFUK, Olam claims that it will pay a lease rent of CFA Franc 5,000 (US\$10) per hectare from the 17th year and that these tax benefits are "available to all investors under the relevant law and not just limited to Olam's projects in Gabon."¹⁰⁵ Olam aims for the concessions to be RSPO certified, and that planting would not begin until social and environmental impact and high conservation value forest assessments had been completed. It did not expect these assessments to present any problems, because it claimed the plantation is "entirely located on degraded land".¹⁰⁶ The company also claims that there is a "minimal threat from local community or land rights issues" due to Gabon's low population density.

Of the total 300,000 hectares of land allocation by the Gabonese Government, Olam is planning to develop at least 180,000 hectares by 2018 or 2019, including 100,000 hectares of industrial palm oil plantations (in two phases) and up to 30,000 hectares of smallholder palm plantations and 50,000 hectares of rubber plantations.¹⁰⁷ A McKinsey study on Olam's investment portfolio in Gabon states that, when completed, it would be "Africa's biggest oil palm plantation", with production of just under 0.5 million

tonnes of crude palm oil (CPO) per year, which would make the country Africa's second largest palm oil producer. The McKinsey study claims the project will lead to an 85 per cent increase in the area of commercial agriculture in Gabon by 2022, and that the combined Olam investments will lead to a 1.1 per cent per annum boost to non-oil GDP.¹⁰⁸ It also notes the potential that, "social tensions could arise from possible community claims to land and a major influx of labor" as well as the "potential risk of ecosystem damage from the erosion of soil, water pollution and land clearance".¹⁰⁹

The initial phase of the oil palm development is in Kango, in the Estuaire region, about 60km from Libreville, and in another area slightly further south in Mouila. Other areas in Ngounie and Nyanga have been allocated for oil palm plantations but have not yet been assessed by Olam for potential development.¹¹⁰ According to Olam's figures, it has already been allocated 209,334 hectares of land for commercial oil palm development in Gabon, of which 63,780 hectares has so far been returned to the government as 'unsuitable' and other areas have been set aside because of social or environmental value.¹¹¹ With the assistance of African banks Ecobank, Afreximbank and BGFI Bank Gabon, Olam secured a loan of \$228 million from the Central African States Development Bank to fund the plantation development, which Olam expects to draw upon in December 2012.¹¹²

"OLAM IS PLANNING TO DEVELOP AT LEAST 100,000 HECTARES OF INDUSTRIAL PALM OIL PLANTATIONS BY 2018/19."

3.2.2 OLAM'S PREVIOUS TRACK RECORD IN TIMBER

Following major acquisitions in 2011, Olam now has 1.8 million hectares of logging concessions in the Congo Basin,¹¹³ making it one of the region's largest logging companies. The company began trading timber in Gabon in 1998, and started operating timber concessions in the country in 2006. It has two sawmills in Gabon with a combined capacity of 70,000 cubic metres¹¹⁴, fed with logs from over 555,000 hectares of logging concessions the company has in the north-east.¹¹⁵

Olam has a number of blemishes on its track record in forestry. The company previously had logging concessions in DRC, which it is alleged were issued in contravention of a 2002 moratorium.¹¹⁶ Though Olam's non-operational concessions were relinquished in late 2007¹¹⁷, it continued to buy and sell timber from third parties for some time thereafter.¹¹⁸ In August 2007, allegedly illegal timber shipments from Olam International were seized in the remote province of Bandundu; the area's Forestry chief, Coco Pembe, allegedly accused the company of trading illegal timber cut by local companies whose logging permits had expired.¹¹⁹ Olam also had US\$0.5 million of

logs seized by the DRC forest authorities in 2007 for alleged failure to pay taxes.¹²⁰ Olam states that it subsequently "exited the wood business entirely in DRC" following this incident, which it claims was due to suppliers delivering cargoes in contravention of Olam's internal documentation systems.¹²¹ In 2005, Olam's Gabon branch was also reported to owe nearly US\$12,000 in forestry back-taxes, but now says that it is up to date with the relevant taxes.¹²²

3.2.3 THE START OF OLAM'S OIL PALM OPERATIONS

Thus far, Olam's plans for palm oil development in Gabon under the agreement with the government involve two 50,000 hectare phases, to be completed by 2018/19. Information from Olam states that planting began in February 2012 and that 12,134 hectares (7,134 hectares in Kango and 5,000 hectares in Mouila) will be planted by June 2013.¹²³ This is an area over 35 times the size of New York's Central Park.¹²⁴ Gert Vandersmissen, Director of the only previous commercial vegetable oil and rubber plantation company operating in Gabon (SIAT), has said it would be relatively easy for Olam to clear the amount of forest needed, but has cast doubt on the ability of Olam to meet its planting targets unless

they brought in labour from outside Gabon; SIAT has had similar problems in Gabon in recent years.¹²⁵ Olam has told RFUK that the vast majority of its workforce is recruited locally and that "we do not believe we will have to import foreign labour to keep to our planting timetable".¹²⁶ Beyond Olam's promise to abide by RSPO standards, it is not yet possible to judge the potential impact of the majority of this massive conversion project, since clearance has only recently begun and most of the land has yet to be identified. However, some of the lessons from the first two oil palm areas identified are sobering.

3.2.4 KANGO OIL PALM PLANTATION - ENVIRONMENTAL, SOCIAL AND CARBON IMPACTS

The first 51,920 hectares identified by the Gabonese government for oil palm development under the agreement with Olam are spread across three 'lots' or areas in Estuaire & Moyen-Ogooue provinces, just to the south of the capital, Libreville. How these areas were first identified is open to question, since the High Conservation Value (HCV) assessment undertaken for the areas found that two of the three lots were entirely within a key Ramsar-listed wetland populated by endangered manatees, one of which was also mostly untouched primary forest within an area of Intact Forest Landscape.¹²⁷ Evidence of the presence of chimpanzees and forest elephants was found in a large part of the final lot, much of which was also found to be too steep for clearance to occur without potentially serious erosion and pollution of rivers which flow into the nearby Pongara National Park and the adjacent Komo estuary.¹²⁸ The study also noted that the livelihoods of people living in the earmarked areas were "inextricably linked" to natural resources in the landscape, including hunting, collection of non-timber forest products, and artisanal timber harvesting.¹²⁹ Any such potential livelihood values are completely lost in areas which are converted to oil palm.



FIGURE 7
Landsat ETM7 satellite image showing forest clearance (red) within Block 8 of Olam's Kango oil palm concession in Gabon, April 2012'

The first two lots were not pursued by Olam for further development, and in the third lot Olam set aside areas identified as HCV forest and areas of particular use to local communities (for example, where vines are used for making baskets), and was only able to identify 7,134 hectares as suitable for planting - just 14 per cent of the initial land allocation. Olam states that it will allow fishing, but not hunting, in the area.¹³⁰ While the area the company does plan to clear does not meet the strict definition of HCV, converting it will still involve the clear-felling of secondary forest and will bring about significant changes to local livelihoods, some of which are likely to be negative. The carbon impacts of the development are also significant: it is estimated that it will result in the release of around 4 million tonnes of carbon dioxide¹³¹ - almost double Gabon's current annual emissions¹³² (carbon

emissions are not considered in HCV assessments - see Section 4.3 on the flaws in RSPO standards). According to the environmental assessment for Olam's development in Kango, the estimated carbon stock in the forests planned for clearance is 160 tonnes of carbon per hectare.¹³³ This is almost five times the maximum allowed by another major oil palm firm's forest conservation policy, which commits them to avoiding new development on 'High Carbon Stock' forests, defined as those with over 35 tonnes of carbon per hectare.¹³⁴ Satellite images obtained by RFUK confirm that extensive clearance of secondary forest in the Kango plantation area had already taken place by the end of April 2012 (see Figure 7 and aerial photos in this case study).¹³⁵

"BY JUNE 2013, OLAM WILL HAVE PLANTED 12,134 HECTARES OF OIL PALM, AN AREA OVER 35 TIMES THE SIZE OF NEW YORK'S CENTRAL PARK."



Recent forest clearance for oil palm by Olam, Kango, Gabon. Alexander De Marcq

3.2.5 MOUILA OIL PALM PLANTATION - COMMUNITY NEEDS AND RARE AND THREATENED ECOSYSTEMS AND SPECIES

The second area earmarked by the Gabonese authorities for oil palm development by Olam is at Mouila in Ngounie province. Olam has been allocated 67,154 hectares of land for potential industrial oil palm development in two lots. The HCV assessment for the 35,354 hectare concession of 'Mouila 1' found large areas of high conservation value forests, including rare, threatened or endangered ecosystems and species, and forest areas critical to water catchment, fundamental to meeting the needs of local communities and critical to local communities' cultural identity. One large area in the north of the concession is a habitat for forest buffalo and elephants, while populations of great apes have also been identified.¹³⁶ Forty-two per cent of the concession, 14,994 hectares, has already had to be set aside on the basis of

its high environmental value, and further areas of HCV still need to be established for livelihood and cultural purposes.¹³⁷ Olam has stated that it is carrying out "further faunal surveys" in the area.¹³⁸ Related to community rights, many serious concerns were raised during the social impact assessment consultations.¹³⁹ Olam claims to have identified a particular concern related to subsistence agriculture activities, as part of a free, prior and informed consent (FPIC) process, and set aside two areas totalling 950 hectares for this purpose.¹⁴⁰

The second area in Mouila to be allocated by the government for Olam's palm oil plantations ('Mouila 2') is 31,800 hectares and the suitability of the area has yet to be assessed by the company.¹⁴¹ The exact location and boundary of this second area has not yet been made public, so no independent assessment is possible.



Recent forest clearance for oil palm by Olam, Kango, Gabon. Alexander De Marcq

“THE HCV ASSESSMENT FOUND LARGE AREAS INCLUDING RARE, THREATENED OR ENDANGERED SPECIES, AND FOREST AREAS CRITICAL TO WATER CATCHMENT, FUNDAMENTAL TO MEETING THE NEEDS OF LOCAL COMMUNITIES AND CRITICAL TO LOCAL COMMUNITIES’ CULTURAL IDENTITY.”

3.2.6 OTHER JOINT VENTURES BETWEEN OLAM AND THE GOVERNMENT OF GABON

As well as an 80/20 joint venture with the government to develop 28,000 hectares of rubber plantations, which is beyond the scope of this report, there is also a 60/40 joint venture between Olam and the Gabonese government for the creation of a Special Economic Zone focusing on timber processing, and another related to an urea fertiliser plant.

RFUK is not aware of any information in the public domain about how any beneficiary earnings from these joint-ventures would be used by the state.¹⁴² A document provided by Olam setting out the ownership arrangements of Olam Palm Gabon only states that the 30 per cent share is owned by "La République Gabonaise", represented by the Minister of Economy, Commerce, Industry and Tourism.¹⁴³ Olam states that the government is aiming to diversify from oil, gas and timber and holds stakes in other timber and mining companies.¹⁴⁴

3.2.7 SUMMARY - OLAM'S RESPONSE TO CONCERNS, AND BROADER IMPACTS OF DEVELOPMENTS

Olam has shown greater transparency than many palm oil companies in the region and has conducted and made available HCV forest assessments for its developments and set aside identified areas. Olam also claims to carry out FPIC and long term community engagement procedures. This demonstrates that the company is attempting to address some of the potential major negative environmental and social impacts of industrial palm oil development. In general, Olam states that it is helping to develop the agricultural sector in Gabon, providing paid jobs mainly taken up by Gabonese citizens with a minimum wage of CFA 150,000 (approximately US\$300) per month,

“OLAM’S DEVELOPMENTS WILL INVOLVE THE CLEARANCE OF LARGE AREAS OF SECONDARY TROPICAL FORESTS, RESULTING IN HUGE CARBON DIOXIDE EMISSIONS.”

health check-ups for workers and are "commencing the construction of worker housing".¹⁴⁵ Olam also claims to be investing in roads, schools, a small-scale agriculture support programme, solar light panels and wells.¹⁴⁶ These claims could be verified through local NGO or other independent third-party monitoring, preferably on an on-going basis.

Even if this is taken at face value, large questions still remain about the broader social and environmental impacts of Olam's developments in Gabon. They will involve the clearance of large areas of secondary tropical forests, resulting in huge carbon dioxide emissions. It is possible that despite the company's efforts, there will be significant negative impacts on local livelihoods. Indirect social and environmental impacts have not been assessed or addressed and could be significant. There is a lack of transparency regarding the government's role in the project.

Perhaps most worrying is the fact that almost 70 per cent of the first 87,000 hectares allocated by the Gabonese government for the planting of oil palm by Olam was found to be extremely valuable forest, including areas of intact forest landscape, Ramsar wetlands, great ape and elephant habitat, and areas with crucial livelihood functions. While Olam has committed not to develop such areas, this is a voluntary commitment. Other oil palm companies to whom the Gabonese authorities may issue licences in the future may not make the same

voluntary commitments as Olam, and hence clear forests with high environmental or social value. The choices of land made so far suggest either that very little truly 'suitable' land is available in the country, or that there has been insufficient effort invested to identify suitable land.

“ALMOST 70 PER CENT OF THE FIRST 87,000 HECTARES ALLOCATED BY THE GABONESE GOVERNMENT WAS FOUND TO BE EXTREMELY VALUABLE FOREST INCLUDING GREAT APE AND ELEPHANT HABITAT AND AREAS CRUCIAL FOR LIVELIHOODS.”

The *indirect* impacts of the creation of large-scale plantations in remote and previously forested areas should be taken into account. Large projects attract workers into the area who often bring their families, sharply increasing the local population and hence pressure on surrounding flora and fauna. Olam claims to have a “robust process to manage HCV areas”, although details of this have not been provided.¹⁴⁷ Once a new plantation has been established, expansion of that plantation or new developments in the area by other companies becomes more likely. Newly renovated or opened up roads allow easier access to outsiders into forest areas, which can lead to an increase in artisanal logging and commercial bushmeat hunting and poaching.

The broader political context of these developments cannot be ignored either. All land in Gabon is formally owned by the state, and customary use of forest areas mostly remains unmapped and usually not recognised in law or respected - although

Olam has voluntarily committed to do so. Local communities – especially traditional hunter-gatherer communities – therefore have no formal land rights and, in general, have limited political voice and influence. The asymmetry in political power between the different actors is particularly stark when the project is partly owned by the government. This is likely to play a role in determining which actors will benefit or be negatively impacted by the project.



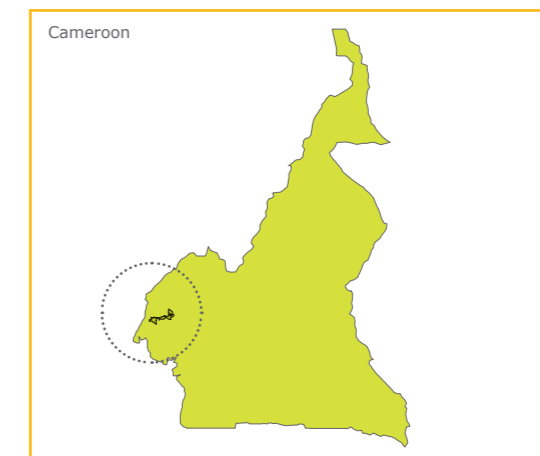
Recent forest clearance for oil palm by Olam, Kango, Gabon. Alexander De Marcq

3.3 CASE STUDY: HERAKLES FARMS/SG SUSTAINABLE OILS CAMEROON (SGSOC), CAMEROON



New York-based Herakles Farms, founded by investment group Herakles Capital, is developing 60,000 hectares of oil palm plantations in Cameroon, an area ten times the size of Manhattan,¹⁴⁸ near several key wildlife sanctuaries and protected areas. The development, which has received generous tax breaks from the Cameroonian government, has been controversial locally, nationally and internationally, and has faced questions as to its legality. The company recently has decided not to proceed with certification under the Roundtable on Sustainable Palm Oil (RSPO) scheme.

FIGURE 8 HERAKLES' OIL PALM CONCESSION, CAMEROON



“HERAKLES IS DEVELOPING 60,000 HECTARES OF OIL PALM PLANTATIONS IN CAMEROON, AN AREA TEN TIMES THE SIZE OF MANHATTEN, NEAR KEY WILDLIFE SANCTUARIES AND PROTECTED AREAS.”

3.3.1 BACKGROUND

In September 2009, an agreement was signed between Sithe Global Sustainable Oils Cameroon (SGSOC, a subsidiary of the New York-based Sithe Global Corporation) and the Cameroon government, whereby 73,086 hectares of land were to be leased for a period of 99 years for the development of an oil palm plantation. Shortly after, SGSOC was sold by Sithe Global, part of the Blackstone Group, to US company Herakles Farms, which was founded by the investment group Herakles Capital. The project is located in the Kupe, Manengula and Ndiang divisions of the Southwest region of Cameroon, about 250km from the port town of Douala. The site consists mostly of logged-over forests, but is surrounded by five separate protected areas, including the globally significant Korup National Park, home to forest elephants, chimpanzees and gorillas.¹⁴⁹



“EXPERTS STATE THAT 23,115 HECTARES OF THE CONCESSION IS HCV FOREST, AND 31,576 HECTARES IS NEEDED FOR LOCAL AGRICULTURE. IN CONTRAST, HERAKLES IS SETTING ASIDE ONLY 1,969 HECTARES FOR RIPARIAN RESERVES, HCV FOREST AND LOCAL PEOPLE’S AGRICULTURE.”

3.3.2 RSPO CERTIFICATION PLANS DROPPED

Herakles originally planned to obtain RSPO certification for its Cameroon plantation and carried out an Environmental and Social Impact Assessment (ESIA), as is required under Cameroonian law. This ESIA, published in August 2011, states that the company will exclude from development areas of high conservation value (HCV) forest, steep slope areas (over 30 degrees incline), areas sacred to local communities, river buffers and land currently used by local people for agriculture.¹⁵⁰ Herakles stated that the actual area to be cleared and planted within the concession will be 60,000 hectares, implying that a total of 13,086 hectares (18 per cent) will be set aside from palm oil production. However, the ESIA makes clear that almost all of this ‘set aside’ area is made up of buffer zones where the concession shares a boundary with protected areas, as well as all land over a 650 metre altitude.¹⁵¹ Careful reading of the ESIA shows the company is actually only proposing to set aside 1,969 hectares for riparian reserves, HCV forest and local people’s agriculture. This contrasts with



FIGURE 9 Oil Palm Nursery in Cameroon, © Greenpeace / Alex Yallop

figures from the German development agency GIZ, which has stated that it believes that at least 23,115 hectares of the concession is HCV forest, while a further 31,576 hectares needs to be set aside for local agriculture.¹⁵²

The consultant recruited by Herakles to conduct its HCV assessment published a summary in February 2012.¹⁵³ Independent experts published a damning critique of this HCV assessment two months later, which concluded that it was “extremely weak and completely inadequate”.¹⁵⁴ The independent review of Herakles HCV assessment also stated that, “The review team did not believe that the company has clear tenure rights for the plantation development, and that traditional tenure and customary use rights have been recognized... it is clear that hunting grounds and other areas where collection activities currently take place will be impacted by plantation development”.¹⁵⁵ Herakles has stated to RFUK that its HCV assessment was confirmed as complete and in compliance with RSPO by the British Standards Institute (BSI).¹⁵⁶



Oil Palm Nursery in Cameroon, © Jan-Joseph Stok / Greenpeace

In August 2012, Herakles dropped its plans to obtain RSPO certification of the concession.¹⁵⁷ The company claims that this decision was due to the delays to the project which were likely to occur as a result of following RSPO grievance procedures, but that it nevertheless intends to meet RSPO standards.¹⁵⁸ When questioned by RFUK as to its reasons for dropping RSPO, Herakles responded that it “did not withdraw from the RSPO in order to proceed without having to follow the sustainable requirements of the RSPO”, and that it had to quickly begin planting because its palm seedlings were starting to take root in the nursery.¹⁵⁹

The ESIA for the project admits that, “the conversion [to oil palm] will destroy existing biodiversity in 75% of the concession”¹⁶⁰ and that it will “result in an overall loss of fauna”¹⁶¹. It concluded that there will be major adverse impacts on livelihoods, flora, fauna and biodiversity.¹⁶² The ESIA found specifically that forest elephants regularly pass through the concession when moving between the

surrounding protected areas¹⁶³ – the implication being that these migration routes, which can be critical in elephant populations’ survival, would be destroyed by the development. Environmentalists have expressed particular concern that the influx of workers into the plantation will lead to increased bushmeat hunting in the neighbouring protected areas.

Herakles claims that it will adopt “best practices for protecting the [elephant migration] route” and that “pre-clearing environmental studies” will be carried out prior to clearance and planting, which may identify additional areas for protection beyond those noted in the HCV assessment.¹⁶⁴ The company also claims to be “looking into inter-cropping” (growing two or more crops in proximity, although this is usually only practical in the early years of oil palm plantation establishment whilst the palms are still small). As a result of these additional measures, the company told RFUK that, “it is certainly not expected that an entire 60,000 ha [hectares] will be clear-

cut for conversion to oil palm”.¹⁶⁵ Curiously, in its initial response to questions from RFUK in November 2012, Herakles claimed that its development would “not be clearfelling any forests”, even though plentiful evidence, including aerial photographs and the company’s own official documents and statements, clearly shows this to be incorrect (see Figure 9).

“THE CONVERSION WILL DESTROY EXISTING BIODIVERSITY IN 75% OF THE CONCESSION.”

The ESIA for the project states that the company plans to develop the 60,000 hectares of palms over just four years, with 7,500 hectares planted in the first year, 21,000 hectares in the following two years and 10,500 hectares in the final year.¹⁶⁶ This is a very rapid planting schedule in comparison to most oil palm plantation developments in Africa and Asia, which typically aim for between 2,000 and 5,000 hectares of new clearance and planting a year.

‘All for Africa’, an NGO with strong links to Herakles, has stated that it will fund development projects in the area, but has been seen by campaigners concerned about the development as a vehicle for helping to ‘market’ a controversial project and downplay social and environmental concerns. All for Africa posted misleading claims on its website, which were subsequently taken down, that the project would be carbon positive.¹⁶⁷ In fact, no assessment appears to have been carried out by the company of the carbon stocking of the secondary forests which the project plans to convert, and the company has made no public commitment to avoiding clearance of high carbon stock forests in the concession.

3.3.3 QUESTION-MARKS OVER LEGALITY

The Herakles oil palm project has been dogged by allegations of illegality from the start. While local groups allege that the concession agreement with the Cameroonian government was in breach of legislation, the company has also been accused by official inspectors of various breaches of regulations in its initial land clearance at the site.

During the summer of 2011, prior to the issuance of the ESIA, Herakles began clearance and planting in at least one nursery area.¹⁶⁸ The company claimed to have permission to clear up to 100

“THE HERAKLES OIL PALM PROJECT HAS BEEN DOGGED BY ALLEGATIONS OF ILLEGALITY FROM THE START.”



Oil Palm Nursery in Cameroon, © Greenpeace / Alex Yallop

hectares in advance of the ESIA and associated environment permit required under Cameroon law,¹⁶⁹ but a local court thought otherwise and suspended the company’s operations in February 2012 after a case was brought by a local NGO.¹⁷⁰ The suspension was overturned by the court in April 2012¹⁷¹, however, as by the time the original court decision was handed down, the company had obtained the environmental permit in question.¹⁷²

The existence of an ESIA and associated environment permit does not appear to have been the only legal problem with the clearance for the nursery, however, and the local court decision in April did not spell the end of the legal issues. An official April 2012 report from Cameroon’s Ministry of Forestry states that a government inspection team found the company had breached regulations and seized two bulldozers which had been used in the clearance.¹⁷³ Herakles initially told RFUK that it had “no knowledge of the Ministry of Forestry report you mention”¹⁷⁴ and has continued to assert that no equipment was ever seized. Herakles

claims that the findings of the official inspection in April 2012 were not enforced and assumes from this that it was a result of a misunderstanding between Ministry of Forestry officers in the region and the capital about what permits the company had been issued.¹⁷⁵

However, documents obtained by RFUK show that in May 2012, a joint follow-up mission to the SGSOC concession by the official Cameroon Independent Observer of Forest Law Enforcement and Governance (OI-FLEG) and government forestry officials confirmed that the company had cleared forest which had not yet been officially excised from the

“A GOVERNMENT INSPECTION TEAM FOUND THE COMPANY HAD BREACHED REGULATIONS.”

Permanent Forest Estate, as legally required. It concluded that SGSOC had illegally felled 220 cubic metres of logs, and reported that the company had been served with a “notification primitive” to pay 24.5 million CFA (US\$48,000) in fines and damages by the National Control Brigade (Brigade Nationale de Contrôle - BNC).¹⁷⁶ Though the area of forest destroyed by this apparently illegal felling is not large, it indicates a worrying and early ignorance or disregard by Herakles for the due process of the law, in an area where, as noted above, the potential for causing major environmental damage is great. In response to questions on this issue, the company told RFUK that, “Herakles Farms never received a fine, penalty or order to stop work”.¹⁷⁷ The company continues to cite the April 2012 decision of the local court (regarding the environment permit) as evidence that the clearance for the nursery was legal.¹⁷⁸

As of June 2012, the company had cleared 30 hectares for oil palm nurseries, and carried out a pre-clearance assessment, but not yet clearance or planting, of an initial area of 2,000 hectares.¹⁷⁹

A report on Herakles’ development by Cameroonian non-governmental organisation Centre for Environment and Development (CED) alleges that the concession agreement breaches both the spirit and the letter of Cameroon law.¹⁸⁰ CED claims that the process followed for the approval of the ESIA may have failed to comply with relevant regulations, and the agreement itself also does so, since it did not obtain the necessary Presidential approval and exceeds the maximum five years allowed by law for initial leases.¹⁸¹ The agreement also poses significant legal questions by allegedly contradicting other Cameroonian legislation in its provision of tax exemptions.¹⁸² As with other such investments elsewhere in Central and West Africa, the agreement includes extremely generous investment terms, including a total exemption from all taxes and duties for ten years.¹⁸³ In response, Herakles has vigorously denied allegations of illegality, and stated to RFUK that it is, “not receiving any special treatment that puts us above the law”, but that, “the details of the agreement with the government of Cameroon cannot be discussed as it is confidential.”¹⁸⁴

The only payment required under the oil palm concession agreement between Herakles and the Cameroonian government is an annual ‘area rent’, which will provide just US\$66,000 a year to the government once all of the land is planted. Herakles has countered this by stating that “millions of dollars” of additional revenue will be generated by sale of timber on the land which Herakles will cut, trim and stack ready for auction by the Cameroonian government.¹⁸⁵ Herakles has claimed, in its defence, that it is bringing paid employment to the area, as well as medical services, university scholarships and farming programmes.¹⁸⁶

3.3.4 LOCAL OPPOSITION

The development is meeting with increasing opposition locally, nationally and internationally. Greenpeace has documented the frustrations and opposition of numerous local villagers to the development.¹⁸⁷ Young people from the village of Fabe are reported to have tried to intervene directly to prevent bulldozers clearing land for the palm nursery;¹⁸⁸ Herakles has stated to RFUK that this was related to the dismissal of young employees who had misbehaved.¹⁸⁹ Cameroonian NGO the Centre for Environment and Development is now pursuing a challenge to the agreement through the political and legal avenues possible in Cameroon.¹⁹⁰

3.4 LESSONS FROM CASE STUDIES

In addition to the three case studies above, a brief summary of other active projects in the region is given in Annex 1. Taken together, this information illustrates numerous reasons for concern regarding the new wave of expansion of industrial oil palm plantations in the Congo Basin.

Of the seventeen projects identified, at least three are connected in some way to companies which have been found to have breached national regulations in other countries, involving timber-felling or plantation development. All three main case studies involve conversion of forests and potentially large-scale carbon emissions. In at least two and probably all three cases, the land allocated by the governments encompass areas of high conservation value, including primary forest, great ape and elephant habitat, or internationally-listed wetlands. Without appropriate assessment and mitigation measures, all three are likely to have negatively impacted on local people's farms and areas of forest needed for subsistence livelihoods. At a minimum, this suggests that potential environmental and social impacts have so far been very much a secondary consideration in site selection for new oil palm developments. It further

“THERE IS A CONSISTENT LACK OF TRANSPARENCY IN THE PROJECTS IDENTIFIED, ESPECIALLY WITH REGARDS TO CONTRACTS SIGNED WITH GOVERNMENTS.”

suggests that some of the ambitious planting targets already set out by governments will only avoid very large-scale environmental damage and social disruption if much greater effort is put into site selection, assessment and mitigation measures.

In two of the three main case studies, companies with existing logging and timber interests in the country concerned are involved in some way, raising the possibility that developments may aim to boost profits through commercial timber felling. In both case studies where clearance has actually begun, there has been opposition from local NGOs. There is a consistent lack of transparency in the projects identified, especially with regard to the details of contracts signed with governments, or concession maps showing the areas planned for conversion.

The case studies also expose the flaws in RSPO certification (see section 4.3 below for more on RSPO). For a start, it is voluntary: of the seventeen new planting projects identified, just two have committed to meeting RSPO standards, and one of them has since decided to drop its bid for certification. Whilst Olam has embarked on a process to achieve RSPO certification, the huge carbon emissions likely to result from forest clearance for the Olam plantation demonstrate the flaws in RSPO standards, which do not require high carbon stock forest to be set aside. Meanwhile the Herakles case demonstrates the difficulty in ensuring that RSPO standards are meaningfully met: not all cases will meet with the same level of NGO attention, and without such attention it is unlikely the flaws in HCV assessments and local consultations would have been exposed.

In the case of Atama Plantations in the Republic of Congo, Rainforest Foundation UK has not been able to find evidence that any environmental and social assessments have been carried out.

POTENTIAL SOCIAL & ENVIRONMENTAL IMPACTS OF PALM OIL IN THE CONGO BASIN

FIGURE 10
Social and Environmental impacts



Oil palm is native to the Congo Basin and is widely cultivated on a small-scale by subsistence farmers, with many important local uses. Lessons on the dramatic negative environmental and social impacts often associated with expansion of large-scale industrial oil palm plantations in the tropics come mainly from the two countries with the greatest experience - Malaysia and Indonesia. There are plentiful examples from these and other countries of oil palm developments leading to the destruction of tropical rainforests (mostly secondary logged forests, but also primary forests) and consequently having major negative impacts on biodiversity, watersheds, climate change emissions and local livelihoods. Even if demand for oil palm were to remain static, these effects would continue to be felt, since plantations are often abandoned after one 25-year cycle because of soil exhaustion, and are replaced by new greenfield planting.¹⁹¹

With the exception of climate change emissions from oil palm planting on peat-lands, there is every reason to believe that the same negative impacts seen as a result of oil palm development in Indonesia and Malaysia will be repeated in the Congo Basin. Negative environmental and social impacts typical of

developments in Indonesia have already been well documented at one of the most advanced new oil palm developments in Africa, Sime Darby's concession in Liberia. Some impacts are also already beginning to be felt at the handful of new Congo Basin oil palm developments which have already broken ground.

Though some Congo Basin projects have committed to meeting Roundtable on Sustainable Palm Oil (RSPO) standards - most have not - those which have made such a commitment may change their minds when faced with difficulties, as Herakles has already done so in Cameroon (see section 3.3).

The laxity of RSPO's standard-setting and enforcement, together with the system's lack of experience and expertise in Africa, may mean that the certification is not a guarantee of strong, social and environmental performance by oil palm projects in the region.

The following sections look at the negative environmental and social impacts already documented in oil palm plantations in South-East Asia, as well as some of the measures used to try to avoid or mitigate such impacts.



Oil Palm Plantations in Kalimantan, Indonesian Borneo. Oil palm plantations and the processing plant in a totally deforested area at Pundu. 24/07/2009 © Daniel Beltrá / Greenpeace

4.1 ENVIRONMENTAL IMPACTS

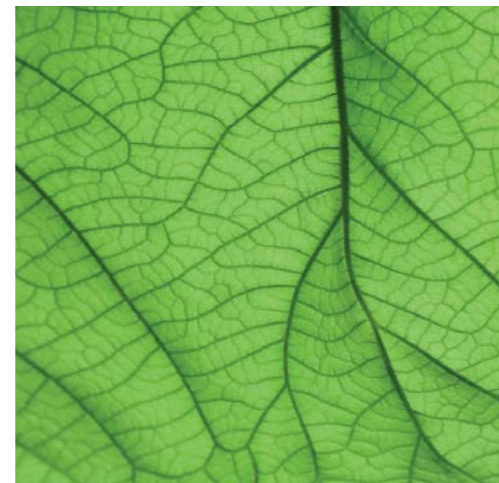
4.1.1 DEFORESTATION & BIODIVERSITY LOSS

There is a direct relationship between the growth of oil palm estates and deforestation in Malaysia and Indonesia.¹⁹² Between 1990 and 2005, 1.1 million hectares of forest in Malaysia and 1.7 million hectares of forest in Indonesia were cleared to make way for oil palm. Between 50 and 60 per cent of all oil palm expansion in those countries during the 15-year period occurred at the expense of natural forests.¹⁹³

Much of this destruction has been illegal. Licenses are often issued in breach of regulations, sometimes as a result of corruption. For example, the governor of East Kalimantan province in Borneo was jailed for 4 years for illegally issuing oil palm plantation permits covering 1 million hectares between 2003 and 2008.¹⁹⁴ It is common in Indonesia for oil palm companies to begin clearance before all the necessary permits are in place.¹⁹⁵ There are numerous examples of oil palm companies illegally using fire to clear land¹⁹⁶, clearing forest outside of concession boundaries¹⁹⁷ and clearing in prohibited areas

within concessions such as river buffers and areas of deep peat.¹⁹⁸ Oil palm companies in Indonesia have cleared habitats of endangered Orang-utans and Sumatran tigers.¹⁹⁹

Oil palm companies almost always defend green-field operations on the basis that their new planting is on 'degraded' land, but this term is widely abused and is often used to refer to areas of forest which have been selectively logged but retain significant biodiversity values, carbon stocks and



© Jiri jura



Forest clearance of oil palm, Kalimantan, Indonesian Borneo, © Ulet Ifansasti / Greenpeace

livelihood and watershed functions. Palm oil planting has often been linked with timber extraction, with different parts of the same industrial conglomerates first pulling out all the most valuable timber species, then the 'degraded' forest being clear-felled for palm plantations.

Where oil palm developments target primary forest areas, this is often simply a cover for accessing valuable timber resources: once these are taken, the land is abandoned and no planting ever takes place. Even where plantations are developed on genuinely 'degraded', or un-forested land, they can have indirect negative effects on neighbouring forests. Where local people's subsistence agricultural land is planted, farmers may be forced to cut down neighbouring forests in order to replace the lost land. The large influx of people needed for the planting and operation of an oil palm plantation

can also lead to increased small-scale illegal logging, bush-meat hunting and agricultural clearance. Where fire is used to clear degraded land, they can spread beyond concession areas into neighbouring forests.

4.1.2 CLIMATE-CHANGE EMISSIONS

Oil palm plantations are a very large contributor to climate-changing gas emissions. Emissions result from the above-ground biomass cleared to make way for the plantations, which even in heavily degraded forests exceeds the biomass of the oil palms which replace them. Studies in Indonesia found oil palm plantations had an above-ground carbon store of 39 tonnes of carbon per hectare (C/ha), while logged-over forest areas which they typically replace had above-ground carbon stores of between 175 and 250 tonnes C/ha.²⁰⁰

Where the natural biomass is buried, piled up to rot or used as timber, the emissions will take place over some time, but if the land is cleared by fire or woody material used for charcoal or cooking fires this will occur more rapidly.

In Indonesia and Malaysia, even larger climate change emissions come from below-ground, since much of the oil palm has been developed on peat-lands. When these are drained or burned, vast amounts of carbon are released. According to a Greenpeace analysis, one tonne of palm oil produced on deep peat can lead to nearly 20 times the emissions of burning a tonne of crude oil.²⁰¹

A third and more commonly overlooked source of emissions from the industry are methane emissions which occur during the processing of palm fruit and waste.

“OIL PALM PLANTATIONS ARE A VERY LARGE CONTRIBUTOR TO CLIMATE-CHANGING EMISSIONS.”

4.2 SOCIAL IMPACTS

4.2.1 LAND RIGHTS & CONFLICT

Written laws in tropical countries often do not recognise customary land rights of indigenous or other local peoples, and all 'vacant' land is formally 'owned' by the state. In such instances, governments are able to hand people's ancestral land to oil palm companies without consultation or their free, prior, informed consent (FPIC) and without suitable compensation. In most countries where large-scale oil palm plantations have been developed, this has led to the loss of customary lands and resulted in conflicts between local people and oil palm

developers. Where formal regulations do provide for consultation with communities or require some form of consent, these regulations are regularly breached by companies and governments. Even where consultations are conducted, false information is provided and false promises are made in order to obtain local people's consent.²⁰²

The painstaking work of NGOs such as Sawit Watch (which translates as 'Oil palm watch') has demonstrated beyond doubt that the rapid expansion of oil palm plantations in Indonesia has led to "hundreds of disputes and conflicts over land, involving demonstrations, land occupations, displaced persons, arrests, beatings, torture and deaths".²⁰³



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Sawit Watch was aware of 513 active conflicts between companies and communities in the oil palm plantation sector in Indonesia in 2008, and believed that, in total, there may have been as many as 1,000 conflicts in the country. It has been estimated that between 1998 and 2002, 479 local people and activists defending community rights were tortured, 12 were killed, and 936 were arrested; at least 284 houses or huts were burned down or destroyed and 307,954 hectares of "peasants' land was affected by crop damage, destruction and burning".²⁰⁴

"IN MOST COUNTRIES LARGE-SCALE OIL PALM PLANTATIONS HAVE LED TO LOSS OF CUSTOMARY LANDS, RESULTING IN CONFLICTS BETWEEN LOCAL PEOPLE AND OIL PALM DEVELOPERS."

4.2.2 LIVELIHOOD IMPACTS

The conversion of community agricultural lands and forests can have dramatic negative impacts on local livelihoods. Forests which are destroyed to make way for oil palm plantations can no longer provide subsistence foods, medicines and building materials. Where insufficient land is left for subsistence agriculture, it can be impossible to grow enough food. Villages can find that they have become 'islands' in a sea of oil palm plantations. The new opportunities for income from formal employment within the oil palm plantations often fail to fully counter the loss of subsistence incomes and leave people worse off than they were before.²⁰⁵

4.2.3 CULTURAL IMPACTS

Oil palm developments have dramatic negative impacts on indigenous and local cultures and customs. Many customs are related to traditions of working and using the land, including subsistence agriculture, hunting and gathering of forest products and for spiritual and cultural purposes. Indigenous peoples in particular have a profound relationship with the land and its resources. The loss of land for subsistence agriculture, the loss of forest resources, and the shift to working as wage labourers in oil palm plantations all serve to undermine and ultimately destroy these traditions, and the cultural practices which accompany them.

More direct impacts include numerous well-documented instances in Indonesia and Malaysia of oil palm companies desecrating indigenous people's ancestral grave sites. Ultimately, the disruption caused by conversion of local people's land to oil palm can lead to communities losing the very things which make them communities: their self-respect, pride and identity, their independence, and their collective spirit.²⁰⁶

4.2.4 WATER QUALITY AND AVAILABILITY

Studies in Indonesia have shown how oil palm developments can have serious, detrimental impacts on local people's access to clean water. Concession agreements often define new plantations as private property, and give the oil palm company the right to refuse access, including access to rivers and streams within the concession area, to local people. At least some of the new concessions being allocated in the Congo Basin countries have similar provisions.²⁰⁷

"OIL PALM DEVELOPMENTS OFTEN HAVE DRAMATIC NEGATIVE IMPACTS ON INDIGENOUS AND LOCAL CULTURES AND CUSTOMS."

The planting of oil palm monocultures has dramatic effects on local hydrology. Local communities surveyed in Indonesia found that rivers and streams dried out following the planting of oil palm, while conversely floods also became more common. Even where communities are still able to access water sources, and these have not dried out, they are often polluted. Pesticides and other agrochemicals are leached from fields into streams, and increased erosion leads to increased turbidity and sedimentation. Even worse pollution comes from the oil palm processing facilities, which release large amounts of organic liquid waste which

saps oxygen from water, killing fish. A palm oil mill serving a concession of around 8,000 hectares can produce 1,200 cubic metres of liquid waste per day, equivalent to the sewage produced by a city of 75,000 people.²⁰⁸ Examples of water pollution in the Congo already exist: a press report in March 2010 claimed that SIAT's oil palm processing facilities in Lambaréné and Makokou, Gabon had caused significant pollution of rivers.²⁰⁹

4.2.5 POOR LABOUR CONDITIONS

Oil palm companies, including those involved in developments in the Congo Basin, seek to justify inevitable negative environmental impacts by highlighting the numbers of jobs which will be created. Where the permission of local communities is sought, the promise of employment is a key incentive. Paid employment in most rural areas of the Congo Basin is in very high demand, as these are some of the poorest countries and regions anywhere. The experience in Indonesia however, is that existing communities in the vicinity of new oil palm plantations often end up disappointed. Many of the promised jobs are only temporary, since plantation establishment is much more labour intensive than plantation maintenance. One study found that plantation establishment required 542 person-days per hectare, whereas operation required just 85 days.²¹⁰ Most jobs are for casual workers, with little or no job security. Wages are very low - at or below the minimum wage, which is itself not a liveable wage.²¹¹ The quality of work found in palm oil plantations is often also very poor - harvesting palm fruits is physically difficult and results in many injuries.

4.3 ATTEMPTS TO ADDRESS NEGATIVE IMPACTS OF OIL PALM DEVELOPMENT

4.3.1 CERTIFICATION

In response to consumer campaigning by NGOs, in 2004 the Roundtable for Sustainable Palm Oil (RSPO) was set up. The RSPO has established a set of standards for independent, voluntary certification of 'sustainable' palm oil. An increasing number of major corporate buyers of palm oil are demanding certified supplies, and companies can choose to have their plantations RSPO certified in order to sell to these more discerning customers (in theory, at a premium price). As of September 2012, 1.5 million hectares of oil palm plantations had been certified to RSPO standards.²¹² An RSPO Africa Roadshow "aimed at supporting best practice in the planning and expansion of oil palm plantations in West and Central Africa" kicked off with events in Liberia and Gabon in May and June 2012. The roadshow was funded by the International Finance Corporation, a member of the World Bank Group, and Sime Darby, Olam International and Unilever.²¹³

For a plantation to meet RSPO standards, it is supposed (among other things) to meet all local and national legislation, only diminish customary rights of local land users with their free, prior, informed consent, and must avoid planting on areas of 'high conservation value', such as primary forests or forests with important populations of endangered species.²¹⁴ Importantly, this does not prevent RSPO certified plantations clearing natural forest.

While RSPO can help bring greater transparency to the palm oil industry and has served as a forum for discussion, it is only a voluntary



Oil palm replacing tropical forest in Sarawak, Malaysia. © Earthsight Investigations

scheme. Most plantations (and most importantly, most new plantations) are still not certified or seeking to be certified, and even for those plantations which are certified, there are serious problems with the standards used, as well as with their enforcement. RSPO standards still allow companies to clear natural tropical forests, including areas of high carbon stock, provided that these forests have previously been slightly degraded by logging. Plantations established prior to 2005 can even be certified in cases where they replaced primary forests.²¹⁵ RSPO certification does not address potential indirect impacts on neighbouring forests of displacing local people from farmed land. Multiple case studies have also demonstrated how RSPO-member companies are able to obtain RSPO certification for some of their plantations (usually the older ones),

while continuing to develop new plantations illegally or unsustainably elsewhere.²¹⁶

4.3.2 THE 'DEGRADED LAND' STRATEGY

A lot of attention is now being paid by international agencies and NGOs to the idea that deforestation can be reduced significantly by shifting new oil palm development from forest areas on to degraded land. The World Resources Institute (WRI), for instance, has calculated that there is already sufficient suitable degraded land in Indonesia to cater for continued oil palm expansion through to 2020, without any more forests needing to be felled.

NGOs like WRI and WWF are working with donors, national governments and major oil palm companies to try to encourage oil palm development on degraded land, by helping identify land and minimise any administrative hurdles. Such initiatives are also linked to potential funding for REDD, such as in the financial agreement between the governments of Norway and Indonesia.

Although the basic concept is sound, there are a number of potential challenges with the degraded land strategy as currently implemented. The first is that land rights and tenure issues on 'degraded land' may be as or even more significant than they are on forested land. The second relates to how 'degraded land' is defined; the term has been widely abused and often used to refer to areas of forest that have been selectively logged but still retain significant biodiversity values, carbon stocks and livelihood and watershed functions.

The third, larger, but less well documented problem is that the whole strategy could be counterproductive, because it is not being sufficiently coupled with parallel actions to prevent continued new planting on 'non-degraded' forest land. Given the huge profits and massive demand for palm oil, as well as the tempting cash-flows offered by timber clearance and sale, it is entirely possible that oil palm companies will take the degraded land offered to them, and then plant on that and the forested land they were originally planning to plant on. The reality is that, in Indonesia and other Asian countries, palm oil companies have built up substantial 'land banks' which, if utilised, would require further forest clearance, and they have been strongly reluctant to relinquish such land reserves even if suitable 'degraded land' is on offer.

“THE TERM ‘DEGRADED LAND’ HAS BEEN OFTEN USED TO REFER TO AREAS OF FOREST THAT STILL RETAIN SIGNIFICANT BIODIVERSITY, CARBON STOCKS AND LIVELIHOOD FUNCTIONS.”



Oil palm plantation, Malaysia, © Kimpin - Fotolia.com



Farmer's house, Cameroon, POZZO DI BORGO Thomas - Shutterstock

4.3.3 SMALLHOLDER/ 'OUT-GROWER' SCHEMES

Because of its perennial, year-round production, oil palm has proven favourable for smallholder production in Asia. Roughly two-fifths of oil palm plantations in Indonesia are controlled by smallholders, a proportion that looks set to grow.²¹⁷ The area of large-scale plantations in Cameroon is believed to be at least matched by the area of smaller scale or village plantations²¹⁸. Typically these are between 10-15 hectares in extent, though up to 50 hectares, and occasionally more. Earnings per hectare and per person/day of

labour from these small plantations are at least ten times higher than, for example, dry-land rice production (in Indonesia, earnings for smallholder production are seven times higher than the average net income of subsistence farmers²¹⁹).

Such figures can indicate, superficially, that smallholder palm oil production, which is already widespread, may offer a compromise between the desire of palm oil producers to expand production in the Congo Basin, and the need to ensure that such expansion advances local community well-being and efforts to achieve rural development

– and possibly even to help secure community ownership over land. In an idealistic vision, it might be possible to locate small-scale palm oil production in degraded portions of community-managed forest land (though legal provisions for such community forests exist only in one country so far, Cameroon), thus providing both sustainable cash income whilst protecting natural forests for other non-cash needs, and providing greater security of ownership. However, this vision presents numerous challenges (see Box 3).

CHALLENGES OF SMALLHOLDER / OUT-GROWER PALM OIL SCHEMES

Box 3

PRODUCTIVITY

Even in more advanced, export-orientated smallholder production in South-East Asia, yields are typically lower, by around 50%, than those of large-scale producers. In Cameroon, though the data is vague, the figure seems to be closer to only 40%²²⁰, though this includes all 'village plantations' which are mostly used to satisfy local demand and have had little or no investment in, for example, planting stock or management techniques.

ELITE CAPTURE

As in community forestry and smallholder agriculture in Cameroon, small-scale palm oil production may be prone to domination by either local or non-local elites, whereby benefits flow to small numbers of typically older/retired ex-government officials or employees of larger corporations, with an urban background and advanced education, rather than member of poor rural communities.²²¹

ENVIRONMENTAL DAMAGE

There is little or no evidence that smallholder palm oil production is inherently less damaging than large-scale production, though in Cameroon there is some evidence that land acquired for smallholder palm developments tends to be 'secondary forest' or old plantations and agricultural land, rather than primary forest.²²²

ACCESS TO CAPITAL AND TECHNOLOGY

The nature of smallholder production, especially in remote rural areas with little physical infrastructure and banking facilities, and particularly with typical conditions of insecure land title, means that investment and technical improvements can be very hard to secure. Targeted aid programmes could help overcome this disadvantage.

LOGISTICAL PROBLEMS

Palm fruit has to be processed within two days of harvesting, so access to mills is important. Efficient small-scale equipment for each of the stages of palm fruit processing does exist in Africa²²³, though is probably not widely available (see above), and in the absence of this, smallholders cannot compete with larger mills benefiting from economies of scale. Palm fruit buyers who do have access to mills tend to control fruit prices.

WHAT IS THE BEST TYPE OF SMALLHOLDER FOR THE CONGO BASIN CONTEXT?

Smallholders can be:

- Fully independent - the grower typically fully owns or leases the land, but is not provided with extension services, credit or guaranteed markets by a large corporate processor; or;
- 'Supported'- contractual obligations will exist between producer and buyer/processor, and technical/market support offered, but land may be held through joint or sub-leasing arrangements.

Both options have advantages and disadvantages for each party, though the latter would seem to present the greater challenges in terms of being able to be accommodated within typical Congo Basin ownership systems, both of a customary kind and more formal designations such as community forests.

INDIGENOUS PEOPLES

It seems highly unlikely that even smallholder palm oil production is likely to benefit the region's indigenous forest communities, who are primarily semi-nomadic, and who have typically benefited very poorly from permanent agriculture of any description, and indeed have tended to be harshly exploited for very cheap or effectively 'indentured' labour (see Box 1).

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

This report has shown that the expansion of commercial palm oil production poses a new and growing threat to the forests of the Congo Basin, as well as to people who depend on those forests for their livelihoods and culture. This expansion is likely to have negative environmental and social impacts unless national governments, palm oil developers, international agencies, investors and palm oil buyers adopt practices that radically improve on those typically seen in Indonesia and Malaysia.

The following are provisional recommendations that are designed to be a starting point for discussion among all relevant stakeholders.

RFUK has carried out an initial consultation with key non-governmental organisations in the Congo Basin on these recommendations, but much more needs to be done to inform and open public debate within the region. Substantive recommendations about palm oil development in some specific countries, especially Cameroon, have already been made by national NGOs; the more general recommendations offered here are intended to complement those recommendations, not serve as an alternative to them²²⁴.

Further studies in the field are needed, as well as wider consultation and engagement with relevant non-governmental organisations, palm oil developers and governments of the region.

“THE EXPANSION OF OIL PALM POSES A GROWING THREAT TO THE FORESTS OF THE CONGO BASIN, AS WELL AS TO PEOPLE WHO DEPEND ON THOSE FORESTS.”

5.2 RECOMMENDATIONS

5.2.1 GENERAL RECOMMENDATIONS

- Greater transparency needed:** There is a need for transparency in the industry, specifically in dealings between palm oil investors and Congo Basin governments. All contracts and agreements between governments and palm oil developers should be made public, to enable proper public debate, reduce the potential for corruption and enable local consultation and participation prior to development. Other relevant documents, including SEIAs and official concession maps and planting plans, should also be made public.
- Small holder cultivation should be prioritised:** Small holder palm oil production may help address the need for investments in the Congo Basin countries and provide long-term sustainable development opportunities for rural people, provided that it respects and ensures formal recognition of customary rights. New palm oil developments should, in consultation with local and indigenous communities, aim to maximise local, household and/or farm family production, as well as agro-forestry techniques, where oil palms are grown together with other crops and species or integrated into community forestry. However, much further consideration and exploration needs to be given as to how some of the potential challenges and disadvantages of smallholder palm oil production in the Congo Basin could be overcome.
- Rehabilitation of old plantations and use of degraded land should be prioritised:** In countries with dilapidated oil palm plantations, any development should focus on these areas instead of expanding into natural forest areas. The planning of new oil palm developments should include a presumption in favour of utilisation of land which can be assessed as 'degraded' (in relation to, for example, previous forest or other natural ecosystems) – while bearing in mind that such areas may be particularly important in local livelihoods, even if they are not

subject to formal land title. Efforts to promote developments on degraded land must be coupled with parallel measures to prevent developments on forested land.

- Indirect impacts need to be taken into account:** Assessments of the likely environmental and social impacts of large-scale oil palm developments in the Congo Basin need to take account of potentially major indirect impacts, such as through new infrastructure increasing accessibility to nearby forested areas, in-migration of employment-seekers, displacement of subsistence farmers into adjacent areas and potential increase in social conflicts.
- Congo Basin NGOs have a crucial role:** Non-governmental organisations in the region can play critical roles in minimising negative impacts of the expansion of large-scale oil palm in the Congo Basin. They can provide independent assessments of land ownership rights and environmental and socio-economic conditions in proposed planting sites, help local and indigenous communities articulate their concerns, convene relevant stakeholders to seek consensus around proposed developments, and act as independent monitors. However, sustained technical and human capacity building will be needed to ensure that they can fully fulfil these roles.

5.2.2 RECOMMENDATIONS FOR CONGO BASIN GOVERNMENTS, PALM OIL PLANTATION DEVELOPERS, INVESTORS AND INTERNATIONAL ORGANISATIONS:

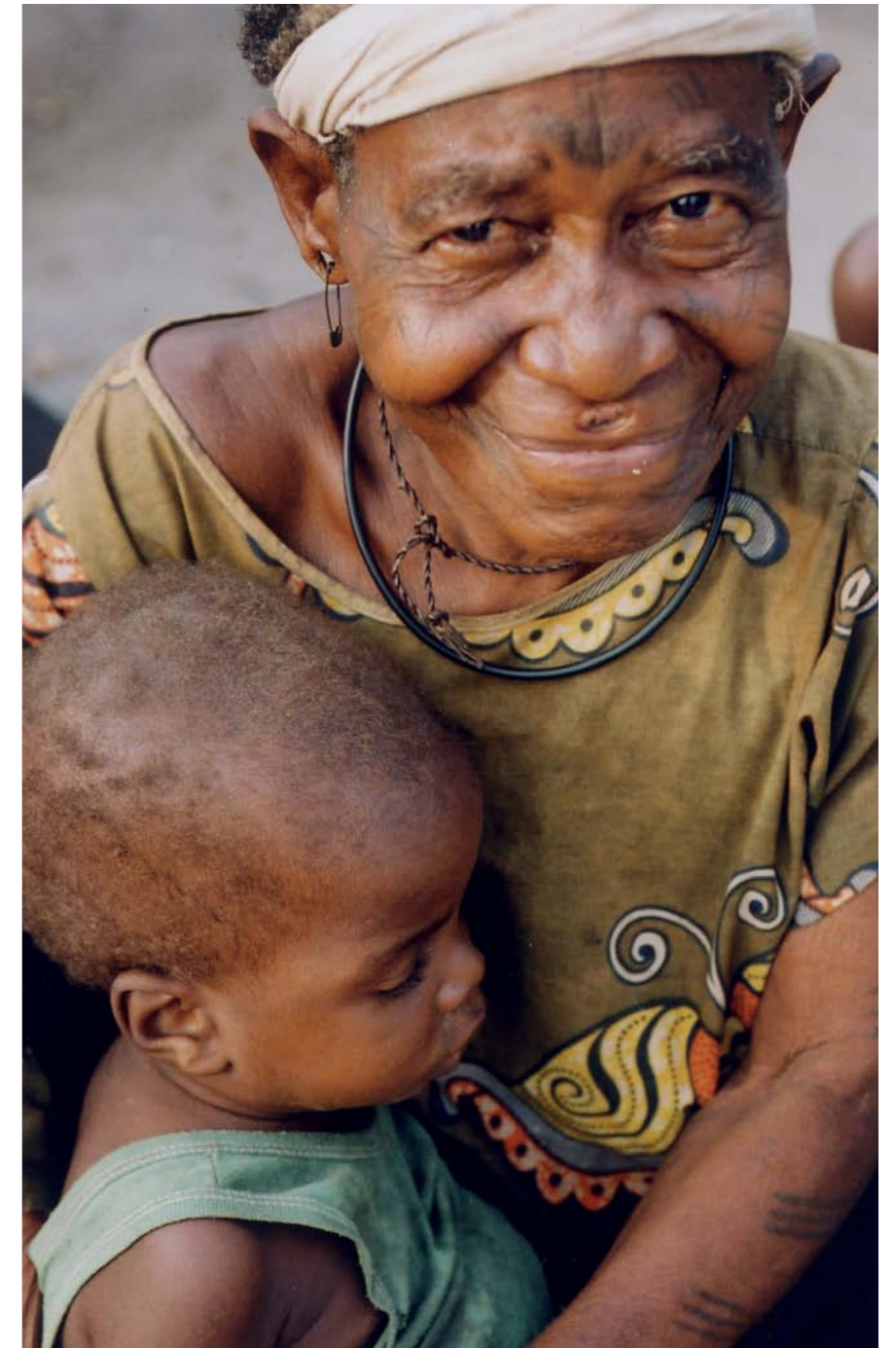
RECOMMENDATIONS FOR GOVERNMENTS IN THE CONGO BASIN:

- Information on impacts of oil palm in South-East Asia should be made available in the Congo Basin:** Decision-makers and other stakeholders in Congo Basin countries should have access to reliable information on large-scale oil palm expansion in Indonesia and Malaysia in order to learn lessons to avoid major cultural, social and environmental damage.
- Governments should develop clear and transparent policies on oil palm development:** Governments should develop and implement clear and transparent policies on the allocation and management of oil palm plantations,

in consultation with all relevant stakeholders. Large-scale agro-investments should be developed in harmony with national land-use plans and poverty reduction strategies. Governments should avoid signing agreements with oil palm developers that include restrictive confidentiality clauses and all such contracts and agreements should be available to the public. The public auctioning of oil palm development licenses should be explored.

- Governments should make high environmental and social standards compulsory:** Governments should legislate strict standards to ensure that high-conservation value (HCV) forests and high carbon stock (HCS) forests are not allocated to oil palm developments, and that an obligation to obtain free, prior and informed consent (FPIC) is obtained (see next recommendation). Companies with a poor track record elsewhere should be excluded from developing oil palm plantations.
- Customary tenure and user rights should be mapped and recognised, and free prior and informed consent sought:** Government agencies should develop the means to systematically record and recognise both the formal and customary tenure conditions within any potential palm oil development area, prior to approval of projects. Careful analysis of existing livelihoods systems, especially those that rely heavily on subsistence (non-cash) use of natural forest resources which may be largely invisible to standard cost-benefit analyses, need to be made prior to approval of projects.

The free, prior and informed consent (FPIC) of local and indigenous communities should be obtained before any development is negotiated with palm oil developers.



Kate Eshelby

“ALL CONTRACTS AND AGREEMENTS BETWEEN GOVERNMENTS AND PALM OIL DEVELOPERS SHOULD BE MADE PUBLIC.”

RECOMMENDATIONS FOR PALM OIL DEVELOPERS:

- **Customary land rights of communities must be respected:** Palm oil developers need to be aware of, and respect, customary land tenure and usage rights of forest communities and ensure that local and indigenous communities are genuinely able to exercise the principle of free, prior and informed consent (FPIC) and their right to be consulted over developments affecting their lands. This would require, as a minimum, a participatory process involving all sections of local and indigenous communities through which the areas under customary rights and usage regimes are clearly identified and mapped, that communities are made fully aware of the consequences of the conversion of these lands for palm oil development, and that any expressed collective demand to exclude these lands from future development is respected. Some companies included in this report have taken positive steps in this direction, but more needs to be done. As stated

“PALM OIL DEVELOPERS NEED TO RESPECT CUSTOMARY RIGHTS OF FOREST COMMUNITIES.”

above, governments would preferably record and legally recognise customary tenure and usage regimes in the relevant areas before any FPIC consultations are undertaken, and would make FPIC a legal requirement.

- **RSPO alone will not be enough:** Standards and certification through the Roundtable on Sustainable Palm Oil (RSPO) have been strongly criticised in South-East Asia and are unlikely to be easily adapted to the Congo Basin, or robust enough to ensure that conflicts over land tenure or social and environmental impacts will be avoided. Palm oil developers will need to ensure that due diligence goes beyond application of the RSPO’s standards, and should be wary of the quality of third-party assessments for RSPO certification compliance in the Congo Basin, due to the lack of adequate, independent, reliable and easily obtainable information on the socio-economic, tenure and livelihoods conditions of proposed development sites, and weak capacity of both governmental and non-governmental organisations.

RECOMMENDATIONS FOR INVESTORS:

- **Banks and other investors must abide by responsible investment standards:** Large-scale oil palm development usually requires substantial up-front investment and support from banks and other financial services providers. To avoid bankrolling destruction in the Congo Basin, investors should sign up to and abide by the Equator Principles for project financing, in particular Principles 2 and 3 on social and environmental assessments and standards, and Principle 5 on consultation and transparency.²²⁵

In addition, financial institutions should introduce specific forest policies, which (among other things) preclude them from engaging with agricultural plantation developments on forested land with high carbon stocks or high conservation value, or without the free, prior, informed consent of local people.

RECOMMENDATIONS FOR INTERNATIONAL ORGANISATIONS:

- **Greater technical assistance needed on mapping customary land tenure:** Assistance will need to be given to most governments within the region to ensure that they have adequate capacity to properly assess, record and legally recognise local (customary) land tenure regimes and traditional forest utilisation patterns in areas earmarked for oil palm development, as well as to ensure that they have the resources and skills necessary to monitor oil palm developments and ensure compliance with the relevant laws and norms.
- **Support capacity building of in-country civil society organisations:** Donors should help strengthen the capacity of local civil society organisations to raise awareness of, and monitor the expansion of, oil palm – and other large-scale plantations – in the Congo Basin. In addition, donors could support programmes to accompany local and indigenous communities in the formulation, implementation and evaluation of community projects, in order that communities benefit from any oil palm development.
- **Financial and technical assistance on smallholder production:** Financial, technical and market assistance/incentives may be required to ensure that smallholder production offers a viable and attractive proposition to local communities, governments and investors.

- **Scrutinise how oil palm expansion fits with national commitments on forest management and conservation:** Donor governments and agencies should scrutinise how current and planned expansion of large-scale oil palm plantations fits with Congo Basin governments’ commitments and engagements with international processes concerning the improved conservation and management of forests, especially countries which have signed a Voluntary Partnership Agreement (VPA) as part of the European Union’s Forest Law Enforcement, Governance and Trade (FLEGT) programme, or are receiving official development funding related to REDD. The multi-stakeholder approaches and forest governance-strengthening embedded in the FLEGT processes should be extended to decision-

making concerning palm oil developments. Consideration should be given as to whether the kind of international timber trade controls mutually agreed to through VPA agreements could usefully be extended to agricultural commodities such as palm oil, where the production of these affects forests.

As large-scale palm oil developments in the Congo Basin are likely to cause significant levels of emissions of climate-changing gases from land-use developments, as well as shaping wider patterns of forest loss or conservation, donors of REDD funding should seek to address such developments through both ‘REDD-readiness’ programmes and/or REDD ‘payments for achievements’ agreements.



Kate Eshelby

ANNEX 1: SUMMARY INFORMATION ON KNOWN OIL PALM EXPANSION PROJECTS IN THE CONGO BASIN

COUNTRY	INVESTOR	HECTARES	NOTES
Cameroon	CDC	6,000	Already has around 12,000 ha of oil palm in Cameroon. ²²⁶ As of 2009, had just started planting on new 6,000 ha estate at Boa Plain, Iloani (in SW); work was expected to take 5 years. ²²⁷ As of April 2011, 1000 hectares had been planted. ²²⁸ No information available on nature of land involved.
Cameroon	SG Sustainable Oils Cameroon (SGSOC) (Herakles)	73,086	99-year lease, signed in 2009. Land is selectively logged forest, adjacent to four protected primary forest areas in Ndiang and Kupe-Manenguba Divisions of SW Cameroon. Env & soc impact assessment says only 60,000ha will be planted. Dropped plans to obtain RSPO certification after HCV assessments were heavily criticised. Owned by Herakles Farms, a US company. Widespread NGO attention and opposition. Ground broken for nursery during 2011, not clear if wider planting has begun or if so how far it has progressed. For references and additional information see Section 3.3.
Cameroon	Biopalm Energy	200,000	Announced in Aug 2011. In South-East Cameroon. 3,000ha signed off for nursery, not clear if remaining areas fully signed off or just under memorandum of understanding with the authorities. No Free Prior and Informed Consent for local Bagyeli indigenous people. Biopalm is subsidiary of Singapore-based Siva Group, which is owned by an Indian billionaire. Will be jointly developed with Cameroon's National Investment Corporation. No reports that ground has yet been broken. Expect to produce 60,000 tpa by 2016. Kribi, Loukondje, Bipindi, Lolordof and Mvengue regions. The company is said to be seeking 'at least' 200,000 ha in Cameroon, not in one block, and has reportedly 'already been accorded 50,000ha in Ocean Division, with authority to develop 10,000ha yearly'. One site Siva is trying to secure is UFA 00-003, a Forest Management Unit (logging concession, part of the 'Permanent Forest Estate') managed by MMG. ²²⁹ Biopalm is also a joint venture partner in new oil palm plantations in Liberia, and targeting oil palm investments in DRC. ²³⁰
Cameroon	Sime Darby	300,000	Still in negotiation with government; would be in south-west (Yingui, Nkam Division, adjacent to Ebo NP). The company wants to develop 5,000-15,000ha per year, and is reported to have recently rejected a site offered to it (an intact primary forest near Mintom) because of its high conservation value. Sime Darby is reportedly searching for up to 600,000ha of land in total for oil palm and rubber in Cameroon; in addition to the 300,000 of oil palm they are currently also proposing a further 150,000 ha of rubber (100,000 in Efulan, Mvila and 50,000 in Meyomessi, Dja et Lobo Division). ²³¹ Sime is one of the largest oil palm companies in the world. It has been found to have been clearing orangutan habitat and clearing forest illegally without the necessary permits in Indonesia. ²³² At Sime Darby's new oil palm plantation in Liberia, villagers have complained that the company had thrown people off their land, illegally cleared forest and filled in wetlands. ²³³ In 2011, Sime Darby was fined \$50,000 by the Liberian authorities for breaches of environmental requirements during forest clearance. ²³⁴
Cameroon	GoodHope	6,000 (est.)	Company announced in August 2011 a plan to invest 'hundreds of millions of dollars' in oil palm in Cameroon, and said to be searching for 'an unknown quantity of land' for oil palm development in Ocean Division, Southern Region. ²³⁵ News reports say only 50ha approved, but also say investment is \$200m and will produce 30,000tpa ²³⁶ , which would represent around 6,000ha. Goodhope are a very large Malaysian oil palm company.

(INCLUDING INFORMATION ON OPERATIONS ELSEWHERE OF THE COMPANIES CONCERNED)

Cameroon	Cargill	50,000	Announced by Director of Cameroon's Investment Promotion Agency May 2012, said to be worth \$390 million; deal not yet signed; Cargill has declined to comment. ²³⁷ Not clear whether a location has been identified. Cargill has been found to have cleared tropical forests in Indonesia for oil palm without all the necessary permits, while local people have complained of pollution. The company has also cleared forest on peatlands, and fire hotspots were found in its concessions during clearance in 2006. ²³⁸
Cameroon	Palm Co	100,000	This company is reported to be requesting at least 100,000ha in Nkam area of Littoral ²³⁹ ; no other information available.
Cameroon	Smart Holdings	25,000	Company of this name said to be trying to acquire 25,000ha in an unknown destination. ²⁴⁰ Not clear if it is connected to giant palm oil company PT SMART / Golden Agri in Indonesia (which has a new oil palm plantation in Liberia already, and which in the past has been found to be clearing illegally on deep peat, clearing orangutan habitat and clearing forest without EIAs in Indonesia ²⁴¹). No other information.
CAR	Palmex	8,701	Revealed in May 2012, planting planned for Pissa in Lobaye Mbaiki sub-prefecture. Announced at a launch ceremony attended by Minister Pascal Koyamene. ²⁴²
Republic of Congo	Eni	70,000	Italian oil & gas firm. Has had presence in Congo since 1968 ²⁴³ ; 'protocol agreement' signed with government Nov 2008; MoU signed in 2009; Niari in NW Congo. Eni says its role is as technical consultant to MinAg to help identify most suitable areas and create a consortium to implement the project, in which it will have a maximum stake of 10%. ²⁴⁴ Eni website says feasibility studies are ongoing, and plan is to do environmental and social impact assessment and follow RSPO. ²⁴⁵ In Feb 2009 a special FAO mission visited Congo to evaluate the project's potential. This included a visit to the site at Mbé, in Pool region. ²⁴⁶ Congo environmental legislation requires ESIA's to be made public. Eni is also working with Congo government on developing tar sands and building a gas-fired power station. The tar sands area of exploration is 70% primary forest, so could impact forests more than the proposed oil palm plantation. ²⁴⁷ Status of investment unclear - since Eni was only advising, it could be that part or all of this 70,000ha is the same land later provided to Fri-El-Green or Biocongo (see below)
Republic of Congo	Fri-El Green	40,000	Italian bioenergy company, 50% owned by German energy utility RWE, purchased 4,000ha of existing plantations in Cuvette province in the north of the Congo from two state-owned firms (Sangha Palm and Congo National Palm Plantations Authority -RNPC), in July 2008, and agreed 40,000ha expansion, with all the palm oil intended for the production of biofuel. ²⁴⁸ The Sangha Palm land is in Etoumbi district, the RNPC land in Owando. The new planting is to be in Sangha (30,000ha), La Cuvette (5000ha) and La Cuvette-Ouest (5000ha). ²⁴⁹ Fri-El also signed a deal for 30,000ha for OP in Ethiopia in 2008, but half this area was recently cancelled by the government there due to a failure to meet targets for starting development of the land. ²⁵⁰ Also took over 11,000ha of dormant state-owned plants in Nigeria in 2007, with rights to expand to 100,000ha. ²⁵¹ Fri-El also announced deal in 2007 for investing in 180,000ha OP dev in Indonesia.
Republic of Congo	Atama Plantations	180,000	Concession agreement signed in December 2010. Total area covered is 470,000ha, of which 180,000ha of suitable land has thus far been identified. Land is in Cuvette and Sangha provinces. Planting expected to begin in spring 2013. Malaysian-run company currently being purchased by a Kuala Lumpur publicly listed firm. For references and additional information see Section 3.1

ANNEX 1: SUMMARY INFORMATION ON KNOWN OIL PALM EXPANSION PROJECTS IN THE CONGO BASIN

COUNTRY	INVESTOR	HECTARES	NOTES
Republic of Congo	Biocongo Global Trading	24,280	News reports in February 2012 said deal signed that month by Agriculture Minister for 60,000 acres. Plantations to be in La Cuvette and Cuvette-Ouest in NW of country. \$150 million investment. ²⁵²
Republic of Congo	Aurantia	Unknown	Spanish company Aurantia was reported in 2007 to be planning to build four palm oil mills and a plantation covering 'thousands of hectares', with the aim of producing biofuel. Feasibility studies on possible sites for the development were underway. ²⁵³ No new information since, and many such projects planned during the biofuel boom year of 2007 have been shelved around the world, so it is possible that this project never came to fruition.
DRC	ZTE	100,000	Announced 2007, but as of 2010 development had not begun. ²⁵⁴ Original target area was Equateur province, but later rumours named Mbandaka. Original news reports mentioned much larger area. ²⁵⁵ Deal expired in 2011, by which time ZTE had only 600ha of actual land holdings. ²⁵⁶ ZTE has 10,000ha of oil palm in Indonesia and is in process of acquiring much larger land bank there for future expansion. ²⁵⁷
Gabon	Olam	100,000	Deal signed Nov 2010. 70/30 joint venture with government; to be planted at Kango & Mouila. Part of broader programme of investment which also includes a special zone for wood processing and a large fertiliser factory. Recently announced additional joint venture for 28,000ha of rubber at Bitam in the north. 2,000 hectares of oil palm planted by end of 2011, aiming for a further 12,000ha by end of 2012. Company committed to meeting RSPO standards, including setting aside all areas of High Conservation Value (HCV). The majority of the areas allocated to the company thus far for oil palm in Kango & Mouila have been found to be HCV, including primary forest, intact forest landscapes, Ramsar sites and great ape and elephant habitat. Oil production to start in 2015, for export to Europe. Olam is one of the largest logging companies in the Congo basin. Until recently the company had logging concessions in the Democratic Republic of Congo (DRC). It was alleged that these concessions were obtained in breach of the 2002 moratorium on issuance of logging titles in the country. Olam also had \$0.5 million of logs seized by the DRC forest authorities in 2007 for failure to pay taxes. (For references and additional information see Section 3.2).
Gabon	SIAT	6,000	Received loan in 2008 from African Development Bank for oil palm expansion. ²⁵⁸ Existing plantations located around Lambarene and Makouke, comprises 6,500ha mature, 800ha immature, with production mainly for domestic market. New planting of 6,000ha was to be at Bindo. ²⁵⁹ Status of planting unclear, but company has complained about difficulties it has experienced finding sufficient labour. A press report in March 2010 claimed that SIAT's oil palm processing facilities in Lambaréné and Makokou had caused significant pollution of rivers. ²⁶⁰

ANNEX 2: FPIC AND CONSULTATION

WHAT IS 'FREE, PRIOR AND INFORMED CONSENT' (FPIC)?²⁶¹

'Free, prior and informed consent' as referred to in the UN Declaration on the Rights of Indigenous Peoples can be understood as follows:

- Free should imply no coercion, intimidation or manipulation;
- Prior should imply consent has been sought sufficiently in advance of any authorisation or commencement of activities, and respect time requirements of indigenous consultation/consensus processes;
- Informed should imply that information is provided that covers (at least) the following aspects:
 - a) The nature, size, pace, reversibility and scope of any proposed project or activity;
 - b) The reason/s or purpose of the project and/or activity;
 - c) The duration of the above;
 - d) The locality of areas that will be affected;
 - e) A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
 - f) Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others); and
 - g) Procedures that the project may entail.

Consent, timing, representation and accessibility

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communication among interest holders. Indigenous peoples should be able to participate through their

own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent. Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.

FPIC should be sought sufficiently in advance of commencement or authorization of activities, or legislative or administrative measures likely to have an impact on IPs taking into account indigenous peoples' own decision-making processes, in the phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

Indigenous peoples should specify which, if any, representative institutions are entitled to express consent on behalf of the affected peoples or communities. In FPIC processes, indigenous peoples, UN Agencies and governments should ensure a gender balance and take into account the views of children and youth as relevant.

Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

WHAT IS 'CONSULTATION'?

The right to consultation constitutes part of the legal framework in two countries in the Congo Basin: the Republic of Congo (through the national Indigenous Populations Law) and the Central African Republic (through the ratification of ILO Convention No. 169). In both these contexts, there is therefore a legal obligation to consult with indigenous peoples.

The right to consultation outlined in these two instruments is similar to the principle of Free, Prior and Informed consent (FPIC). It should be undertaken whenever legal or

administrative measures that will have an impact on indigenous peoples are being considered. This is very broad and means that it applies not only to projects but also to legal and policy development or implementation.

As such, it should follow the following principles, as outlined in these two laws.

- It should have the objective of achieving agreement or consent;
- The process of consultation should allow for those concerned to express themselves freely, in a fully informed manner;
- It should be conducted in a form appropriate to the circumstances.

This means that the consultation process should:

- Take into account indigenous peoples' own ways of making decisions, allowing sufficient time to be able to do this
- Consider the location of the consultation as this should be appropriate for the people concerned
- Be in an appropriate language
- Provide all information, in a form that is understandable to those concerned, on the potential positive and negative impacts of a proposed action;

- Consultation should be through the representative institutions of indigenous peoples – representatives should be chosen by the groups concerned and not hand-picked by those doing the consultation. Representation is fundamental; and

- Consultation should be in good faith.

An information meeting does not constitute a consultation. Consultation is a process, giving indigenous peoples enough information and time to be able to understand the proposed actions and make a decision through their own decision making processes.

ACRONYM	FULL NAME
BVI	British Virgin Islands
C	Carbon
CAR	Central African Republic
CED	Centre for Environment and Development, Cameroon
CEO	Chief Executive Officer
CFA (FRANC)	African Finance Community Franc (the unit of currency in Cameroon, Gabon, CAR and Republic of Congo)
CIFOR	Center for International Forestry Research
CPO	Crude Palm Oil
DRC	Democratic Republic of Congo
ESIA	Environmental and Social Impact Assessment
FELDA	Federal Land Development Authority, Malaysia
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
ha	Hectares
HCS	High Carbon Stock
HCV	High Conservation Value
NGO	Non-Governmental Organisation
REDD	Reducing Emissions from Deforestation and Degradation
RFUK	Rainforest Foundation UK
RSPO	Roundtable on Sustainable Palm Oil
SGSOC	SG Sustainable Oils Cameroon
SIAT	Société d'Investissement pour l'Agriculture Tropicale
VAT	Value Added Tax
VPA	Voluntary Partnership Agreement
WRI	World Resources Institute
\$	US Dollars

¹ The area planted rose from 3.9 million to 7.2 million hectares. PwC Indonesia, 2010, "Overview of palm oil industry landscape in Indonesia", Indonesia, 2010. <http://www.pwc.com/id/en/publications/assets/Palm-Oil-Plantation.pdf>

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⁴⁰ Personal communication with palm oil investors, July 2011

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- ⁵⁷ It is likely that a significant proportion of the contracted areas will be excluded from planting at the time of development, due to regulatory controls, land ownership challenges or RSPO certification requirements.
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