

Commodity Crimes

Illicit land grabs, illegal palm oil, and endangered orangutans

FRIENDS OF THE EARTH US, WALHI-FRIENDS OF THE EARTH INDONESIA, FOREST HEROES, AND SUMOFUS¹



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Executive Summary

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Two of the world's leading distributors of palm oil, a staple ingredient in many consumer food and personal care products and a major feedstock for biofuels in Europe, are obtaining the commodity from illegal sources – growers who are clearing vast areas of rainforests, including sensitive orangutan habitat and protected forest reserves, in violation of the law, the criteria of the Roundtable on Sustainable Palm Oil (RSPO) and their financiers' own policies.

Our investigation used satellite imagery, trade data and on-the-ground reporting to uncover how, at the other end of a long chain of culpability, unwitting consumers are being sold products that are killing orangutans and destroying some of the world's last forested lands. Friends of the Earth has alerted the companies involved and their financiers of the problems detailed in this report, but the problems persist.

The revelations about Bumitama Agri in this report illustrate how palm plantation companies and commodity traders use the lack of legal enforcement, complicated transfers of land and assets, and inter-company agreements to take control over land, regardless of its legal status, traditional use or ecological importance.

The chain extends thousands of miles, through many actors:

- The producer, **Bumitama Agri Ltd**, one of the largest and fastest growing owners of palm oil plantations in Indonesia – a company whose aggressive expansion plan depends on the flawed regulatory environment in which it operates.
- The traders, **IOI Corp.** and **Wilmar International** who distribute palm oil to a global market which is expected to more than double by 2030 – a serious and growing threat to human rights and tropical forests.
- The financiers and investors – including **Bank of America, Citigroup, JPMorgan Chase, BlackRock, Van Eck Global, as well as the largest pension funds in North America, TIAA-CREF, CalPERS and the Canada Pension Plan Investment Board** – who provide the needed capital for, and profit from, the industry's runaway expansion. By financing the palm oil growers and traders named in this report, these financiers are violating not only voluntary standards like RSPO and their own Environment, Social and Governance policies, but also national legislation.
- The palm oil industry's sham "sustainability" association, the **Roundtable on Sustainable Palm Oil**, which does little to prevent illegal activity and has proven ineffective at providing comprehensive protections for the environment and human rights.

Bumitama Agri Ltd, (BUMI.SI) is headquartered in Jakarta, Indonesia and operates through a number of

subsidiaries. Bumitama controls over 200,000 hectares (nearly 500,000 acres) of plantation land bank in Central Kalimantan, West Kalimantan and Riau, Indonesia.

Since 1990, development of palm plantations by Bumitama and others has cleared about 16,000 square kilometers (more than 6000 square miles) of forested land in Kalimantan. The company has been a member of the Roundtable on Sustainable Palm Oil since 2007, and sells to global palm oil traders including IOI Corp. of Malaysia and Wilmar International of Singapore.

This investigation specifically documents that:

- **Bumitama has knowingly destroyed forest that is the home for endangered orangutans.** In April 2013, in response to a complaint filed at the RSPO, Bumitama promised it would not clear land near forest reserves in West Kalimantan until studies were completed to appraise the land's ecological importance. These reserves host one of the largest, and last, populations of the Central Bornean orangutan in the region. However, satellite imagery shows that hundreds of hectares of peatland and forests in the area were cleared between May and September 2013. So while Bumitama was negotiating with the RSPO to address the complaint, the company continued to clear land, *despite its pledge to stop the cutting.*
- **Bumitama's actions are unpermitted.** The plantation in West Kalimantan that is managed by Bumitama was cleared in violation of national laws, without permits or proper approval of the Ministry of Forestry and the Environmental Monitoring Agency. This land bank consists of at least 7,000 hectares (roughly 17,300 acres) of "ghost estates"² – plantations that lack valid permits. Selling palm oil from unpermitted plantations is illegal.
- **Bumitama aggressively and deliberately acquired assets of questionable legality shortly before its Initial Public Offering** and stated that their money-making strategy was to exploit these assets and find new ones of a similar nature.
- **After gaining control over thousands of hectares of unpermitted plantation landbank, Bumitama continued the illegal production of palm oil** without the necessary permits and engaged in further illegal land grabbing and forest clearing.

² "Ghost estates" ("Kebun hantu" in Bahasa Indonesia) are estates that are operating without the necessary permissions.

- **Bumitama’s investors, including IOI and Wilmar, purchased shares of a company with known illegal operations.**³ Prospective investors were informed through Bumitama’s prospectus in April 2012 that Bumitama’s expansion plans included preferential rights to manage and harvest from a plantation that was operating without the required licenses for its operation and management, and that the Hariyanto family – the majority owner of Bumitama Agri – would bear the liability risk. Despite this admission of illegality, all the shares were sold.
- Global palm oil traders like Wilmar International are purchasing illegally grown palm oil and selling it on the world market. Bumitama Agri knowingly manages illegal oil palm plantations in Ketapang District, West Kalimantan, and sells palm oil from these plantations to the world’s largest palm oil traders.
- The RSPO provides greenwash for the industry’s illegal, unethical and environmentally destructive practices. The Bumitama Group, IOI Corp. and Wilmar International are all members of the RSPO. They have been involved in several illegal landgrabs in Kalimantan over the past five years, but the RSPO has been unable to prevent this, nor has it taken any effective enforcement action.

The report also draws attention to the fact that Bumitama’s actions may raise issues with the Indonesian government’s anti-money-laundering statute. This law may be triggered by “predicate offenses,” including forestry crimes, environmental crimes and tax crimes, when the proceeds from illegal actions are placed in financial institutions or moved from one place to another.⁴ Finally, the report highlights the role of financiers, including banks and

equity investors, in bankrolling Bumitama Agri, IOI and Wilmar, and identifies leading companies that purchase palm oil from global traders linked to Bumitama.

The bottom line is that the current system of producing palm oil as a global commodity is unjust, unsustainable and rife with actual and potential illegal practices, and all actors involved should take immediate action to address these issues.

We therefore call on all banks and financiers of Bumitama Agri Ltd, IOI and Wilmar International to use their influence over these companies to bring an end to the problems with PT Ladang Sawit Mas and PT Gemiling Makmur Subur, the Bumitama-associated companies named in this report. If this does not happen immediately, they should cancel their loans and commit to issue no more loans and purchase no more shares or bonds in Bumitama or any company associated with it and take steps toward public divestment from these companies.

We call on Bumitama to return illegally held concessions to the Ministry of Forestry, whereby land that belonged to the local communities should be returned to them; to halt all activity on lands without location permits; and to stop any further expansion on peatlands of any depth.

We call on IOI and Wilmar to publicly commit to stop purchasing palm oil from Bumitama and sell their shares in Bumitama until Bumitama has implemented the demands mentioned above.

We call on all consumer companies that use palm oil to adopt and implement comprehensive No Deforestation and No Exploitation policies to only source palm oil and other commodities that do not contribute to deforestation, peatland destruction, species endangerment, land-grabbing, labor or human rights violations, exploitation of local communities or illegality. Companies should also maintain a fully traceable supply chain.

And we urge the government of Indonesia to immediately implement and enforce its existing moratorium on the conversion of peatlands and forests, to save the most threatened forests, peatland ecosystems and endangered wildlife, to take immediate steps to ensure the recognition of community rights during the resolution of social and land conflicts, and to fully enforce anti-money laundering and tax law in the palm oil sector.



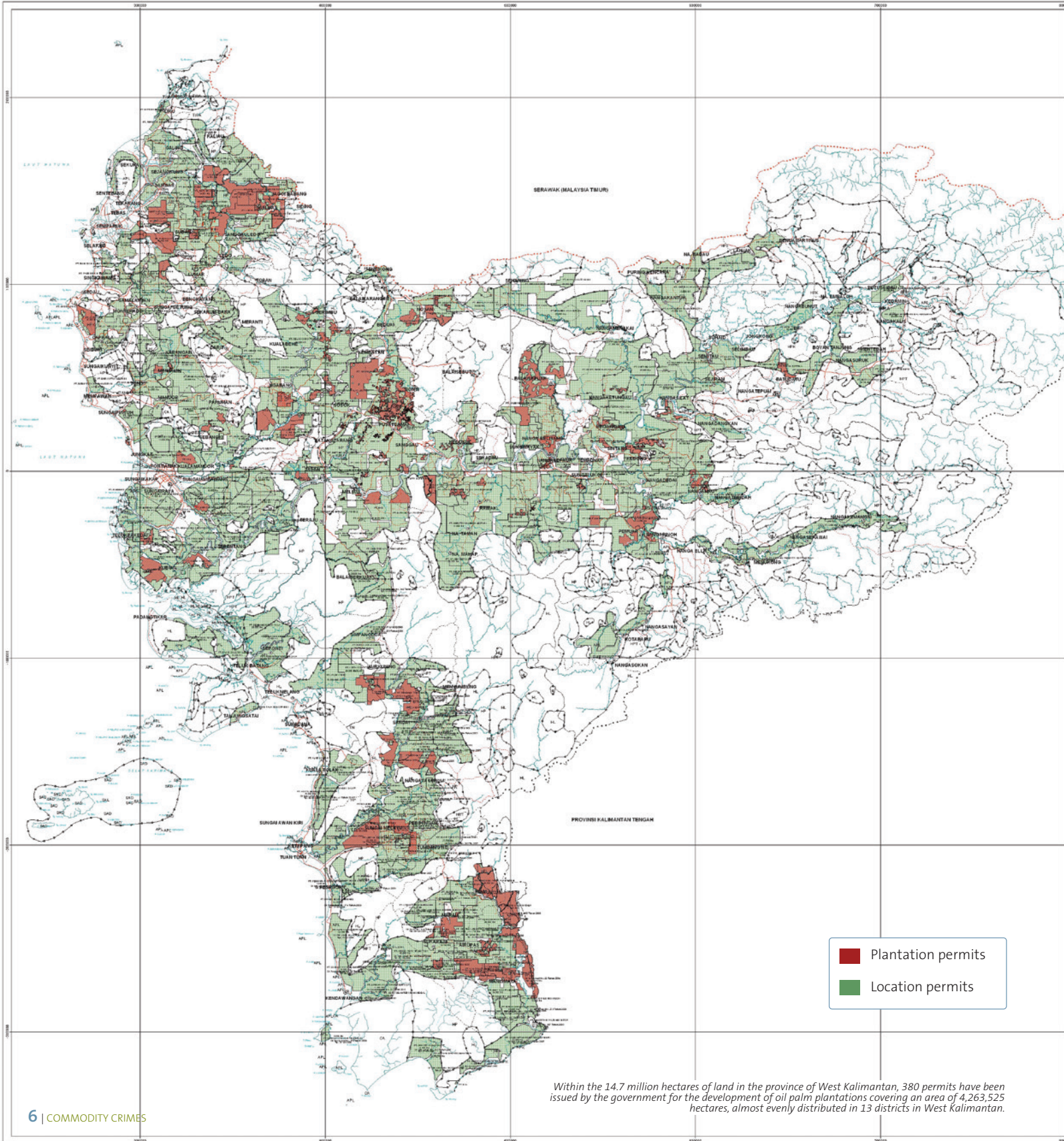
Harvesting on plantation without legal permits.

³ See details in Chapter 2 of this report, and Bumitama Agri, 2012. Prospectus.134, at: http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

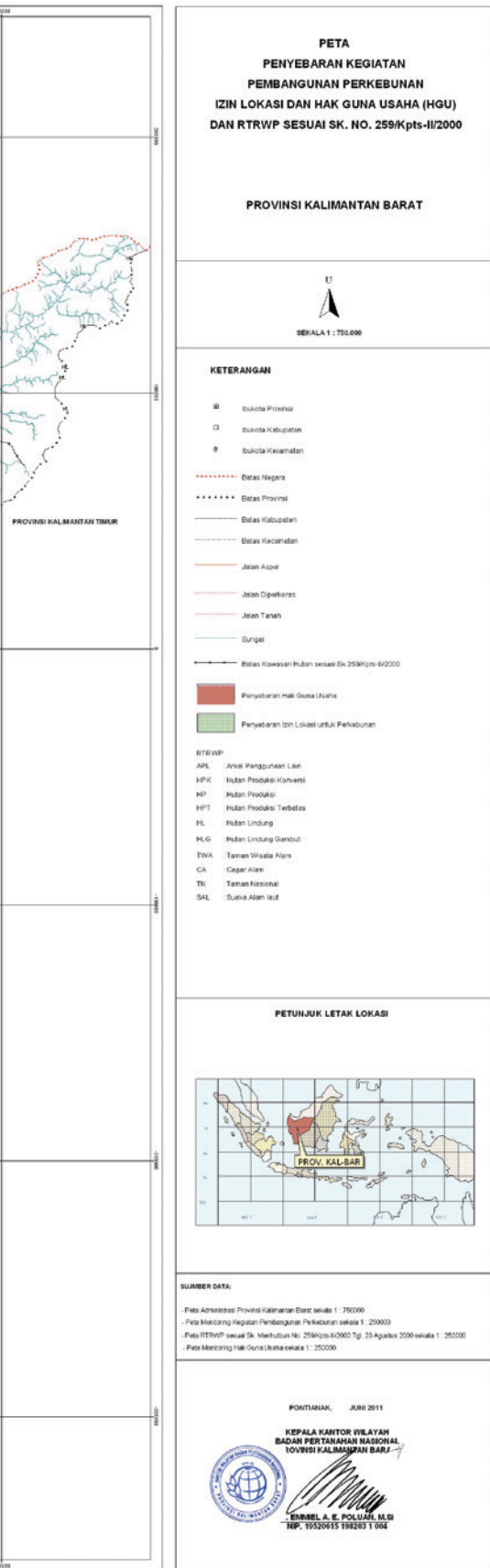
⁴ Law of the Republic of Indonesia, Number 8, 2010, About the Prevention and Crime of Money Laundering

Introduction

1



Within the 14.7 million hectares of land in the province of West Kalimantan, 380 permits have been issued by the government for the development of oil palm plantations covering an area of 4,263,525 hectares, almost evenly distributed in 13 districts in West Kalimantan.



The rapid rise of palm oil to become the world’s leading vegetable oil has been shadowed by its rise as the world’s leading cause of rainforest destruction and the illegal and illegitimate acquisition of land (land grabbing). This dubious distinction has been enabled by the lack of mandatory, comprehensive and enforceable social and environmental standards guiding palm oil production, the weakness of voluntary initiatives such as the RSPO, and the apparent eagerness of national governments to hand over huge swaths of land to palm oil producers. The voluntary Environmental, Social and Governance (ESG) policies that banks and investors have adopted to prevent their exposure to land-grabbing and deforestation activities are clearly not effective in the palm oil sector.

Bumitama Agri Ltd. is an Indonesian company listed on the Singapore Stock Exchange. With extensive oil palm operations in Indonesia, Bumitama is one of many companies whose current practices take advantage of weak governance and lack of enforcement to contribute to widespread environmental and social devastation. Bumitama Agri operates through its company PT Bumitama Gunajaya Agro, and has a number of subsidiaries operating under different names. The company has been a member of the RSPO since 2007, and sells to global palm oil traders including Wilmar International, Sinar Mas and Musim Mas. IOI engages in joint ventures with Bumitama Agri, but claims not to have sourced palm oil directly from Bumitama Agri since 2009.⁵

This report reveals that Bumitama Agri is clearly and explicitly engaged in illegal practices, and has misrepresented itself to investors and financiers to underwrite the expansion of its operations. Responsibility for these practices falls not only to the company’s executives, but to Bumitama’s financiers and downstream purchasers as well, who have a hand in putting illegal palm oil on the world market.

Beyond merely exposing the crimes of one company, the Bumitama case reveals how plantation companies and commodity traders use weak governance, absence of legal enforcement, complicated transfers of land and assets, and inter-company agreements to illegally take control over land, regardless of that land’s legal status, customary and practical use, or ecological importance, and regardless of the implications of such actions under Indonesia’s anti-money laundering statute.⁶

Further, the case serves to illustrate the nature of the global palm oil market, where international consumer brands purchase from powerful multinational palm oil traders like IOI and Wilmar, who in turn purchase from smaller national producers such as Bumitama Agri. This complex chain of custody, made all the more complicated by unclear land tenure laws, masks the crimes and abuses in the sector, enables the corrupt practices of corporate and government officials, and insulates government agencies, investors, and financial regulators, as well as consumers, from public accountability.

In an environment that virtually depends on lack of transparency, this report argues, the Environmental, Social and Governance policies that many financiers have adopted, and the due diligence processes they use to ascertain value and manage risk, are proving vastly insufficient.



Palm oil nursery in illegal GY plantation with over 20 million seedlings ready for new land clearings.

5 In communication between Bumitama and Friends of the Earth, the company alleges that “IOI’s last purchase of Crude Palm Oil from Bumitama was in FY2009. These transactions were conducted on an arm’s length basis as the value of the trades was based on the market price of CPO prevailing at the time of the transactions. There was no sale of CPO to IOI in FY2010, FY2011, and FY2012.”



Bumitama Agri is an Indonesian palm oil plantation company group set up by the Harita Group, a mining business conglomerate created by billionaire Lim Hariyanto Wijaya Sarwono. In 2012, Forbes ranked Lim Hariyanto as number 30 of Indonesia's 40 richest people.⁷ Bumitama Agri owns and/or controls approximately 200,000 hectares of plantation land bank in Central Kalimantan, West Kalimantan and Riau, Sumatra. Over 60 percent of this land bank was claimed to have been planted by the end of 2011, with 72,786 hectares of uncultivated land available for future planting, according to the company.⁸

In April 2012, Bumitama Agri made its initial public offering (IPO) of 297,570,000 shares on the Singapore Stock Exchange, issuing shares with a total value of US \$195.2 million. A notable feature of the IPO was Bumitama's strong emphasis on future growth: "We

are ... continuously seeking opportunities to increase the size of our land bank and planted area through selective external acquisitions and additional concessions from the Indonesian government. We have not encountered any significant problems with our past acquisitions."⁹ *Notably, \$142 million USD from Bumitama's IPO was allocated for expansion and development of its existing uncultivated land bank.*¹⁰

In the financial year 2012, Bumitama Agri generated revenues of \$373.26 million USD, resulting in a net profit of over \$95 million USD. At the end of December 2012, the company owned total assets exceeding \$962 million USD.¹¹

Bumitama Agri is a member of the RSPO. During the writing of this report there are four complaints filed against Bumitama concerning violations of the RSPO criteria.¹²

Table 1. Most important European and North American financiers of Bumitama Agri since 2010

Investor	Country	Share Value (\$ mln)	Loans (\$ mln)
Amundi (75% Credit Agricole, 25% Société Générale)	France	4.13	
MassMutual Financial Group	United States	2	
Schroders	United Kingdom	1	
Deutsche Bank	Germany	0.69	
BlackRock	United States	0.54	
State Street Corporation	United States	0.4	
Wellington Management Company	United States	0.36	
Fidelity Investments	United States	0.08	
IndexIQ	United States	0.19	
SVM Asset Management	United Kingdom	0.15	
HSBC	United Kingdom		107.7
Rabobank	Netherlands		64.7
Manulife Financial	Canada	0.23	

7 See: www.forbes.com/profile/lim-hariyanto-wijaya-sarwono

8 Bumitama Agri. 2012. Prospectus, at: http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

9 Bumitama Agri. 2012. Prospectus.28, at: http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

10 Bumitama Agri Prospectus.175, at: http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

11 Bumitama Agri Ltd. Annual Report 2012.57 <http://ir.bumitama-agri.com/annuals.cfm>. Last accessed November 2013.

12 http://www.rspo.org/en/status_of_complaint&cpid=31

Bumitama Agri

2.1 Irregular permits, clearing protected forest and endangering orangutans: The case of PT Ladang Sawit Mas (LSM)

PT Ladang Sawit Mas (LSM) is an oil palm plantation company in Nanga Tayap sub-district, Ketapang district in West Kalimantan, Indonesia.¹³ In October 2011, six months before Bumitama's IPO, Bumitama Agri Group bought the company from its former owner, V.S. Industry, for \$2.2 million USD.¹⁴

In May 2012, now under the ownership of Bumitama Agri, LSM commissioned subcontractors to begin clearing land within a concession area it had acquired near the Sentap Kancang and Gunung Tarak Forest Reserves and the Gunung Palang National Park in West Kalimantan. But even before any land was cleared, LSM had started off on the wrong legal footing, due to irregularities in the permitting process, as noted below.

Irregular permits

Under Indonesian law, plantation companies must acquire a Location Permit specifying the location and other features of any land to be developed, followed by an Environmental Permit and a Plantation Business Permit (IUP) which allow it do business on that location. For an Environmental Permit to be issued requires that the company must present an Environmental Impact Assessment (EIA) and a Social Impact Assessment to the environmental committee of the province. Both of these processes must involve key stakeholders, including local communities and civil society organizations. Failure to take this step signals failure to consult with or receive approval from local communities.

LSM was awarded its Plantation Business Permit in May 2006, *before having obtained a Location Permit* (in June 2006) and *long before it had obtained an Environmental Permit* (on January 27, 2010).¹⁵ Further, the total land bank specified in the Location Permit (8,300 hectares)¹⁶ is smaller than the land bank specified in the Plantation Business Permit (9,300 hectares)¹⁷. This discrepancy implies that the company could develop plantations beyond the boundaries of its legally acquired land. All of this clearly shows that the permitting system in Indonesia is functioning poorly.

13 PT Ladang Sawit Mas was incorporated on 30th May 2005 as a 75-25 percent joint venture between the President commissioner of PT VS Mining Resource (a subsidiary of V.S. Industry Berhad from Malaysia) and Mr. Gusti Kamboja, the present head of the Ketapang district parliament.

14 V.S. Industry, Annual Report 2012.2 http://vsi.investor.net.my/wp-content/uploads/2012/11/VS_AR12.pdf

15 Ladang Sawit Mas obtained permits as follows:
IUP: 551.31/350/Disbun dated 30 May 2006 for 9,300 ha;
Location permit: 422/2006, date 11 November 2006 for 8,300 ha;
EIA report: 2008; Environmental Permit: 2010.

16 Location permit: 422/2006, date 11 November 2006 for 8,300 ha

17 IUP: 551.31/350/Disbun dated 30 May 2006 for 9,300 ha

18 See LSM EIA.2008

Encroachment on orangutan habitat

According to LSM's 2008 Environmental Impact Assessment (EIA) report, 8,075 hectares, or nearly the entire concession area, is covered with natural forest.¹⁸ The EIA failed to note the proximity of the LSM concession to the Sentap Kancang Forest Reserve and the Gunung Tarak Forest Reserve and the Gunung Palang National Park. This was a serious oversight, especially given the significant population of orangutans both within the forest reserves and in the buffer zones surrounding them, which fall within LSM's concession area.

Gunung Tarak and its surrounding areas are home to 14 mammal species, 158 bird species, 24 amphibian and reptile species, 48 tree species¹⁹, and at least 1,975 individual Southern Bornean orangutans (*Pongo pygmaeus wurmbii*).²⁰ Given that the LSM concession overlaps the buffer zone of these forest reserves, the presence of these endangered and protected primates in the forests in the LSM concession should not have escaped the EIA assessors. In order to move between seasonal feeding areas, nesting sites and other key habitat, orangutans need forest corridors to move between protected forest areas, making forest conservation outside protected areas essential.

In March 2013, International Animal Rescue, Centre for Orangutan Protection and Friends of Borneo rescued four orangutans from land clearing sites in the Ladang Sawit Mas concession.²¹ On April 8th, International Animal Rescue (IAR) filed a formal complaint to the Roundtable on Sustainable Palm Oil (RSPO) against PT LSM (subsidiary of Bumitama Agri Group) about the violation of RSPO principles 5 and 7.²² In September IAR and BKSDA relocated two more orangutans from LSM to Gunung Tarak protection forest.²³



Orangutan in captivity for the rest of her life. Rescued by International Animal Rescue.

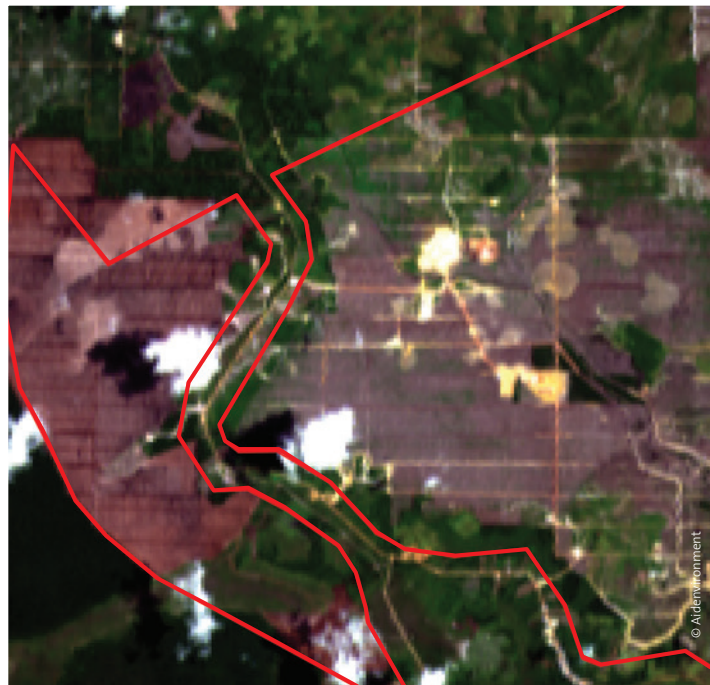
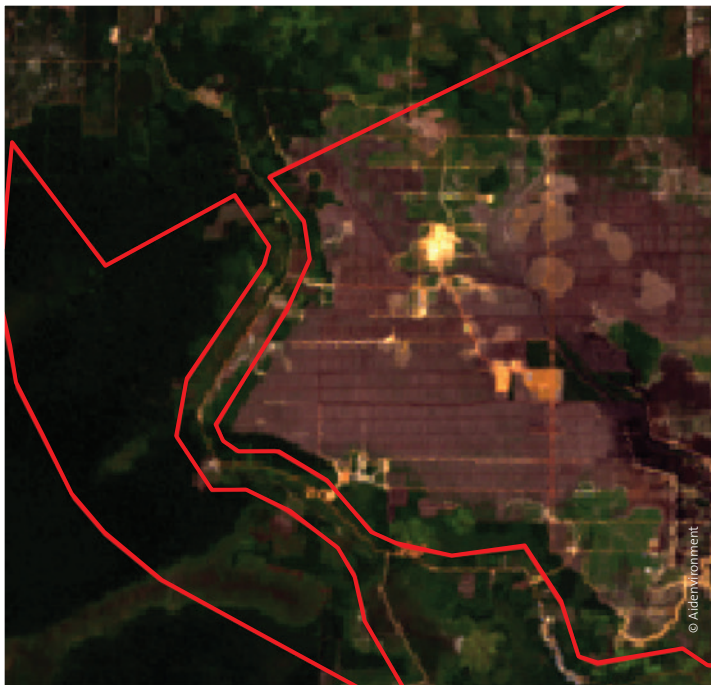
19 http://www.planvivo.org/wp-content/uploads/CFES-Indonesia_PIN_published.pdf

20 Flora Fauna International, 2010. Population, distribution and conservation status of orangutan (*Pongo pygmaeus wurmbii*) in Ketapang, West Kalimantan, Indonesia. Summary. Link: [http://primate-society.com/ips/public/ips_program/IPS10-608.pdf].

21 International Animal Rescue released an adult Orang Utan to Gunung Tarak protected forest. 22 August 2013. Link [<http://yayasaniarindonesia.blogspot.com/2013/08/memperingati-hari-orangutan-sedunia.html>].

22 http://www.rspo.org/en/status_of_complaint&cpid=31

23 FoE communication with IAR.10.14.13



Left image: Landsat image 30 May 2013. Right image: Landsat image 19 September 2013. The images show new land clearings after 18 April 2013 in Ladang Sawit Mas. Red lines show concession border, pink areas are new land clearings.

Orangutan in dangerous decline

There has been an estimated decline of orangutan well over 50 percent during the last 60 years. The decline of the species is predicted to continue at this rate, primarily because of forest loss due to forest fires and conversion of forest to agriculture. The majority of remnant wild populations are located outside of protected areas, in forests that are exploited for timber production or in the process of being converted to agriculture.

Source: IUCN Red List²⁴

The company then invited the RSPO and International Animal Rescue to assist with the relocation of remaining orangutans to adjacent land also managed by Bumitama Agri.²⁵ On April 18, 2013, in response to the RSPO complaint, Bumitama stated that it would not recommence operations in LSM before High Conservation Value/Social Impact Assessment studies were completed. However, the company failed to keep its promise: satellite imagery over the period May to September 2013 shows that an estimated 500 hectares of land – mostly peat swamp and forest – were cleared during this period.

On September 24, 2013 – five months after the initial complaint filed by International Animal Rescue – RSPO reached an agreement with the company regarding planned improvements.²⁶ RSPO and Bumitama issued a joint statement,²⁷ where Bumitama committed to collaborate with IAR on monitoring the existence and conditions of orangutans in the concession area and compliance with RSPO's New Planting Procedures. But, notably, the violations cited above occurred *while the stated agreement was being negotiated*, and appear to have escaped the notice of the RSPO, revealing Bumitama's utter disregard for the RSPO.

²⁴ IUCN Red List. Link [iucnredlist.org/details/39782/0].

²⁵ Bumitama Agri Ltd. "Clarification in respect of petitions to the Roundtable on Sustainable Palm Oil from (I) the Centre for Orangutan Protection and (II) the International Animal Rescue and Friends of Borneo. 18 April 2013. Link: [rspo.org/file/18Apr2013_Bumitama-COP-180413.pdf].

²⁶ http://www.rspo.org/file/PTLSM_Joint-statement_24Sept2013.pdf

²⁷ http://www.rspo.org/file/PTLSM_Joint-statement_24Sept2013.pdf



Orangutan in rehabilitation centre IAR.

Bumitama Agri

RSPO is insufficient to prevent abuses

The Roundtable on Sustainable Palm Oil, established in 2004, is widely referred to as the body to settle grievances, arbitrate disputes and bring palm oil companies into line with broad sustainability criteria. But experience over the nearly ten years of the RSPO's existence has made it clear that membership in the RSPO, a commitment to source RSPO-certified palm oil, or use of so-called "Green Palm" certificates, has little or no relevance to the presence of deforestation and land grabbing in the palm oil supply chain.²⁸

RSPO certifies palm oil produced by companies engaged in the destruction of natural forests, ultra-high carbon stock peatlands and forests with endangered species, and tolerates use of hazardous chemicals such as paraquat²⁹. Very few of the complaints filed with RSPO since 2008 have been resolved to the satisfaction of complainants and defendants; complaints generally take months or years to resolve, by which time the damage has been done; and the growing backlog of cases tends to stall progress on meaningful improvements in the palm oil sector.³⁰

In early 2013, WWF, the primary founder and key stakeholder in the RSPO, released a statement that RSPO certification can no longer be considered an adequate measure to ensure sustainability.³¹

Social science research confirms that corporations will generally advocate only for solutions that do not harm them financially. Therefore voluntary solutions like RSPO are very limited in regulating a sector and solving sustainability issues.³²



Fresh fruit bunch.

2.2 Ghost estates and illegal land grabs: The case of GY Plantation

PT Gemilang Makmur Subur is the new name of a company previously known as PT Golden Youth Plantation Indonesia, or GY Plantation. The company was previously a 53 percent subsidiary of V.S. Industry from Malaysia, a publicly listed plastic television remote control producer.³³ In 2011, GY Plantation was sold to PT Karya Manunggal Sawitindo (KMS) and Westbrook International which are owned by the Hariyanto family, the controlling shareholders of the Bumitama Agri Group.³⁴ It was agreed on November 1, 2011 that Bumitama's subsidiary BGA would manage the plantations and maintain the exclusive right to buy and sell palm oil produced from its concessions.³⁵

The GY Plantation concession is located in Ketapang, West Kalimantan, close to the aforementioned LSM concession, and overlaps the Sentap Kancang Forest Reserve. However, *neither GY Plantation nor its new owners have permits from any Indonesian government authority to occupy and plant on the majority of this land.*³⁶

Irregular permits and illegal clearing

The head of Ketapang district, H Morkes Effendi, established the GY Plantation project on April 21, 2004,³⁷ several months before he had issued his new company a Plantation Business Permit, and also prior to obtaining a Location Permit and Environmental Permit, making the permitting illegal.



Palm oil nursery in illegal GY plantation with over 20 million seedlings ready for new land clearings.

28 Greenpeace. Certifying Destruction: Why consumer companies need to go beyond RSPO to stop forest destruction.2013. At <http://www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Certifying-Destruction/>

29 <http://www.panap.net/en/fs/post/food-sovereignty-rspo/1417>

30 Op cit: Greenpeace. Certifying Destruction: Why consumer companies need to go beyond RSPO to stop forest destruction.2013. At <http://www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Certifying-Destruction/>

31 http://awsassets.panda.org/downloads/wwf_statement_revised_rspo_principlescriteria_april_2013.pdf

32 Schouten, Greetje PhD, Tabling Sustainable Commodities through Private Governance, Processes of Legitimization in the Roundtables on Sustainable Palm Oil and Responsible Soy (2013) University of Utrecht

33 Several individual directors of the V.S. Industry Group owned 42 percent of the company's shares, with the remaining 5 percent held by PT Mandiri Sumberdaya Perkasia, a company associated with the Ketapang district government. See Link [www.ws-1.com].

34 Bumitama Agri, 2011. Prospectus.134, at: http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

35 Ibid.140

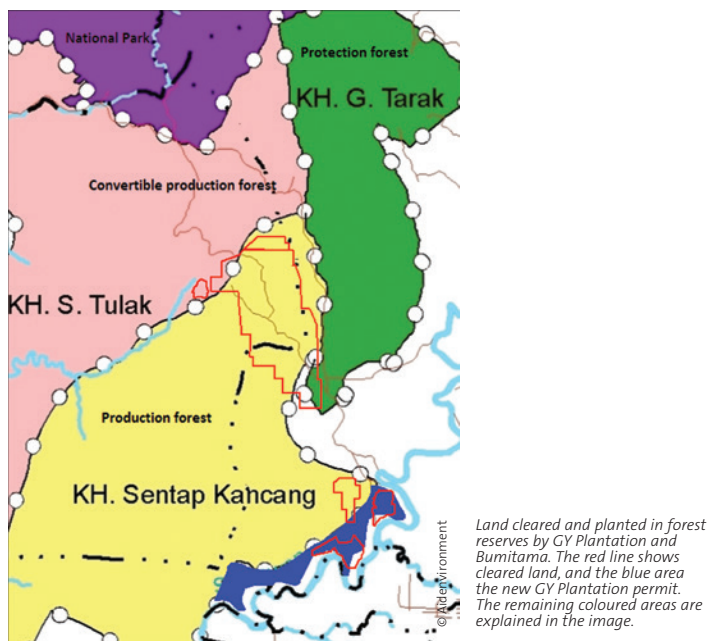
36 In the list of the Ministry of Forests which lists all permits, GY Plantation does not appear.

37 Garap Sawit, PT GY Plantation Indonesia Investasi USD 50,5 Juta. Pontianak Post. 21 April 2004.

In June 2004, GY Plantation obtained a Location Permit for an area measuring 18,300 hectares.³⁸ GY Plantation, however, never obtained an Environmental Permit, and never gained the legal rights to develop the land, *because the bulk of its concession (approximately 63 percent) overlapped with the Sentap Kancang Forest Reserve, which is managed by the Ministry of Forestry. The Ministry of Forestry has never relinquished this land.*³⁹

GY Plantation was well aware that its license “*was issued pending the issuance of the land utilization right and rezoning of land area by the relevant government authorities*”.⁴⁰ However, this did not deter the company from starting land clearing and planting oil palm inside the forest reserve without approval and oversight of Indonesia’s Ministry of Forestry and Environmental Monitoring Agency.⁴¹

Between 2004 and 2011, GY Plantation cleared some 5,694 hectares of forestland (see figure 3.) One quarter of this forest was cleared illegally outside the company’s Location Permit boundaries, and within the boundaries of the forest reserve.⁴² By the middle of 2011, when the company was sold, it had planted 4,191 hectares of oil palm, of which 759 hectares had recently become productive.⁴³



38 GY Plantation obtained permits as follows:
Location permit Nr. 205/2004, of 30 June 2004 for 18,300 ha;
Location permit revised and replaced by Permit Nr. 245/2009, date 19 June 2009 for 2,500 ha.
IUP (Nr. 551.31/1396/Disbun.C, of 18 June 2004 for 18,300 ha;
IUP revised and replaced by IUP Nr. 51.31/2299/Disbun.D, date 25 August 2008 for 2,821 ha.
Note: GY Plantation’s new permits were thus also issued in the wrong order, while the Location Permits is irregularly granted over a smaller area than the area under the IUP.

39 In the list of the Ministry of Forest which lists all permits, GY Plantations does not appear.

40 V.S. Industry, Annual Report 2012.106 http://vsi.investor.net.my/wp-content/uploads/2012/11/VS_AR12.pdf

41 Communication with AidEnvironment, November, 2013

42 Communication with AidEnvironment, November, 2013

43 V.S. Industry. Disposal of PT. GY Plantation Indonesia, a 53 percent owned subsidiary company of V.S. Holdings (M) Ltd. Bursa Malaysia announcement. 19 July 2011. Link [http://investor.net.my/pdf/6963_vsi_transactions.pdf].

Peatlands: a carbon time-bomb

The peat swamp forest in Kalimantan is a unique ecology that is home to many rare species such as orangutans and diverse tropical trees standing on a 10 - 12 meter layer of peat (partly decayed and waterlogged plant material). These specialized ecosystems store massive amounts of carbon. When deforested and drained for palm plantations, peat soils decay and release huge stores of carbon into the atmosphere. According to the United Nations Environment Programme, palm oil production on peatlands can result in more than 2,000 percent more greenhouse gas emissions than burning diesel oil.⁴⁶

GY Plantation’s “ghost estates” and faulty permitting

The illegal development of GY Plantation’s land bank contributed to deforestation, loss of orangutan habitat, illegal logging and peatland degradation. The company appeared well on its way to start clearing a vast area of forest on very deep peat in the Sungai Putri peat dome⁴⁴ – an action that would patently violate Indonesian law which bans development on peatlands deeper than three meters⁴⁵ – until revisions to Indonesian law required the head of Ketapang district – *the same man who owned the company* – to dramatically reduce the size of GY Plantation’s permitted concession area. While this reduction in the size of the permitted plantations reduced the scale of the potential destruction, it did not stop it.

In 2007, Indonesia adopted a new Spatial Planning Act with provisions that hold government officials personally liable for land use decisions that violate national law and provincial spatial plans. Shortly thereafter, numerous permits, including those of GY Plantation, were revised. According to updated permits and concession maps, GY Plantation’s concession area was scaled down in June 2009 from the original 18,300 hectares to a mere 2,330 hectares.⁴⁷

The revised concession area (renamed PT Gemilang Makmur Subur) overlaps with only 1,284 hectares of the original area. Only a minute portion of the new concession (<20 hectares) was previously planted by GY Plantation, so that the bulk of the plantation land developed by GY Plantation (4,200 hectares) now exists *without any valid permit from any government authority* in the Sentap Kancang and Gunung Tarak forest reserves. In order to comply with the changes in the law, these “*kebun hantu*” (ghost estates) should have been transferred back to the Ministry of Forestry, with land that belonged to the communities returned to them. Instead, the estates were “sold” by V.S. Industry and its directors to the controlling shareholders of the Bumitama Agri Group.⁴⁸

44 Communication with AidEnvironment, November, 2013

45 Presidential Decree No.32 year 1990 on the Management of Protected Areas

46 Bringezu, Stefan et al. “Towards sustainable production and use of resources: Assessing Biofuels.” United Nations Environment Program. 2009. http://www.unep.fr/scp/rpanel/pdf/Assessing_Biofuels_Full_Report.pdf

47 Aidenvironment calculated with Google Maps Pro based on map by head of the regional office of the national land agency West Kalimantan province (June 2011)

48 In the list of the Ministry of Forest which lists all permits, GY Plantations does not appear.

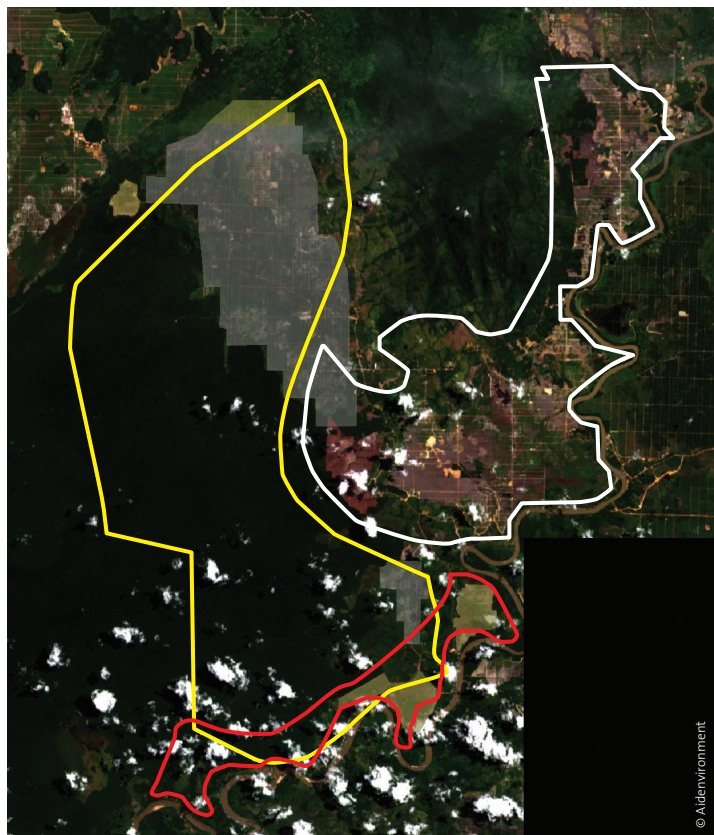
Bumitama Agri



An illegal nursery outside the old GY Plantation boundary (June 2013).



Peatland development by Bumitama in LSM concession.



The land cleared by GY Plantation lies almost entirely outside the new GMS concession. Also BGA continued clearing outside the concession. The white shaded areas show land clearing by GY plantation. The light green shaded area shows land clearing by Bumitama. The yellow line is the old GY concession, and the red line is the new GY concession. The white line is the LSM concession.

Table 2. The illegal land grab by GY Plantation/Gemilang Makmur Subur in figures⁵⁵

Company	Total developed land	Inside location permit	Outside location permit
By V.S. Industry/PT Golden Youth Plantation (2004-2011)	6,908	4,489 ^a	2,419
2011: location permit PT GYP revoked. PT GMS location permit issued over 2,330 hectares. Of this, 1,284 hectares overlap with the old PT GYP location permit.			
By Bumitama Agri/PTGemilang Makmur Subur (2011-August 2013)	1,003 ^b	468	535 ^c
Total area under Bumitama Agri management, excluding Ladang Sasit Mas (August 2013)	7,911	606 ^d	7,305

^a Inside Location Permit but without Environmental Permit and Forestland Release Permit (so all is illegal).
^b Inside and outside the Location Permit map of PT GMS and the former PT GYP concession. Not including new developments in PT LSM.
^c Clearings outside PT GMS Location Permit (LP) and inside + outside ex PT GYP.
^d 229 hectares of this is illegal, since it overlaps with forestland without a forest release permit.

54 Communication with Aid Environment.10.15.13
 55 Based on field investigations and satellite imagery analysis by AidEnvironment in 2009, 2011 and 2013.
 56 See: <http://files.shareholder.com/downloads/AMDA-WWON6/2145995354x0x706328/d2f5030e-83e7-4812-9a89-73994ff7101b/BAL-3Q2013-Result.pdf>.16.
 57 In the list of the Ministry of Forest which lists all permits, GY Plantations does not appear.
 58 Law of the Republic of Indonesia, Number 8, 2010, About the Prevention and Crime of Money Laundering.

Bumitama takes over GY Plantations

In July 2011, V.S. Industry announced its intention to dispose of GY Plantation.⁴⁹ According to an analyst of RHB, V.S. Industry's decision to sell GY Plantation "was mainly prompted by regulatory issues with the local authority."⁵⁰ V.S. Industry reportedly sold GY Plantation at a loss for \$4.1 million USD in October 2011.⁵¹ The new owners, PT Karya Manunggal Sawitindo (KMS) and Westbrook International are in turn owned by the Hariyanto family, the controlling shareholders of the Bumitama Agri Group.⁵²

On November 1st, 2011, Bumitama Gunajaya Agri (BGA), a subsidiary of Bumitama Agri, entered into an agreement with KMS and Westbrook with the following terms:

1. BGA will take on the management and operation of 4,310 hectares of cultivated oil palm plantations located in Ketapang and any other designated oil palm plantations that may be owned by GY Plantations or KMS and/or Westbrook;
2. BGA will have the exclusive right to purchase any palm oil Fresh Fruit Bunches (FFB) produced from the plantation of GY Plantations; and
3. KMS and Westbrook will favour the Bumitama Group to acquire up to 95 percent of GY Plantation.⁵³

The acreage of cultivated plantations (4,310 hectares) mentioned in the terms of reference makes clear that the agreement refers to the areas planted previously by GY Plantations, and not the much smaller concession held by GY Plantation after the revision of its permits (see figure 4). It implies that Bumitama continues the illegal operations that VS Industry started. The agreement furthermore shows that Bumitama intends to benefit from the FFB produced from the GY Plantations until it eventually buys the plantations from PT KMS and Westbrook.

Bumitama is well aware that it needs to avoid legal and reputational liability for GY Plantations illegal plantations, and that the problems had to be disclosed in its prospectus for its public offering in April 2012. The liability for the legal problems is placed with the billionaires of the Hariyanto family until such time as the legal issues are sorted out, which is extremely unlikely if all applicable Indonesian laws are to be complied with.

Meanwhile, Bumitama Agri will serve as the exclusive buyer of palm fruit from GY's illegal plantations, and will sell palm oil products to Bumitama's major customers. Due to the fact that most of GY's 4,310 hectares of cultivated oil palm plantations in Ketapang lacks permits,⁵⁴ every time the company accesses the land to harvest palm fruit, they are in violation of Indonesia's Forestry Act, the Environmental Act, and the Plantation Act. *Palm oil harvested from these illegal plantations has clearly made it to the world market, and profits from activities in violation of Indonesia's laws have likely been transferred through the financial system which could trigger action under Indonesia's Anti-Money Laundering statute.*

Continued illegal land grabbing

Satellite imagery (figure 4) shows that after GY Plantation was sold by V.S. Industry, new lands were cleared both within and outside the boundaries of the old GY Plantation concession. Many of these clearings occurred within forested areas, as well as in the new concession that now operates under the name PT Gemilang Makmur Subur. One of the new developments outside the old concession boundary is an oil palm nursery (see photo).

2.3. "Tax free" profit from land grabbing?

Evidence that the agreement between KMS and Westwood and Bumitama Agri is being fulfilled can be derived from Bumitama's circular and Quarterly Reports to investors. Bumitama reported that it has charged GY Plantation \$94 USD per hectare per year for the management of GY Plantation's mature plantations and \$60 USD per hectare of immature plantations. Furthermore, Bumitama had paid \$16.7 million USD to KMS and Westwood up to June 30, 2013.⁵⁶

Although the object of these payments is not specified in the company's reporting, it follows from the agreement between parties that these are payments for palm fruit produced from the old GY Plantation areas, *over which none of the companies involved appear to have any valid permit from any government authority.*⁵⁷

This sale of illegal material has many implications. Aside from the primary concern of harvesting and selling FFB from unpermitted land in violation of environmental and spatial planning laws, it is difficult to understand how the profits earned from plantations managed without any valid permit, would be subject to required forestry, land and building taxes.

Indonesia's Anti-Money Laundering Statute

Indonesia's anti-money laundering statute lists "predicate offenses," or triggers for money-laundering investigations, which can lead to the seizure of assets or profits associated with criminal activities, including not only violations of forestry and environmental laws, but also corruption, bribery, fraud, tax crimes and other crimes.⁵⁸ When the proceeds from illegal actions are placed in financial institutions or moved from one place to another, this is considered to be money laundering. The suspicion of any such violation is sufficient to trigger an investigation by Indonesia's Financial Intelligence Unit, the Financial Transaction Reports and Analysis Center (PPATK), and can lead to the freezing of assets or profits associated with predicate offenses, no matter where these assets have been placed.

As such, it would be important for financiers as well as relevant Indonesian authorities, including PPATK, the Corruption Eradication Commission (KPK) and the Directorate General of Taxes to seek further information on the taxation of these unpermitted plantations as well as to examine the manner by which permits or licenses for other operations were granted in the first place.

Bumitama Agri, Wilmar International and IOI

3



3.1 Bumitama Agri and Wilmar International

Wilmar International is an important partner of Bumitama Agri. In 2011, Wilmar bought 56.8 percent of Bumitama's total Crude Palm Oil (CPO) and Palm Kernel Oil (PKO) production (most of the remainder of supply being bought by the Sinar Mas and Musim Mas groups).⁶⁰ Wilmar bought between 0.9 percent and 4.3 percent of all the shares offered at Bumitama's Initial Public Offering.⁶¹ Wilmar officials acknowledge that the company buys palm oil from Bumitama and say they are working to eliminate deforestation and exploitation from the company's supply chain.⁶² Wilmar's response to the Bumitama case will be a critical test of this claim. Any new policies must be announced and, more importantly, implemented,

before their credibility can be evaluated or used as a basis for responsible purchasing or financing decisions.

Shareholders and banks are the most important financial stakeholders of Wilmar International. As of the end of 2012, shareholders financed 34.2 percent of its assets, while banks accounted for 52.4 percent, largely in the form of short-term loans. European and U.S. financial institutions own or manage 4 percent of Wilmar International's outstanding shares, with a value of \$481 million. Pension funds hold \$71.75 million of Wilmar International shares. These North American and EU investors hold the largest shares in Wilmar International:

Table 3. Most important European and North American financiers of Wilmar International since 2010⁶³

Investor	Country	Share Value (\$ mln)	Bonds (\$mln)	Loans (\$ mln)	Investor	Country	Share Value (\$ mln)	Bonds (\$mln)	Loans (\$ mln)
Van Eck Associates Corporation	United States	186.02			Fourth Swedish National Pension Fund	Sweden	2.37		
Blackrock	United States	99.56			Axa	France	2.12		
Vanguard Group	United States	57.02			Lloyds Banking Group	United Kingdom	2.07		
J.P. Morgan Chase	United States	43.16			Ecommerce Alliance	Germany	1.93		
MassMutual Financial Group	United States	22.44			Fourth Swedish National Pension Fund	Sweden	2.38		
CalPERS	United States	20.26			Third Swedish National Pension Fund	Sweden	1.59		
Dimensional Fund Advisors	United States	18.60			Bank of New York Mellon Corporation	United States	1.18		
Fidelity Investments	United States	18.18			Société Générale	France	1.11		
Northern Trust	United States	15.70			Barclays	United Kingdom			139.74
State Street Corporation	United States	14.55			KBC	Belgium			90.42
Capital Group of Companies	United States	13.58			Citigroup	United States			242.49
TIAA-CREF	United States	11.62			ABN Amro	Netherlands			50.69
Crédit Agricole	France	11.29		152.07	Rabobank	Netherlands			304.14
ING Group	Netherlands	10.14		110.97	Bank of America	United States			110.97
Pensioenfondszorg en Welzijn	Netherlands	9.88			Caisse de Dépôt et Placement du Québec	Canada	7.15		
ABP	Netherlands	9.59			CPP Investment Board	Canada	4.11		
Invesco	United Kingdom	4.89			British Columbia Investment Management Corporation	Canada	3.96		
Deutsche Bank	Germany	4.63		32.88	Toronto Dominion Bank Group	Canada	1.29		
HSBC	United Kingdom	4.41	87.68	1174.09					
BNP Paribas	France	2.71		434.29					
Aegon	Netherlands	2.45							

59 Bumitama Agri Ltd. Annual Report 2012.10: <http://ir.bumitama-agri.com/annuals.cfm>. Last accessed November 2013.

60 Bumitama Agri Ltd. Annual Report 2012.156: <http://ir.bumitama-agri.com/annuals.cfm>. Last accessed November 2013.

61 Bumitama Agri. 2012. Prospectus.256. http://files.shareholder.com/downloads/AMDA-WWON6/0x0x663207/8E4A2D0B-7CB0-4B7E-BD70-43C682510F24/Bumitama_Agri_Ltd_Prospectus.pdf

62 Communication between Wilmar International and Climate Advisers. October, 2013.

63 Profundo: The Financing of Wilmar International. A research paper prepared for Friends of the Earth Europe. 16 October 2013.

Bumitama Agri, Wilmar International and IOI

3.2 The Bumitama Agri – IOI partnership

IOI Corporation is a Malaysian conglomerate active in the palm oil industry and property development. The group is headed by its founder, Lee Shin Cheng. Forbes ranked Lee as number six of Malaysia’s 50 Richest in 2012.⁶⁴ IOI has a total land bank of 229,000 hectares, with 169,000 hectares located in Malaysia and 60,000 hectares in Indonesia.⁶⁵ The company first ventured into Indonesia in 2007, in partnership with Bumitama Gunajaya Agri (BGA), a subsidiary of Bumitama Agri.

Bumitama Agri and IOI Corporation started collaborating in 2007 through the foundation of joint venture plantation companies in Kalimantan. Some of these are majority (67 percent) owned by Bumitama Group while others are majority-owned by IOI. The Sawit Nabati Agro (SNA) and Berkat Agro Sawitindo (BAS) groups of companies, majority-owned by IOI, have a 40,000-hectare land bank, of which about 9,000 ha were planted by the end of 2011. Bumitama and the Hariyanto family jointly hold 33 percent of the shares in this group.⁶⁶

After the public listing of Bumitama in April 2012, IOI Corporation became one of Bumitama’s controlling shareholders, with a 31.2 percent stake at present.⁶⁷ IOI’s Chief Executive Officer, Lee Yeow Chor presently holds a position on the Board of Directors of Bumitama Agri.

The two palm oil companies have agreed to mutually support each other. Bumitama taps into IOI’s technical expertise, and IOI historically buys Crude Palm Oil from Bumitama at a discounted price and extends interest-free loans to Bumitama.⁶⁸ Bumitama set aside up to \$27.9 million USD from the net proceeds of its IPO to finance the capital expenditure of subsidiaries under IOI’s SNA and BAS groups.⁶⁹

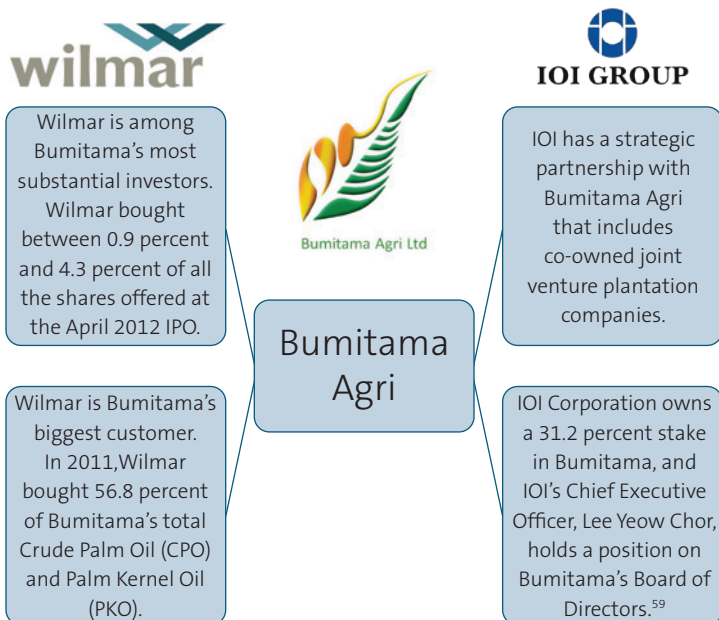


Table 4. Bumitama’s main customers for fiscal years 2009, 2010 and 2011.

Company	Type of product	% of revenue		
		2009	2010	2011
Wilmar Group ^{a, b}	CPO and PKO	47.2	64.7	56.8
Sinar Mas Group	CPO and PKO		13.3	25.3
Musim Mas Group	CPO and PKO	44.4	14.4	4.1

Repeat Offenders

IOI’s involvement with the illegal practices of Bumitama Agri is not unique in its history. In 2010, Friends of the Earth Europe and Milieudefensie published an investigation into IOI’s operations in Ketapang district, West Kalimantan.⁷⁰ The report found evidence that challenges IOI Corporation’s compliance with its own corporate responsibility policy, the requirements of the RSPO, and Indonesian law. The following observations were made at the time:

1. Plantation development without approved Environmental Impact Assessments
2. Fraudulent statements regarding activities in relation to Environmental Impact Assessments of plantation subsidiaries
3. Plantation development in forestlands without full approval of the Ministry of Forestry
4. Land clearing inside production forest and outside the concession boundary of one plantation subsidiary (PT BNS)
5. Encroachment in protected forestlands and peat lands

The picture that arose from this investigation differed considerably from the promise of sustainable palm oil presented by the IOI Corporation. Friends of the Earth concluded that decision-makers in the marketplace and the political arena cannot rely on the company’s announced green ambitions, partial certification, glossy PR and participation in multi-stakeholder initiatives. The fact is that RSPO has certified IOI as ‘legally compliant’ and ‘sustainably managed’ despite having engaged in the unauthorized clearing of some 10,000 hectares of land.⁷¹ Green credentials presented by the company itself and by voluntary stakeholder initiatives are clearly no guarantee for sustainable practices in the field.⁷²

64 <http://www.forbes.com/profile/lee-shin-cheng>

65 Profundo: The Financing of IOI Group. A report prepared for Milieudefensie. 16 September 2013.

66 Ibid.

67 IOI Corporation - Bought some shares in Bumitama HOLD. Investor.com, 22 August 2013. Link [<http://kls.e3investor.com/servlets/ptres/17659.jsp>].

68 Bumitama Agri, 2012. Prospectus.35

69 Ibid.35

70 http://www.foeeurope.org/sites/default/files/publications/FOEE_Too_Green_to_be_True_0310.pdf

Table 5. Most important European and North American financiers of IOI Corporation since 2010⁷³

Shareholders finance over 50 percent of IOI's assets,⁷⁴ and much of the rest is divided between bond holders and outstanding bank loans. Following are important European and North American shareholders, banks, and bond holders from the most recent filing date:

Investor	Country	Share Value (\$ mln)	Bonds (\$mln)	Loans (\$ mln)	Investor	Country	Share Value (\$ mln)	Bonds (\$mln)	Loans (\$ mln)
Safra National Bank of New York	United States	553.48			First Swedish National Pension Fund (Första AP-fonden)	Sweden	4.38		
Van Eck Associates	United States	194.40			bpfBouw	Netherlands	1.92		
BlackRock	United States	135.22			Seventh Swedish National Pension Fund (AP7)	Sweden	1.92		
The Vanguard Group	United States	112.34			Second Swedish National Pension Fund (AP2 Andra AP Fonden)	Sweden	0.55		
Prudential	United Kingdom	49.18	4.15		Alliance Bernstein Luxembourg, part of Axa	France		4.67	
Emerging Global Advisors	United States	21.78			HSBC	United Kingdom			101.38
California Public Employees' Retirement System (CalPERS)	United States	19.59			Caisse de Dépôt et Placement du Quebec	Canada	16.71		
Pensioenfonds Zorg & Welzijn	Netherlands	18.77			CPP Investment Board	Canada	16.17		
Northern Trust	United States	18.22			JP Morgan	United States		14.00	
Dimensional Fund Advisors	United States	17.26			Bluebay Asset Management part of Royal Bank of Canada	Canada		7.58	
ABP	Netherlands	16.44			Pinnacle Fund Management	United States		1.25	
ING Group	Netherlands	15.34	12.10						
Fidelity Investments	United States	13.84							
Principal Financial Group	United States	13.02							
Schroders	United Kingdom	11.65							

A partial list of companies that directly source palm oil from Wilmar or IOI or their buyers:⁷⁵

AarhusKarlshamn (AAK)	Cargill	Perdue Grain & Oilseed	While many of the companies listed above are not household brands, the majority of them sell palm oil to many other well-known companies that use palm oil in consumer products. SumOfUs and Forest Heroes contacted over 200 companies that purchase palm oil with the findings of this report, and requested information on whether they source palm oil originating from Bumitama's plantations. Their responses can be found at www.ForestHeroes.org .
ADM (also a 16 percent owner of Wilmar)	Cognis Corporation	P&G	
California Oils Corporation	Ventura Foods	Chemtex	
Morgan Stanley Capital Group	Masefield	Concordia Chemical	
Twin Rivers Technologies	Mitsui	Empreseas Carozzi	
Sun Products Corporation	Fuji Vegetable Oils Inc.	Industrializadora Oleofins Sa De CV	
	Vitol	Proteinas Y Oleicons Sa De CV	
	Loders Croklaan		
	Global AgriTrade		
	Tarome		

71 Ibid.

72 Schouten, Greetje: 'Tabling sustainable commodities through private governance' University of Utrecht, 2013

73 Profundo. The Financing of IOI Group. A research paper prepared for Milieudefensie. 16 September 2013.

74 IOI Corporation, "Changes in Director's Interest Pursuant to Section 135 of the Companies Act. 1965," IOI Corporation, 3 September 2013 (announcements.bursamalaysia.com/EDMS/curshweb.nsf/LsvAllByID/1F95CA82256DE577482578DB0031882E?OpenDocument).

75 US Trade data: panjiva.com

Conclusions and Recommendations

4

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- Digging of drainage canal next to Natural forest in LSM plantation.

The case of Bumitama is grave, and should be taken seriously by all actors along the palm oil value chain, from financiers to consumers. But the case of Bumitama is not unique. The rampant and uninhibited expansion of industrial scale palm oil is unsustainable; with few exceptions, the palm oil industry depends on regulatory failure, corrupt bureaucracy, non-disclosure, land grabbing, deforestation, human rights and labor abuse, and other practices to maintain low costs, high production and the land base demanded to enable continued growth.

Bumitama's apparent violations of Indonesia's forestry and environmental laws have many implications. Aside from the primary concern of harvesting and selling FFB from unpermitted land in violation of environmental and spatial planning laws, it is difficult to understand how the profits earned from plantations managed without any valid permit, would comply with required forestry, land and building taxes. Indonesia's anti-money laundering statute lists as "predicate offenses" or triggers for money-laundering investigations, not only violations of forestry and environmental laws, corruption, bribery and fraud, but also tax crimes.

Given this statute, both investors and relevant Indonesian authorities, including Indonesia's Financial Intelligence Unit (PPATK - Financial Transaction Reports and Analysis Center), the Corruption Eradication Commission (KPK) and the Directorate General of Taxes, should seek further information on the taxation of the unpermitted plantations named in this report, and should examine the manner by which licenses were granted in the first place.

In conclusion:

We call on financiers to avoid investing in or lending to companies that continue to cause deforestation, high greenhouse gas emissions from plantation development on peatlands of any depth, land grabbing and human and labor rights violations, and/or that are unable or unwilling to comply with these standards. We further call on investors to review their anti-money laundering due diligence processes, especially in relation to the palm oil sector, in light of the findings in this report.

Financiers with outstanding loans to Bumitama, or who hold shares in Bumitama, should use their influence over the companies to bring an end to the problems with PT Ladang Sawit Mas and PT Gemilang Makmur Subur named in this report. **If this does not happen immediately, they should cancel their loans and provide no further financial services, and commit to issue no more loans to and purchase no more shares in Bumitama or any company associated with it.**

In addressing this case, asset managers, institutional investors and pension funds that finance Bumitama Agri Ltd, IOI and Wilmar International should use their influence over these companies to

bring an end to the problems with PT Ladang Sawit Mas and PT Gemilang Makmur Subur named in this report. **If this does not happen immediately, they should commit to purchasing no more shares in Bumitama Agri, IOI, or Wilmar International or and begin the process of publicly divesting from these companies.**

Financiers should engage with Bumitama's senior management and should make clear that they will terminate their financial relationships with the company if Bumitama fails to take the following actions:

- 1.** Halt any land clearing and FFB harvesting in lands without location permits, forestland release permits, environmental permits (with Environmental Impact Assessment & Social Impact Assessment), plantation business permits (IUP) or Land use right licence (HGU), particularly in PT LSM, PT GMS and the plantations in the former GY Plantation concession.
- 2.** Halt and prohibit all further clearing of High Conservation Value (HCV) forests or drainage or expansion on peatlands of any depth.⁷⁶
- 3.** Return all illegal concessions to the Ministry of Forestry. All land that belonged to the communities should be returned to the communities.
- 4.** Compensate for the illegally cleared land, and set aside conservation forest within the current concessions.
- 5.** Clearly instruct estate managers to not proceed with land clearing if and where HCV assessments have not been completed.
- 6.** Make concession maps publicly available.
- 7.** Obey and respect all of the procedures and regulations governing palm oil plantations in Indonesia, and bring an immediate halt to peatland development and destruction of orangutan habitat.
- 8.** Recognize and respect agriculture and cultivation areas and indigenous lands of communities in and impacted by palm oil plantation areas.

IOI and Wilmar should:

- 1.** Publicly commit to stop purchasing palm oil from Bumitama until and unless Bumitama has implemented the aforementioned demands.
- 2.** Sell all shares in Bumitama.
- 3.** Comply with points 1-8 above in regards to the specific case of Bumitama, and in regards to their operations in general.

⁷⁶ For a definition of HCV forest, see: <http://www.hcvnetwork.org/about-hcvf/the-six-high-conservation-values>

Conclusions and Recommendations

4

Companies that use palm oil should:

1. Adopt comprehensive No Deforestation and No Exploitation policies to only source palm oil and other commodities that do not contribute to deforestation, peatland destruction, species endangerment, landgrabs, labor or human rights violations, exploitation of local communities, money-laundering, or illegality.
2. Develop supply chains that are fully traceable in order to ensure that the palm oil in their products adheres to the policies adopted.

The government of Indonesia should immediately implement the existing moratorium on conversion of peatlands and forests in Indonesia,⁷⁷ by undertaking the following steps:

1. Conduct immediate investigations into the findings in this report and in the reports released by several other organizations, especially regarding illegal activities being conducted by Bumitama Agri, IOI Corporation and Wilmar International; take control of the illegal concessions; and return community-owned land directly to the communities.
2. Revoke the permits of the companies when illegalities are found.
3. Stop issuing new permits and renewals of permits for logging concessions, pulp wood estate, plantation and mining operations.
4. Conduct independent third party review of all existing permits on forest extraction, plantations and mining with the results of the review used for law enforcement, including revocation of permits for any finding of illegality.

The government of Indonesia should, further, implement the moratorium on conversion of peatlands and forests according to the following performance indicators:

1. No conversion of natural forests, as well as forest and peatland landscape, for industrial or commercial purposes.
2. No overlapping of forest use and function in spatial planning.
3. No new industrial and commercial permits in critical ecological areas, high conservation value areas, and communities' livelihood areas.

4. Recovery and protection of areas that have an important ecological function, without compromising local communities' access to benefit from the areas in ecologically and environmentally sustainable manners.
5. Guarantee the rights of access and control of indigenous peoples and local communities in and around forest areas.
6. Legal recognition and support through policies and programs on the rights of indigenous peoples and local communities to determine appropriate development for themselves.
7. Implementation of the Constitutional Court decision No. 35/PUU-X/2012, and the Peoples' Assembly (MPR) No. IX year 2001 which guarantee the rights to land and natural resources, including forests, in the form of policies and operational rules.
8. Recognition of community-based natural resource use and management as part of development policy that recognizes, protects and respects the rights of local and indigenous peoples.
9. Establishment of grievance and dispute resolution mechanisms that have a strong legal basis, and are effective and easily accessible, with a credible implementing entity.
10. The existence of a map of the territory of local and indigenous peoples, and its integration with moratorium maps and regional and national spatial planning maps.
11. The full enforcement of tax and anti-money laundering statutes.

All actors across the palm oil supply chain, from investors and financiers, to traders and refiners, to retailers and consumers bear responsibility for transforming the sector. Governments of consumer countries must also work to reduce demand for palm oil, whose growth is predicted to multiply if steps are not taken to reduce consumption for all uses. It is only through the aforementioned sets of actions, with full involvement of civil society, that rainforests and rights will be rescued from the bulldozers.

⁷⁷ In May 2013 the Indonesian government extended its moratorium on new logging and plantation concessions in 65 million hectares of forests and peatlands for another two years.





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