



Rainforest Resource & Development Centre (RRDC)

NGO for Environment Development and Information Delivery

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Norashikin Rasikon

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Roundtable on Sustainable Palm Oil
Unit A-33A-2, Menara UOA Bangsar,
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Dear RSPO,

SUBMISSION OF COMPLAINT IN RESPECT OF WILMAR NIGERIA LIMITED

RE: COMMENTS UNDER THE NEW PLANTING PROCEDURE FOR BAISE PLANTATIONS

Under the public consultation window for comments on Biase Plantations' (WILMAR) new planting of the Ibiae Estate in Cross River State, Nigeria, we wish to submit 5 comments for consideration, namely:

1. Failure to reach an agreement with landlord communities
2. Unlawful acquisition of land leased to CARES farmers
3. Failure to properly account for migrant communities within the estate
4. None commitment to transparency
5. None compliance with applicable municipal laws and regulations

Find below details for each comment, including a proposal for action.

In addition to these comments, we wish to note that it is surprising that Wilmar has already begun land development activities on the Ibiae estate *before* relevant RSPO procedures are finalized. Photographic evidence can be provided if required.

It is suggested that Wilmar halt all their activities on the estate until all comments are dealt with in a manner consistent with RSPO protocol. Should you require any clarification or additional information, please do not hesitate to contact us.

Yours Sincerely,

Odey Oyama

Executive Director, RRDC

Chief Edwin Usang

Director, NGO Coalition for Environment (NGOCE)

Manus Olori

Executive Director, Ekuri Initiative

Eyo Eyo

Coordinator, Citizens Network Nigeria

Peter Bete

Director, Biakwan Light

Lillian Oyama

State Coordinator, Gender Empowerment Network

Sunday Ekpok Erokoro

Director, Citizens for Environmental Safety

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Executive Director, Action for Rural Development

Uket Clemen

Coordinator, Uclenta Development Initiative

Pastor Victor Basey

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Joseph Ekawu
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Excellence Eyo Offiong Uso
Director, Young People's Initiative

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Coordinator, Association for Alternative Development (AAD)

Felicia Arikpo
Executive Director, Nigerian Organization for Solidarity and Development (NOSAD)

Jombo Okey
Director, Women and Children Initiatives

NPP COMMENTS - BIASE PLANTATIONS, IBIAE ESTATE

COMMENT 1 - Failure to reach an agreement with landlord communities

While representatives from the landlord communities have had opportunities to engage with Wilmar and the government on the privatization of Ibiae, to date Wilmar has failed to make any direct agreements with the landlord communities. Under the 'Fundamental Terms for Privatization of Ibiae Estate' (May, 2012), clause 4(4), Wilmar is required to "assist landlord communities in the provision of such facilities as shall be mutually agreed by the investor and the landlord communities" (see below an excerpts of the clause). Contrary to how Wilmar portrays the Fundamental Terms (as being developed by the Privatization Council on behalf of communities), the agreement, as the clause implies, does not relieve it from developing mutually agreed terms of engagement with landlord communities.

(4) The Investor shall, under its corporate social responsibility policy, participate and assist the said landlord communities in the provision of such facilities as shall be mutually agreed by the Investor and the landlord communities.

None of the landlord communities have been provided with copies of the Fundamental Terms despite repeated and futile requests to government and Wilmar. Both parties are no doubt aware that once the Fundamental Terms are made public, fierce protests by the landlord communities will ensue for failure to include numerous demands made by representatives of landlord communities during earlier consultations. This is not in the spirit of transparency, as advocated by the RSPO.

During consultations on August 9, 2011, community representatives made demands for *inter alia* the rehabilitation of community roads, improved access to clean drinking water, extension of the electricity grid, and contribution to the community schools. Community acceptance of Wilmar was contingent on those demands being incorporated into the Fundamental Terms, which communities are assuming have been included, but in reality is absent. Community consent was therefore gained under false pretences.

PROPOSED COURSE OF ACTION

It is proposed that Wilmar cease their operations on the Ibiae estate until an agreement on the provision of facilities with communities is reached, as required under clause 4(4) of the Fundamental Terms for Privatization of Ibiae Estate, and in accordance with the principles and criteria of the RSPO.

COMMENT 2 - Unlawful acquisition of land leased to CARES farmers

Under the Cross River State Agricultural and Rural Empowerment Scheme (CARES), a poverty alleviation program, approximately 1,100 ha were allocated in 2009 to small-scale commercial farmers for 25 years for the purpose of planting oil palm. Each farmer received between 10 and 20 ha of land. According to the Ministry of Agriculture, 32 farmers had developed 470 hectares with oil palm at the time the estate was privatized to Wilmar. Those farmers have been informed not to invest further on the land allocated to them as a result of the privatization.

Although compensation was promised - though has not been paid as of 5 November, 2012 - as per the CARES leasehold agreements, the government does not have the right to terminate the agreement unless the lessee: (i) fails to pay rent or is (ii) in breach of the covenants in the agreement (see the relevant clauses below). Considering that privatization is not included in the termination clause, the acquisition of the land and its allocation to Wilmar is unlawful.

ARTICLE 6 - THE LESSEE'S COVENANT

The Lessee covenants to:

- a) use his own resources to cultivate the the farm in line with approved agricultural practices;
- b) keep the farm in good repair and condition;
- c) pay the stipulated rents after the period of grace as stated in Article 4;
- d) pay all existing and future rates ,taxes and other outgoings whatsoever which may be imposed at anytime or become payable in respect of the farm;
- e) take a comprehensive insurance policy with the Nigerian Agricultural Insurance Corporation in respect of the land leased;
- f) not to assign,sell,sublet or mortgage the farm or any part thereof without the prior consent of the Lessor in writing;
- g) yield up the farm at the expiration of the term hereby created or in the event of breach or misconduct, upon receipt of any notice thereto from the Lessor requesting the Lessee to vacate the farm;
- h) yield up the farm and everything thereon at the expiration of the term in good condition

Article 7- TERMINATION

The Lessor may give the Lessee three (3) months written notice of its intention to terminate this Agreement if the Lessee:

- i. Fails to pay the stipulated rents; or
- ii. Is in breach of any covenant in this Agreement.

PROPOSED COURSE OF ACTION

It is proposed that the land allocated to farmers under the CARES program be removed from the Ibiae concession *at least* until the 25 year leasehold period has expired in 2034. The estate, therefore, needs to be re-demarcated to account for all CARES recipients that have not been in breach of Article 7 of the CARES leasehold agreement.

COMMENT 3 - Failure to properly account for migrant communities within the estate

Based on data from the 1991 national population census and assuming population growth in line with state averages (3.0 %), approximately 3696 persons reside within the Ibiae estate. These persons originate from the neighboring state of Akwa Ibom, most of whom having migrated in

search of plantation work in the early 1960's when the estate was first established. Since the estate was in a state of neglect since the 1980's and employment opportunities became less abundant, these migrant workers were permitted by former Ibiae management to farm parts of the undeveloped areas of the Ibiae estate.

While Wilmar indicated that it will compensate those farming within the undeveloped parts of the estate, compensation has not been disbursed to date - nor has there been a consultative process to determine the appropriate nature and extent of compensation.

Moreover, with most migrant households residing in the estate not having any legal and customary rights to land, few alternative livelihood options besides plantation employment will be available to them once they lose access to their farmlands within the estate. Since Wilmar is seeking to rebuild the worker camps and only those employed at the estate will have right to be housed in those camps, those migrant households who are unable to regain plantation employment (e.g. those too old or physically unfit) will be forced to vacate the estate.

In another estate acquired by Wilmar in Cross River State, Calaro, such workers were granted only a 'retirement package', which in no case exceeded Naira 10,000 (equivalent to approximately Euro 50). Clearly, this does not enable households to effectively reconstruct their livelihoods.

Since many of those households have lost social ties to Akwa Ibom, having migrated numerous generations ago, and have few alternative livelihood options within Cross River State, displacement from the estate could have dire implications.

The Social Impact Assessment, dated April 2012, conducted by ProForest makes no mention of this stakeholder group, raising serious questions as to the quality of the said Assessment.

PROPOSED COURSE OF ACTION

It is proposed that an additional Social Impact Assessment be conducted for this stakeholder group and a Resettlement and Rehabilitation Plan be developed that is acceptable to ALL parties. Wilmar should cease all land development activities until this group is adequately accounted for, in a manner consistent with the principles and criteria of RSPO.

Comment 4: None commitment to transparency

Recently WILMAR was contacted for a copy of their EIA on the new planting area at Biase. It was noted that they had none as at the time of our request in October 2012. To our greatest amazement we were referred to their consultant, the Managing Director of Ibara Environs Consultant Nigeria Ltd, Chief William Usetu Unoh who we understand is yet to finalize the work. We equally contacted the Ministry of Environment to request for a copy of the EIA. It was also discovered that even the supervising Ministry is yet to have a copy lodged with them by the company as provided by the Law. We also contacted the Ministry of Lands as well as the Ministry of Justice to verify issues pertaining to Land title. It was revealed that so far, no official gazettes have been published relating to these properties.

EIA

Our opinion therefore is that, referring the matter to consultants is a way of avoiding the issue. The Environmental Impact Assessment (EIA) Law, Act No. 86 of 1992, (Laws of the Federal Republic of Nigeria) demands that EIAs must be made 'publicly available' to ALL stakeholders for their attention in a manner consistent with the Law. Accordingly, Section 24 subsection (1a - 1c) and subsection (2) of the EIA Act No.6 of 1982, stipulates as follows:

Subsection 1: "After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish in a notice setting out the following information –

- (a) The date on which the mandatory study report shall be available to the public;***
- (b) The place at which copies of the report may be obtained; and***
- (c) The deadline and address for filling comments on the conclusions and recommendations of the report."***

Subsection 2: "Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report."

The fact that this has not been done implies that WILMAR has 'not provided adequate information to stakeholders on environmental and legal issues relevant to RSPO Criteria' as expressly stated in Criterion 1.1 and 1.2 in the RSPO Principles and Criteria for Sustainable Palm Oil Production. It is evident that due process has not been followed in the development of the project. It therefore shows that WILMAR has not demonstrated any commitments to the Laws of Nigeria as the company is presently in contravention of PART 1, Section 2 subsections (1); as well as PART 1 Section 12(1) & (2) of the EIA law which states inter alia:

PART 1:

Section 2: Restriction on public or private project without prior consideration of the environmental impact.

Subsection (1): The public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration, at an early stage, of their environmental effects.

PART 1:

Section 12 (1): When a project is described on the mandatory study list specified in the Schedule to this Act or is referred to mediation or a review panel, no Federal, State or Local Government or any of their authority or agency shall exercise any power or perform any duty or functions that would

permit the project to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it, or has taken a decision or issued an order that the project could be carried out with or without conditions.

PART 1:

Section 12 (2): Where the Agency has given certain conditions before the carrying out of the project, the conditions shall be fulfilled before any person or authority shall embark on the project.

Land Titles

The acquisition of land by WILMAR in respect of the New Planting area at Biase is not transparent. None of the demands have been published in the official government gazettes. That means that the act of WILMAR taking possession of the Land without conforming to due process is contrary to the Laws of Nigeria. It should be noted that the Biase Land in question is a rural land. It should particularly be noted that the Land Use Act No. 6 of 1978 (Laws of the Federal Republic of Nigeria) place rural lands under the powers of the Local Governments, in this instant case, the Biase Local Government. Therefore in the event of acquisition of rural lands by the Local Government in accordance with the provisions of this Act, Section 6(5) & (6) of the Act stipulates inter- alia, that:

“The holder and the occupier according to their respective interests of any customary right of occupancy revoked under subsection (3) of this section shall be entitled to compensation, for the value at the date of revocation, of their unexhausted improvements.”

“Where land in respect of which a customary right of occupancy is revoked under this Act was used for agricultural purposes by the holder, the Local Government shall allocate to such holder alternative land for use for the same purpose.”

It therefore shows that the provisions of the Land Use Act No.6 of 1978 are not applied to the benefits of the landowners at the Biase New Planting Estate. There are no documentations showing the date the said land was acquired; the date publication of notices of acquisition were made; and the date compensations were compiled, paid, and to who. WILMAR claims that compensations have been paid to the Cross River State Government. But so far no publications and/or government gazettes have been sited showing the revocation of the title of the previous owners of the land as prescribed by the Land Use Act. No. 6, Laws of the Federal Republic of Nigeria.

PROPOSED COURSE OF ACTION

Following the above comments, it is proposed that the project should not be allowed to continue unless:

- i) The EIA is publicly displayed (as demanded by the EIA Act No. 86 of 1992 (Laws of the Federal Republic of Nigeria) in order to give due notice to the local communities and other stakeholders that would be directly affected by the project.
- ii) The title of the Land is properly perfected in accordance with the provisions of the Land Use Act No. 6 of 1978 (Laws of the Federal Republic of Nigeria);

Comment 5: None compliance with applicable municipal laws and regulations

The following laws of the Federal Republic of Nigeria have not been conformed to in the process of this project:

- i) EIA Act No. 86, 1992
- ii) Land Use Act No.6, 1978.

These issues have already been discussed in the proceeding sections above. It is therefore not in conformity to the RSPO principles stated in criteria 2.1.

The Land in question falls within the jurisdiction of the Biase Local Government and held in Trust on behalf of the Local Landlords. There is no evidence that the positions of the Landlords have been incorporated into the DEED of transfer of title from the government of Cross River State or the Biase Local Government of Cross River State to WILMAR. Unless this is done then WILMAR's acquisition of the land is illegitimate ab-initio.

So far no EIAs have been done in compliance with the demands of Principle 7 on responsible development of new plantings as it relates to the Biase project. There is no documentary evidence of any attempts to compile the views of the local people and other stakeholders and to accommodate their demands in the process as provided in PART 1 Section 7 of the Land EIA law which states as follows:

Section 7: Opportunity for comments by certain groups

“Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comments on the environmental impact assessment of the activity.”

Although Social Impact Assessment (SIA) have been made but this do not adequately certify the requirements of the existing laws as well as the provisions of criterion 7.1 and 7.5 provided in the RSPO principles. It is our conclusion therefore that no fair assessment of compensations have been made. Consequently, the issue of payments of fair compensations has not been

addressed as provided by the law (i.e, the Land Use Act No. 6, 1978) and the provisions of 7.6. Until WILMAR is able to meet the requirements specified under the Land Use Act No. 6 of 1978, CAP 202 (Laws of the Federal Republic of Nigeria), the land transactions at Biase remain null and void, as described in SECTION 26 of the Law which stipulates that:

26. Null and void transactions and instruments.

Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.

PROPOSED COURSE OF ACTION

It is therefore recommended that WILMAR be compelled to abide by the RSPO principles as in Criterion 2.2. It is also recommended that WILMAR should negotiate appropriately with the Landlord communities. WILMAR's claims that compensations have been paid to the State Government on behalf of the communities is not consistent with the Law. The Land Use Act No.6, of 1978 (Laws of the Federal Republic of Nigeria) place rural lands under the powers of the Local Governments. The Act further demands that compensation claims should be dully compiled following negotiations with the owners of the land, and therefore payments should be made directly to the owners of the land. WILMAR has not followed this process and the suggestion that compensations belonging to the communities have already been paid to the State Government amounts to a cover-up which is intended to avoid the main issues (i.e. making payments to the rightful owners of the land). Hence, it is finally recommended that WILMAR's certification be kept on hold until all the relevant municipal laws and regulations of the Federal Republic of Nigeria are complied with abi-initio.