



Rainforest Resource & Development Centre (RRDC)

NGO for Environment Development and Information Delivery

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Roundtable on Sustainable Palm Oil
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Dear RSPO,

RE: SUBMISSION OF COMPLAINT IN RESPECT OF WILMAR NIGERIA LIMITED.

We in RRDC have received the document of WILMAR reference as above, dated 8th December 2012, and have noted that reference was made specifically to RRDC alone. We at RRDC therefore wish to reply as follows:

We note that the company in question is WILMAR and not WILMAR NIGERIA LIMITED and that Wilmar has a subsidiary known as Biase Plantations Ltd. We reject the positions of Wilmar on account of the following reasons:

- 1) IBIAE Landlord communities Forum (AppendixII) Document of 30th November 2012.
The claim contained in this document that “ENDC entered into an agreement with the four (4) landlords communities of Ibiae namely: Idoma, Betem, Igbofia (now Ehom village) and Akpet Egbai (now Akpet group of villages)” is incorrect. The name IBIAE was coined out of the first letters of five (5) communities as follows: I (for Idoma), B (for Betem), I (for Igbofia), A (for Akpet Egbai) and E (for Ehom). The community denoted by the last letter “E” is Ehom which is located on the Ikom – Calabar Highway not Ehom village which was previously denoted as Igbofia.

Findings from our investigation have revealed that no such forum ever held as claimed. It is curious that a Forum would really have been convened without the participation of one of the principal stakeholder communities. This is the point that the signatories to the said document **MUST** explain. It is also curious that only 2 of the signatories are village - heads. What happened to the village – heads of all the other villages that constitute

IBIAE? Why were they excluded from the purported Forum? Or where they deliberately absent in protest?

It is RRDC's position that the APPENDIX II of the purported Public Forum is insufficient. The proceedings of a public forum are certainly not confidential or secret document because they relate to a public event. It is therefore mandatory that the full and complete document of the Forum should be presented to back-up the claims of the signatories. Records of attendance should be annexed to the document. In the absence of the full records of the proceedings of the purported Public Forum, the signatories shown in APPENDIX II can only be taken to be representatives of a small minority interest group, unless proven otherwise.

Importantly, RRDC has noted that APPENDIX II does not seem to relate to any existing main document because it has absolutely no page numbers. An Appendix should be a continuation of an existing document. In this instant case there are no page numbers to suggest so. It is therefore RRDC's position that the main document of proceedings of the purported forum be tendered, showing:

- i) Date of the forum;
- ii) Venue of the forum
- iii) List of participants and/or attendance
- iv) Resolution reached at the forum, etc

Essentially, it should be noted that RRDC has absolutely no objections to the good intentions of Wilmar towards the livelihoods and general economic wellbeing of the landlord communities. Our position however is that Wilmar must observe our National Laws and Regulations as they pertain to Environmental Impact Assessment (EIA), the Land Use Act, the National Park Act, the Forest Laws and regulations, and the Constitution of the Federal Republic of Nigeria. They should also continuously ensure that the rights, privileges and entitlements of indigenous communities are not usurped by any external agencies and /or influential internal minority interest groups. As of necessity, Wilmar must deal transparently with all stakeholders in these matters to the exclusion of none. .

1.2) References to Eastern Nigeria Development Corporation (ENDC)

All the references to ENDC are not supported by any verifiable evidence. We in RRDC expect:

- a) That references to ENDC Agreement should be in quote with the Sections and subsections clearly stated;
- b) That the ENDC Agreement which purportedly forms the basis of the present action of the Government of Cross River State should be annexed in full for reference and verification. The onus is for the signatories to the document (of IBIAE Landlords Communities) to show proof that the ENDC Agreement is in

existence and that the claims made by them in respect of the document are authentic;

- c) Without the above subjects of proof we cannot accept the submission of the purported forum;
- d) Similarly also, all the claims of Wilmar that are based on the submissions of the said Forum are not acceptable;
- e) We await substantial proof of the submissions of the forum based on the presentation of specific citations from the ENDC Agreement along with the ENDC Agreement itself/;
- f) **CARES**: The Forum should similarly attach authentic documents to support the following claims:

i) "CARES farmers in Ibiae oil palm estate have been adequately compensated" ;

ii) "...the Commercial Agriculture Support Office of Cross River State Government had conducted a verification of CARES farmland for necessary grading since most farmers have abandoned the project";

iii) "...every farmer whose farmland was verified and graded accordingly has been adequately compensated".

- g) We in RRDC deny the submissions of the purported forum in this matter of CARES. Recent visit to the Cross River State Ministry of Agriculture reveal that the CARES scheme is still ongoing. It should be noted that CARES was established in 2008 as a pet project of the Government of Cross River State. It should particularly be noted that as at 25th September, 2009, planting have been successfully carried out in 307 hectares out of 340 hectares that were pegged at the time. For the benefit of doubt, please find attached a scanned copy (as in Biase Report page 1 & 2) of the Farm Manager's progress report of the Ibiae Oil Palm Estate at Biase, dated 25th September, 2009, for verification and authentication. The onus is now on Wilmar and the forum to show proof that CARES has been brought to a terminal point and since CARES is a government programme then the document must be originated from Government.

- h) This is what we in RRDC call Transparency and proof based on verifiable evidence. So far the purported forum and Wilmar have based their submissions on free comments, and not facts. Therefore RRDC expects RSPO to compel Wilmar to substantiate all their claims in the matters raised in their response to our complaint.
- 2) **CROSS RIVER STATE COUNCIL ON PRIVATIZATION**
 The observations of RRDC about the purported privatization and/or Lease Agreement signed between Wilmar and Cross River State Council on Privatization are as follows:
- a) It is doubtful if acquisition of the Biase community land for the use of a private developer is consistent with provisions of the Land Use Act No. 6 of 1978 (Laws of the Federal Republic of Nigeria);
- b) Under the Land Use Act No. 6 of 1978 (Laws of the Federal Republic of Nigeria) the Governor is the Trustee, and nothing more. He holds land on behalf of the owners and acts according to the trust bestowed on him, in good faith and for the benefit of the owners, as prescribed by the Act. In LAW this means that he is the manager of another's property: i.e. somebody who is given the legal authority to manage land on behalf of somebody else.
- c) PART I of the Act stipulates as follows:
- “PART I – GENERAL (Vesting of all land in the State)***
- Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.”***
- d) The powers vested in the Governor by the Land Use Act in dealing with the land entrusted to him is a public and not private power, which he must exercise for the use and common benefit of the Nigerian public for overriding public interest;
- e) Council on Privatization has no powers to enter into transactions on the behalf of the Government of Cross River State on Land matters as the governor has not delegated any of his powers under the Land Use Act to the Council. This position is supported in reference to the Functions and Powers of Council on Privatization prescribed in **Section 3 of the State Enterprises (Privatization) Law Cap S12 (Laws of Cross River State of Nigeria 2004);**

STATE ENTERPRISES (PRIVATISATION) LAW

PART I

C— Functions and powers of the Council

3. Functions and powers of the Council

The functions and powers of the Council are to—

- (a) articulate the economic and social objectives of privatization of enterprises;*
- (b) recommend policies on privatization;*
- (c) recommend guidelines and criteria for valuation of enterprises for privatization and choice of strategic investors;*
- (d) recommend enterprises to be privatized;*
- (e) approve the legal and regulatory framework for the enterprises to be privatised;*
- (f) advise government on choice of public or private issue of sale of shares of listed enterprises for privatization;*
- (g) determine the timeframe for privatization;*
- (h) recommend the prices for shares or assets of the enterprise to be offered for sales;*
- (i) review, from time to time, the socio-economic effects of the programme of privatization and decide on appropriate remedies;*
- (j) approve the appointment of privatization advisers and consultants and their remuneration;*
- (k) advise Government on appointment of committees as and when necessary with regard to persons from private sector with requisite technical competence;*
- (l) forward the budget of the Council for approval by the State Executive Council;*
- (m) supervise the activities of the Bureau and issue directions on the implementation of the privatization programme;*
- (n) receive and consider for approval, the audited account of the Council;*
- (o) submit to the Governor in each year a report on the activities of the Council;*
- (p) receive regular and periodic reports from the Bureau on programme implementation and give appropriate directions; and*
- (q) perform such other functions as may, from time to time, be necessary to achieve its objective.*

- f) The There is no estate in Biase land to privatize. The document privatizing the land at Biase is void.
- g) The powers vested in the Governor by the Land Use Act in dealing with the land entrusted to him is a public and not private power, which he must exercise for the use and common benefit of the Nigerian Public.
- h) The holding of land by the Governor in the case of urban lands or the local Government Chairman in the case of rural lands is as Trustee for the people/owners and can only be alienated thereof for “overriding public interest” and /or “public purposes” of which there is none in the instant transaction. This position is interpreted in the Section 51(1a-b) of the Land Use Act as follows:

“public purposes” includes-

- a) for exclusive Government use or for general public use;*
- b) for use by any body corporate directly established by law or by any body corporate registered under the Companies and Allied Matters Act as respects which the Government own shares, stocks or debentures;*

Section 14 (2) of the Constitution of the Federal Republic of Nigeria strengthens this position thus:

The Government and the people

It is hereby, accordingly, declared that -

- b) Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;*
- c) The security and welfare of the people shall be the primary purpose of government; and*
- d) The participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.*

- e) The powers of the Governor/Chairman are to be done in person or through an expressed delegate; and the only delegate in respect of Cross River State lands in

urban areas is the Commissioner for Lands. The Agreement by the Council on Privatization is therefore null and void by virtue of Section 45 Of the Land Use Act which states inter alia:

Section 45 Of the Land Use Act

Delegation of powers

45. (1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment, of this Act as the Governor may specify.

(2) Where the power to grant certificates has been delegated to the State Commissioner, such certificates shall be expressed to be granted on behalf of the Governor.

- f) ENDC is since extinct since the creation of South Eastern State of Nigeria; so from which body does WILMAR derive its right to the land?
- g) Who is the successor in title from ENDC?
- h) The Governor's/Chairman's powers in transactions of this nature is limited to granting consent to transact land instrument with the landlords;
- i) Why is the purported Agreement between ENDC and the Landlord communities shrouded in secrecy? Let the Agreement be brought to the public gallery for scrutiny;
- j) Wilmar is a private concern and cannot deal directly with the state government with respect to land matters, but with the landlords directly and the same brought for the Local Government Chairman's consent to transfer/dealing on the land;
- k) Wilmar's dealings with the estates have nothing to do with land ownership and transfer through government agencies. As a private concern Wilmar must deal directly with the landlord communities;
- l) Government divestment in the estates returns the land back to the landlords;
- m) Even if the divestment of the estates by the Cross River State Government is justified, Government is strictly bound to use the land for public purpose as prescribed by the Land Use Act. Government cannot divest the communities of its

rights to its land and resources for public purpose only to lease and/or privatize the land for whatever reason to Wilmar. Private interest of Wilmar is not equivalent to Public Interest under the Land Use Act No. 6 of 1978 (Laws of the Federal Republic of Nigeria). If for any reason Government is unable to use the land for public purpose for which it was taken from the communities then they have a legal duty to restore the land to the indigenous land owners, “**no more no less**”.

3) ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

It is curious that Wilmar has commenced destruction of the forest area and raising of palm nursery for planting without proper acquisition of the Biase Land through due process and in particular, without an approved Environmental Impact Assessment (EIA) as provided by Decree 81 of 1992 which is now an Act of National Assembly (laws of the Federal Republic of Nigeria). See Photos attached showing Wilmar’s oil palm nursery on the NPP site as well as several heavy machinery (also on site) use for clearing the site for the new planting at Biase.

Wilmar should explain why they have commenced work on site (clearing several hectares of land) despite the fact that the EIA draft report has not been published by the Federal Ministry of Environment for public comments as provided in Section 24(1 & 2) of the EIA Law. Wilmar should indeed explain why it prefers to destroy the environment before obtaining approval from the Ministry on an agricultural project (measuring 8,668 hectares) that requires mandatory study as demanded by the Law. This is the requirement of the Law and by this action Wilmar, it is evident that the company is already operating in violation of the Laws of the Federal Republic of Nigeria.

We question the following submissions by Wimar in their letter of 8th December, 2012, under the sub-heading “**None commitment to transparency**”: *“The latest updates we received was that the second EIA Draft Reports which incorporated all the opinions, views, comments, observations and contributions of the participants at the Public Forum are currently being prepared for final submission to the Federal Ministry of Environment”*.

- i) When and where was the Public Forum held?
- ii) When and where was the information about the forum published in compliance with the demands of the Law?
- iii) Which specific stakeholders participated in the forum?
- iv) Which specific stakeholders were excluded from the forum and why?

We also question some of the submissions of IBARA ENVIRONS CONSULTANTS on the EIA procedures. The consultants must base all their opinions on the provision of the Law and cite the relevant references. For instance, it is incorrect to state that: ***“It IS AT THE FINAL STAGE THAT RAINFOREST RESOURCE AND DEVELOPMENT CENTRE (RRDC) and other NGOS are expected to make their comments and***

inputs/contributions to the EIA projects and submit same to the Federal and State Ministries of Environment and the proponent just like what happened at the Public Fora for their respective actions and consumption”.

The consultants should cite the sections of the Law that permit them to exclude RRDC and other NGOs from participating at the purported forum right from the beginning.

4. OBASANJOR FARMS

Wilmar has recently bought over the Obasanjor Farms comprising of: The Ibad Plantation measuring 7,805 hectares; the Oban Plantation measuring 2,986.385 hectares and the Kwa Falls Plantation measuring 2,014.429 hectares respectively. See scanned copy of the Obasanjor Farm plantations attached for verification. In this matter, Wilmar was certainly mislead into making transactions over Obasanjor Farms for the following reasons:

- i) That the lands upon which they are located are partly a Forest Reserve and also partly the Oban Hills Division of the Cross River National Park (CRNP). Therefore the title does not belong to Obasanjor Farms;
- ii) That for as long as the land is a Forest Reserve Wilmar’s agreement with the landlord communities, Obasanjor Farms, or Government is null and void ab initio.
- iii) That for as long as the concessions constitutes an encroachment on the CRNP, all agreements are null and void, also ab initio;
- iv) That a situation where 40% area of the IBAD Plantation is right inside the Ekinta Forest Reserve, and 44% area of the Oban Plantation is also right inside the Cross River National Park is objectionable and unacceptable by the Rainforest Resource and Development Centre (RRDC);
- v) That the landlord communities were never consulted nor compensations paid to them by the Obsanjor Farms before the land was acquired;
- vi) That the land was forcefully collected from the poor indigenous communal land owners;
- vii) That the Ekinta Forest Reserve had never been de-reserved as provided by the Law;
- viii) That the palms planted in the Obsanjor Farms were public palms conveyed from the public oil palm nursery at Ochon village in Obubra Local Government Area;
- ix) That invariably, Obasanjor Farms have nothing to sell, because you cannot place something on nothing.
- x) That therefore the transactions between Wilmar and Obsanjor are completely an illegality, null and void and ultra vires.

We have observed that Wilmar deliberately avoided discussing the Obasanjor Farm issue in their recent submissions because of the illegalities surrounding the project. It should

also be observed that Wilmar is carefully avoiding mentioning the CALARO extension which is also in a Reserve.

Finally, it has become pertinent for RSPO to demand from Wilmar concrete explanations in respect of the illegalities summarized above. It is only RSPO that can compel Wilmar to conduct its operations in line with International Standards as prescribed in the “**RSPO Principles and Criteria for Sustainable Palm Oil Production**”.

While we extend to you good wishes and warm regards for the season, we thank you graciously for your kind consideration.

Merry Christmas, and with our best wishes,

Odey Oyama

Executive Director

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Cc: See photographs and notes below



Photo 01:
Photo 01 shows vast areas of community forestlands being cleared by Wilmar for its project.



Photo 02



Photo 03

Photo 02 & 03 shows a cross-section of Wilmar's vast oil palm nursery already raised before the EIA approval is obtained

NOTES ON PHOTOGRAPHS

Wilmar has by its own documents affirmed that the EIA has not yet been issued. Within the context of the Environmental Impact Assessment Act (Laws of the Federal Republic of Nigeria), Wilmar's project fall under the mandatory study list as described in the Schedule and as in section 12 (1&2) which states inter alia:

SCHEDULE

Mandatory study activities

1. Agriculture

- (a) Land development schemes covering an area of 500 hectares or more to bring forest land into agricultural

- production;
- (b) Agricultural programmes necessitating the resettlement of 100 families or more;
- (c) Development of agricultural estates covering an area of 500 hectares or more involving changes in type of agricultural use.

Section 12 (1&2)

12 Mandatory study list not to be carried out without the report of the Agency

- (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 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.
- (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.

From where therefore does Wilmar derive the right to clear vast areas of forest lands (as in photo 01) and develop new palm nurseries (as shown in photo 02 & 03)?

Certainly the Law does not permit a private developer and or any developer whatsoever to proceed with development unless the final EIA has been approved and issued appropriately. It appears therefore that Wilmar is in contravention of the Constitution of the Federal Republic of Nigeria and the LAW. This is the point that RSPO MUST compel Wilmar to explain.

Sign:.....
Odey Oyama (Executive Director, RRDC)