

PT Mustika Sembuluh and the Dayak Temuan of Central Kalimantan

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Sophie Chao, Agustinus Karlo Lumban Raja, Fandy Achmad Chalifah and Tawangatri Kusumohartono



Introduction

PT Mustika Sembuluh is one of seven subsidiary companies owned by Wilmar International (member of the RSPO since 2005) in Central Kalimantan. PT Mustika Sembuluh was awarded RSPO certification on 11th August 2010 (valid until 10th August 2015) after a certification assessment by PT TUV Rheinland on 19th – 23rd October 2009 of its mill and three estates, with verification of closure of the major non-conformances identified carried out on 12th – 13th December 2009.¹ PT MS is among the first of Wilmar's holdings in Indonesia to have been assessed against the RSPO standards and also the first plantation company in Kalimantan to receive RSPO certification, according to the Wilmar CSR Tribune.²

■ *Ritual offerings for the resolution of conflict between the village of Pondok Damar and PT Mustika Sembuluh, Estate 1 Block 2 / Sophie Chao*

The concession of PT Mustika Sembuluh was chosen by the NGO consortium for assessment for a number of reasons. First, local communities in this area have experienced several land conflicts and forced displacements due to oil palm expansion on their customary lands since at least 1996, including prior to the acquisition of the concession by Wilmar, prompting repeated community protests and ensuing investigations and mediation by local and international NGOs. On the other hand, the 2010 audit of PT Mustika Sembuluh suggests that the company has established and maintained an effective system to ensure

compliance with the RSPO principles and criteria. For example, 1,711 ha of customary lands had reportedly been enclaved for local communities' use. The audit report also states that satisfactory compensation was paid to all parties, and that local communities accepted and participated in the mapping of the boundaries of the concession. Iterative stakeholder consultations were also reportedly held. It was thus assumed that positive lessons could be learned from this company's approach and implementation of FPIC in order to inform best practices in other oil palm concessions.

However, PT Mustika Sembuluh was also chosen because some major indicators were not fulfilled during the main assessment in 2009 and some major non-conformances were raised. These included ongoing land disputes over destroyed graveyards (Criterion 2.2), lack of identification and documented agreements between PT Mustika Sembuluh and local communities with regards to their traditional rights and usage of the land (Criterion 2.3), lack of monitoring and surveillance of HCVs (Criterion 5.2) and lack of regular monitoring and management of social impacts, with the participation of local communities (Criterion 6.1). The company proposed corrective action for all identified non conformities to the certification body within 15 days of the closing meeting. Part of the assessment team's objectives was therefore to ascertain whether and how these non-conformances have been resolved on the ground in a way that is satisfactory to all parties involved.

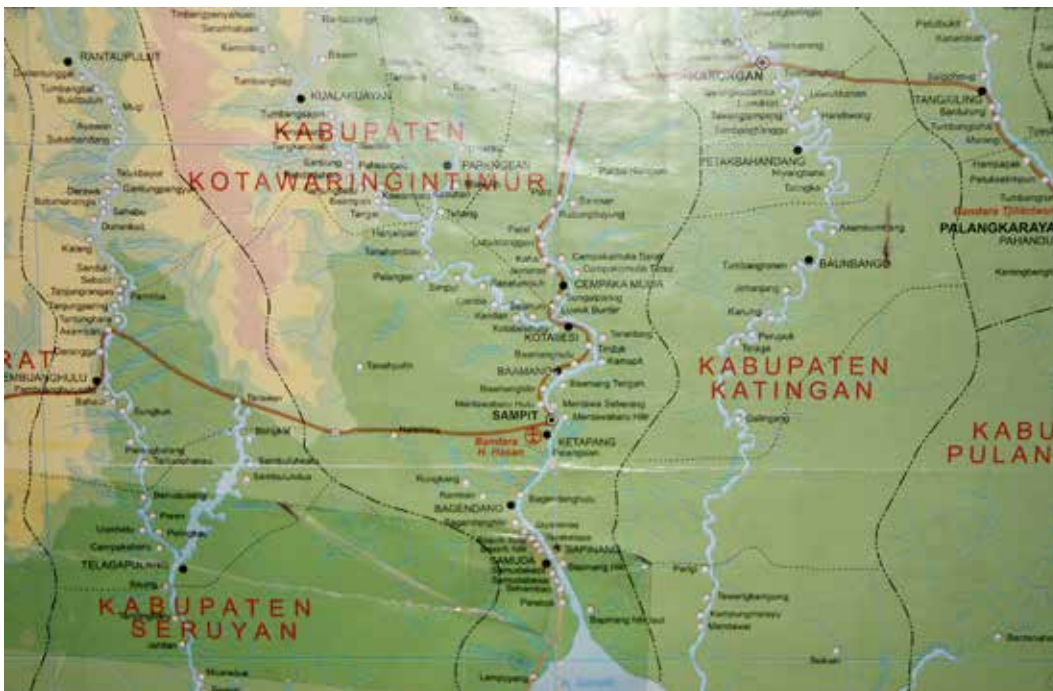
Area in Question

Constituting one of the four provinces of Indonesian Borneo, Central Kalimantan is located on the southern coast of Borneo and extends over an area of around 15 million ha, representing the third largest Indonesian province. Central Kalimantan is bordered by West and East Kalimantan provinces to the north, by the Java Sea to the south, by South and East Kalimantan provinces to the east,

and by West Kalimantan province to west. The Schwaner Mountains stretch from the north-east of the province to the south-west, 80% of which is covered in dense forest, peatland swamps, mangroves, rivers, and traditional agricultural land. The centre of the province is covered with tropical forest, which produces rattan, resin and valuable timber such as Ulin and Meranti. There are two protected areas within the region, Tanjung Puting National Park (more than 100 km to the west of PT Mustika Sembuluh) and Sebangau National Park (more than 30 km to the east of PT Mustika Sembuluh). The southern lowlands are dominated by peatland swamps that intersect with several rivers. The province's climate is wet weather equatorial zone with an eight-month rainy season, and four months of dry season.³

Until recently a highly forested region with mineral soils and vast areas of peat, Central Kalimantan has seen extensive areas of forests and peatlands allocated and cleared for oil palm, particularly over the last decade. To this day, Central Kalimantan remains largely dependent on natural resource exploitation, including gold and coal mining, forestry, timber estates and oil palm plantations.⁴ Oil palm development is a central part of Central Kalimantan's development strategy, with over one million ha planted and over three and a half million ha allotted to oil palm, including areas in early phases of licensing.⁵ In East Kotawaringin (or Kotim) district alone (where a large part of the PT Mustika Sembuluh concession is located), over 50% of the total area has now been allocated to oil palm (around 1.5 million ha), constituting the district with the largest area of oil palm plantations.⁶ In May 2011, a two-year moratorium was placed on new permits for converting natural forests to plantations, as part of the Norway-Indonesia Partnership on REDD+. However, there is evidence that the conversion of peatland and peat forest for oil palm development is continuing illegally.⁷

The district of East Kotawaringin extends from the hilly Schwaner Mountains in the



north down to the Java Sea and oil palm plantations are located in both the middle and lower parts of the district. The concession of PT Mustika Sembuluh is located on flat to undulating dry and wet mineral and peat land. Several rivers run through the concession, including Rinjau, Hanjaipan, Seranau, Mentaya Sampit, Pukun and Seruyan.

■ Map of East Kotawaringin and Seruyan districts in Central Kalimantan

History, peoples and customary land tenure

From 1526 to 1860, the central region of Kalimantan and its Dayak inhabitants were loosely ruled by the coastal Muslim Sultanate of Banjar, to which virtually all of the south-west, south-east, and eastern areas of Kalimantan island were paying tribute. The nineteenth century saw increased control by the Dutch colonial authorities over territory belonging to the Banjar sultanate in the appointment of its rulers, leading to the Banjarmasin War (1859–1863) and the abolition of the sultanate in 1860. The region was then governed by regents in Martapura and Amuntai until their abolishment in 1884. Following Indonesian independence, and in part due to demands from the indigenous Dayak population for greater autonomy from the authority of South Kalimantan

province,⁸ the separate province of Central Kalimantan was established on 23rd May 1957 under Presidential Law No. 10 as Indonesia's seventeenth province with Palangkaraya as its capital.

The capital of East Kotawaringin district, Sampit, was an important trade center in the thirteenth century, in part due to its strategic location close to the three rivers of Mentaya, Seruyan and Katingan, which flow into the Sea of Java. Trade in forest products in particular developed significantly in the first half of the second millennium with China, India and the Middle East. Folk legends tell of a former Kingdom of Sampit ruled by Raja Bungsu, which perished following a power struggle between his two heirs. Islam spread throughout the region from the sixteenth century, with particular influence from the 1620s onwards, at which time Central Kalimantan was part of the Demak kingdom, although a number of areas remained under the leadership of tribal chiefs who later withdrew to the hinterlands.⁹ Coastal ports established by local sultans in the late nineteenth and early twentieth centuries

saw the expansion of colonial exploration and political control over the hinterland.¹⁰ East Kotawaringin became a district on 3rd August 1950 upon the issuance of Decision Letter 154/OPB/92/04 by the Governor of Kalimantan. Seruyan, originally part of East Kotawaringin district, became a district of its own in 2002 under regulation No.5/2002 and now covers five sub-districts (Danau Sembuluh, Hanau, Seruyan Hulu, Seruyang Tengah and Seruyan Hilir).

The indigenous peoples of Central Kalimantan are Dayak¹¹, traditionally forest-dwelling peoples who self-identify as Njagu, Ot Danum and Dusun Ma'anyan Ot Siang, Temuan, Lawangan, Taboyan, Dusun Siang, Boyan, Bantian, Dohoi and Kadori.¹² In addition to the indigenous Dayak tribes, the province is also inhabited by ethnic groups from other areas of Indonesia, including Javanese, Madurese, Batak, Toraja, Ambonese, Bugis, Palembang, Minang, Banjarese, Makassar, Papuan, Balinese, Acehnese and Chinese. Resentment of preferential treatment given to non-Dayak led to widespread violence and killings of migrants, mainly Madurese, during the late 1990s and early 2000s.¹³

There are three villages within the PT Mustika Sembuluh concession:¹⁴ Desa Pondok Damar (North Mentaya Hilir sub-district, East Kotawaringin district) is located in PT Mustika Sembuluh Estates 1 and 2. Desa Tanah Putih (Telawang sub-district, East Kotawaringin district) is located in PT Mustika Sembuluh Estate 3. Desa Bangkal (Danau Sembuluh sub-district, Seruyan district) is located in PT Mustika Sembuluh Estate 2. According to the company's Social Impact Assessment (SIA) report dated September 2009, the total population of these three villages is of around 1,608 households or approximately 6,128 people,¹⁵ of which the majority are indigenous Dayak Temuan, as well as a minority of incomers, such as Javanese and Batak.

The Dayak Temuan, according to community members, originated from Lamandau region, an area bordering West Kalimantan. The communities of the three

villages within the PT Mustika Sembuluh concession also include a minority of Javanese and Bugis, as well as some families from Flores. Five religions are practised (Islam, Christianity, Pentecostalism, Catholicism and Hinduism), as well as Hindu Kaharingan, an ancestor worship-based religion which is said to have developed around 30 years ago and is unique to Central Kalimantan. The seat of this religion is the Hindu Kaharingan Grand Council in Palangkaraya. Adherents maintain that these descend from the Kutai kingdom, an eastern Borneo state dating from the fourth century whose religion was imported from India. Over time, this belief system was lost in Kutai amid colonisation by the Dutch and missionary activities by Christian missionaries and has now been revived in Central Kalimantan. The religion of Hindu Kaharingan is anchored in the Panaturan, or holy book, and practised by a body of priests, referred to as *mandung*. While Hindu Kaharingan is not an officially recognised religion in Indonesia, and appears to bear little relation to Hinduism, adherents of the faith maintain that it is also an attempt to keep their cultural identity separate from the religious identities sanctioned by the State, and a reaction in part to decades of generally unwanted Western missionary activity.

Community members claim to have been living in the villages of Pondok Damar, Tanah Putih and Bangkal for at least 150 years, as testified by their ancestral graves. In the 1970s, these communities saw their customary lands gradually taken over by a number of both legal and illegal logging companies (following the issuance of HPH licences in the area), and oil palm plantations from the early 1990s, including PT Agro Indomas (Agro Hope Sdn Bhd), PT Hamparan Mas Sawit Bangun Persada (Best Group), PT Agro Mandiri Perdana (Sinar Mas) and PT Mustika Sembuluh (Wilmar Group). Prior to the arrival of the companies, community members described the area as a lush and forested region with diverse vegetation and several rivers on which they depended for transport and water supplies.

Our forests were lush back then, and the river was the source of our fish to eat. We used to hunt game, such as deer, boars and wild birds. (community member)

The communities of Pondok Damar, Tanah Putih and Bangkal traditionally depended on shifting agriculture and garden cultivation for their livelihoods, complemented by game, fish and vegetables obtained from the forest. These traditional practices continued up to the late 1990s, according to community members, at which point they gradually diminished, largely due to the shrinking of available forest land to practise shifting agriculture because of conversion to logging and oil palm concessions, and government policies banning forest burning (eg Regional Law No. 5/2003 in Central Kalimantan).

We used to follow what our fathers, and their fathers, and our ancestors used to do on the land. We would burn the land first, because this increased the fertility of the soil, and we also burned the land with our own customary techniques, to prevent it from spreading out of control. We would dig a ditch around the area and tend the fire carefully, in accordance with custom. (community member)

Rubber cultivation is the main source of income for most communities today, in addition to smaller plots of oil palm and fruit gardens (durian, rattan, jackfruit, *cempedak*, rambutan and mangoes). While most communities own their own rubber and/or oil palm smallholdings, some are involved in oil palm plasma schemes with PT Mustika Sembuluh. While the riverine trade of fish and scented woods (such as camphor) has now decreased as a result of water pollution from neighbouring oil palm plantations, rivers as routes of trade, transport and migration still play a prominent role in the lives of these communities.¹⁶

The land ownership system of the Dayak Temuan is inextricably linked to the practice of shifting agriculture, and land cleared for cultivation becomes the property of the household whose labour has gone into the clearing.¹⁷ Land opened and farmed is

inherited cognatically and land is evenly distributed among the children upon their marriage, or upon the death of their parents. According to community members interviewed, married couples manage their plots jointly but maintain distinct ownership. In cases of divorce, community members explained that the land of the initiator of the divorce is passed on to the other spouse, or to their children. The opening of land does not generally require permission from the *adat* (customary) leader (*mandung*), although forest land may do, particularly if there are historical or sacred sites nearby. Land owned by households today can range from three ha to over 30 ha and both men and women share the tasks of gardening, maintenance, fertilisation and rubber tapping. Women interviewed reported that when the forest was still intact, their work included gathering mushrooms, vegetables and edible ferns, herbal medicines, flammable resin and scented woods, such as aloe wood.

Rights to control and use land are customarily demarcated with the planting of certain crop trees (usually fruit and rubber) along the borders of the land. Oral testimony from households cultivating land directly adjacent to the land in question is also considered an important form of proof of households' and individuals' right of use and ownership (these witnesses are referred to as *saksi sebatas*, or border witnesses). Oral evidence continues to play a key role in the value system and social structure of the Dayak Temuan, and is often perceived locally as of greater importance than written documents, such as land certificates or other documents.

Because among us, we are already bound by a consensus to respect each other's land and property, to look after each other's rights, we do not seek to take over land opened or worked on by other people. If there is conflict over land borders, then these are also resolved through *adat* and through mutual respect.

However, today's communities are increasingly keen to obtain Land Information Certificates (*Surat Keterangan Tanah* or *SKT*) in order to prove their rights

to land in the face of incoming pressures from oil palm companies.

Honestly, we don't know why we need SKTs, because the fact that we worked these lands for generations and made them what they are today, is our evidence that the land belongs to us. That is our proof. But the SKTs are recognised, and our labour on the land isn't

Land conflict

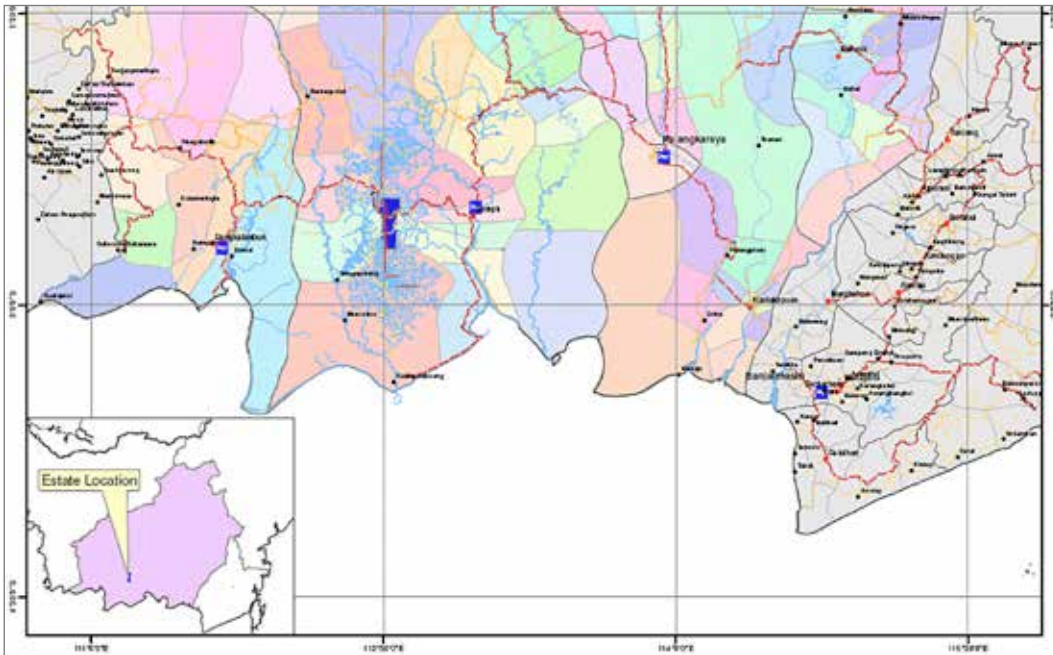
Oil palm expansion in Danau Sembuluh has been a source of conflict since the mid-1990s, beginning with PT Agro Indomas, whose indiscriminate land clearing activities led to the destruction of sacred graves and the eviction of communities from Terawan, Bangkal and Lanpasa. Land conflict and forced displacements have also been reported as a result of the activities of oil palm companies PT Kerry Sawit Indonesia, PT Sawit Mas Nugraha Perdana, PT Rungau Alam Subur and PT Salonok Ladang Mas. Community responses have ranged from the submission of letters of rejection and negotiation with the companies, to demonstrations and the capture of company property. The main grievances have been the loss of customary land, the lack of 'socialisation' or *sosialisasi* (understood as consultation to inform communities of planned developments) undertaken by the companies prior to their operation and unsatisfactory or non-existent compensation offers.¹⁸ For example, unresolved compensation claims from the communities whose lands and plantations were lost led to demonstrations in July 1998 by the communities of Bangkal, Terawan, Lanpasa and Sembuluh I in front of the Parliament of East Kotawaringin, and again in October 1999. Sembuluh I and Bangkal community members protested in November 1999 by cutting off access to a bridge crossing the river Rungau and used by the company. Between October and November 2000, community members of Sembuluh I and Sembuluh II held company equipment hostage (bulldozers, tractors and other heavy machinery) and directly

confronted plantation workers, demanding that the company suspend its activities until dialogue and consensus was achieved with the communities. A number of ongoing land conflicts were reported by community members of Tanah Putih and Pondok Damar, which are explored in more detail in the following sections.

PT Mustika Sembuluh's operations

PT Mustika Sembuluh was founded on 29th November 1988 in Palembang as PT Rimba Ogako Hayu and was renamed on 12th February 1994, with its base relocated from Palembang to Palangkaraya. In November 1999, part of PT Mustika Sembuluh's shares were transferred to PPB Oil Palms Berhad based in Malaysia and approved in a Decree from the Minister of Justice and Human Rights on 26th August 2005. In 2007, PPB Group Berhad merged PPB's oil palm plantation and edible oils trading and refining businesses with Wilmar International Limited and is presently the largest shareholder in Wilmar with 18.3% interest. PPB Group Berhad has an investment of 90% interest in PT Mustika Sembuluh. On 23rd November 2005, the company made an application to the Department of Industry and Trade, Central Jakarta for the expansion of PT Mustika Sembuluh over 10,000 ha on 17,500 ha of land reserves, located in Danau Sembuluh and Kota Besi sub-districts, East Kotawaringin District, Central Kalimantan Province.

The concession of PT Mustika Sembuluh is located in the central to southern part of Wilmar's Central Kalimantan Project (CKP), Central Kalimantan province, Indonesia. It extends over parts of two districts (*kapupaten*), Kotawaringin and Seruyan, and three sub-districts (*kecamatan*), North Mentaya Ilir, Telawang (both part of East Kotawaringin district) and Danau Sembuluh (part of Seruyan district). The Mustika Sembuluh estates are surrounded by several other oil palm plantations: PT Maju Aneka Sawit and PT Septa Karya Damai on the eastern border; PT Suka Jadi and PT Bumi Sawit Kencana



(Wilmar) to the north and north-west; PT Hamparan Mas Sawit BP to the west; and Wilmar's estates PT Rimba Harapan Sakti and PT Kerry Sawit to the south. Wilmar's six other oil palm plantations in Central Kalimantan are: PT Karunia Kencana Permaisejati, PT Bumi Sawit Kencana, PT Mentaya Sawit Mas, PT Kerry Sawit Indonesia, PT Sarana Titian Permata and PT Rimba Harapan Sakti. The seven Wilmar-owned companies operate a combined 84,000 ha of oil palm plantations of which 71,000 ha are already in production stage.

PT Mustika Sembuluh is composed of three estates and one mill in operation since 2006, which receives supplies from the three estates, as well as from several other company-owned estates and several outgrowers. Mustika Estates 1 and 3 are located in East Kotawaringin while Mustika 2 is located in Seruyan District. The total land holding of PT Mustika in 2010 was of 22,011 ha, of which 15,604 ha had been planted. 3,403 people were employed on a permanent and temporary basis on the plantation in September 2009. Company representatives reported that there are no plans for further expansion of the concession.

Six High Conservation Value areas (HCVs) were identified within the three estates of PT Mustika Sembuluh concession by

■ *Location map of PT Mustika Sembuluh within Central Kalimantan (RSPO Public Summary Report 8/9/2010, p.5)*

Malaysian Environment Consultant in their HCV Assessment (HCVA) dated 29th October 2009.

- HCV 1 areas (Forest areas containing globally, regionally or nationally significant concentrations of biodiversity value) identified in MS 1, MS 2 and MS 3;
- HCV 2 areas (Forest areas containing globally, regionally or nationally significant large landscape level forests) identified in MS2 and MS3. This includes an HCV 2.2 area (large level landscape forest) identified in MS 2;
- HCV 3 area (Forest areas that are in or contain rare, threatened or endangered ecosystems) identified in MS 3;
- HCV 4 area (Forest areas that provide basic services of nature in critical situations) identified at MS 1, MS 2 and MS 3 estates. This includes HCV 4.3 areas (forests critical to water catchment and erosion control) located at MS 1 and MS 2;
- HCV 5 areas (Forest areas fundamental to meeting basic needs of local communities) identified in MS 1, MS 2 and MS 3 estates; and

- HCV 6 areas (Forest areas critical to local communities' traditional cultural identity) identified in MS 1 and MS 3 estates.

The forest areas within the concession are a mix of secondary forest and agro-forestry, including bamboo, rubber, cassava and various fruit trees, including rambutan and durian. Rare ecosystems were identified in the *kerangas* forest and along the borders of the Rinjau river that flows through it.

Legal status of PT Mustika Sembuluh

According to data obtained from the Plantation Office of Central Kalimantan, as of 31st December 2011, PT. Mustika Sembuluh had secured the following permits from both the regional and central government:

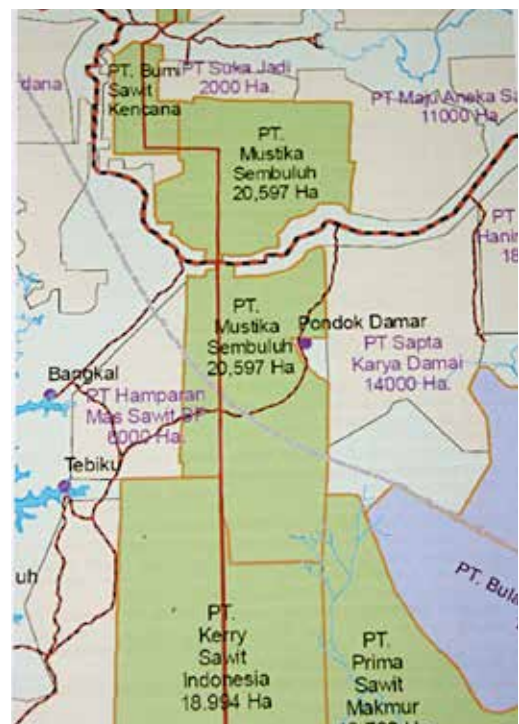
1. Location directive (*Arahan Lokasi*) from Bupati of Kotawaringin Timur, Number. 382/400.460.11.91 in March 1991 with an area of 17,500 ha.
2. Location Permit (*Izin Lokasi*) from Bupati of Kotawaringin Timur, Number. 382/400.460.11.91 in March 1991 with an area of 17,500 ha.
3. Location permit (*Izin Lokasi*) from Bupati Seruyan, Number. 7.460.42 on 16th October 2003 with an area of 4,000 ha.
4. Plantation Business Permit (*Izin Usaha Perkebunan*) from the Governor of Central Kalimantan, Number 343 of 2003 in August 2003 with an area of 15,990 ha.
5. Forest Area Release Permit (*Izin Pelepasan Kawasan Hutan*) from the Minister of Forestry, Number. 695/kpts-II/1996 in November 1996 with an area of 15,994 ha.
6. Business Use Right (*Hak Guna Usaha*) from BPN, Number. 01/540/HGU/BPN.42/2000 in September 2000 with an area of 166.306 ha.
7. Hak Guna Usaha from BPN, Number. 03/540/HGU/BPN.42/2000 in December 2000 with an area of 144.88 ha.
8. Hak Guna Usaha from BPN, Number. 8/HGU/BPN/2005 in February 2005 with an area of 5,227 ha.
9. Hak Guna Usaha from BPN, Number. 2-HGU-BPN RI-2007 in February 2007 with an area of 1,990.320 ha.
10. Hak Guna Usaha from BPN, Number. 3-HGU-BPN RI-2007 in February 2007 with an area of 5,169.280 ha.
11. Hak Guna Usaha from BPN, Number. 29/HGU/BPN RI/2011 in June 2011 with an area of 6,188.804 ha.
12. Hak Guna Usaha from BPN, Number. 52 on 16th August 2011 with in area of 563.674 ha¹⁹

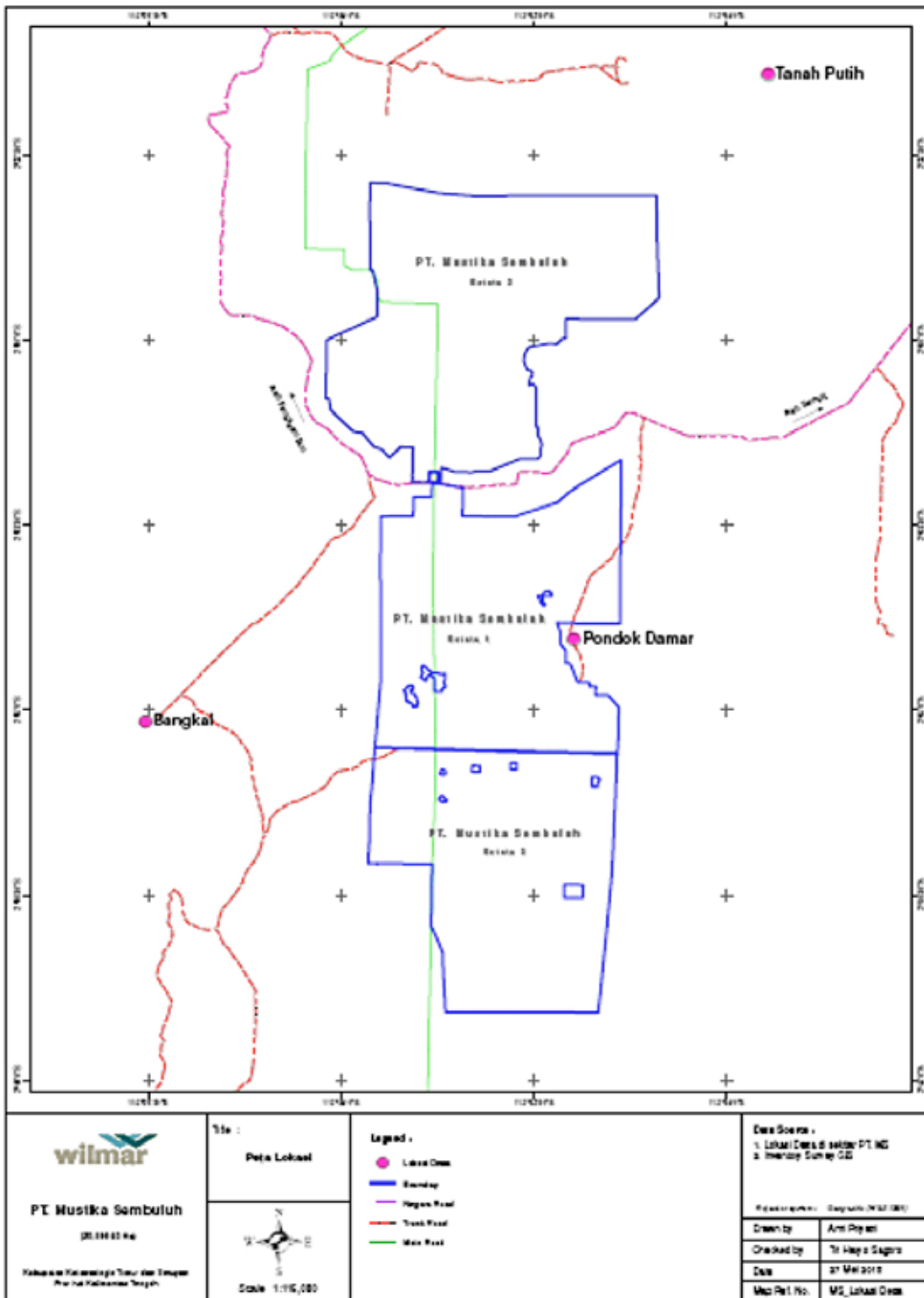
Community perspectives

Pondok Damar

The flags on the poles that we have placed to block the road of PT Mustika Sembuluh bear the colours of our plight. Red is blood. Yellow is a warning of caution. And white is transparency and clarity. For now, the last one remains a wish. (Protester from Pondok Damar village)

■ Map of PT Mustika Sembuluh and surrounding concessions





The village of Pondok Damar is located in the east of PT Mustika Sembuluh Estates 1 and 2. It covers an area of 14,100 hectares with a total population of 832 individuals (or 200 households), 85% of whom are Dayak Temuan. The community of Pondok Damar claims to have lived in this area since at least the Dutch period, and to have grown out of a number of smaller neighbouring communities who moved there to access

■ *Map of PT MS Estates 1, 2 and 3, and PT MS Palm Oil Mill. Source: RSPO Public Summary Report 8/9/2010, p.6*

the river. The village of Pondok Damar is fully surrounded by PT Mustika Sembuluh's plantations and was the location of PT MS's first estate. The community there has been in conflict with the company on and off ever since it was established, due to land grabbing,

unfulfilled promises of employment and plasma and lately, pollution of the rivers due to mill effluents. A significant cause of these conflicts was reported as the lack of involvement and participation of the community in negotiation and consultation with the company about its activities.

General discontent with the operations of PT Mustika Sembuluh was made evident from the first day of the NGO consortium's visit to Pondok Damar on 24th June 2012. At the time, the community was on the third and last day of a protest against the company, attended by over 200 villagers who blocked a company road within the concession leading to their village (see Box 'Hinting Pali ritual in Pondok Damar')

Various accounts were received from community members of Pondok Damar interviewed regarding how PT Mustika Sembuluh obtained the land for its oil palm concession. In some cases, the company had begun land clearing without informing the customary landowners, promising compensation at an indefinite time in the future. In other cases, company

representatives were reported to have used the permits already obtained to intimidate the communities and pressure them into surrendering their land. With their limited knowledge of the law, the communities reported not having had the courage to debate the company's arguments, believing that their own lack of legal documents proving their rights to the land outweighed the fact they had cultivated the land for generations. Many individuals reported that *sosialisasi* had been minimal, and where carried out, had not provided them with sufficient information to make informed decisions about whether or not to accept the company's operations on their customary lands.

In a limited number of cases, intimidation from security apparatus, and the co-optation of village officials was reported. In others, the company offered compensation for less land than the company ended up taking. In one case, for example, one community member explained that he had five ha of land and only agreed to sell three ha to the company with the intention that the remaining two ha would be worked by him. In reality, all five ha were cleared by the company and his complaints ignored.

■ *Road block protest against PT Mustika Sembuluh due to unresolved land conflicts and water pollution, Pondok Damar / Sophie Chao*

We were forced to accept compensation, on the terms of the company, due to this forceful land transfer. If we resisted, we faced the security



apparatus brought in to guard the company's operations. The company also used village officials and village figures to pressure the people and manipulate information. Our village chief told us back then that if anyone refused to give up the land the company would proceed to clear those lands anyway because they had the permit, and because our lands are State land anyway. (Pak Burhan)

Community members interviewed mentioned that prior to the establishment of the PT Mustika Sembuluh plantation, some *sosialisasi* by the company had been carried out, and consisted of certain community members being invited by the company to learn about the benefits of oil palm plantations. Apart from describing the positive dimensions of their project, the company also promised to hire community members to work on the plantation and to offer them plasma. However, no negative potential impacts were described at the time, including the risk of water pollution.

The company came to us and asked for our help to develop their oil palm plantation. They asked us to release our land and to join a plasma scheme with them. We were happy to do plasma back then. It was all verbally discussed. We didn't have any written contracts with the company. In fact, the company has never been down to our village since 2008. Today, our fate is to be stuck right in the middle of two oil palm plantations [PT Mustika Sembuluh and PT Septa Karya Damai]. (Pak Jamin)

According to some community members, no alternative options were offered by the company when they first contacted the community and informed them of their intention to develop an oil palm plantation. A number of individuals reported that they had not received compensation for the land they released to the company back then. Some reported pressure from local officials as well as threats of imprisonment should they refuse to give up their land. Those who refused saw their land cleared, often late at night, without prior warning.

One community member had joined the plasma scheme but appeared confused as to

the actual terms of his agreement with the company.

I have a contract with the company but honestly, I'm not sure what it says. I understood it when I discussed it with the company at the time, but I'm not clear on the exact terms. All I know is that I receive a certain amount of money (Rp. 100,000) at the end of every six months. Is this compensation or actually payment? I don't know. To me, it is more like compensation for what has been lost, not payment. (community member)

Individual community members who are part of the plasma scheme do not have copies of their contract as these are kept with the head of the cooperative. Those who have not joined the plasma scheme are reportedly allowed to plant five oil palm trees each, the fruit of which, sold for 7,000 Rp per kilo, brings them an income of around 70,000 Rp per month. Several reported that they did not join the plasma scheme voluntarily:

At least with the plasma, we can earn a little bit more, but even then, we are only paid at the end of every six months. We were forced to accept it on their terms. *Sosialisasi* was not about getting our point of view. It was basically the company informing us of what was going to happen on our land and negotiating the terms of our involvement in their project. It's not like we were asked whether we agreed to anything. If we had known back then this would happen, we would never have accepted. Now, we just want to burn it all down. (community member)

Significant resentment was also expressed regarding the lack of local employment opportunities offered by the company to local community members. Only 20 individuals from Pondok Damar are reportedly employed by the company, and on a part-time basis.²⁰ Several community members complained that they had not been given opportunities to benefit from the plantation development.

The only thing we are allowed to do is to pick the leftover palm fruit. It's enough to pay for some food only. No more. And we have no contracts for this. (Mas Rudi)

***Hinting Pali* ritual in Pondok Damar**

The protest held on 21st – 23rd June 2012 was referred to by community members as *hinting pali*, a customary ceremony of the Dayak in the region, intended to pacify areas subject to conflict between two parties and to seek a peaceful and mutually beneficial resolution to the conflicts. The rattan rope and a *sawang* leaf used are believed to dispel evil spirits that bring about disasters.

Posters displayed at the *hinting pali* in Pondok Damar stated the demands of the community:

1. Unresolved water pollution from the PT Mustika Sembuluh mill on 1st January 2012.
2. Lack of implementation of the agreement between PT MS and the community of Pondok Damar over pollution of the river from mill water of PT Mustika Sembuluh in 2008.
3. Land grabbed from the community by PT Mustika Sembuluh.

The protest was ended with a large gathering of community members, the village head, company representatives, police in civilian clothing, one army representative and the head of the sub-district of North Mentaya Hilir (the NGO consortium were invited by the village head to attend). Prior to that, water buffaloes were sacrificed by Pondok Damar to appease the ancestors and request their help to resolve the problems they faced with PT Mustika Sembuluh. The community demanded that the company provide buffaloes and pigs for a second sacrifice to mark the end of the blockade and act as a binding agreement between them and the community to resolve the existing conflicts. This was accepted by the company. A written agreement was also signed by all the stakeholders above and the government representatives present pledged to resolve the conflict.

Protester from Pondok Damar explained that they were not only protesting against the lack of action taken by the company to remedy the pollution of the rivers and compensate affected communities, but also against the lack of information made available to them by the company about their activities in the first place, and the lack of employment opportunities offered to local community members, as originally promised.

We lack information. There is so much we do not know. We feel insecure, and unemployment is rife. We are not given jobs by the company. (Mas Udin)

We don't feel safe here. The army and BRIMOB [mobile brigade] frequently come through the plantation. (Mas Udin)

The situation was so much better before. The only poor relation we have is with the company. They have violated our *adat* laws. (Mas Rudi)

We don't want violence. We will always seek the peaceful way to resolve problems. But do I believe that today's agreement will resolve our conflicts? It all looks fine for now, but they [the company] will just go back to their usual ways. (Mas Rudi)

■ *Government, company and community representatives sign an agreement to resolve ongoing conflicts between Pondok Damar and PT Mustika Sembuluh, 27th July 2012 / Carlo Nainggolan*





Few community members interviewed reported having been involved in the HCV assessment, and only found out about the existence of the HCVs once the signposts had been erected. On the other hand, the company reports having carried out a public consultation on HCVs with consultants on 29th November 2007 which was reportedly attended by 50 stakeholders. Community members were reportedly involved in the development of an MoU on customary rights/traditional rights management and HCV management on 13th November 2009, attended by 42 individuals of which 21 were from Pondok Damar and 21 from the company.

With regards to HCVs, some community members reported that part of their *adat* land (gardens and paddy fields) had been classified as HCVs but appeared confused as to whether these areas were (and should be) within the HGU or enclaved from the HGU:

We are completely confused about this HCV thing. Some consultants came to us, measured the land, and then told us that these areas were now HCVs. We are not allowed to practise slash-and-burn there anymore, or fish, or hunt, like we used to. But this is our *adat* land. We are not sure if these HCVs are supposed to be in the HGU or enclaved.²¹(community member)

■ *Community of Pondok Damar finalise their demands from PT Mustika Sembuluh / Carlo Nainggolan*

We don't understand the point of the HCVs. The company tells us it is to stop community members from burning the land and destroying rare species. But shouldn't we be protecting these areas from the company rather than the community? They are the ones who are burning everything up. (community member)

Also, a large banyan tree that we use in our Hindu *keharingan* rituals was destroyed by PT Mustika Sembuluh when they cleared the land. Why was that not considered HCV? It matters to our culture and to our beliefs. (community member)

Many villagers are also worried about how their access to the HCV areas will be secured in the future.

For now, we can still access this land, even though our activities have been limited. But we fear that we will be tricked out of our land. How can we be sure that it will not be sold by the company? Is it even our land, or is it theirs? (community member)

The MoU between the communities and the company (the authors were unable to get a copy of this) reportedly contains clauses specifying that communities' access to the



■ *HCV 4.2 in PT Mustika Sembuluh Estate 1 / Sophie Chao*

HCV areas to fulfil their basic needs is not to be restricted. The fact that uncertainties remain for several community members over this point suggests that either the MoU has not been fully shared with the wider community, or that its terms have not been properly explained in the appropriate forms and languages, as required under Criterion 1.1 of the RSPO Principles and Criteria.²²

Whereas some community members were aware of the mapping of the HCVs, they reported that their participation was limited to being informed of the location of the HCVs based on GPS points identified by the consultants. While none objected to the location of the HCVs, they object to the process through which these have been identified, in other words, their lack of participation. None of the community members interviewed reported having been involved in the Social Impact Assessment (SIA) or Environmental Impact Assessment (EIA) carried out by the company, nor in participatory mapping activities.²³ No copies of maps or of the aforementioned documents have been made available to them.

With regards to representation, a notable degree of tension was apparent in terms

of who represented the community in interactions with the company. More specifically, community members were suspicious that the village head was not communicating information about the company or about agreements between the village head and the company, supposedly made on behalf of the community. In the words of Pak Yurias:

Maybe he attended *sosialisasi* events with the company, and with TUV [audit team]. We don't know. But we should know. The problems we are facing are those of a community. The pollution of our rivers by the company for example: it's not just the village head who is going to suffer from the consequences. All of us need water. Is he hiding behind the company? We don't know, but if he is, we just don't agree with it. (community member)

Some community members had heard of the TUV audit that was supposed to have included on-site visits to the villages within the PT Mustika Sembuluh concession. The village head and adat leader (*damang*)²⁴ were not present at any site visits that may have taken place and the village head reports not having received an invitation to attend. While the Assessment Agenda suggests that the TUV audit team visited the villages, this appears to be contradicted in their Audit Plan. First, it makes no mention of community visits; second, all interviewees cited are company representatives and;

third, where the only Public Consultation Meeting involving other stakeholders did take place, it was in Sampit, outside the concession. An examination of the list of stakeholders who attended this Public Consultation Meeting on 19th October 2009 reveals that only two community members from Pondok Damar were present. The list of stakeholders interviewed on-site does not contain any community members from villages within the concession. The NGO consortium only obtained confirmation that the TUV team had visited the villages from the village heads, whereas all other community members interviewed reported not having being involved.

Several community members expressed discontent over the lack of consideration given to their *adat* rights and land ownership:

We don't know what rules or laws PT Mustika Sembuluh is following. In any case, our *adat* laws are far more important than national laws. For sure, they are oral laws, but they have existed since time immemorial, we have lived by them for generations, and they govern the way we use this land. Our people have settled in this area since long ago, long before the company existed. And we have lived side by side with the company for quite some time. But how is it that they have the right to tell us how to use our land? (Ingging)

In addition, the community is confused by the lack of clear borders between Seruyan and East Kotawaringin, as this means they are not sure where to take their complaints, and in which district PT Mustika Sembuluh is accountable.

The boundaries are not clear. This is not only a problem for us, but also for the villages of Sembuluh I, Sembuluh II, Bangkal and Tembiku. If there are different laws in different districts, how do we know which one PT Mustika Sembuluh is subject to? (community member)

Of particular concern to the communities is the pollution of their rivers (Sungai Sundi, Sungai Tubeliang Tusang, Sungai Penda Enyu and Sungai Sampit) due to waste from the PT Mustika Sembuluh

mill, located around three kilometres from the village. Effluents from the mill caused severe contamination of the river in 2008 and again in 2012. While the company claims water samples show that the water at Pondok Damar is 'deemed to be good', community members were adamant that it was nearly impossible to find fish anymore, both for their own consumption and as a source of income, as formerly practised.²⁵

At the same time, Administration and Public Relations Manager of Wilmar's Central Kalimantan Project, Pak Riswantoro, stated in an interview that while the case of water pollution of 2008 was genuine (and that the company had taken significant measures to purify the water and provide compensation to the communities) the reported river pollution of 2012 was fake. However, the pollution of the water was recently confirmed by a water sampling by the Environmental Office which classified the pollution level of the water from one of the three rivers flowing through Pondok Damar (Penda Enyu) as of 'medium' threat. However, PT Mustika Sembuluh is not the only mill on this stretch of river, so it is unclear whether the pollution results from their activities or those of neighbouring concessions. The day before the NGO consortium visited Pondok Damar, community members had met with sub-district and company representatives to request that this issue be resolved, the last of a long series of appeals on this matter.

PT Mustika Sembuluh is a disease for us. Land conflicts continue. We are afraid of the police, and we don't want violence. At the same time, we don't understand the rules of this game. Take the water of our rivers. A lot of reports have been written about the pollution, but they have all been silenced. Who is paying them? (Village head, Pondok Damar)

We are drunk on the pollution in our rivers. The land is gone, the forest is gone, and the river is dirty. Burning is forbidden, wood has disappeared, the water is contaminated. We want to be informed. We want to stop being oppressed, colonised and ignorant. (Village head, Pondok Damar)

Women interviewed in the village also reported that the water from the river causes skin rashes and irritation. The company has taken measures to provide the communities with clean drinking water but not water for other uses, such as washing and cooking. As a result, community members have had to build their own water supply pools and wells at their own expense and collect rainwater outside the dry season. The women of Pondok Damar expressed particular concern about the lack of water for daily needs such as cooking and washing clothes (which they are responsible for in the household), and the health impacts on their children.

We have already been waiting for four years, and we will continue to wait. We will wait as long as it takes for the company to resolve the pollution of our waters. (community member)

The TUV audit states that PT Mustika Sembuluh was waiting for the village head to develop a budget plan for the payment of compensation for the contamination of the water. The village secretary of Pondok Damar stated that a budget was being developed with community members, but most community members interviewed appeared unaware of this and reported not having been consulted by the village head in this regard.

No community members had heard of FPIC and while some had heard of the RSPO, reactions were generally negative, with community members pointing out, in practice, participation and consultation had not been carried out properly, not to mention the right to say 'no' to the company's project. The lack of accuracy of the TUV report, of which relevant sections were translated during the interviews, was a particular source of discontent.

The RSPO is just theory, not practice. We should all be around the same roundtable, but we are not. Also, the auditors you mention are wrong, and the company is using them to make themselves look good. How much are they paying them? (community member)

Lack of information, communication and transparency were the main obstacles identified by the community of Pondok Damar. Many reported that it was difficult for them to access information from the company, despite numerous requests.²⁶

We have asked many times for maps and information on the HGU of the company, but we have not obtained them, and we have not been given reasons why we cannot access these documents. (Pak Robi)

A number of unfulfilled promises since an agreement signed on 22nd September 2008 between Pondok Damar and PT Mustika Sembuluh were also reported, including failure to provide electricity to Pondok Damar and illegal planting of oil palm close to the edges and within certain roads, as well as in rivers. The complete agreement of 2008 is as follows:

1. Gradual employment of Pondok Damar villagers in line with their education and competence.
2. The company is willing to remove the oil palms planted along the road connecting Pondok Damar and Tabiku villages and restore the road to its original condition.
3. The Company is willing to resolve the problem of graveyards planted over with oil palm.²⁷
4. The Company is willing to resolve the issue of waste polluting the river, and the company is willing to provide clean water facilities.²⁸
5. The problem of oil palm being planted too close to the river and the village road will be immediately resolved by the company and adjusted to prevailing regulations.
6. The Company is willing to build a Secondary School inside the plantation area
7. The Company is willing to maintain and protect the safety of the Pondok Damar village road.
8. The Company is willing to pay for the peace ceremony.
9. The Company is willing to pay for the ceremony of the cutting of the *hinting pali* (*terinting sawang*).

Four years on, the community renewed these same demands in June 2012 on the occasion of the *hinting* ritual, with further demands as follows:

1. 20% of the HGU to be allocated as plasma, in accordance with Ministry of Agriculture Law 26/2007, article 11.²⁹
2. Enclavement of around six ha of land belonging to Pondok Damar village.
3. Enclavement of the former location of Pondok Damar (Kampong Padas).
4. Re-negotiation of land conflicts in PT Mustika Sembuluh Estate 1 in the names of:
 - a. Rejo³⁰
 - b. Yamin³¹
 - c. Teriman
5. Gesoliasa and Ameliasti, as well as all other customary landowners in Pondok Damar.
6. Resolution of land conflicts in PT Mustika Sembuluh Estate 2 in the names of:
 - a. Mawan (deceased)
 - b. Ibit.
7. Capacity-building for the development of unused land owned by the community of Pondok Damar.
8. Provision of job opportunities.
9. Support for the development of fishery and animal husbandry.

Finally, the community was adamant that it would resolve ongoing conflicts in a peaceful, non-violent manner. Some did express their worries about BRIMOB (mobile brigade) and army personnel in the concession, questioning the legality behind their presence. An army representative interviewed at the *hinting* ritual affirmed that there was no army presence within PT Mustika Sembuluh and that it would be illegal for the company to hire either the military or BRIMOB in the concession. Contradictorily, confirmation was obtained directly from company representatives interviewed that military personnel were requested to enter the plantation by PT Mustika Sembuluh to supervise the plantation and ensure the security of company staff. A soldier carrying an M-16 rifle inside the concession was seen and

photographed by the NGO consortium on the first day of their visit within the concession.

Bangkal

—
The village of Bangkal is located in the north-east of PT Mustika Sembuluh Estate 2 and covers 14,402 ha. Its population is of 2,096 individuals (or 639 households), 65% of whom are Dayak. It is said that Bangkal is the oldest village in the area, dating back over 150 years.

A striking feature of the interviews carried out in Bangkal was the discrepancy between the point of view of the village chief (a former employee of PT Mustika Sembuluh) and the community members. While community members reported that little to no information had been conveyed to them about the company's operations, the village chief affirmed that a complete FPIC process had been carried out.³² He also affirmed that copies of the SIA, EIA and various Standard Operational Procedures (SOPs) had been shared with him by the company, but did not show these to the NGO consortium, stating that he had not had time to look for them (three days after the NGOs first contacted him requesting to meet) and later that he could not find them (three days after the meeting). Community members chose not to join the meeting with the village chief and those who did join towards the end pretended they had never met us.

■ *Contradictory statements were obtained as to whether or not military personnel are hired by the company to supervise the concession / Sophie Chao*



The village head explained that a village team (*tim desa*) and a land clearing team had been created as part of the *sosialisasi* activities of PT Mustika Sembuluh early on in their interaction with Bangkal. He reported that several consultations had been held and that he had been invited to make inputs to the TUV audit in 2009.

All the issues were clearly explained to us, the process was good. I would say that it was 95% perfect. I say 95% because obviously there are always problems in concessions, that's just normal. It's more a question of balancing out the pros and cons.

Although he was reportedly involved in the process early on, the village head was unable to give an estimate of the area of Bangkal which is located inside the PT Mustika Sembuluh concession, or of the location of HCVs (a term he was unfamiliar with, including in bahasa Indonesian), or of the location of any enclaved lands. This was despite claiming to be fully involved in the company's social and environmental assessments.

The village head also affirmed that the company had played an important role in developing the village and providing social and infrastructural support. He is also reportedly involved in all activities of the company's Community Development (CD) program and states that he took part in participatory mapping activities (the NGO consortium were not able to see copies of these maps upon request but were told by the village head – and his wife – that 'they definitely exist.')

An interesting feature of the conversation with the village head was the fact that he was reluctant to side with the community whose interests he is expected to represent.

I used to be a small person, but now I am a big person. ... I am the government here. ... There are no problems – as the government representative here, I would know. ... I am not here to side with anyone or any group. I am neutral, in the middle. I just facilitate things for others.

According to the village head, 60 ha of plasma were in place and the plasma scheme had been fully socialised with the communities, along with a number of related SOPs. He also stated that the presence of PT Mustika Sembuluh was bringing a lot of jobs for the community of Bangkal, but was unable to give us an estimate of how many community members were employed by the company, even though he claimed that:

People only get jobs with the company if they get a recommendation from me. If not, they don't. All demands to the company pass through me, then to PT Mustika Sembuluh.

In terms of recommendations, the village head stated that the company needed to clarify the nature of the nuclear estate and smallholder scheme, as there are no written agreements for this yet.

The main thing is the management of the plasma and its development. The plasma scheme is what will develop the community and benefit their children. Otherwise, they are too lazy to work.

On a number of occasions, the village chief clarified that he was 'proud of what the company had done and was doing', and that no problems had ever been reported to him by the community of Bangkal, either in relation to land or any other matter. Curious as to what he meant by feeling proud of the company, he later explained that he had worked for PT Mustika Sembuluh for eight years, rising from the position of clearer to heavy machinery staff, and then became village head in 2008. On this basis, he claimed to be very well informed as to the process undertaken by the company to socialise their projects.

I used to work at PT Mustika Sembuluh, so I know that they have nothing to hide. If anyone, I would know. Their procedure is perfect.

However, interviews with community members revealed a very different picture. The overall impression given was that they had not been involved in consultations or *sosialisasi* with the company, and that

where their village head had been involved and informed, there had been a significant lack of communication with the wider community by the latter.

According to Pak James, a community member of Bangkal, the company approached the community and expressed their wishes for the development of oil palm, in what he described as a 'negotiation process'. Many complained of the lack of realisation of the promised plasma and noted that the lack of written agreements at the time was a problem they had come to realise in retrospect. No community member reported having seen the participatory maps, the HCVA and SIA or EIA, or the Environmental Impact Analysis (AMDAL), noting that these were probably with the village head. They report having contacted the company and the Environment Office as well as National Land Agency on several occasions to demand copies of these documents.

These documents still haven't been given to us by any of them. We are still waiting. Do we have to pay them to get them? (community member)

According to the company, all documents, including the SIA, EIA and HCVA can be accessed by stakeholders if they submit a written request to the company. No documents are distributed without a formal request in accordance with this procedure. However, as raised by several community members, if the communities are not aware a) that documents relevant to them exist in the first place (such as HCVA) and b) that documents are only distributed upon formal written request, it is highly doubtful that pro-active transparency is genuinely being implemented by the company.

A general feeling of discontent and resentment was conveyed by community members, who feel they were lied to by the company, including the promises of plasma and electricity. The community of Bangkal also resented the fact that promised employment has not been realised. PT Mustika Sembuluh reportedly verbally promised a rate of 75%

local employment at the early stages of *sosialisasi*, as a way to remedy the loss of the communities' forests and traditional livelihoods base. While the village chief suggested that plasma was the communities' main demand, a number of individuals interviewed stated that they 'never wanted them [the company] in the first place.'

Before the plantation, we had a better life. We could hunt deer and pigs in the forest. We were also able to access clean water for free. We were happy with our forest, our hunting and our fishing. The plasma scheme was encouraged, so we went with it, but we were only told the good things about oil palm, none of the bad things. Otherwise, we would have refused of course. It turns out it was all lies. All of the process with the company was about negotiating terms and deals, not about saying 'yes' or 'no'. (Pak James)

We are asking for plasma, but to be honest, we need plasma because our forest is gone, and all the land is in the control of the big palm oil companies, so our room to choose is limited. While we wait for our fallow lands to be usable again, we need jobs to meet our daily needs. (community member)

While the community members interviewed blamed the company for a number of these problems, they were also critical of the village head, suggesting that he was not representing their interests and failing to impart important information to the community. Certain individuals commented on the fact that he had worked for the company for several years, implying that he became village head with their support.

He rose within PT Mustika Sembuluh, and then he stopped working there when he became village head. Many strings were pulled. While he rose, others fell. (Pak James)

I could go to PT Mustika Sembuluh and get rich, for sure. That's the easy way. But if I did that, I would become a rich monkey (later explained by Pak James as losing one's dignity).

Community members reported not having been invited to the TUV consultation

meeting. One individual happened to be in Sampit at the time and found out about it by coincidence. He attended the meeting and made demands that land be returned to the community of Bangkal if the land conflicts were not resolved. He reported not having been given notes of the meeting but was concerned that his presence had been interpreted as consent.

I wrote down my name and contact details on a participant list, even though I was not invited. Does that mean the company now thinks I gave my consent? It's really unclear to me. Also, I walked out of that meeting in the end, but I'm sure that's not in the meeting notes, which I haven't seen. (Pak James)

According to the community, participatory mapping was not undertaken by the company, either of customary lands or of HCV sites. Sharing the experience of some of the other villages, community members described that the plantation was established on their religious (*keharingan*) sites without their consent, in what was described as a violation of their customary rights, which could only be resolved through a customary ritual.

On another note, according to community members, oil palm is also being planted illegally in a number of places, such as along national roads within less than five meters (these were shown to the NGO team in the field) and across certain roads and rivers.³³ One such road is that between Pondok Damar and Tembiku, built by the government in 1987 under the village development acceleration programme (*program pembangunan desa tertinggal*).

Are they allowed to do this? When they plant all the way up to the road, that leaves us no room to use that land. Some rivers have ceased to be because they are now full of oil palm. There are even roads that have been shut off because they have been planted with oil palm, such as the roads between Bangkal and Pondok Damar, and Pondok Damar and Tembiku. We used to use those roads all the time. Now, we have to use the company's roads. Do you know what that means? It means that we have to report to the

company every time we want to go somewhere. Some of us have even been refused access to our own homes. That is simply not done. Why do we have to report to the company when we want to do anything? It's the company that should be reporting to us. (Pak James, Bangkal village)

Land conflicts have also proliferated as a result of the process through which the company obtained the land in Bangkal. Because the company did not seek to find out who the land belonged to, and who it was inherited by, customary ownership and use rights were neglected. In a number of cases, the company signed land transfer agreements with one family member, while the rest of the family was not informed, even though they also had rights to that land. This in turn has created a deep sense of resentment and friction within families.

According to one community member, there are 2,000 ha of land which have been disputed since 2005 between the company and the community of Bangkal. Several efforts to solve the conflicts have been undertaken by the community. Recently, they sent a letter to the company expressing their grievances, and reported their case to local and provincial governments. The community have requested that the company follow their customary rituals as a means of conflict resolution which resonates with their culture and *adat* norms. So far, they have received no response from the company. Bangkal has also reported their case to the Indonesian National Human Rights Commission, which in turn made recommendations to the local authorities, but this has not had any significant impact on the conditions in the field for the community.

The main recommendation that emerged from the interviews was that consultations and the FPIC process cannot involve village heads alone, especially when these fail to socialise with the community they represent.

It can't be only in the hands of the village head and adat leaders. It has to be in everybody's

hands. Otherwise it breaks up the community itself. Of course we need information. Of course we want to be involved. (Pak James)

Tanah Putih

Our life depends on the land. Where else can we live? In the clouds? What are we without our land? (Pak Umbung)

The village of Tanah Putih is located in PT Mustika Sembuluh Estate 3. It covers 3,600 ha with a total population of 3,180 individuals (in 769 households), 82% of whom are Dayak. Other ethnic groups residing in Tanah Putih include Javanese and Batak. The village head reports that around 500 ha of the village's customary lands are within the PT Mustika Sembuluh concession.

At the time of the RSPO audit, non-compliance by PT Mustika Sembuluh was found in relation to Criterion 2.2³⁴ due to an ongoing land dispute since 2005 with two individuals, Tarang and Umbung from Tanah Putih over ancestral graveyards which were desecrated by the company during land clearing and development work. The audit verification states that a conflict resolution mechanism was agreed upon by the parties involved and on that basis, the non-compliance was considered

closed. The Tarang-Umbung cases are the only land conflicts identified in the PT Mustika Sembuluh concession by TUV in its certification audit. Part of the interviews therefore sought to find out whether the conflict resolution mechanism had been successful in resolving the conflict, as this was the justification upon which the non-conformity was closed.

Grave concerns —

In 2003, the ancestral graves of Tarang and Umbung were destroyed by company workers clearing the land for the construction of a road. Neither were informed beforehand that this would take place. Pak Umbung states:

We were not told anything about the construction of this road. They just bulldozed right through our graves. Now, the ancestors rest beside the road. Everyday, they are visited by trucks of fresh fruit bunches. If we had not fought for our ground on this case, they would be run over by the trucks a hundred times a day. How is that acceptable?

The Tarang-Umbung case was taken to the customary court in September 2008 where it was ruled that compensation would be of 64 million rupiah for Umbung and 25 million

■ *Ancestral graves beside company road / Sophie Chao*



rupiah for Tarang. Both rejected the stated amounts as inadequate, demanding 1 billion rupiah (Umbung) and 750 million rupiah (Tarang). They also lodged a report against the company to the district police department. Later, another round of negotiations took place in the presence of local NGOs Save Our Borneo and WALHI Kalteng and the affected parties changed their demand to seven pieces of Melawen plates³⁵ (Umbung) and three pieces of Melawen plates (Tarang), later reverting to the equivalent in monetary compensation. A documented mechanism towards resolution was accepted and signed by the company, Tarang and Umbung on 6th November 2009 (copies were shown to the assessment team). However, three years on, the compensation amount has not been agreed to by the company as it is said to be ‘unrealistic’.

According to Pak Umbung, the ancestral graves cannot be measured in terms of monetary value:

We asked for the Melawen plates to show how much our graves mean to us. The value of our *adat* graves depends on our *adat* rules. They demand respect and care. The Melawen plates were a way to express that. Also, the company ignored our plea for over three years after the desecration. They need to pay for that as well, because three years is a long time to suffer for us, and for our ancestors.

After several unsuccessful meetings at the level of the sub-district, district and provincial government, Umbung and Tarang recently appealed to the Indonesian National Human Rights Commission (Komnas HAM) for support. Komnas HAM accepted to act as facilitator in the resolution of the conflict, but the communities report that PT Mustika Sembuluh has not agreed to this process and the situation is at a stalemate as a result.³⁶ They are now uncertain as to the next step to take, as they do not feel confident to opt for formal court proceedings due to lack of knowledge of legal procedures:

We lack education – we don’t know how formal courts work, and no one has told us or socialised

this to us. This is advice coming from far away to our village. We don’t know what step to take next. (Mas Bibin, son of Pak Umbung)

A major concern for the communities was the fact that the company has been certified despite the fact that ongoing land conflicts have not been resolved. The fact that the RSPO P&C do not explicitly require conflict resolution but rather the existence of conflict resolution processes implemented and accepted by the parties involved,³⁷ was identified as a limitation of the P&Cs as they stand.³⁸

It’s not enough that there is a mechanism in place. What matters is that the mechanism is effective. Also, the mechanism might be accepted by our leaders, but not by the rest of the community, so we have to be really careful when we talk about a mutually accepted mechanism. In some ways, this makes things easier for the company, because as long as they show they are making efforts towards resolving conflicts (genuinely or not), it is taken as a positive sign and enough to get certification. (Pak Umbung)

FPIC process —

Interviews with community members revealed not only that the Tarang-Umbung case is still ongoing (three years after the TUV audit) but that there are also numerous other ongoing land conflicts which were not mentioned in the TUV report.³⁹

One community member, Pak Mengong, explained that the company did not give him any choice with regards to the releasing of his land. He is still waiting for compensation, as the compensation offered by the company was not satisfactory to him, but doubts that he will obtain it, as the company started planting oil palm on his land immediately after the release.

I lost around half of my land back then, and I had no real choice. The land was *ladang* [rotational agricultural land], but also rubber gardens, rattan and vegetable plots, and fruit trees. Straight after, the company started to plant. I did not agree to the compensation then, and I do not agree with it now.

Another two individuals reported that their land had also been taken by the company without their consent (Pak Luhang Jaga and Pak Wil Mabigi⁴⁰), and it was reported that these were only some of many similar cases in the village. Several community members are still waiting for compensation for the land they released to the company. Others want their land back, not compensation:

These lands were lost without our consent because we didn't get enough information. These are *adat* lands: our rights to it must be returned, not compensation. (community member)

Community members are also confused as to the meaning, area and location of both HCVs and enclaved land.

We can't tell the difference between HCVs and enclaved land, because it seems like all the HCVs are in enclaved land. (community member)

We don't know where the HCVs are unless we happen to come across the signs that mark them out. And we don't understand why our gardens are sometimes marked as HCV. Why put HCVs on the land we own? What does that mean in terms of our access and right to own those lands? (community member)

Community members also questioned why their ancestral graves were not marked as HCVs, as they were of important cultural value.

Some of our graves (*sandung*) are over 100 years old. Why are they not considered as HCVs? One of them is marked by an ancestral tree. It is surrounded by oil palm. (community member) (note: the NGO assessment team was taken to visit the aforementioned site).

Although there is a list of enclaved land available, community members stated that they were unclear where their enclaved land was, and that they had received less than they had asked for.

We suspect that some of the enclaved land is being planted with oil palm, but we can't be sure because we don't know exactly where this

enclaved land is. But surely we should be the ones who decide where the enclave should be? Also, most of us got less than we asked for. Those who asked for five ha got two. Those who asked for two got one. (Tarang)

The village head (also the former village Secretary) shared his recommendations regarding HCVs as follows:

One of the main grievances of the community was that the presence of the company had not brought any particular benefits in terms of economic development for the village. In particular, the lack of realisation of plasma schemes and of employment was resented. Many reported that they were not offered plasma schemes by the company in the first place.

You can count the number of people from our village who managed to get work at the company on the fingers on your hand. They bring in people from outside and tell us that we don't know how to take care of the oil palms. (Tarang)

They think we are stupid country people, and the only thing we can do is pick the remainder of the fallen fruit to sell. They think we are stupid, because we don't have a proper education. It's true we don't, but who is not able to pick fruit? (community member)

Significant concern was expressed over the fact that the company has blocked both roads and rivers by planting oil palm, thereby limiting the communities' access to both. An example was a 23 km road linking Tanah Putih to Bangkal, which was built in 1997, which is now blocked by oil palm. The borders of the concession itself also remain unclear to most, as no maps were made available to them (including the village head). No copies of the SIA, EIA or HCVA were available to them either.

The limited access to employment and the physical blocking of used roads and rivers was described as restricting the development and wellbeing of the village, which community members say is 'neglected' (*terlantar*) and 'left behind' (*ketinggalan*).

We thought economic benefits would come from the company's arrival, but all we face are hindrances. We are not free anymore in our movements. (community member)

We used the river everyday for trade and for transport. But now the boats cannot cross, and we have to use company roads to get anywhere. (village head, Tanah Putih)

Lack of clear and complete information from the company was blamed for a lot of the problems faced by the community. Some reported that it was only after problems emerged that they were given information or relevant documents.

We want our rivers and access to the roads back now. For now, we are just floating in a kind of unclear middle ground. We don't want to be observers of our own fate. And these are not recommendations or suggestions. They are demands.⁴¹ (community member)

Customary rights and FPIC: The role of the government and the company

The government

The NGO consortium carried out interviews with representatives of the Plantations Office (Disbun), the Environmental Office (BLH) and the Forestry Office (Dishut) in Sampit, in relation to PT Mustika Sembuluh's operations. One of the major findings from these interviews was that there is a significant lack of coordination and communication between relevant government bodies. Several reported not being informed in time (or at all) regarding the company's operations and projected activities. The Forestry Office representatives noted that they had not been significantly involved in the early years of PT Mustika Sembuluh's operations in the area, or in the opening of the concession. Few of the representatives interviewed had heard of the RSPO, or knew that PT Mustika Sembuluh had recently been certified, or what this certification entailed. The right to FPIC was unknown to all, as

was the relevance of international human rights law and the RSPO as the contextual framework for FPIC.

The Plantations Office representatives reported encountering a number of obstacles in conducting their work to ensure the full legality of the licensing process in accordance with national legislation and local regulations. One of these relates to the recent division resulting from Law No.5 of 2012⁴² of the district of East Kotawaringin into separate districts: Kotawaringin Timur, Katingan and Seruyan. A consequence of this change has been that the local government of East Kotawaringin finds itself with restricted scope to monitor the operations and licenses of oil palm companies, and faces problems of coordination with other governmental bodies both within East Kotawaringin and with Seruyan. The fact that the concession of PT Mustika Sembuluh stretches over two districts (Seruyan and Kotawaringin) was reported as a complicating factor as it is often unclear which district's government bodies should be, or are, involved, in the monitoring of the company's activities and the follow-up of complaints and conflicts.

Not only are the roles of each government body unclear, the allocation of responsibility for each district is also unclear (Plantation Office representative).

Not all government bodies appear to have been involved in all the stages of the licensing process of PT Mustika Sembuluh. The Forestry Office, for example, was only involved in the early stages when they made recommendations regarding the location and status of the land to be acquired and the allocation of the *izin prinsip*. The Plantations Office was involved in the allocation of permits but is not in communication with the company with regards to its operations and plantings. One result of this lack of continuity across different government bodies' involvement has been lack of due supervision, monitoring and oversight of the company's operations, as admitted by the government representatives themselves. With regard to the legal procedures of obtaining permission

to clear land, government representatives from the Forestry Office noted that most companies begin planting prior to receiving all necessary permits (often only with an *izin prinsip*) as the process tends to be time consuming (up to three years) and costly.

Even though they are not allowed to, they often plant before getting all the permits, because they see that waiting for the permits means loss of revenue from the land (Forestry Office representative).

In terms of environmental standards, BLH categorises PT Mustika Sembuluh as a ‘blue category’ company, meaning that it is relatively in line with the legal requirements (the scale being gold, green, blue, red and black categories). However, they confirmed that two cases of water pollution had been reported against the company in 2008 and early 2012. Neither the Forestry Office nor the Environment Agency were aware of the meaning of HCVs. Furthermore, it was reported that, as with many other oil palm companies, some Environmental and Social Impact Assessments had only been carried out after planting had taken place (‘sometimes even when the oil palm trees begin to bear fruit’).

PT Mustika Sembuluh

The company representatives interviewed acknowledged fully that the lands on which the concession is located are customary lands and that the company are the newcomers. In line with PT Mustika Sembuluh’s commitment to transparency of company information, as stated in their management letter of 16th March 2009, the NGO consortium was able to view and photocopy some documents upon request. These included the HCVA, the HCV Management Plan 2011 – 2012, the SIA, a number of SOPs and maps of customary lands. Company policies are also clearly posted in the Regional Office (including Social, Environmental, and Corporate Social Responsibility Policies). However, no community

members interviewed had obtained or seen copies of these documents, and it is not company policy to automatically provide copies of documents to the communities (these are obtained only upon request). One village head reported having copies of the documents, but did not show them to the NGO consortium. Several community members complained that information was not being conveyed to them in good time, if at all, and that they lacked knowledge to make informed decisions as a result.

While the company has taken a number of measures to remedy the non-conformances identified by TUV in their audit of 2009, such as the development of SOPs and further negotiations with Tarang and Umbung over the grave conflict, findings from the field suggest that these have so far largely failed to improve the FPIC process in the eyes of local communities, whose representation is limited and often undermined by the village heads. Important documents, such as SIAs, SOPs (for Guidance for Land Acquisition, for Recognition of Traditional or Customary Rights of the Community) and maps of HCVs exist, but have not been provided to local communities. The participation of communities in the production of such documents also appears to be highly limited. A number of land conflicts have yet to be resolved three years on from the certification of PT Mustika Sembuluh, only a small minority of which may be said to be based on opportunistic claims from certain community members. The basic needs of at least one community in relation to water access and transport are significantly limited by the activities of the company. Finally, opportunities to benefit from the plantation development for local communities have been either limited or unfulfilled, leading to a number of collective acts of protest.

While the TUV audit of 2009 identified two ongoing land disputes (one of which they claim was successfully resolved), field findings suggested that there are many more ongoing cases. While a conflict resolution

mechanism has been set up by the company in a participatory manner, it appears to have been developed with the village heads only, leading community members to question its validity and usefulness, given that some conflicts have been ongoing since 2007. The case of Tarang and Umbung, having failed to be successfully resolved through the conflict resolution mechanism, has now been taken by the community to the Indonesian National Human Rights Commission (KOMNASHAM), but the company has refused Komnas HAM's mediation, preferring to continue dialogue and negotiation with the individuals concerned directly.

As such, it can be said that the conflict resolution mechanism has not succeeded in resolving this conflict, and that parties involved have not yet mutually agreed on an alternative channel. With regards to compensation, the company has established a mechanism for the identification, calculation and compensation of loss of legal or customary rights of land, but this is not accepted by all parties. Several community members are still waiting for compensation for land lost. However, the company has taken steps to develop MoUs (around 80) with individual community members in order to secure their customary rights within the concession. A village team (*tim desa*) has also been set up, facilitated by the company, and including community members and representatives, to socialise the activities of the company and to identify emerging land conflicts.

The company has identified and clearly marked out HCVs within the concession and developed an HCV Management Plan for 2011 – 2012. Posters of wildlife and endangered species are also put up along major roads (these were seen in Estate I only). However, explanations of the concept and purpose of HCVs with local communities (especially of HCV5 and HCV6) has been very limited. Most communities are unclear as to how their rights and access to HCV5 and HCV6 areas will be secured on the long-term. Furthermore, based on

the responses of company representatives, the difference between enclaved land and HCVs is ambiguous; from their explanations, it appears that a number of HCVs are in fact located in enclaved land. Community members themselves are largely unable to differentiate the two. Furthermore, certain areas critical to local communities' traditional cultural identity (such as ancestral graves) were planted or surrounded by oil palm prior to mapping, causing concern among community members as to how they will be protected in the case of further oil palm development. A number of areas have been enclaved for local communities, but in most cases the areas of these enclaves were smaller than that requested.

Finally, the pollution of rivers affecting Pondok Damar has yet to be resolved. While drinkable water has been provided for the community, they are still waiting for access to water for other daily needs (including washing and cooking) and are resorting to buying water and collecting rainwater instead. Many have had to dig wells at their own cost as a result of the pollution. It is to be hoped that the agreement signed on 27th June between the community, the company and the sub-district, will bring a speedy resolution to this urgent matter.

Identified legal inconsistencies

A number of legal inconsistencies were identified throughout the course of the field investigation. First, the legality of the company's operations is questionable in terms of land clearing prior to obtaining the HGU. The TUV audit is contradictory in its statements on this issue. On the one hand, it states that:

Approval of these HGU titles is in progress (as verified from letter received from the National Land Agency on June 15, 2009). *The company has already planted on the area of 6,188.804 ha, for which the HGU for this area is still pending approval from the local government, however this is not illegal as the company already has their*



location permit for this area and is permitted to begin operations while awaiting for HGU approval for this area. (emphasis added)

■ Meeting with company representatives at Regional Office of PT Mustika Sembuluh / Carlo Nainggolan

On the other hand, it states that:

The company only develops land on which they have the required land use titles (HGUs).

The company was somewhat unclear in this regard, stating that on the one hand, economic benefit came first, but also that the company would always ‘follow the rules’.

Secondly, while plasma has been promised to the communities, only 182 ha have been allocated out of 3,890 ha to be allocated in accordance with the minimum of 20% of the total HGU under Agricultural Minister Regulation 26/2007.⁴³ This is causing significant stress for the community members involved, as they are unclear as to when the promise from the company will be fulfilled. Violation of the ministerial regulation by PT Mustika Sembuluh prompted thousands of people in Seruyan District to take their grievances to the office of the *Bupati* of Seruyan to demand that the government press the company to realise this requirement. From information obtained from government agencies and local communities, PT Mustika is far from the only oil palm company operating

in Kotawaringin Timur and Seruyan districts that has failed to comply with this requirement.

In response to the communities’ complaints, the Bupati of Seruyan stated that as PT Mustika Sembuluh had received its Plantation Business Permit (IUP) prior to 2007, the Minister of Agriculture’s Regulation 26/2007 was not applicable. A similar statement was also made by the head of the provincial plantation office, Erman P. Ranan. However, paragraph 2 Article 42 of the Chapter on Transition in the Agriculture Minister’s Regulation 26/2007 stipulates that:

1. Plantation Business Permit (IUP) or Plantation Business Registration Letters (SPUP) that have been issued prior to this regulation are still deemed valid.
2. Plantation companies that already have the permit or the Plantation Business Registration Letter as referred to in paragraph (1) in the implementation of the plantation business must abide by this Regulation.

Paragraph 2 clearly specifies that plantation companies that hold a permit or a Plantation

Business Registration Letter must abide by this law and PT Mustika Sembuluh, as a company holding such permits, is also bound by this regulation.

Thirdly, community members in Pondok Damar are concerned about the planting of oil palm along the edges of rivers, in contravention of the Decision of the President of the Republic of Indonesia Number 32/1990 on Management of Protected Areas, Article 16(a). In accordance with Forestry Law 41/99 article 50 paragraph 3(c), the felling of trees is prohibited within a radius or distance of:

- 500 meters from the edge of a reservoir or lake;
- 200 meters from the edge of springs and from the banks of rivers alongside swamps;
- 100 meters from river banks;
- 50 meters from banks of streams

Local communities claim that this significantly limits the area of land that they can make use of for their own needs.

- *The planting of oil palm within 100 meters of the river was witnessed at Sungai Sampit (S 02°35'19.7" – E 112°32'54.5")*



Fourthly, significant discontent is also voiced by a majority of community members over the fact that priority of employment is not given to community members but to outsiders. It would thus appear that the company is failing to give local communities opportunities to benefit from the plantation development. In certain cases, communities feel they are being restricted in their movements and development opportunities due to the blocking up of rivers and roads with newly planted oil palm, leading to transport being restricted to company roads.

Oil palm companies operating in Indonesia are required to provide jobs and improve local incomes, in line with Law 18 of 2004 regarding Plantations, Article 3:

Plantations are organized [sic] with the purpose:

- a. *to increase people's income;*
- b. *to increase state revenues;*
- c. *to increase state hard currency revenues;*
- d. *to provide jobs;*
- e. *to increase productivity, added value, and competitiveness;*
- f. *to meet the consumption needs and raw materials for domestic industries; and*
- g. *to optimize natural resource management in a sustainable manner. (emphasis added)*

While the law itself does not say anything about the company having to prioritise local communities per se, the needs of local communities also need to be accommodated by the company. The situation in PT Mustika Sembuluh is one where a majority of staff and workers are brought in from outside the local area, causing local discontent and contributing to a certain degree of inter-ethnic tension.

Finally, there are also indications that BRIMOB is operating within the concession (community statements and sighting in Estate 3). Community members report seeing them regularly, and the company itself admitted hiring Safety Apparatus (which could be the police or the army) to ensure the security of the concession. However, an army representative interviewed at the protest assured the NGO consortium that this was not the case, and that it would be illegal to do so.

Recommendations

Recommendations from local communities

Recommendations from the local communities of Pondok Damar, Bangkal and Tanah Putih were as follow:

1. Implementation of the agreement between PT Mustika Sembuluh and Pondok Damar of 1st January 2012 over pollution of local water supplies by mill effluents in 2008 and again in 2012.
2. Compensation for land taken from Pondok Damar without prior consultation.
3. Provision of job opportunities with PT Mustika Sembuluh on a permanent and regular basis, with priority given to local communities.
4. Information sharing by the company on the legal status of its operations, the lease agreement and duration and the legal status of the land within the concession after the expiry of the lease.
5. Further *sosialisasi* on the meaning and purpose of HCVs to local communities, as well as joint identification of further HCV sites considered by the communities as of high cultural and social value (including graves and sacred trees).
6. Enclavement of six ha of land in Pondok Damar for communal village use.
7. Enclavement of the former location of Pondok Damar village (Padas village).
8. Resolution of all ongoing land conflicts, including but not limited to the cases of community members Rejo, Jamin, Teriman, Gesoliasa, Ameliasti (Estate 1) and Mawan (Almarhum) and Ibit CS (Estate 2).
9. Implementation of plasma scheme with due information-sharing by the company on its implications, terms and conditions to community members interested in joining the scheme.
10. Negotiations with the company over the blocking of roads and rivers with planted oil palm.
11. Provision of all relevant documents to community members, including HCVA, SIA, information on the company's acquired HGUs, AMDAL and available maps.

Recommendations from government bodies

The main recommendation from the government representatives interviewed (Environment Office, Plantations Office and Forestry Office of East Kotawaringin) was for the roles, responsibilities and mandates of each institution to be clarified with regards to the monitoring and supervision of oil palm investments and operations. A clarification of this within East Kotawaringin, and in relation to the new district of Seruyan, was pointed out as essential to avoid loopholes for the companies and to improve the oversight of company operations by the government, particularly when these overlap more than one district, as is the case for PT Mustika Sembuluh

Recommendations from PT Mustika Sembuluh

PT Mustika Sembuluh staff informed the NGO consortium that they had recently discussed inputs and recommendations for the RSPO P&C review, and advised the NGO consortium to contact higher level staff to access these recommendations. However, the NGOs were unable to receive this information from staff contacted. A few recommendations were however made by staff interviewed at the estate, as follow:

1. HCVs to be recognised in law by relevant government bodies and not treated as neglected or degraded lands, so as to ensure that their management becomes the responsibility of the State as well as companies.
2. Government bodies to improve communication with private sector companies in relation to law and legal reforms, so that companies are informed in good time of changing regulations and can implement them in good time.
3. Better law enforcement on the part of the government and more clarity in terms of the specific mandates and responsibilities of different government bodies (eg National Land Agency, Environment Office, Forestry Office, Plantations Office) in both Seruyan and East Kotawaringin.

References

- Agricultural Minister Regulation 26/2007.*
- Cahyono H 2008 'The State and society in conflict resolution in Indonesia (conflict area of West Kalimantan and Central Kalimantan)' in *Journal of Indonesian Social Sciences and Humanities*, Vol. 1: 151–160. Available at <http://www.kitlv-journals.nl/index.php/jissh/index>
- Casson A 2001 *Decentralisation of policies affecting forests and estate crops in Kotawaringin Timur District, Central Kalimantan*. Center for International Forestry Research, Bogor.
- Central Kalimantan Province Tourism and Culture Board 2001 *Profile Central Kalimantan Province*
- Cleary M & P Eaton 1992 *Borneo: change and development*. Oxford University Press.
- Colchester M, P Anderson, N Jiwan, A Darussaamin and A Kiky 2011 *Securing High Conservation Values in Central Kalimantan: Report of the field investigation in Central Kalimantan of the RSPO Ad Hoc Working Group on High Conservation Values in Indonesia*. RSPO. Available at <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2012/securing-high-conservation-values-central-kalimantan-report-fi>.
- Decision of the President of the Republic of Indonesia Number 32/1990 on Management of Protected Areas, Article 16(a).
- Dinas Perkebunan Provinsi Kalimantan Tengah 2011 *Perkembangan Usaha Perkebunan Besar Provinsi Kalimantan Tengah*. 31st December.
- District Government East Kotawaringin (nd) *History of Kotim*. Available at <http://kotimkab.go.id/selayang-pandang/sejarah-kotim.html>
- EIA/Telapak 2011 *Caught REDD handed*. Available at www.eia.org and through <http://eiainvestigator.wordpress.com/2011/06/16/redd-indonesia-moratorium-norway/>
- Forestry Law 41/99.*
- Jakarta Post 2012 *Governor may have breached moratorium*. 5th June 2012. Available at <http://www.thejakartapost.com/news/2012/06/05/governor-may-have-breached-moratorium.html>. Accessed 6th August 2012.
- Kingsbury D & H Aveling (eds) 2003 *Autonomy and disintegration in Indonesia*. Routledge Curzon, London.
- Law 18 of 2004 regarding Plantations.*
- McKinnon K 1996 *The ecology of Kalimantan*. Periplus editions.
- Mongabay 2012 *Despite moratorium, Indonesia failing to take action on illegal palm oil plantations*. 12th July 2012. Available at <http://news.mongabay.com/2012/0712-eia-investigation-pt-best.html>
- Monografi Statistik Pondok Damar, Tanah Putih and Bangkal 2009.*
- Persoon AG & M Osseweijer (eds) 2008 *Reflections on the heart of Borneo*. Tropenbos International, Wageningen, the Netherlands.
- PT Mustika Sembuluh 2009 *MOU on the management of adat rights/traditional rights and*

HCVs between PT Mustika Sembuluh and the community of Bangkal village. 124/MoU/BM-PR/XII/2009.

PT Mustika Sembuluh 2011 *Programme for realisation of HCV management plan 2011 – 2012*.

RSPO 2009 *Stakeholders public announcement: PT Mustika Sembuluh Certification Assessment*. Available at <http://www.rspo.org/sites/default/files/PT%20MS%20Public%20Announcement%20-%20English%20090909.pdf>

RSPO 2011 *Securing High Conservation Values in Central Kalimantan: report of the field investigation in Central Kalimantan of the RSPO Ad Hoc Working Group on High Conservation Values in Indonesia*. Forest Peoples Programme, Moreton-in-Marsh. Available at <http://www.forestpeoples.org/sites/fpp/files/publication/2012/08/final-report-field-investigation-rspo-ad-hoc-wg-hcv-indo-july-20113.pdf>

Sercombe P & B Sellato (eds) 2007 *Beyond the green myth: Borneo's hunter-gatherers in the twenty-first century*. Nordic Institute of Asian Studies, Copenhagen.

Sevin O 1983 *Les Dayaks du Centre Kalimantan: etude géographique du pays ngaju, de la Seruyan à la Kahayan*. ORSTOM, Paris.

TUV Rheinland 2009 *Public summary report: PT Mustika Sembuluh*. Report no. 106469. Available at http://www.rspo.org/sites/default/files/RSPO%20Public%20Summary%20Report_PT%20MS_TUV_08092010.pdf

Undang-Undang Republik Indonesia Nomor 5 Tahun 2012 Tentang Pembentukan Katingan, Kabupaten Seruyan, Kabupaten Sukamara, Kabupaten Lamandau, Kabupaten Gunung Mas, Kabupaten Pulang Pisau, Kabupaten Murung Raya, dan Kabupaten Barito Timur di Provinsi Kalimantan Tengah.

Wilmar International *CSR Tribune* December 2010, Issue 4. Available at <http://www.wilmar-international.com/sustainability/resources/WilmarCSRtribune4.pdf>

Endnotes

1. RSPO 2009; TUV Rheinland 2009.
2. Wilmar International *CSR Tribune* December 2010. Note: Wilmar International has committed to achieving RSPO certification for all units in which it has at least a 51% share in Indonesia by 2013.
3. McKinnon 1996.
4. Casson 2001
5. Persoon & Osseweijer 2008: 69 – 119.
6. RSPO 2011: 3.

7. Mongabay 2012; Jakarta Post 2012. Note: According to a Ministry of Forestry review, 'of 325 plantation companies in Central Kalimantan, 282 were suspected of 'non-procedural' forest use.' (EIA/Telapak 2011).
8. Central Kalimantan Province Tourism and Culture Board 2001.
9. District Government East Kotawaringin website (nd).
10. Sercombe & Sellato 2007: 21 – 22.
11. The name Dayak, carrying the meaning of 'upriver (people)' is frequently used by outsiders to refer to non-Muslim tribal groups. There are hundreds of Dayak groups across Borneo, each with their own ethnonyms, languages and cultural traditions (Sercombe & Sellato 2007).
12. Sevin 1983.
13. Kingsbury & Aveling 2003; Cahyono 2008.
14. Monografi Statistik Pondok Damar, Tanah Putih and Bangkal 2009.
15. The NGO consortium contacted Aksenta several times to arrange a meeting to discuss the findings of the Social Impact Assessment carried out by them for PT Mustika Sembuluh but received no response.
16. Cleary & Eaton 1992: 17 – 18.
17. Ibid.: 89 – 113.
18. The term *sosialisasi* is frequently used by palm oil companies to describe consultation with local communities, during which information pertaining to the development of plantations is shared. The term is used throughout the studies carried out in Indonesia to make clear the differences between this process and the process required to fully and adequately respect the right to FPIC, which, as it is shown, differs in many ways from the requirements and nature of *sosialisasi*.
19. Dinas Perkebunan Provinsi Kalimantan Tengah: *Perkembangan Usaha Perkebunan Besar Provinsi Kalimantan Tengah*. 31st December 2011.
20. On this point, the company reports that while they are open to providing employment opportunities to local community members, the communities have shown little interest in working as labourers, favouring instead employment as security guards, drivers, factory workers and operators. The company reports that where local community members have been employed as fruit transport contractors, their performance did not match the specifications or requirements of the company.
21. The TUV audit states that awareness of the importance of HCVs is achieved through the putting up of wildlife posters in public areas such as housing sites, offices, main roads and the surrounding villages of Pondok Damar, Tanah Putih and Bangkal. While posters were seen by the main roads in PT MS 1, they were not seen any of the villages within the concession.
22. Criterion 1.1: Oil palm growers and millers provide adequate information to other stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate

- languages & forms to allow for effective participation in decision making.
23. The TUV audit of Mustika Sembuluh states that the company undertook corrective action to the identified non-conformance with Criterion 2.3 and that 'traditional right[s] such as enclave areas owned by local communities have already been identified and marked on GIS maps' (p.45).
 24. *Damang* are village level institutions introduced at the end of the 19th century by the Dutch through which they administered the area. *Damang* are now accepted as the customary authorities.
 25. The TUV audit states that some people interviewed continued to fish in the streams to supplement their daily needs, but this refers to statements from company workers only, although a few community members are employed as well.
 26. A copy of the company's SOP on Transparency (No.47/PR/(2)/0312) is posted in the company offices in the plantation, in English.
 27. The company has already provided compensation in the amount of 500 million rupiah for 46 graves in 2010 in Pondok Damar. It is unclear how many further graves have been either destroyed or planted over with oil palm.
 28. The company reports that it has already given advice to the community on how to preserve water purity but that the community has not taken the necessary steps to do this.
 29. The company reports that 183 ha out of the 250 planned ha have been allocated to date in Pondok Damar.
 30. The company reports that Rejo's claim over nine ha overlaps with the land of 25 individuals in Pondok Damar and thus the claim was rejected on 8th May 2012 on that basis.
 31. The company reports that Yamin's claim over 50 ha in total overlaps with the land of 17 individuals in Pondok Damar and thus the claim was rejected on 8th May 2012 on that basis.
 32. The village chief appeared highly reluctant and defensive in the interview, questioning the validity of the NGOs observation activity and demanding evidence of ID after the purpose of the assessment was explained to him. He also repeatedly stated that he 'knew what NGOs like [you] are looking for and trying to do' and that there were 'no problems at all for [you] to dig out between the company and Bangkal'.
 33. In a previous field investigation carried out in 2011 in PT Mustika Sembuluh, Wilmar noted there was no such requirement under national, provincial or district laws and regulations (see Colchester *et al.* 2012).
 34. Criterion 2.2: The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.
 35. Melawen plates were explained to the NGO consortium as antique objects dating back to the Majapahit empire in Java (AD 1293 - circa 1500) by the communities and by the TUV auditors.
 36. Company representatives interviewed reported that they prefer to hold further meetings with the community of Pondok Damar to engage in dialogue rather than resort to mediation by Komnas HAM.
 37. Criterion 6.3: There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all parties.
 38. This point was emphasised by the TUV auditors interviewed, who stressed that the certification of a company is based on the existence of a mutually agreed conflict resolution process, and not its outcomes, as they can take years to materialise.
 39. The NGO consortium met with the lead auditors of PT Rea Kaltim, Dian Soeminta and Fadli, of TUV Rheinland in Bogor on 17th July 2012. During the meeting, the auditors explained that over 40 land conflicts were recorded at the time of the audit, but that all of them had been resolved except for the Tarang-Umbung cases.
 40. The company reports that Luhang Jaga's claim to four ha of land in Blok D27TU – D28TU was rejected on 28th Feb 2011 by the company because it overlapped with land which 18 other individuals had already been compensated for. This, and the cases mentioned earlier of overlapping claims, suggests the possibility, as raised by several community members, that certain individuals (either from within or outside the villages) are making spurious claims to land and receiving compensation from the company. Had participatory mapping with the full involvement of local communities to identify rights over land been carried out earlier on by the company, this complication may have been significantly reduced or avoided.
 41. In the stakeholder consultation meeting held on 19th October 2009 by TUV as part of the RSPO audit of PT Mustika Sembuluh, the issue of lack of plasma opportunities for communities was raised. The management response was that 'the suggestion was noted'. This issue was not investigated in the ensuing audit verification because it was deemed that 'this is a positive comment' (TUV Audit, p.54).
 42. Undang-Undang Republik Indonesia Nomor 5 Tahun 2012 Tentang Pembentukan Katingan, Kabupaten Seruyan, Kabupaten Sukamara, Kabupaten Lamandau, Kabupaten Gunung Mas, Kabupaten Pulang Pisau, Kabupaten Murung Raya, dan Kabupaten Barito Timur di Provinsi Kalimantan Tengah.
 43. According to Agricultural Minister Regulation 26/2007 Article 11 paragraph 1 'Plantation companies who have an IUP or IUP-B are required to build plantations for the surrounding communities at a minimum of 20% from the total plantation area exploited by the company'. The total area under HGU of PT Mustika Sembuluh is 19,450.264 ha. Plasma should account for 3,890.053 ha of this total area according to this regulation.