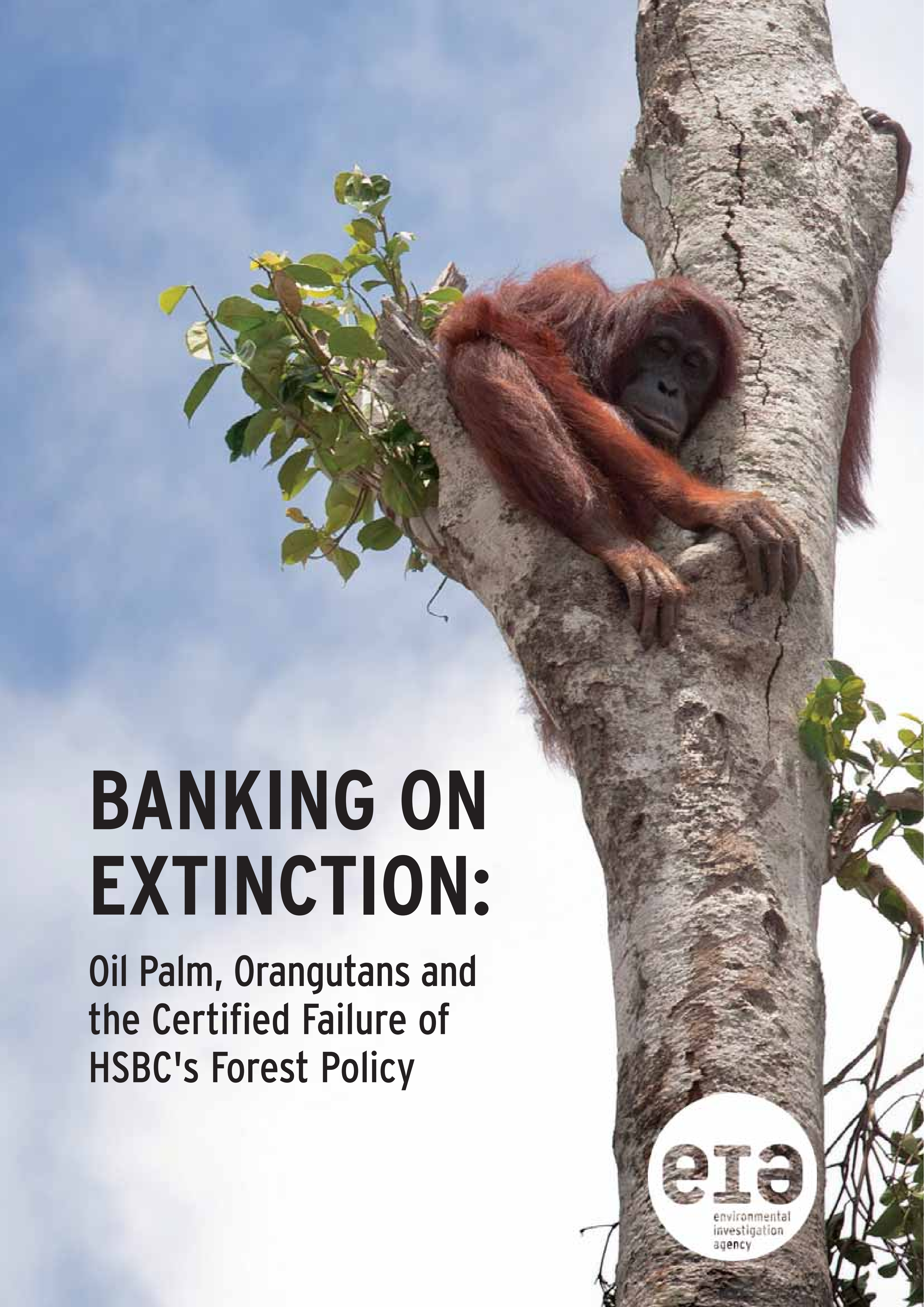

BANKING ON EXTINCTION:

Oil Palm, Orangutans and the Certified Failure of HSBC's Forest Policy

eia
environmental investigation agency

ACKNOWLEDGEMENTS

Report design by:
www.designsolutions.me.uk

November 2013

This briefing was produced with the financial assistance of the Norwegian Agency for Development Cooperation (Norad). The contents are the sole responsibility of EIA and can under no circumstances be regarded as reflecting the official position of Norad.

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SUMMARY

HSBC is bankrolling unsustainable plantation expansion that is systematically destroying forests crucial to the survival of the Bornean orangutan and other endangered species.

This is occurring in violation of policies it has instituted in an attempt to prevent it from financing deforestation, while simultaneously maintaining its role as a leading financier of the palm oil industry. Structural flaws in that policy and HSBC's failure to implement it properly have left the bank exposed to some of the worst elements of the industry, which has become synonymous with rampant deforestation, land rights conflicts and climate change.

In effect, HSBC is continuing to profit from rampant deforestation while presenting a public image of 'sustainability'.

This report will show how HSBC's reliance on the Roundtable on Sustainable Palm Oil (RSPO) as an indicator of compliance with its policy is fundamentally misguided: it is delegating responsibility for the protection of its professed principles to a broken system.

The RSPO lacks credible mechanisms to ensure members protect High Conservation Value (HCV) forests. When such violations are brought to its attention, the RSPO's mechanisms for redress are insufficient to either compensate for the damage or serve as a disincentive to the same behaviour being repeated.

This is evidenced by the two case studies included in this briefing, which represent a small fraction of HSBC's exposure to companies whose business models are predicated on deforestation.

The case studies highlight the need for reforms of the RSPO that replace opacity and self-regulation with transparency and independent monitoring. They further emphasise the need for HSBC to undertake effective due diligence prior to finalising major deals with palm oil firms, and to no longer assume that the proponents of this highly destructive industry share its values.

While this report focuses on the failures in the implementation of HSBC's existing policy, it is also the case that the policy falls far short of the principles a responsible or 'sustainable' bank should uphold. A zero-deforestation approach to plantation expansion is achievable under the right conditions and would reflect the critical role forests and peatlands play in mitigating climate change.

As the world's third largest bank with a prominent position in the sector, HSBC can play a leading role in supporting that agenda; it remains to be seen whether the bank will instead continue to hide behind a fig leaf of sustainability while profiting from deforestation.

Orangutan prior to rescue in Ladang Sawit Mas, March 2013.

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HSBC'S FOREST POLICY RESTRICTIONS

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ABOVE:
HCV forests in Trieka Agro Nusantara, September 8, 2013.

Launched in 2004, HSBC's Forest Land and Forest Products Sector Policy [the forest policy] was intended to govern its investment in several commodities either produced from forests or by forest conversion, including pulp and paper, timber, rubber and palm oil.[1] It initially placed a greater emphasis on industrial logging, but a three-page public summary released in 2008 revealed further measures that reflected the bank's role in the plantation sector.[2]

The policy states:

- We will not finance the conversion of HCVF to plantations [see box on HCV];
- Where clients are not fully compliant with our policy and operate in countries with a high incidence of illegal logging, biodiversity or social conflict, independent confirmation will be required that their non-certified operations do not impact adversely on HCVF;
- HSBC will not finance plantations converted from natural forest since June 2004 unless they are independently certified or confirmed as not having impacted adversely on HCVF.

On the advice of third party experts, HSBC identifies certification schemes that meet its own standard. In 2004, it gave clients five years to certify at least 70 per cent of their operations against a recognised scheme, at which time they could be considered "fully compliant" with the policy. However, until now it will maintain its relationship with clients that fall short of that, providing they are "on a credible path towards achieving compliance".

DOES THE RSPO ENSURE COMPLIANCE?

HSBC has been a member of the RSPO since the latter's inception in 2004 and is a long-standing member of the Executive Board.[3] In correspondence with EIA, HSBC confirmed the scheme is now used to assess compliance with the forest policy.[4]

In principle the RSPO is a good fit for HSBC's forest policy as it also bans the clearance of HCV forests and mandates an HCV assessment by its members prior to any land clearance. However, the system relies almost entirely on self-reporting – the RSPO itself carries out no oversight prior to full certification. As a result, HSBC is financing members of the RSPO on the assumption that they will abide by its forest policy but without any prior scrutiny or ability to determine whether they have.

As this briefing will show, the consequence is that HSBC has sleepwalked into bankrolling destructive, unsustainable practices in clear violation of its own policy. In the first case study, neither the RSPO nor HSBC were aware of this destruction until it was brought to their attention by NGOs working on the ground; in the second, they are still unaware.

Over the next four years, the companies implicated in this briefing will continue substantial plantation expansion programmes financed by HSBC. If the RSPO and HSBC's forest policy are not tightened up, HSBC can have no confidence that this expansion will not take place at the expense of more HCV forests and do irreparable harm to the unique biodiversity of Indonesia.

WHAT ARE HIGH CONSERVATION VALUES?

The principle of High Conservation Value (HCV) has emerged as a tool to objectively assess the importance of areas according to a range of conservation priorities held by different stakeholders.

The first of six HCVs recognised by the RSPO, among other bodies, is:

Forest areas containing globally, regionally or nationally significant concentrations of biodiversity value (e.g. endemism, endangered species).[5]

The habitat of the endangered Bornean Orangutan qualifies as HCV forest and must be conserved, according to RSPO statutes.

IARI staff rescue an orangutan from Bumitama's LSM concession, March 2013.

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HSBC'S LAND-BANKING CASE STUDIES

The following two case studies demonstrate how HSBC's Forest Policy failed to ensure HCV forest is not destroyed during plantation development financed by the bank. They also demonstrate how HSBC's acceptance of clients' RSPO membership as an indicator of "likely" compliance with its Forest Policy is fundamentally flawed, structurally setting up the bank to break its own policy.

In both cases, HSBC committed financial services to companies it could not know would meet its policy, essentially rendering the policy an optional irrelevance.

BUMITAMA AGRI LTD AND HSBC IN NUMBERS

October 2010:
HSBC completes a US$135m Syndicated Term Loan Facility for Bumitama to finance plantation expansion.[6]

April 2012:
HSBC acts as Joint Issue Manager, Bookrunner and Underwriter of Bumitama's IPO. [7] US$114m of the proceeds subsequently earmarked to financing plantation expansion.[8]

October 2012:
HSBC acts as Joint Mandated Lead Arranger and Bookrunner for a five year US$170m syndicated loan to Bumitama.[9]

BUMITAMA AGRI LTD.

Financing forest destruction

On April 25, 2012, within two weeks of its IPO, Bumitama Agri Ltd (Bumitama) [see footnote] entered into a Conditional Sales and Purchase Agreement to acquire 95 per cent equity interest in PT Ladang Sawit Mas (LSM).[10] LSM's sole holding was a 6,450ha concession in Ketapang Regency, West Kalimantan.

As a member of the RSPO, Bumitama was obligated to cease any operations in the concession until it had carried out an HCV assessment, in accordance with the New Planting Procedure (NPP).[11] These assessments are intended to ensure members do not destroy HCV forests, rendering their operations unsustainable.

However, forest clearing continued in the concession without an HCV assessment until at least the end of 2012. In communications with the RSPO, Bumitama would later claim it stopped clearing in "early 2013" after "our local management was informed of sightings of orangutans".[12] By this stage

Bumitama Gunajaya Agro is incorporated in Indonesia and holds a controlling interest in the majority of the Group's Indonesian concessions. In this report the Group is collectively referred to as Bumitama.

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it admitted that 3,205ha had been cleared.

In March 2013, a local conservation NGO, Yayasan IAR Indonesia (IARI), and the local government Nature Conservation Agency rescued and relocated four orangutans from the concession.[13] They further identified more orangutans that they were unable to rescue but which were threatened with starvation if they remained in the barren, deforested land.

IARI submitted a complaint to the RSPO over the destruction of HCV forests and further warned that if they were not allowed immediate and unconditional access to the concession to carry out further rescues “there could be fatal consequences for these orangutans”.[14]

The RSPO complaints process – protecting forests?

On July 1, 2013 the RSPO Complaints Panel upheld IARI’s complaint. It instructed Bumitama to cease forest clearing in LSM and to allow IARI access to the concession in order to rescue the remaining orangutans.[15]

However, Bumitama continued clearing forest inside the concession, in violation of the Complaints Panel’s decision.[16] IARI remained unable to access the concession.

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TOP:
Bulldozer in Bumaitama's LSM concession, March 2013.

BOTTOM:
IARI staff stabilise an orangutan rescued from the LSM concession.


A baby Orangutan clings to its emaciated mother following their rescue from starvation in Bumitama's LSM concession.

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"If no action is immediately considered, there could be fatal consequences for these orangutans."

By the end of August the land clearing had exposed six or seven more orangutans by Bumitama's estimate[17] and the company wrote to BKSDA to request their rescue and relocation. BKSDA in turn asked IARI to assist again with the rescue and at the end of September two orangutans were relocated. Two more remained, but had become adept at evading rescue attempts.[18]

Had Bumitama observed the decision of the RSPO and ceased clearing, the HCV areas in which the orangutans were found could have been saved and conserved to support both the orangutans and a range of other species.

In the same week that IARI carried out the rescue, the RSPO issued a joint statement with Bumitama. Though the ongoing violation of the Complaints Panel decision should have been clear by this point, if the RSPO monitored its implementation, the statement lauded the company for entering into "constructive dialogue" with the RSPO.[19]

The company agreed to allow BKSDA and IARI access to the concession to "monitor the existence and the conditions of orangutans". It also committed to submitting a time-bound plan for certification of all of the company's concessions.

While paying lip service to the RSPO, Bumitama continued land clearing, and freely available satellite imagery clearly demonstrates that by October almost the entire concession had been completely deforested.

While Bumitama is in "constructive" dialogue with the RSPO, it remains unclear what, if any, punitive measures the RSPO will take against a member that wilfully and repeatedly violates its core statutes.

What did Bumitama know and when?

In its communications with the RSPO, Bumitama stated that it became aware of the presence of orangutans in the concession in "early 2013" when its "local management was informed of sightings".[20] However, in 2009 the company from which Bumitama acquired the concession had carried out an AMDAL, or social and environmental impact assessment, during which the existence of orangutans and several other endangered species were documented within the concession area.[21]

As the AMDAL is legally required prior to plantation development, it is not feasible that the document was not considered by Bumitama during the due diligence process.

TRIPUTRA AGRO

Financing forest destruction

In August 2013 the chief financial officer of Triputra Agro Persada (Triputra) revealed that the firm had secured a US$470m loan, more than half of which would be used to finance a massive programme of land expansion.

According to statements made to the media, the expansion would take place within Triputra's existing land bank of 300,000ha, at a rate of 15,000ha per year in each of the next four years.[23] The programme would place the company among the largest palm oil companies in Indonesia by planted area.

In September 2013, EIA investigators visited one of the concessions that would be targeted by this expansion programme.

PT Trieka Agro Nusantara (TAN) lies in a remote area of Lamandau Regency, in the western reaches of Central Kalimantan. Until 2012, the concession was covered in closed-canopy forests holding rare species of flora and fauna including ulin, or ironwood, and gibbons. Over the past year, Triputra has begun clearing the forest.

The RSPO confirmed to EIA that Triputra has not submitted NPP documents for TAN, or for any of its concessions.[24] Since the NPP was implemented as mandatory by the RSPO in 2010, TAP's planted landbank has swelled from 82,000ha to in excess of 134,000ha.[25] All of this expansion, in excess of 50,000ha, has taken place in violation of the RSPO's statutes and subject to no scrutiny by the RSPO. It also took place prior to HSBC's facilitation of a US$470m loan.

TRIPUTRA AGRO PERSADA AND HSBC IN NUMBERS

July 2013:
Triputra Agro Persada secures US$470m loan from syndicate of banks led by HSBC to finance plantation expansion.[22]

Tree in Trieka Agro Nusantara, September 8, 2013

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CREDIBLE PATHWAYS TO CERTIFICATION?

Because neither Bumitama nor Triputra were compliant with HSBC's forest policy, project finance should only have been extended to them on the condition that they were "on a credible path" to certification. Beyond their membership of the RSPO, however, there remains no evidence that either company was on such a path.

The RSPO Code of Conduct requires its members to submit an Annual Communication of Progress (ACOP) towards compliance with its principles. Included in this report is a time-bound plan, setting dates by which companies intend to certify their operations.[26]

In the six years since it became a member TAP has submitted only one ACOP, for 2011-12. While the company boasts of its 300,000ha landbank in its effort to woo the markets, in the ACOP it admits to only one concession, amounting to 12,531ha.[27]

In its membership page on the RSPO website, TAP provides an excuse for its lack of communication: "We were a member of RSPO since 2007 but not active. Now we are interesting to have support from RSPO in the pursuit of promoting the production and use of sustainable palm oil." [sic][28]

In fact, as early as 2008, TAP controlled plantations of more than 70,000ha and had aggressive expansion plans.[29] Clearly, the company wanted to carry out this expansion without subjecting itself to the scrutiny of the RSPO's processes – and the potential limitations associated with conserving HCVs.

Now it intends to cap its "aggressive growth" with an IPO, applying a fig leaf of sustainability has attained greater importance.[30] In August 2013, TAP applied for certification for a palm oil mill and plantation in Seruyan Regency, Central Kalimantan, while simultaneously violating the RSPO statutes in neighbouring Lamandau.[31]

While Bumitama has consistently filed ACOP since 2009, it has also repeatedly failed to achieve the limited targets it has set itself for certification. In 2009, it aimed to certify one mill or plantation within three years,[32] and by 2010 it hoped to achieve certification of a mill by the end of 2011.[33] It missed both targets, but by mid-2012 was aiming to certify its mill by the end of 2013.[34] It will miss that target too.

WHAT HSBC SAYS

EIA brought the details of the Bumitama case to HSBC's attention in August 2013.[35] While HSBC responded that it would not comment on its clients for reasons of confidentiality, it did comment more generally on the efficacy of its policy, both in correspondence and a meeting with EIA and IARI.

HSBC stood by the use of the RSPO as a proxy safeguard for its forest policy. It stated that companies that "have made commitments to certify and have made tangible investments of time and money to achieve that are – in most cases – likely to operate sustainably". It added that HSBC "has focused increasingly on members who have time-bound plans to certify, are certifying or are certified".[36]

In the case of Bumitama and Triputra, the lack of credible time-bound plans for certification was evidently not a disincentive to financing. Further, it is manifestly not the case that either firms' "commitment" to certification has led to sustainable development.

HSBC also pointed to the existence of the RSPO Complaints Procedure as a further safeguard against unsustainable developments. It wrote: "If an RSPO member is thought by stakeholders to have contravened the standards, RSPO has a complaints process to assess that. […] This can take time on occasions because the issues can be complex, but a result is obtained".[37]

It is EIA's contention that when orangutan habitat is destroyed, it is unclear what result can be obtained that will undo the damage.

Indonesia has limited and diminishing forest resources. While it may be within the abilities of the RSPO and its members to avoid habitat destruction, it is arguably beyond their abilities to replace it, where complex spatial planning issues come into play.

The RSPO is currently developing a mechanism to force errant members to 'compensate' for the loss of HCV forests,[38] but it is the view of EIA that it will be inadequate when dealing with endangered – and, in other cases, critically endangered – species. It is incumbent on the RSPO, its members and other stakeholders to prevent such deforestation from taking place at all.

Under their current respective systems, however, neither HSBC nor the RSPO is set up to identify when companies violate their principles. The RSPO NPP is reliant on companies reporting prior to plantation development and HSBC's policy is, by extension, predicated on this self-reporting.

This is demonstrated in the case of LSM, where the violation of the NPP was brought to the attention of the RSPO by an NGO. The complaints process is further complicated by the obfuscation of companies and the fact that the burden of proof rests on complainants. In the case of TAN, neither the RSPO nor HSBC are – to EIA's knowledge – aware of the violations because they are reliant on civil society to police the sector.

Fundamentally, both the RSPO and HSBC must no longer accept that a laissez faire, self-reporting regime is sufficient to safeguard their principles. The evidence that palm oil firms will violate stated 'sustainability' commitments if not subjected to scrutiny is overwhelming, from these cases and many others.

"Neither HSBC nor the RSPO is set up to identify when companies violate their principles."

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RECOMMENDATIONS

HSBC should:

- engage with Bumitama and Triputra to ensure no further clearance takes place in any concessions prior to HCV assessments being carried out, and without compliance with other all Principles and Criteria of the RSPO;
- commission an audit of all land expansion programmes being carried out or planned by its customers and engage with them to ensure they are carried out in compliance with the RSPO P&Cs, at a minimum;
- use its position as a member of the RSPO Executive Board to institute regular and formal, but independent, monitoring of the New Planting Procedure;
- institute a process of due diligence prior to financing of any land expansion, directly or indirectly, to determine and mitigate potential impacts on climate, biodiversity and land rights;
- update the forest policy to prohibit financing of deforestation or exploitation of peatlands, to reflect the urgency of the threat facing tropical forests and the role of deforestation in driving climate change.

Triputra and Bumitama should:

- immediately cease all operations in concessions that have not been subject to independently verified New Planting Procedure.

The RSPO Complaints Panel should:

- carry out an immediate assessment of all land cleared in Triputra and Bumitama concessions prior to the New Planting Procedure being carried out;
- conduct an audit of all other member producers to assess the extent of compliance with the New Planting Procedure.

RSPO members should:

- support proposals for independent and regular monitoring of the New Planting Procedure.

Land preparation in PT Trieka Agro Nusantara, in violation of the RSPO's New Planting Procedure.

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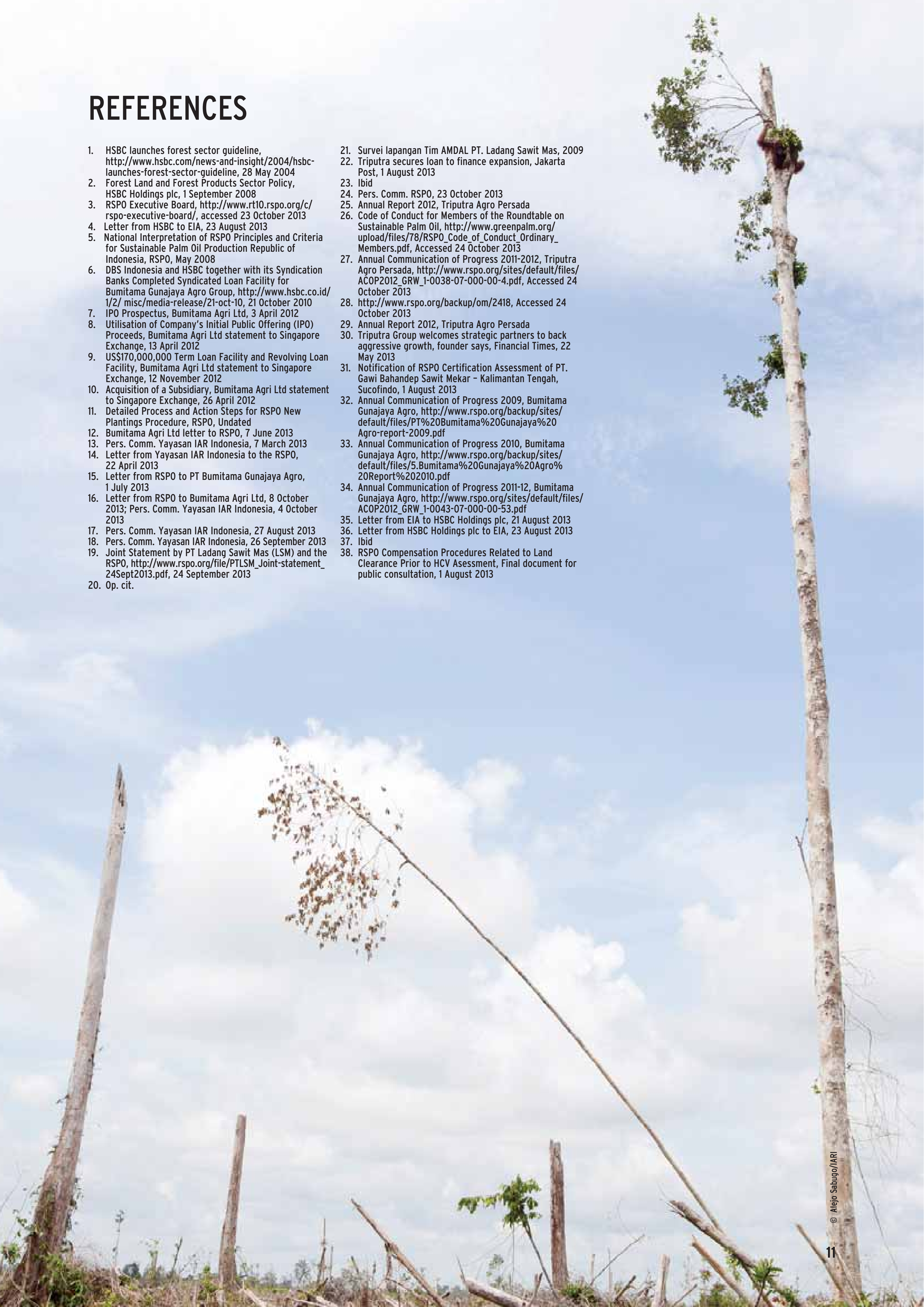

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