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27th May 2015

To
RSPO Secretariat Sdn Bhd
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59000 Kuala Lumpur, Malaysia
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Email: complaints@rspo.org

Date: 27th May 2015

Dear Sir,
SUBMISSION OF COMPLAINT

We, the Environmental Investigation Agency (EIA) and Jaringan Pemantau Independen Kehutanan Kalimantan Tengah (JPIK Kalteng), wish to lodge a complaint concerning PT Sawit Sumbermas Sarana and its subsidiary PT Sawit Mandiri Lestari, located in Indonesia.

This complaint is made on our own account on not in the name of affected communities.

Our full details are as follow:

Name: Tomasz Johnson
Position: Forest Campaigner, EIA
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Name: Wancino
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Please find below more detailed information regarding the complaint.
We understand that RSPO Secretariat will be looking into this complaint based on its Grievance & Dispute Settlement Handling Protocol.

Yours sincerely,

Tomasz Johnson

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Forest Campaigner
Environmental Investigation Agency

Wancino

A handwritten signature in black ink, appearing to be 'Wancino', written over a light blue background.

Focal Point
JPIK Kalimantan Tengah

A: Description of the name, address and location, and nature of the Company subject to the complaint

PT Sawit Sumbermas Sarana (PT SSS)
RSPO Membership No: 1-0111-07-000-00
Website: www.ssms.co.id

This complaint addresses failings in the New Planting Procedure of PT SSS subsidiary PT Sawit Mandiri Lestari (PT SML) that will lead to violations of the RSPO Standard. PT SML claims rights to an oil palm concession located in Kabupaten Lamandau, Central Kalimantan Province, Indonesia.

B: Description of the action taken by us to try to settle the issues

EIA has carried out a desk review of PT SML's NPP documents, that were made available on the RSPO website for public comment on 12th March 2015. Subsequently EIA and JPIK carried out a field visit to the concession area, in April 2015.

EIA's research indicates a series of major flaws in the High Conservation Value (HCV) Assessment, Social and Environmental Impact Assessment (SEIA), and in the conduct of the assessors, PT Sonokeling Akreditasi Nusantara (PT Sonokeling). Collectively these amount to serious violations of the New Planting Procedure.

According to the NPP documents PT SML is scheduled to begin clearing this year. If it does so without rectifying the issues outlined in this complaint, it will lead to violations of the RSPO Standard and potentially of Indonesian law.

The key violations can be summarised as follows, and are elucidated below:

1. Consultations with communities did not take place as described in NPP documents, and affected communities did not participate in the HCV Assessment and SEIA;
2. The HCV Assessment is technically flawed;
3. No FPIC process is in place;
4. The AMDAL process was not carried out in accordance with the law;
5. PT SML has not yet obtained permits that are a prerequisite to land clearing.

1: Consultations with communities did not take place as described in NPP documents, and affected communities did not participate in the HCV Assessment and SEIA

The Notification of Proposed New Planting (NPNN) states that PT Sonokeling has completed a "comprehensive and participatory independent Social and Environmental Impact Assessment (SEIA) and High Conservation Value (HCV) Assessment which include internal and external stakeholders" [p3].

The NPNN states that these comprised both "in-depth interviews" and Focus Group Discussions. The Focus Group Discussions were "conducted with the involvement of local leaders and local government officials and others who are considered competent to valuation issues" [p8].

The NPNN states that PT Sonokeling carried out fieldwork and meetings in the villages to inform the HCVA and SEIA between 30th April and 7th May 2014. Further "awareness and socialization sessions" were held by the company in September.

EIA interviewed village officials in three villages and their testimony contradicts the information presented in the NPNN. There is credible doubt over whether some meetings took place at all.

Cuhai village:

The NPNN claims that two meetings took place in Cuhai village. The first, on May 1st 2014, was reportedly attended by three villagers. The second took place on September 5th 2014, and was reportedly attended by 26 villagers.

When interviewed in April 2015, the Kepala Desa of Cuhai told EIA that he was aware of no meetings in the village related to PT SML in April or May 2014, the period in which PT Sonokeling claims to have carried out its field assessments. He also said that no one from PT SML or PT Sonokeling had carried out field assessments in the village territory, to his knowledge. Indeed, he had no knowledge of PT Sonokeling at all. There is no record of PT Sonokeling in the official book recording visitors to the village.

The Kepala Desa confirmed that a meeting did take place in September 2014, conducted by PT SML. His perception was that the meeting had two purposes. Firstly, for PT SML to 'socialise' the existence of the concession, and secondly, to discuss the proposed plasma scheme. The purpose of this meeting, in his view, was not to obtain detailed or substantive information from the community on any matter.

Ginih village:

The NPNN claims that PT Sonokeling conducted a meeting in Ginih on 3rd May, that was attended by seven villagers. A further "awareness and socialization" meeting was conducted by PT SML in the village on September 24th 2014.

Officials from Ginih, including the village head, village secretary and customary leader (mantir adat) stated that only one meeting has taken place in the village. This took place in March 2014 and was conducted by PT SML. The officials stated that the purpose of this meeting was to alert them to the existence of the concession and to discuss the plasma scheme.

They have attended no other meetings in the village either with the company, their representatives or consultants. No meetings took place to their knowledge in April or May 2014.

Kinipan village:

The NPNN claims that PT Sonokeling conducted a meeting in Kinipan on 4th May, that was attended by two villagers. A further "awareness and socialization" meeting was conducted by PT SML in the village on September 24th 2014.

The village secretary of Kinipan told EIA that no meetings took place with PT SML, PT Sonokeling, or individuals representing either, in April or May 2014. He said that meetings were held between PT SML in July 2014 but this was principally to discuss the plasma scheme.

To the knowledge of the village secretary, no field studies have been undertaken by PT Sonokeling and no process that included members of the village has taken place to identify HCV areas within the concession,

Summary:

Testimony from the three villages raises credible doubt over whether the meetings in April and May took place. If they did take place, the fact that the village leadership in all three villages were not aware of them indicates that the process fell far short of the acceptable threshold for participatory HCV Assessments and SEIA.

While some meetings appear to have taken place in September, these have been mischaracterised by the NPP documents. They did not address RSPO principles such as HCV and FPIC, but were largely considered to address the question of the plasma scheme.

The conclusion that must be drawn is that the SEIA and HCV Assessment were not participatory, and PT SML has not appropriately and accurately identified HCV areas within the concession. By extension, PT SML has not fulfilled the requirement to carry out HCVA and SEIA in compliance with the RSPO Standard. It is likely for this reason that the only 'social' HCVs identified in the HCVA are rivers, which are already protected by law, and "archaeological sites" in unidentified locations.

A sample of comments made by officials from Ginih and Kinipan villages is included in Annex 1. These comments are documented on film.

2: The HCV Assessment is technically flawed

Failure to identify HCVs

The Summary Report of HCV and SEIA states that approximately 18% of the concession has been identified as HCV from a “total area” of 26,995.46ha.

The Summary report quantifies the HCV area as follows:

Mountains:	2,837.26
Rivers:	1,972.45
Water ponds:	1.61
Hamlets:	21.96

The NPNN states that 4,567.46ha of the concession is area with an incline in excess of 40% [p13]. It is unclear why there is a discrepancy between the size of areas defined as ‘mountains’ and those with an incline in excess of 40%.

Areas in which the incline is more than 40% cannot legally be cleared under Indonesian law, and should be classified as Hutan Lindung, or Protected Forest. Similarly, oil palm companies are prohibited from clearing within 50m of small rivers, 100m of large rivers and within a 200m radius of surface springs. As such, the mountains, rivers and ‘water ponds’ identified in the HCV assessment are areas that PT SML cannot clear by law.

According to the NPP documents, these areas are already identified in the AMDAL. The Principle Forest Release Permission from the Minister of Forestry, referred to in the NPNN, only covers an area of 19,240ha. The reduction in the size of the concession is likely a consequence of the excision of areas inappropriate for palm oil cultivation.

This raises the prospect that PT SML and PT Sonokeling have not identified any HCV areas at all within the concession, but only laid claim to areas outside its concession that are now protected by law.

Errors in species classification

The Summary Report of HCV and SEIA notes the presence of *Manis javanica* in the concession but fails to identify it correctly as a Critically Endangered species. This raises doubts over the scientific rigour of the assessments.

Insufficient habitat

The concession comprises 16,857 ha of secondary forest that is identified as the habitat of the Bornean orangutan, Clouded leopard, Critically Endangered flora and dozens of other endangered species. The concession is also contiguous to the Belantikan Conservation Programme area and the Lamandau Wildlife Reserve, with documented populations of endangered species. This being the case, the isolated areas ‘set aside’ as HCV are clearly insufficient to maintain and support these populations.

Within the NPP documents there is no clear indication of how the orangutan population will be managed beyond destroying their habitat; or what will be done to conserve the two Critically Endangered dipterocarp species present beyond logging them.

The absolute minimum biodiversity conservation plan required is to connect all the existing HCV blocks by wildlife corridors and, to link them with existing, intact, and protected forests outside the concession.

3: No FPIC process is in place

Consultation with the community, as outlined above, has been extremely limited to date. As a result, the location, scale and potential impacts of the development are poorly understood by the communities interviewed by EIA.

The communities have no understanding of PT SML's obligations as a member (via its parent company) of the RSPO and of their right to withhold consent to the development. No mapping has taken place with the participation of the community to determine where both individual and communal customary land rights exist. Efforts by the communities to obtain documented commitments by the company, or basic information about the development, including the results of the AMDAL, have been ignored to date.

The lack of clarity over the location of the concession has given rise to ambiguity over whether community farmlands will be taken and converted to palm oil. This has already given rise to opposition to the development that is not reflected in the NPP documents.

The communities interviewed have no understanding of the levels of compensation that will be offered by PT SML in return for their land.

Given the above there is no evidence to indicate that PT SML, either directly or via PT Sonokeling, is in a position to state definitively where land rights claims exist. By extension, PT SML has no means to determine land will not be operated on without the Free, Prior and Informed Consent of the communities.

Further information on the position of village officials interviewed can be found in Annex 1.

4: The AMDAL process was not carried out in accordance with the law

The legal right of communities affected by proposed developments to provide input to the AMDAL process is enshrined in Keputusan Kepala Badan Pengendalian Dampak Lingkungan No. 8/2000.

Village officials interviewed by EIA were invited to what they understood to be an AMDAL consultation meeting in Palangkaraya in September 2014. No substantive consultation on the impacts of the concession had taken place before that point.

According to the NPP documents, however, the PT SML's AMDAL was approved by the Central Kalimantan AMDAL commission on 27th August 2014, prior to the consultation meeting. The village officials interviewed by EIA in April 2015 were not aware that the AMDAL had been approved, despite expressly asking PT SML for the results of the process.

This suggests that the AMDAL process was not carried out in accordance with the law and, by extension, casts doubt over the legality of the concession.

5: PT SML has not yet obtained permits that are a prerequisite to land clearing

According to the NPP documents PT SML has yet to obtain:

- Surat Izin Pelepasan Kawasan Hutan from the Minister of Environment and Forestry;
- Izin Pemanfaatan Kayu (IPK);
- Sistem Verifikasi Legalitas Kayu (SVLK) certification;
- Hak Guna Usaha (HGU).

The first two permits, at a minimum, must be obtained before PT SML can begin operating in the concession legally. However, the NPP documents indicate that it will begin clearing this year.

This raises the prospect that the RSPO may legitimise illegal land clearance in the concession if it does not take preventative action as a consequence of this complaint.

C: List of other person(s) contacted by us in attempt to settle the issues

As described above, EIA and JPIK consulted with communities affected by the proposed development. We also consulted conservation experts.

D: Any other relevant facts and/or other materials to support this complaint.

Annex 1 to this letter includes testimony from officials representing two villages that will be impacted by the proposed development, as described above.

Annex 1:

Tesimony from Ginih village

EIA: Please tell us how PT. SML came to Ginih Village.

Ginih Official (GO): PT. SML carried out information dissemination in March 2014. They came at night and held a meeting in one of the villager's homes. On one occasion they came and gathered the villagers and shared information about the plasma scheme from PT. SML. We discussed from the beginning but could not find a common ground in the discussion because the information dissemination activity was not appropriately delivered, about what they wanted of the plasma scheme.

EIA: What did the community want during that meeting?

GO: The community wants, that before PT. SML enters Ginih Village there should be a written agreement to avoid undesired impacts when the company comes into the village. Because we know, the community knows, that there have been many companies operating in villages in Lamandau District but to date there has been no meeting point about the community's welfare. There are still many neglected and disadvantaged communities. That is the Ginih community's hope, not to refuse oil palm or plasma, but to understand the extent of the responsibility of companies or PT. SML that will operate in Ginih Village.

EIA: What is the response from PT. SML to the Ginih Village community's conditions?

GO: When they carried out their information dissemination program, they did not respond in detail. They only shared that the Ginih Village will have plasma, that is all.

EIA: Did PT. SML return after the information dissemination?

GO: No, never. We were only invited once for a one-day meeting in Palangkaraya.

EIA: Did PT. SML ever come to the forest in Ginih Village?

GO: Never.

EIA: So then the Head of Village is invited to Palangkaraya.

GO: Yes.

EIA: For what event in Palangkaraya?

GO: They disseminated information about the regulations relating to PT. SML.

EIA: Was it only the Head of Village invited, or were there aother villages?

GO: There were 12 villages invited: Batu Tambun, Kinipan, Ginih, Riang Panahan, Sungai Tuat, Tanjung Beringin, Penopa, Karang Taba, and two villages in Lamandau Sub-district.

EIA: During the Palangkaraya meeting, what was the response of other villages of PT. SML?

GO: It's like this. Since we were not given a chance to ask, they only explained the regulations from PT. SML and then we returned.

Testimony from Kinipan village

EIA: PT. Sawit Mandiri Lestari will start an oil palm plantation in Kinipan Village. Can you tell us about how PT. SML first came to Kinipan Village?

Kinipan Official (KO): I do not know about when they first came to Kinipan Village, but based on information, PT. SML came to Kinipan to clear or develop oil palm plantation in Kinipan Village. Therefore the Kinipan community expected that the investor or PT. SML would share information – what is it called, disseminate information to Kinipan Village and meet the village government and community face-to-face, that's all.

EIA: Has PT. SML disseminated information to the community?

KO: I don't think so. They did once, but I would not call it information dissemination. The thing is PT. SML and the community did not reach an agreement.

EIA: What was PT. SML's response to the community's aspiration?

KO: Surely there has not been any response Sir, because PT. SML has never done information dissemination to Kinipan.

EIA: Has PT. SML visited the site or done a site visit along with the community?

KO: PT. SML has been to Kinipan once, but never for a survey in the Kinipan Village ulayat forest.

EIA: Are there any other organisations, maybe consultants or other groups that come or have come to Kinipan to see the SML site?

KO: None Sir, none to the best of my knowledge.

EIA: Will PT. SML provide plasma to the Kinipan Village community?

Kinipan: That is the information we have, but I have not heard about this directly or from information dissemination events from PT. SML. According to the rumors, every oil palm company must provide plasma. But I do not know whether that is true or false because there has been no oil palm plantation that came to Kinipan. That is all I can share with you. I hope it is in accordance with what the investors said, and is not only promises but will one day become realisation. That is what we expect.