

# Certified unsustainable?

## Observations on the first three RSPO certificates

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### SUMMARY AND CONCLUSION

The first three RSPO certificates dispel hopes that the RSPO will guarantee even basic social and environmental standards for the palm oil it certifies as 'sustainable':

- One certificate relates to plantations which, according to the assessors, were established without local communities' free, prior and informed consent, even though communities have been offered no form of redress.
- Two of the three certificates relate to estates on which paraquat is currently used, with one company showing no intention to eliminate its use.
- One assessment endorses two claims made by the company which a simple search of their own website or the UNFCCC website would have shown to be incorrect. As a result of one of those apparently false claims, the assessors failed to investigate whether primary forest or other high conservation value land may have been destroyed or may be about to be destroyed for palm oil expansion since November 2005 (which would be a breach of the RSPO principles and criteria).
- On several occasions, a company's undertaking to improve their practices in future has been accepted as evidence of criteria being met. In some cases, this appears to be permissible under RSPO guidance; in other cases those decisions appear questionable under that guidance. In one case, children of migrant workers continued to be deprived of schooling at the time of the award, with the company pledging to discharge its duty via a charity. The same company is deemed to discharge its duties to reduce soil erosion and to establish riparian buffer zones, as well as protecting biodiversity through set-asides primarily by promises not to replant certain areas in future, even though this will mean little or no action to address serious environmental problems, probably for another 8-11 years. Serious concerns over working conditions (overcrowded and inadequate housing, restricted freedom of movement for migrant workers, inadequate wages for families without access to a garden, excessive working hours, lack of information about working conditions) are either being tolerated or are allowed to continue for another year from the date of the assessment report.
- All three companies have pledged to work towards extending certification to their entire estate in future. The assessors have not commented on those companies' other plantations and on their current expansion programmes outside the certified estates, even though there is clear NGO (Greenpeace) evidence about at least one of the companies having recently been involved in primary forest destruction in Kalimantan, and the evidence provided by another company to the assessors suggests that they are establishing new plantations in Central Kalimantan without proper permission and thus illegally.

Although not directly related to one of the three assessments, it is noted that the wording of principle and criterion 7.3, which is supposed to prevent deforestation and the destruction of other high value conservation habitat, appears to be inadequate to address deforestation for palm oil in many situations. A certified plantation could, in theory, be established at the expense of a primary forest destroyed after November 2005, provided

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that forest was first degraded or destroyed for another purpose, e.g. for commercial logging – even if the palm oil company and the logging company concerned are different subsidiaries of the same parent company. This would be a very common scenario in many countries with large palm oil plantations.

The first three certificates thus do not guarantee that even a very narrow definition of social and environmental sustainability, nor the RSPO Principles and Criteria are met.

There appears to be a very clear link between RSPO certification and market expansion: All three companies concerned have major palm oil expansion programmes, and all of them have a particular interest in the European market, with clear information that two of the companies will be exporting the certified palm oil to Europe. All three companies, or their respective parent companies, are active members of the Malaysian Palm Oil Council (MPOC) which has been using the RSPO as a means to strongly lobby the EU for a 10% biofuel target. The MPOC has also used certification as a way to promote palm oil, including for biofuel, in the United States. Two of the parent companies concerned invest in biofuel production.

The evidence which emerges from the first three RSPO certificates appears to support the analysis made in a recent “International Declaration Against the Greenwashing of Palm Oil by the RSPO” ([tinyurl.com/5f7cxs](http://tinyurl.com/5f7cxs)). That declaration calls the RSPO “a tool for the expansion of the palm oil business and not an authentic strategy to contain its environmental and social impacts.”

### **Background:**

The RSPO was set up in response to major public concern about deforestation for palm oil. Apart from environmental criteria, it also aims to address concern about human rights abuses, evictions, land-grabbing and intolerable working conditions, although palm oil industry, and in particular the Malaysian Palm Oil Council, has, on the whole, never acknowledged their responsibility for serious negative environmental and social impacts.

In August 2008, the RSPO awarded the first ever certificate for sustainable palm oil to United Plantations Bhd in respect of some of their plantations in Peninsular Malaysia. Since then, two other RSPO certificates have been awarded – one to New Britain Palm Oil, in respect of all their plantations in West New Britain, and one to Sime Darby Berhad in respect of one palm oil mill and four estates in Sabah. A considerable number of certificates have been applied for by other companies and further decisions on certification are imminent. It is expected that the EU will, from 2010, rely on RSPO certification as a condition for palm oil counting towards renewable energy targets and being eligible for state support.

Serious concerns about the RSPO as a tool for 'greenwashing' and for facilitating market expansion have been expressed, most recently in an international declaration against the RSPO, signed by over 240 organisations ([tinyurl.com/5f7cxs](http://tinyurl.com/5f7cxs)), which supports a separate declaration by Colombian environmental and social organisations ([tinyurl.com/6xf5ds](http://tinyurl.com/6xf5ds)).

This analysis is based on the information provided in the three assessment reports, together with other documents published by the RSPO and by the respective companies. Without independent information about the actual conditions on the certified estates, it is impossible to judge how accurate or complete the information given by the assessors and the companies is – except in cases where the information provided by assessors conflicts with that given on the company's website or otherwise publicly available. No information

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is available regarding the quality of the assessors' interviews with workers, smallholders and other local people, and on whether people felt free to openly report any concerns.

The analysis looks at how strictly the principles and criteria of the RSPO have been interpreted, and how the certificates reflect on the stated RSPO commitment to guarantee social and environmental sustainability with regards to the certified palm oil. All three companies have pledged to move towards RSPO certification for all their estates in future, hence information about their plantation expansion beyond the certified estates has also been considered. Finally, the role of the three certificates in companies' strategies for palm oil expansion has been considered.

### UNITED PLANTATIONAS BHD: (Assessment: [tinyurl.com/6zvfpu](http://tinyurl.com/6zvfpu))

#### Company profile:

The Danish-Malaysian plantation group United Plantations Berhad owns 40,874 hectares of plantations, 90% of them palm oil and 10% coconuts in Malaysia (making UP Bhd the largest producer of coconuts in that country). The Danish multinational Aarhus United holds a 23% share in UP Berhad which, in turn, owns a 43% stake in Aarhus United. UP Bhd company refines vegetable oil into edible oils, soap products and glycerine, through their fully owned subsidiary, Unitata Berhad, in partnership with Aarhus United. They do not currently invest in bio-energy.

UP Berhad own nine estates, six palm oil mills and a refinery in Peninsular Malaysia. All those estates and mills have been certified by the RSPO. Those estates include old and new ones – established between 1975 and 2008. There are no expansion plans in Malaysia. The plantations are not on peatland.

However, the company has a major expansion programme in Kalimantan, which is discussed below. The certificate does not apply to the plantations in Kalimantan; however the company states that they will seek to apply for certification for those plantations in the next three years.

#### Observations about the assessment of UP Bhd's plantations in Malaysia:

The assessment was undertaken by Control Union Certifications. The assessors noted three minor 'non-compliances' with RSPO criteria. The company pledged remedial action which will be reviewed after twelve months:

1. Criterion 5.12 (mitigating negative environmental impacts): Leakage (pollution) from some diesel tanks;
2. Criterion 6.3.2 (resolving disputes in an effective, timely and appropriate manner): Insufficient records to show whether grievances expressed at stakeholder meetings have been acted on effectively, timely and appropriately;
3. Criterion 6.5.3 (adequate housing and water supplies to workers): Water supply to the houses of plantation workers was not always adequate, particularly on one estate. This is to be addressed immediately and will be assessed after a year.

The assessors recommended that there should be an additional RSPO criterion to ensure a safe working environment in mills, workshops, stores and offices (although criterion 4.7 would appear to address this). This is a general observation, not a suggestion that the work environment at the UP Bhd mills is unsafe, although they recommended inspection of all electrical connections and guards. However, stakeholder comments about the need for sound-proofing in mills and dust in mill working areas are quoted.

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The information made publicly available by the assessors is far more limited than that provided by BSI Management Systems in respect of the other two certificates granted and it is not sufficient for making any detailed comments and observations, with one exception:

The assessors note that Paraquat is still being used, although the company states they are reducing it and are working towards replacing it. This is sufficient for abiding with criterion 4.6.7. It should be noted that Paraquat was banned in Malaysia between 2002 and 2006, which means that, UP Bhd, unless they were using it illegally during this period, would have started using Paraquat again since becoming an RSPO member.

No information is available as to whether other particularly dangerous pesticides are being used. Criterion 4.6.7 also states that chemicals categorised as WHO Type 1A or 1B or listed by the Stockholm or Rotterdam Conventions must be reduced or eliminated. It is not clear whether compliance with this indicator has been assessed.

### **UP Bhd's expansion and uncertified estates in Central Kalimantan:**

Since 2006, the company has nearly doubled their holdings, having acquired around 40,000 hectares of land in Central Kalimantan according to their website. They have taken over two Indonesian plantations companies, PT Surya Sawit Sejati and PT Sawit Seberang Seberang. They previously reported that they were in the process of also acquiring PT Mirza Pratama Putr, but that no permission for plantations had been granted at the time. Those estates were not listed in the UP Bhd submission to the RSPO, and it is not clear whether the acquisition went through. Only a small fraction of the land claimed by UP Bhd in Kalimantan has been planted so far.

When the company applied for assessment in January 2008, they stated that there were no issues regarding social conflicts, no land forested in 2005, and no legal issues regarding any of their estates, including in Kalimantan. However, both according to the information which they provided in that application and according to their subsequent response to the assessors, this was at least partly incorrect:

According to the information that UP Bhd made available to the RSPO in January 2008 ([tinyurl.com/6auohc](http://tinyurl.com/6auohc)), the company was planting oil palms on three of the PT Surya Sawit Sejati estates in Central Kalimantan, yet for two of those they had not obtained an HGU permit. They were also establishing oil palm nurseries at two other locations in the same region and had started planting oil palms at one of them without Environmental Impact Assessments having been completed, and without HGU permits having been applied for. According to Watch Indonesia!, it is illegal (though common) to start planting oil palms before an EIA has been completed and IUP and HGU permits have been granted. The company subsequently stated that they suspended all plantings at the PT Sawit Seberang Seberang estates in February 2008 because the IUP had not yet been granted, but that the other developments were proceeding – which would include two without and HGU permit (unless those have been granted since January 2008). The company thus states that they suspended some of their activities on legal grounds one month after assuring assessors that there were no legal issues outstanding.

Their assurances that there are no social conflicts around their estates are equally questionable: Watch Indonesia! confirm that there are land conflicts over palm oil expansion in the area where UP Bhd is expanding in Central Kalimantan, which have involved violence. An example of land conflicts in one of the villages where the company is planning to develop plantations is Runtu, which attracted international attention (see background information by Walhi, ([tinyurl.com/5ud8jz](http://tinyurl.com/5ud8jz))). According to Watch Indonesia!,

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Runtu villagers resisted palm oil expansion by another company in 2005, resulting in one villager being shot dead, seven being injured and 47 being arrested.

According to the assessors, stakeholders also questioned whether some of the nearly 40,000 hectares in Kalimantan may not have been forests since 2005, although the company stated in 2006 that they were all 'degraded grasslands'.

### **How will the certified palm oil be used and is there a link between certification and expansion plans, including for bioenergy?**

UP Bhd's plantation expansion plans are all in Central Kalimantan. They seek market expansion without directly investing in bioenergy. However, the company has played an active role in promoting greater palm oil use, including for bioenergy in Europe and the US. Their Vice-Chairman Carl Bek-Nielsen is also Council member of both the Malaysian Palm Oil Council and the Malaysian Palm Oil Association. Within the MPOC he is Chairman of the Regional Marketing Committee for Europe.

The MPOC has been actively lobbying for agrofuel expansion and specifically for a 10% biofuel target in Europe, including with an advertisement which the British Advertising Standards Authority found to be misleading ([tinyurl.com/5tzjo4](http://tinyurl.com/5tzjo4)). He clearly believes that agrofuel expansion will benefit his company even though they do not invest in bioenergy, saying: "even if it is another oil that goes into biodiesel, that other oil then needs to be replaced. Either way, there's going to be a vacuum and palm oil can fill that vacuum" (quoted by George Monbiot, [tinyurl.com/2w8tc6](http://tinyurl.com/2w8tc6)). In June 2007, the MPOC organised a PR tour for European politicians to one of the United Plantations Bhd plantations which has since been certified.

The MPOC and MPOA have set up a lobbying organisation in the US, the American Palm Oil Council, set up to promote greater palm oil use including for biodiesel. When UP Bhd obtained their RSPO certificate, that organisation announced it in the media ([tinyurl.com/59bqaz](http://tinyurl.com/59bqaz)) as evidence for the sustainability of 'Malaysian palm oil' in general.

### **Sime Darby SOU 26: (Assessment: [tinyurl.com/5vhsnl](http://tinyurl.com/5vhsnl))**

#### **Company profile:**

Sime Darby Berhad is the largest Malaysian multinational company. They invest not just in plantations but also in property, cars, energy and utilities, heavy equipment, insurance, healthcare and supermarkets, through around 270 subsidiaries. In 2007, Sime Darby merged with two other large Malaysian companies, Kumpulan Guthrie Berhad and Golden Hope. They are now called Sime Darby Berhad. According to Sime Darby's website, the company owns 524,626 hectares of plantations in Malaysia and Indonesia. They control 6-8% of global crude palm oil. According to the 2007 Greenpeace Report 'Cooking the Climate, the company is effectively controlled by the Malaysian government, with the state-owned asset manager Permodalan Nasional Bhd holding a minority stake. The same Greenpeace report states:

"Sime Darby is implicated in recent or ongoing forest destruction in Central Kalimantan", with fire hotspots in their plantations. The Greenpeace figures for Sime Darby plantations on peatlands, in orang-utan habitat, and for fire hotspots can be found at [tinyurl.com/57cxw5](http://tinyurl.com/57cxw5).

Certification has been granted to the Sime Darby Plantation Sdn Bhd Management Unit SOU26, following an assessment by BSi Management Systems. It covers one palm oilmill

and four plantations in Sabah, planted 14–17 years ago, with an area of around 12,000 hectares, none of them on peatlands.

### **General Observations about the certification assessment:**

The certificate was awarded following an assessment by BSI Management Systems Singapore.

The plantations have been deemed to meet the RSPO requirements largely because they are older plantations. The RSPO states that no plantations will be certified if they are on land that was under primary forest or otherwise a high conservation value area in November 2005. In this case, rainforest was destroyed for plantations, but well before 2005 and it is not clear whether deforestation was carried out before or after Sime Darby obtained their lease in 1992. The certificate is therefore an example of a company receiving a certificate for an older plantation established on previously deforested land, whilst the same company has been shown (by Greenpeace) to continue to be responsible for ongoing rainforest destruction elsewhere, for the establishment of new plantations.

The assessment also makes it clear that a very liberal interpretation of the RSPO Principles and Criteria has been used. This certificate, like the other two, has been granted despite two so-called 'non compliance with minor indicators', i.e. despite acknowledged breaches of standards, based on a company promise to take remedial action over the next year. This does not formally contravene RSPO policy, since the breaches have been classed as 'minor', but it shows that an RSPO certificate does not mean that the full standards are being met – it is sufficient for a company to promise to 'do better' in future.

Perhaps even more concerning is the information given by the assessors about the company's performance regarding other principles and criteria which, nonetheless, were deemed to have been complied with, such as the fact that boundaries have not been demarcated, that the company may have encroached on land beyond their lease, that children of migrant plantation workers have so far had no access to schooling, that much of the company's "commitment" on soil erosion and biodiversity protection consists of promises for the future – probably 8–11 years away, rather than any immediate action.

### **Acknowledged failures to conform fully with standards:**

Those relate to

- a) failure to do soil samplings and to monitor whether soil nutrients are being depleted;
- b) likely water pollution by treated mill effluents, lack of water sampling.

The company has pledged to take corrective action and this will be checked after one year.

10 observations/opportunities for improvement were noted. They are not identical to the areas of concern identified below, although some of those overlap.

### **Other areas of concern:**

#### ***Freedom to travel for migrant plantation workers:***

Criterion 2.1 states that ratified international laws and regulations must be observed, and the guidance links this to a list of key laws and conventions, which include rules on the just employment of migrants and that there must be no obstacles to travel. According to the assessment, the company holds the passports of migrant workers and that the Estate Manager only grants permission to travel 'when needed'. Nonetheless, the assessors

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maintain that the company abide by the P&C because the management states that they grant permission to travel 'on request' and because 'some interviewees' stated that they were happy with the company holding the passports, and because they could not find incidents of a refusal to grant permission to travel (without saying how many interviewees were unhappy with the arrangements or what enquiries they made).

### *Land rights:*

Criterion 2.2 states that the right to use the land must be demonstrated and that boundaries must be clearly demarcated. According to the assessment, however, the boundaries have not been properly mapped and that palms may have been planted beyond the land leased by the company. In particular, the boundaries with three Kampongs have not been established, with local people saying that they have only limited use of the land for farming. The company promises to map and observe boundaries in future, without the assessment confirming that there is a commitment to remove any palms if they are found to have been planted beyond the legal boundaries. This has not been classed as even a minor non-compliance, only as an observation/opportunity for improvement.

### *Soil erosion:*

Criterion 4.3 states that soil erosion and degradation must be minimised and controlled. The assessment suggests that steep slopes have been planted and that Sime Darby promises to avoid replanting them in future, though existing plantations will remain for over five years. This means that, in the meantime, soil erosion is unlikely to be controlled for years to come on the slopes. This is no breach of the guidance, because the indicators only demand a 'management plan' and the national guidance only says that steep slopes should not be replanted unless specified in an EIA report.

### *Freshwater pollution:*

Criterion 4.4 states that the quality and availability of freshwater must be maintained. Indicators state that water courses must be maintained, with maintenance and restoration of appropriate riparian buffer zones. Contamination of surface and groundwater through runoffs must be prevented. However, according to the assessment, no buffer zones exist and palms have been planted right up to rivers. The company is deemed to have fulfilled standards by promising to avoid replanting palms in the buffer zones in future – i.e. in more than five years time, possibly much longer. Even then it is not clear whether the oil palms will actually be removed and, if so, how. According to the assessment the company has stopped applying agro-chemicals along riparian zones.

See above for a minor non-conformity order regarding mill effluent discharge.

Incidentally, the Malaysian National Interpretation quotes the indicators to criterion 4.4 differently from what is written down in the most recent version of the Principles and Criteria as agreed by the RSPO in November 2007. The National Interpretation states that appropriate buffer zones must be established at or before replanting. This is highly questionable, because national interpretations should not weaken or change RSPO criteria and indicators.

### *Agro-chemical use:*

The guidance for criterion 4.6 (safe use of agro-chemicals) states that all relevant information must be available in languages understood by workers or be carefully explained to them. The assessment found that for two chemicals, information was only available in English. The company's response was to ask the suppliers to provide

information in Bahasa. There is no indication that workers will be properly informed about those chemicals in the meantime. The government's Department of Occupational Safety and Health has recommended additional safety training of workers, though it is not clear whether this relates to agro-chemical use.

***Biodiversity and high conservation value habitat protection:***

Criterion 5.2 states that the status of rare, threatened and endangered species on plantations must be assessed, including in adjacent areas and must be taken into account in management plans and operations. Wild Asia has drawn up a Biodiversity Management Plan for the company which provides for setting aside land on steep slopes, along rivers and small streams, which should provide links between fragmented reserves within the estates. However, there is no commitment to actually remove the palm trees from those areas in the foreseeable future or to stop manual harvesting there – only to stop using agrochemicals in demarcated areas. Given the average life-time of a plantation, 25 years, 'set asides' would only be established in eight to eleven years, although the assessment says 'at least five years' – and no information about planned removal of the palms at that stage is given. This delay is particularly concerning since WWF state that a small orang-utan population in the area has limited habitat and is isolated from other populations. The company has responded simply by promising to initiate a study to develop a 'management plan'.

***Worker's rights:***

One of the indicators to criterion 6.5 (pay and conditions for employees) states that the company must provide adequate educational amenities to national standard or above where they are not available or accessible. Most of the workers on the estates are migrant workers from Indonesia. Their children who live on the plantation are not entitled to attend state schools. So far, no educational facilities for school age children have been provided for those children. Nonetheless, the company is praised because they are working in partnership with Borneo Child Aid society to build a first school. This means that the certificate has been granted at a time when children are still being deprived of education and that, instead of the company taking responsibility for providing educational facilities, they are relying on a charity to do so.

The assessment states that no children have been found to work on the estates. There is no indication what the school-age children of migrant workers are doing if they are neither in education nor working.

The assessment observes that a number of workers had worked far more than the maximum 104 hours of overtime a month during the 2007 peak harvest.

***Contribution to local sustainable development:***

The assessment states that criterion 6.11 is fulfilled because the company responds to requests from local communities for assistance and has helped communities with accessing water, as well as providing medical assistance 'in cases of need'. They have also offered employment road-shows. However, both the RSPO indicators and the national guidance states that the company must consult with local authorities. It also states that preference in employment should be given to local people. There is no indication that the company is doing either.

## How will the certified palm oil be used and is there a link between certification and expansion plans, including bioenergy?

The certified palm oil will be shipped to the Sime Darby facility Unimills B.V. in Rotterdam. It is not clear whether it will be used for bioenergy or for other markets. Sime Darby owns a biodiesel refinery in Rotterdam, through Unimills subsidiary Clean Energy ([tinyurl.com/6bqlp4](http://tinyurl.com/6bqlp4)), though this is not currently operating. Unimills has also worked with BioX on producing palm oil fractions with lower melting points, to sell palm oil biodiesel in northern Europe ([tinyurl.com/5szgrv](http://tinyurl.com/5szgrv)).

When Sime Darby announced the certification of SOU26 to the media, they stated that the company was planning to expand exports to Europe and that 'sustainable production methods' were particularly important to allow for such expansion. In particular, they were planning to expand the Rotterdam facility and they had other expansion plans to Eastern Europe and China ([tinyurl.com/637wsh](http://tinyurl.com/637wsh)).

## New Britain Palm Oil Ltd: (Assessment: [tinyurl.com/5t7zv3](http://tinyurl.com/5t7zv3))

### Company profile:

New Britain Palm Oil is a subsidiary of Kulim (Malaysia) Bhd, who own a controlling 50.7% share. Kulim in turn belongs to the [Jahor Corporation \(JCorp\)](#), which is a Malaysian state corporation and an investment arm of Johor State. Kulim invests in oil palms, oleochemicals, biodiesel, and fast-food outlets. JCorp owns another subsidiary, EPA Management, which also manages oil palm plantations (23,000 hectares in Malaysia).

Apart from the estates held their subsidiary, new Britain Palm Oil (NBPOL), Kulim also controls 31,422 hectares of oil palms in Peninsular Malaysia. They previously owned plantations in Indonesia but sold all their interests in that country in 2007. The company co-owns to biodiesel refineries of 100,000 tonne capacity per year each, together with German-based Cremer (S) GmbH – one in Johor and one in Singapore. The Johor plant is currently closed for economic reasons. Kulim also hold RSPO membership, separately from NBPOL.

[NBPOL](#) describes itself as the largest palm oil plantation hand milling company in PNG. They hold 44,714 hectares in Papua New Guinea's West New Britain province, 76% of them planted with oil palms. Furthermore, they have contracts with smallholders who cultivate oil palms on a further 25,325 hectares, surrounding the core plantations, with produce being purchased by NBPOL. Since 2007, the company also holds 6549 hectares in the Solomon Islands. They have just acquired Ramu Agri Industries Ltd (Ramu) which has long-term leases over a further 30,000 ha of land in PNG. This includes 4,500 ha of existing oil palm plantations and another 16,000 hectares on which the company seeks to plant oil palms. NBPOL produces and sells palm seeds (including through joint ventures in Colombia, Indonesia and Malaysia), operates plantations, and processes and refines palm oil for export to the EU food market. They are planning to build their first palm oil refinery in Europe – a 200,000 tonne per year refinery in the UK to be commissioned in 2010.

In 1996, Kulim acquired 90% of shares in NBPOL. They have sold some of the shares since then and now hold a controlling stake of 50.75%.

All of the NBPOL plantations and the associated small holder production in West New Britain have been certified. The company states that they intend to try and obtain an RSPO certificate for their plantations in the Solomon Islands in 2009. They acquired Ramu

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Agri Industries Ltd after the RSPO assessment was completed, so those estates are not included.

1-2% of the certified plantation area is on peatland.

### **General observations about the certification assessment:**

The certificate was awarded following an assessment BSI Management Systems.

There are various serious concerns about the assessment:

Firstly, there is an apparently bias towards accepting company information, even if that is contradicted by local communities and NGOs.

Secondly, the issue of deforestation for palm oil has effectively been ignored. As discussed below, there is strong evidence that NBPOL has been a major player in the deforestation of West New Britain. The assessors accepted claims that no new land has been planted since November 2005 and that no details about expansion plans were available, even though the company's own website reveals that this is untrue: It shows that there have been some new plantation developments in West New Britain since that time, and the company was, at the time of the assessment, finalising further major expansion plans in that province. The RSPO certificate thus provides no assurance that the company is not continuing to deforest land for oil palms

Finally, the certificate was granted despite the assessors concluding that the company acquired land without free, prior and informed consent of the communities concerned. The assessors and the RSPO accepted the company's promise to improve their practices for future new plantations as being sufficient. No action was taken or required to allow redress to the communities whose land has been turned into plantations

Several other concerns are discussed in detail below.

### **Acknowledged failures to comply fully with standards:**

After the first assessment visit, three major non-conformities (incompatible with the granting of an RSPO certificate) and seven minor non-conformities were found. After a follow-up visit, the assessors accepted that only three minor non-conformities remained and that all other ones had been addressed. The remaining non-compliances relate to:

- failure to prepare a social impact mitigation plan (criterion 6.1.3) – Corrective Action plan drawn up, to be assessed after twelve months;
- some workers working excessively long hours, some staff not aware of all the working conditions, including maximum working hours (criterion 6.5.3) – Corrective Action plan drawn up, to be assessed after twelve months;
- inadequate housing conditions, with overcrowding, single workers being placed with unrelated families without their consent, small rooms with inadequate ventilation (criterion 6.5.4) – Corrective Action plan drawn up, to be assessed after twelve months.

### **Other areas of concern:**

#### ***Free, prior and informed consent:***

Criterion 2.3 provides that legal rights of others must not be diminished without their free, prior and informed consent. The assessors found:

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“The company's process for land acquisition and open sharing of all relevant information on assessment of impacts does not comply with Indicator 2.3.7 'free, prior and informed consent'. The land acquisition process for mini estates involved only the company, land owners and the provincial lands division, without any consultation of other parties, such as NGOs. Environmental impacts were assessed internally by the company and information provided to landowners focussed on economic benefits. There was no open sharing of information on assessment of impacts. All but one ILG representatives said they did not fully understand the terms and conditions of the lease agreement when they signed it.”

The Forest Peoples Programme addressed the question of what should happen under the RSPO in their 2008 Working Draft Guidance for Companies: “Plantations which have not respected communities' land rights, which have not respected the right to Free, Prior and Informed Consent and where there are ongoing conflicts are not certifiable under the RSPO standard. How can this be sorted out? In line with international law (see section 2), in such a situation indigenous peoples have rights to redress, to restitution of their lands and to compensation for damages” ([tinyurl.com/6cmkpe](http://tinyurl.com/6cmkpe)). This would suggest that NBPOL should have offered to pay compensation or to hand land back to original owners. At the very least, the original owners should have had a say in what should happen. Nothing of this sort was required of NBPOL by the assessors or the RSPO. Instead, they were deemed to have met the criterion indicator for 'free, prior and informed consent' by adopting new management guidance, pledging to seek such consent for new land acquisitions in future, and by arranging for training from The Nature Conservancy, as well as planning workshops on 'stakeholder participation at existing oil palm plantation.

The assessors report that all but one of the local communities concerned (Integrated Land Groups) reported a lack of free, prior and informed consent and that this was backed by NGOs. NBPOL denied what local communities said and the assessors concluded: “It is very difficult to substantiate or refute the claims made”. Even though took the communities' comments into account when finding that this RSPO principle had been breached, it is concerning that they would not accept witness evidence from several communities as being conclusive, just because the company denies it.

### *Water pollution:*

The assessment states that criterion 4.4 (maintaining quality and availability of freshwater) is being met, with NBPOL implementing a programme to rehabilitate riparian buffer zones. Progress is to be checked after one year.

However, the assessors note that at Mosa, significant amounts of sediments enter the bay. The assessment reports complaints from the Association of Nakanai Communities about sedimentation and agrichemical contamination of watercourses and near shore waters by the company. The company holds industrial logging and 'illegal squatter settlements' responsible for the pollution. The assessors state that community concerns should be 'allayed' by better information, apparently relying largely on a report prepared by NBPOL's own consultants rather than on their own investigations, except for a general recognition that sediment erosion from plantations and road is a major source of pollution.

NGOs also raised concern about sedimentation, water contamination by agrochemical residues and inadequate buffer zones. The assessors quote NBPOL's assertion that they implement best practices without further comment.

### *Agro-chemicals:*

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One of the indicators to criterion 4.6 demands: “documentary evidence that use of chemicals categorised as World Health Organisation Type 1A or 1B, or listed by the Stockholm or Rotterdam Conventions, and Paraquat, is reduced and/or eliminated.” NBPOL continue to use Paraquat (though they do not supply it to smallholders. They have no plans to reduce or eliminate it, following a trial with Syngenta (i.e. with the main producers of Paraquat), from which they concluded that there is currently 'no economic alternative' . No information is provided in the public summary assessment as to whether other restricted pesticides are being used.

### ***Greenhouse gas emissions:***

Criterion 5.6 states that plans to reduce emissions, including of greenhouse gases, must be developed, implemented and monitored. The assessors confirm that this is being met partly through a CDM project, which will ensure methane capture and flaring at each mill. Although the assessment states that this is an existing CDM project, that information appears to be incorrect: The company appears to have applied for CDM funding but the UNFCCC website shows that so far this has not been granted.

### ***Working conditions:***

Criterion 6.5 provides that workers must be paid at least the minimum legal wage and enough to meet decent living wages. This includes housing, education, water supplies, medical facilities and welfare provisions.

Concerns about overcrowding and other housing issues, as well as about excessive working hours and lack of understanding about working conditions remain (see non-conformities listed above).

Although workers receive more than the minimum wage, the assessors note that “workers families without access to land for food gardening have difficulty meeting their 'basic needs'”.

### ***Contribution to local sustainable development:***

Whilst the indicators to criterion 6.11 state that the company's contribution to local sustainable development must be based on consultation with local communities, this appears to have been ignored by the assessors. They state that the criterion is fulfilled because the company invests in social services and responds to requests via its own West New Britain Foundation.

### ***Protection of forests and other high conservation value habitat:***

Criterion 7.3 states that new plantations established since November 2005 (regardless of any change in farm management or ownership) must not have replaced primary forest or land classed as 'high conservation value' land since 2005. The assessors accepted that, although the company was planning to expand in future, no details were available. No enquiries into possible new plantings since 2005, nor into existing expansion plans appear to have been carried out.

There is very clear evidence that oil palm plantations in general and NBPOL in particular have been responsible for large-scale deforestation in West New Britain. Between 1989 and 2000, the annual deforestation rate in New Britain was 1.1%, compared to 0.8% across South-east Asia. Since 2000, large areas of oil palm plantations have been identified on previously forested land, particularly on the Talasea peninsula (understood to be part of the certified NBPOL estate) ([tinyurl.com/62e5og](http://tinyurl.com/62e5og)). A 2005 report by the Center for Science in the Public Interest ([tinyurl.com/2n7gxs](http://tinyurl.com/2n7gxs)) states: “In the country’s West New Britain

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Province, as in Indonesia, high conservation-value forest is being permanently lost because oil palm plantations are replacing much of the lowland forest after it has been logged commercially.“ All lowland forest in West New Britain has been opened up to commercial logging by the government and conversion to plantations tends to happen after the forest has been logged.

It seems unlikely that deforestation, even after 2005, would be addressed by RSPO criterion 7.3: Conversion to oil palm frequently happens after the forest has been logged and at this stage it will no longer be classed as primary forest and may no longer be classed as a high conservation value area either. The 2005 'cut off date' relates only to the date of plantation establishment, not to land cover at that time. It would thus appear to be possible for a company to acquire land for a plantation right after it has been selectively logged or cleared, a common pattern in Papua New Guinea and many other countries, and to have that land certified by the RSPO. Commercial relations between loggers and palm oil companies, well documented for Indonesia and other countries with large palm oil plantations, do not have to be examined under RSPO guidance. This would even apply where the palm oil company and the logging company are different subsidiaries of the same parent company, since a subsidiary company can gain RSPO membership in their own right. NBPOL's guarantee in their "Sustainability Handbook" ([tinyurl.com/5ndlbq](http://tinyurl.com/5ndlbq)) that they will not “undertake new developments in areas of Primary Forest or on land containing one or more High Conservation Values” may therefore not be difficult to meet.

In this specific case, it seems remarkable that the assessors appear to have made no attempts to verify the company's assertion that they have not established any new plantings since November 2005 and that plans for palm oil expansion are 'not available'. The company's 2006 Annual Report states that during that year, the company developed 1,500 more hectares in West New Britain ([tinyurl.com/6dy3ft](http://tinyurl.com/6dy3ft)).

The company's 2007 Annual Report, for example, outlined plans to convert 9,500 hectares additional land in New Britain to oil palms, in addition to palm oil expansion on the Solomon Islands (which is not covered by the certificate) ([tinyurl.com/54q75k](http://tinyurl.com/54q75k)). In May 2008, before the assessment report was issued, the company reported: “We are completing the final assessments on 7,000 hectares of prospective new land, adjacent to our existing operations” – yet this has been ignored by the assessors for the RSPO (1<sup>st</sup> Quarter Report and Trading Update, 14.5.08, [tinyurl.com/6rt6s3](http://tinyurl.com/6rt6s3)). The assertion that Criterion 7.3 does not apply is thus not based on true evidence.

### **How will the certified palm oil be used and is there a link between certification and expansion plans, including bioenergy?**

NBPOL's production is almost exclusively for the European market. The company has plans to double production in the next 7-8 years. They intend to build the UK's first palm oil refinery and they are currently investing in major infrastructure expansion in Papua New Guinea. The company's annual reports make it clear that the growing demand for biofuel is regarded as an important driver of market expansion, even though NBPOL (other than their parent company, Kulim) do not currently invest in bioenergy.