



Graduate School of Development Studies

## **Third Generation Human Rights in the Palm Oil Industry: RSPO as a Global Multi Stakeholder Organization**

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## List of Abbreviations

CAO	Compliance Advisor Ombudsman
CBD	Convention on Biodiversity
CCC	Convention on Climate Change
CRC	Convention on the Rights of Child
CERD	Convention on Elimination of Racial Discrimination
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
DRIP	Declaration on the Rights of Indigenous People
DRTD	Declaration on the Rights to Development
EU	European Union
EIA	Environmental Impact Assessment
FPP	Forest Peoples Programme
FPIC	Free, Prior and Informed Consent
GAPKI	Indonesian Palm Oil Producers Association
HR	Human Rights
HRW	Human Rights Watch
IPOC	Indonesian Palm Oil Commission
ICESCR	International Covenant on Economic Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IFC	International Finance Corporation
IPs	Indigenous Peoples
MPOA	Malaysian Palm Oil Association
NGO	Non Governmental Organization
PC RSPO	Principles and Criteria of the Roundtable on Sustainable Palm Oil
RSS	Roundtable Sustainable Soy
SOI	Statement of Intent
SPKS	<i>Serikat Petani Kelapa Sawit</i> (Palm Oil Peasant Union)
WALHI	<i>Wahana Lingkungan Hidup Indonesia</i> (Friends of the Earth Indonesia)
WSF	World Social Forum
WWF	World Wide Fund for Nature

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*“Sinitik ma sigompa, golang-golang pangarabutna,  
Tung so sadia pe naeng tarpatupa, sai anggiat ma riset paper on godang pinasuna”*  
(Hopefully this paper will be meaningful, even though it is very limitedly presented)

**Saurlin P Siagian**

## **Abstract**

Sustainable development has become mainstream in development studies and requires that social and environmental issues (the so-called third generation of human rights) be central to the wider development process. International conventions and agreements on how the sustainable development is to be achieved influenced the principles of the Roundtable on Sustainable Palm Oil (RSPO). This is an international multi-stakeholder organisation set up to regulate the growing palm oil industry. The protection of third generation rights under formal RSPO documents is quite advanced, but there remains a wide gap between the principles of RSPO and realities on the ground. This study considers an example of one major RSPO stakeholder – the Wilmar Group of companies – in relation to indigenous and environmental rights in West Kalimantan, Indonesia. It considers the multi-stakeholder relations around one legal case, through the lens of an analysis of power relations among the parties involved in a legal case brought to RSPO. By taking a case from a RSPO member in West Kalimantan, and examining it in detail, the study is able to reflect on the limits of accountability in the present multi-stakeholder arrangements of RSPO, arrangements which tend to benefit business rather than indigenous people's human and environmental rights. Power relations are thus reflected in the issues and proceedings of the legal case brought by a number of NGOs against the Wilmar Group through RSPO. So, whilst RSPO incorporates some important principles of third generation human rights, particularly in recognizing the collective rights of local communities and including environmental rights in its Principles and Criteria, what is lacking is an appropriate mechanism for enforcing these principles and ensuring that powerful stakeholders adhere to them. The principles and criteria of the RSPO need to be connected to effective mechanisms for their implementation. And RSPO membership needs to be extended to involve broader stakeholders, including local communities and trade unions. All this is needed in order to more effectively implement the principles and criteria of RSPO on the ground.

## **Relevance to Development Studies**

Multi-stakeholder engagement has become a buzzword in development studies since sustainable development has come to be a core principle of development interventions. Sustainable development requires a consideration of economics, social and environmental concerns, and together with human rights theory, these can be seen as part of the third generation of human rights. This study takes an example of a dispute that arose within the RSPO – the global Roundtable on Sustainable Palm Oil – as an example of how conflicting stakeholders with very unequal resources and power inequalities are able – or unable – to resolve their differences to mutual benefit and to promote the wider values of sustainable development.

## **Keywords:**

Third generation human rights, Roundtable on Sustainable Palm Oil (RSPO), multi-stakeholder organisation, power relations, West Kalimantan, Indonesia.

## Chapter 1

### Introduction

#### 1.1 Introduction

One of the new foci in development studies is sustainable development. The discourse of sustainable development has been broadly discussed particularly in relation to social and environmental impacts of development processes. To this extent, I want to scrutinize the discourse and practices of the idea of environmental and human rights by looking at an international multi stakeholder organization – the RSPO (Roundtable on Sustainable Palm Oil). This organisation has been using the language of human rights and environmentalism as a part of its principles and regulations on paper. What I would like to explore is whether these principles are being applied. Using the case of the Wilmar Group – part of Wilmar International - this study will try to address this issue.

The legacy of palm oil plantations and their expansion, one of the largest development projects of the past decade or so in Indonesia, worries the world because of its environmental and human rights impacts. Since at least 2004 Wilmar International, which is the biggest palm oil trader in the world at the present time, has been one of the main objects of a growing international awareness and concern, especially from NGOs and other civil society organisations. A number of reports have already examined Wilmar International's operations in the context of Indonesia. This particular study, by taking the case of Wilmar International's operations in West Kalimantan, is intended to contribute to wider debates about how stakeholders in the global palm oil industry can be held accountable to the industry's own agreed standards.

#### 1.2 Contextual background

Sustainable development has been widely recognized as an important objective in today's globalizing world. Two major global meetings have been undertaken to mainstream the notion of sustainable development; the first *WSSD (World Summit on Sustainable Development)* was held in Rio De Janeiro, Brazil 1992, and the second WSSD was held in Johannesburg, South Africa, 2002. The United Nations refers to the "interdependent and mutually reinforcing pillars" of sustainable development as economic development, social development, and environmental protection<sup>1</sup>. These three components of development are expected to be integrated into the operations of all international development projects, of international development organizations, and adopted by international standards organizations. All three aspects of sustainable development have implications for human rights even if the language of rights is not always used in the discourse on sustainable development.

The issue of human rights and environmental concerns are given increasing significance in the perspectives and activities of international institutions. Thus while neo-liberal economic globalization continues to be the leading 21<sup>st</sup> century paradigm, the different processes associated with it are being challenged in relation to the implications they hold for environmental and human rights. The initiation and development of multi-stakeholder organizations such as RSS (Roundtable Sustainable Soy)<sup>2</sup>, BSI (Better Sugarcane Initiative)<sup>3</sup>, RSB (Roundtable on Sustainable Bio-fuel)<sup>4</sup>, and

<sup>1</sup> <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>, accessed in July 19, 2008

<sup>2</sup> <http://cgse.epfl.ch/page65660-en.html>, accessed in July 19, 2008

<sup>3</sup>[http://www.panda.org/about\\_wwf/what\\_we\\_do/policy/agriculture\\_environment/index/our\\_solutions/better\\_sugarcane\\_initiative/index.cfm](http://www.panda.org/about_wwf/what_we_do/policy/agriculture_environment/index/our_solutions/better_sugarcane_initiative/index.cfm), accessed in July 19, 2008

RSPO (Roundtable on Sustainable Palm Oil) are reflective of this trend where the three aspects of sustainable development are incorporated in their basic principles of functioning. In many cases, the three pillars of sustainable development are used as standard criteria for many international organizations in organizing their activities.

Indonesia as one of the major developing countries receives significant attention from developed countries, firms and corporations, and also from civil society organizations, such NGOs all over the world. As a huge country, the development activities in Indonesia will affect the global community and global environment. Palm oil plantations, extensively developed in Indonesia have certainly taken on international significance, economically and environmentally.

There are now around 7,3 million hectares of Palm Oil Plantations in Indonesia, and Indonesia's government plans to expand these plantations by a further 20 million hectares in future, an area the size of England, the Netherlands and Switzerland combined. This plan has attracted international attention. In early 2005, business society, environmentalists, and other civil society group that concern and have interests in Palm Oil Plantation established an organization, Roundtable Sustainable Palm Oil (RSPO) which is the focus of this study.

### **1.3 The Roundtable on Sustainable Palm Oil (RSPO)**

The Roundtable on Sustainable Palm Oil (RSPO) is a relatively new international multi-stakeholder organization dedicated to bringing sustainable palm oil to the marketplace, as both a source of revenue for those in producing regions as well as those consuming the end product<sup>4</sup>. RSPO is a non profit purpose whose aims are to promote the growth and the sustainable production and use of palm oil through co-operation within the supply chain and open dialogue with its stakeholder. This is specified in the RSPO by laws (Chapter 1, Article 1). The organization is constituted in Zurich and under Swiss Law<sup>5</sup>. Formally, RSPO was established on 8 April 2004,<sup>6</sup> under Article 60 of the Swiss Civil Code with a governance structure that ensures fair representation of all stakeholders throughout the entire supply chain. Whilst the seat of the association is in Zurich, Switzerland, the secretariat is currently based in Kuala Lumpur<sup>7</sup>. As of 31 August 2004, forty seven organizations have signed the SOI<sup>8</sup>.

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<sup>4</sup> [www.rspo.org/5th\\_Roundtable\\_Meeting\\_\(RT5\)\\_on\\_Sustainable\\_Palm\\_Oil.aspx](http://www.rspo.org/5th_Roundtable_Meeting_(RT5)_on_Sustainable_Palm_Oil.aspx) - 77k, accessed in July 19, 2008

<sup>5</sup> <http://www.rspo.org/PDF/RSPO%20By-laws.pdf>, accessed in July 19, 2008

<sup>6</sup> “In 2001, WWF gave an assignment to Reinier de Man, a Dutch consultant, to explore the possibilities for a Roundtable on Sustainable Palm Oil. The result was an informal co-operation among Aarhus United UK Ltd, Golden Hope Plantations Berhad, Migros, Malaysian Palm Oil Association, Sainsbury's and Unilever together with WWF in 2002. A preparatory meeting was held in London on 20 September 2002 and this was followed by a meeting in Gland on 17 December 2002. These organizations constituted themselves as an Organizing Committee to organize the first Roundtable meeting and to prepare the foundation for the organizational and governance structure for the formation of the RSPO. Reinier de Man was the Organizing Committee's facilitator until April 2004. The inaugural meeting of the Roundtable took place in Kuala Lumpur, Malaysia on 21 - 22 August 2003 and was attended by 200 participants from 16 countries. The key output from this meeting was the adoption of the Statement of Intent (SOI) which is a non-legally binding expression of support for the Roundtable process”. See: [http://www.rspo.org/History\\_of\\_RSPO.aspx](http://www.rspo.org/History_of_RSPO.aspx), accessed in July 19, 2008

<sup>7</sup> [http://www.rspo.org/History\\_of\\_RSPO.aspx](http://www.rspo.org/History_of_RSPO.aspx), accessed in July 19, 2008

<sup>8</sup> [http://www.rspo.org/History\\_of\\_RSPO.aspx](http://www.rspo.org/History_of_RSPO.aspx), accessed in July 19, 2008

Figure 1: Players in the RSPO



Source: [http://www.rspo.org/Players\\_in\\_the\\_Palm\\_Oil\\_Supply\\_Chain.aspx](http://www.rspo.org/Players_in_the_Palm_Oil_Supply_Chain.aspx), accessed in August 26, 2008

As the organization has committed itself to sustainable development, and the latter is closely related to the promotion of environmental, social and human rights, it is important to explore RSPO activities with regard to the respect for and implementation of these rights.

#### 1.4 Relevance and Justification

There is growing concern about palm oil plantations in two senses: on the one hand these concerns relate to the emerging functions of the world trade in palm oil products, on the other hand, to the impacts of production and social facts in the field. Palm oil is found in at least 10 percent of all supermarket products in Europe, including biscuits, frying oil, sauces, mayonnaise, chips and chocolate. It is also broken down to form derivative products such as soaps, shampoo, cosmetics, and detergents (Friends of The Earth, Greasy Palms, 2005). More than that, the growing use of palm oil as a raw material for bio-fuels makes for growing demands for the product.

Friends of the Earth (FOE) wrote that there is more concern about the Palm Oil because the creation of monoculture oil palm plantation is a major driver of forest destruction in one of the world's most bio diverse areas. In Indonesia, more than 2 million hectares of rain forest disappears every year, and Oil Palm plantations have increased by 118 percent in the past eight years alone. FOE also wrote that plantation workers in South East Asia often are paid at below the minimum wage for insecure, dangerous work, which involves unpaid work by relatives of the workers in order to meet production targets and deadlines (FoE, 2005).

Not least, the recent news of a world food crisis is closely related to the market demands of bio/agro fuel crops, where one of the most wanted crops is palm oil. So food crops are displaced by the move towards market oriented multi-purpose crops such as palm oil, soy bean, and so forth. Finally, the writer, through this paper would like to contribute to the discussion of RSPO by viewing the organisation particularly from an environmental and human rights angle, and considering the organisation in relation to so called third generation human rights.

## **1.5 Research Objectives and research questions**

The objective of the research paper is use a specific case study in order to analyse the framework and regulations of the RSPO and how these are being acted on in regard to the promotion and implementation of sustainable development in terms of human and environmental (third generation) rights.

## **1.6 Research questions**

1. How are the third generation of human rights (environmental and human rights) incorporated into the framework and principles of the RSPO?
2. To what extent have these rights been reflected in the implementation of activities of stakeholder companies, in this case of the Wilmar International?
3. What accountability measures exist to ensure that environmental and human rights are respected by stakeholders in RSPO?
4. What part do power relations play in the process of making RSPO stakeholders accountable for their activities?

## **1.7 Working Hypothesis**

A multi-stakeholder organisation, the RSPO has come into being in the context of globalisation and has included into its functioning important principles linked to environmental and human rights. However, there are few accountability mechanisms that can be a check on RSPO's stakeholders' activities in different contexts. In practice, this means that the interests of business will tend to shape the concepts and practices of the organization.

## **1.8 Analytical framework**

In this research paper, five key concepts will be reviewed in the theory chapter in order to inform the research framework used in the study. These are: multi-stakeholder analysis, sustainable development, human right and environmental sustainability, and finally the concept of power. Of all of these, the main focus that will be retained will be the twin perspectives of stakeholder analysis and power relations. Whilst human rights and sustainable development form the subject matter of the paper, and the concept of sustainable development has informed the selection of the case study, none of these is used as an analytical concept in the main part of the research (i.e. Chapters 3 and 4). Analysing power relations has proven a particularly contentious research issue, and we have used the definition proposed by Steven Lukes, referring to the third dimension of power. His definition emphasises the importance of the power to prevent the formation of grievances by shaping perceptions, cognitions, and preferences in such a way as to promote the acceptance of a certain view of the existing order and of ways of acting within it (Lukes 1974).

## **1.9 Data sources and research methodology**

The data used has been taken from various sources mainly the research results and NGO report of Palm Oil Plantation in Indonesia, particularly in West Kalimantan. This data relates to the case study, Wilmar Group and its operations in West Kalimantan. Besides secondary data, I will use primary data as well. Primary data was collected from interviews with some RSPO related actors in Indonesia, Malaysia, and Netherlands. Unstructured type of interviews were mainly used in order to have an in-depth exploration of the research focus and questions (Riddell 2004:287).

Secondary data from the official website of RSPO organization, including notes and decisions of meetings, discussions, press releases, various research and policy documents, and many others publications, as well as regulations, agreements and codes of conduct about RSPO were used. Some

NGOs offices in The Netherlands were also visited for relevant information. By means, the research method is documentary sources, considering that mostly all the data is available and answerable by existing data (Riddell 2004:302)

The research paper studies the available literatures on the RSPO to understand its perspective in analysing the principles and criteria of RSPO. By this methodology, I will discover which human rights and environmental ideas underpinning the RSPO principles. The approach gives possibility to see a sort of things such as ideas or principles from different ways (Riddell 2004:273). Then in chapter 3 I will examine a case of Palm Oil Plantation in West Kalimantan, Indonesia, the Wilmar Group, and the interests playing in the case. Wilmar Group now has an environmental problem in Kalimantan where the complaint has been brought to the Grievance panel, a legal body of RSPO, by some local NGOs in Indonesia and Friends of the Earth International, an international NGO based in Netherlands. Then, the conclusion will be carried out from the analysis of the available various documents and reports.

### **1.10 Brief profile of the case study: The Wilmar Group**

Wilmar International Ltd or Wilmar Group is the merchandising arm of Wilmar Holdings Pte Ltd<sup>9</sup>. The Wilmar Group is a leading processor, merchandiser and distributor of edible oils, oil seeds and related products in Asia<sup>10</sup>. As the company's website states: "*With consolidated sales of over US\$5 billion in 2004, our Group and our joint-venture companies are the largest soy bean crusher and a leading edible oil processor in China; a leading edible oil processor in India; the largest refiner and exporter of palm oil and palm-related products in Indonesia*".

There are 11 companies under the Wilmar Group operating in Kabupaten Sambas: PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation, PT Agro Nusa Investama, PT Daya Landak Plantations, PT Agro Nusa Investama, PT Indoresin Putra Mandiri, PT Pratama Prosentindo, PT Putra Indotropical, PT Tritunggal Sentral Buana, PT Agro Palindo Sakti, and PT Bumi Pratama Khatulistiwa. They operate on a total land area of around 166,015 hectares. The main findings of research by the NGO, the Gemawan Foundation are that the Wilmar Group conducts the following activities which are contrary to the RSPO principles: Land clearing by the use of fire and forest conversion. A legal case on this basis is now being held by RSPO through the complaints mechanism. This action was brought by several NGOs, including Millieudefensie and Friends of the Earth International and a number of local NGOs<sup>11</sup>.

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<sup>9</sup> See the appendix: Profile of Wilmar International

<sup>10</sup> <http://www.wilmar-international.com>, accessed in August 20, 2008

<sup>11</sup> [http://www.rspo.org/Complaint\\_against\\_Wilmar\\_International\\_Ltd.aspx](http://www.rspo.org/Complaint_against_Wilmar_International_Ltd.aspx), accessed in August 20, 2008

Figure 2: Map of West Kalimantan



Map of Wilmar Group area operation in West Kalimantan Indonesia.

The Wilmar Group has been being one of the members of RSPO since August 16 2005. As a member of RSPO, The Wilmar Group is required to work proactively towards promotion of sustainable palm oil cultivation and production. RSPO is also working on an environmental and social certification scheme which is nearing completion, so that producer members will be required to work towards certified production standards.<sup>12</sup> As an ordinary member, The Wilmar Group has the right to vote at each meeting of the General Assembly, as provided in Article 5 of the RSPO bylaws, and has access to all material produced by RSPO, is eligible for election on the Executive Board, and can participate in meetings of the General Assembly and thematic Working Groups<sup>13</sup>. For a stakeholder like Wilmar, breaching the Code of Conduct, principles and criteria of RSPO can eventually result in exclusion from RSPO membership.

### 1.11 Organization of the Paper

The paper is divided into four chapters. After this first chapter, Chapter 2 will discuss the analytical framework, and review some theoretical explanations of environmental and human rights. Chapter 3 will be an elaboration of the RSPO, its basic principles and regulations. In Chapter 3 the main findings of the research process are presented and the case study of the Wilmar Group in West Kalimantan is presented in terms of whether RSPO regulations are applied in relation to human rights and environmental aspects. Chapter 4 is the finding, analysis and conclusions.

<sup>12</sup>[http://www.rspo.org/resource\\_centre/FAQ%20on%20the%20Roundtable%20on%20Sustainable%20Palm%20Oil.pdf](http://www.rspo.org/resource_centre/FAQ%20on%20the%20Roundtable%20on%20Sustainable%20Palm%20Oil.pdf), accessed in August 20, 2008

<sup>13</sup> [http://www.rspo.org/Rights\\_of\\_Members.aspx](http://www.rspo.org/Rights_of_Members.aspx), accessed in August 20, 2008

## **Chapter 2**

### **Third Generation Human Rights, Stakeholder and Power Relations**

#### **2.1 Introduction**

This chapter will elaborate on the concepts of environmental and human rights and on how they are taken on board in discussions of sustainable development. These debates were highlighted before the creation of the RSPO (Roundtable of Sustainable Palm Oil) in 2004, around the time of the first United Nations Conference on the Environment and Development (UNCED) in Rio De Janeiro, Brazil in 1992. Known as the first earth summit, this will be discussed in the chapter also. The results of this and later meetings were the first steps in establishing the concept of sustainable development and linking it with environmental and human rights as a new direction in the overall development frame.

Karel Vasak's notion of the third generation of human rights is useful since it incorporates notion of development, rights and environmental aspects under a single concept. Third generation human rights are the means used to read the principles and criteria of RSPO. Vasek's division of human rights into three generations suggests that ideas of rights can vary with generations. The third generation is seen as giving more emphasis to the problems of local communities, their collective rights, and to indigenous people and to environmental aspects of development. In this chapter notions of stakeholder analysis and power relations will also be discussed, and related to the above concepts of sustainable development and 'third generation' human rights, especially environmental and human rights.

#### **2.2 Sustainable Development as the Mainstream in Development Studies**

Sustainable development popularly called as mainstream in development debates since the earth summit in Rio De Janeiro in 1992 conducted by United Nation. By then, even though so many different definitions of sustainable development raised by many experts and institutions, mostly all of them agreed that sustainable development has been the new mainstream in the development studies since. Rio 92 can be seen as an effort in mainstreaming sustainable development idea (Adams 1990), because of particularly the results of the summit embraced the new shape of development model both legally and morally binding agreements born in this meeting.

The Rio 92 noted about five main agreement and convention; they are firstly, 27 principles of sustainable development also very well-known as Rio Declaration. This is seen as the most valuable agreement establishing the new direction of development agenda to the more human and environmental friendly. Secondly is the convention on biological diversity or biodiversity, this convention need ratification by the state parties and legally binding, and also has a protocol. Thirdly is the convention on climate change, also ratification is needed by state parties. Conference of Parties (COP) is establishing body to run the regular conference and forum called United Nation Forum on Climate Change Convention (UNFCCC). The last result of the meeting was Forest Principles which is a voluntarily principles for the forest benchmarks.

Rio 92 is not stand alone. Some its predecessor have been conducted long time before, even though not as tough as Rio it self. Brundtland report and Stockholm conference were counted contributing

to the emerging discourse on sustainable development. Having a role in igniting the idea of sustainability, Brundtland report: "Our common future" was actually a report published by WCED (World Commission on Environment and Development), an UN body established by General Assembly in 1983, led by Gro Harlem Brundtland, former minister of Norway. The report noted trying to meet the development agenda with the environmental problems

Another important conference before the Rio was Stockholm conference held in Stockholm in 1972 by United Nations. It is one of the event that tried to mainstreaming the sustainable development agenda (Adams 1990:54). Adam added that the motivation of the proposal more coming from developed countries. in the conference, development was seen as an integrated aspect with the environmental, which was not accepted generally in the developing countries at the time. The most important part of the conference was the creation of United Nation for Environment Program (UNEP). Similar with WCED, UNEP was established by general assembly of UN, and the secretariat located in Nairobi, Kenya.

This is the genesis link of environmental and development agenda so called sustainable development, from the Stockholm declaration on the human environment 1972<sup>14</sup>, the brundtland report, to the Earth Summit, at Rio de Janeiro 1992. Later on the link of human rights and sustainable development will be elaborated, which then called as the third generation of human rights.

### **2.3 Third Generation of Human Rights: From Human to the Human and Nature centered**

Dividing human rights in to three generations firstly was posed by Karel Vasak. Vasak tried to meet human rights and local community, indigenous people and environmental paradigm. The first generation refers to the civil and political rights, second generation refers to social, economic, and cultural rights, and third generation refers to communal rights, and indigenous people rights. In his article titled "human rights; thirty year struggle, The sustained efforts to give force of law to the universal declaration of human rights (Unesco Courier , 30:11), Vasak basically ignited his proposing theory by referring to the France revolutionary slogan; *liberty, equality, and fraternity*.

The first generation comes from the western liberal democracy tradition, reflected by International Convention on Civil and Political Rights which is more promoted by liberals. The first generation focuses on individual rights like freedom of speech, freedom from torture, freedom to establish union and others rights which limit state intervention to the individual life, categorized in the human rights terminology as negative duties of states. Second generation of human rights is reflected by International convention on economic, social, and cultural rights promoted more by socialist states. This second generation focuses on the state responsibilities to the people need and welfare namely basic needs, healthcare, basic education, and other worth life insurances. In many extends it also closes to the concept of so called progressive rights, or also affirmative or positive duties of state(Ruppel 2008).

The third generation referred to fraternity, called solidarity rights, refers to the global trend in recognizing the collective rights instead of individual rights. The third generation is not placed in the debate of whether state intervenes or not mere the individual rights like the previous two

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<sup>14</sup><http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503>, accessed in August 20, 2008

generations, but also upon the behavior of each individual. The rights of self determination, indigenous people<sup>15</sup>, rights to development, the rights to peace, the rights to healthy environment, and the rights to intergenerational equity are categorized as a part of the third generation (Ruppel 2008).

By using the concept of Vasak, Oliver C Ruppel specifies the rights to a healthy environment requires by healthy human habitat, healthy (clean) water, air, and soil. In terms of state role, Ruppel requires three aspects to be entailed: Government is refrained from interfering directly or indirectly with the enjoyment of the right to a healthy environment. Second, Government has to prevent third parties such as corporations from interfering in any way with the enjoyment of the right to a healthy environment. Third, Government has to adopt the necessary measures to achieve the full realisation of the right to a healthy environment(Ruppel 2008).

Another definition given by Stephen P. Marks noted that the third generation of human rights consists of solidarity rights belonging to peoples and covering global concerns like development, environment, humanitarian assistance, peace, communication and common heritage (Tarodi 2004)

Due to the explanation on the genesis of sustainable development in this sense, particularly the result of Stockholm conference and Rio summit 1992, it is clear that there was a link of its concept with the emergence of third generation of human rights. In this paper, environment, local people, and indigenous people are called as human rights problem, by theory called as the third generation of human rights. The two other generations of human rights are seen as indivisible, they do complement each others.

However, it can be concluded from these readings that the most important part of the third generation invention is how the definition of human rights is shifted from “human centered” alone to the “human and nature or environment centered”. This kind of human rights paradigm is obviously still developing in terms of conceptual frame, but actually the notion of the third generation can be traced from some conceptual explanations, international laws and institutions related, and national laws. The research paper will be going to focus on the two aspects of third generation of human rights; collective and environmental rights which will be elaborated below.

### **2.3.1 Collective Rights: Indigenous People**

The notion of collective rights posed by Kasak can be seen from some international consensus based such as ICCPR, ICESCR, UN Declaration on Indigenous People (UNDIP), Declaration on the rights to development (DRD), and Rio Declaration. The Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on September 2007, declared 46 articles giving prominence to collective rights to a degree unprecedented in international human rights law<sup>16</sup>. The United Declaration on the Indigenous Peoples is run by some permanent bodies, such as Permanent Forum on Indigenous Issues (UNFII) based in New York, and UN Special Reporter on the situation of human rights and fundamental freedoms of indigenous peoples. The articles 1 of

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<sup>15</sup> In September 2007 the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration was adopted by vote with 143 countries in favor, including the governments of both Malaysia and Indonesia, and 4 against (with 11 abstentions)

<sup>16</sup> <http://www.un.org/esa/socdev/unpfii/en/history.html>, accessed in August 20, 2008

the declaration stated *Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law*<sup>17</sup>.

Related to the third generation of human rights, the guidelines on Indigenous people issues has been stated by United Nations Development Group, some such as self determination, self government, autonomy, self management, lands and territories, natural resources, environmental issues, traditional knowledge, intellectual property, intangible heritage and cultural expression, indigenous customary laws, and health and social security. *One of a prominent rights of Indigenous peoples stated in article 19, noted the rights to be Free, prior and informed consent (FPIC) on any issues related to indigenous people life, called the rights to FPIC, allowing indigenous peoples to reach consensus and make decisions by them self according to their customary systems of decision-making, for example the decisions on their lands.*

Declaration on the rights to development (DRD), 1986, was adopted by general assembly of UN on December 1986. In relation with the third generation of human rights, article 2 of the declaration stated “The human rights to development also implies the full realization of the rights of peoples to self determination, which includes, subject to the relevant provisions of both international covenants on human rights, the exercise of their inalienable rights to full sovereignty over all their *natural wealth and resources* (italic version by author)<sup>18</sup>. Arjun Sengupta also deliberately stated the right to food, education and health, as the primer rights to development (Tarodi 2004)

### **2.3.2 Environmental Rights**

Furthermore, the notion of environmental rights as third generation of human rights posed by Ruppel and Kasak above was claimed by Marie Soveroski as been included in the major international human rights declarations and conventions. The basic of many environmental rights are made base on the right to life, the most fundamental of all human rights (Soveroski 2007). Ms Fatma Zohra Ksentini poses a more comprehensive definiton of environmental rights as “*the rights of all persons to a secure, healthy, and ecologically sound environment, and the right to freedom from pollution, environmental degradation, and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries*” (Soveroski 2007:267)

Regarding to the consensus and institutions on the environmental rights, beside some other international agreements<sup>19</sup>, four packages of UN declarations, principles and conventions which are openly ratified in the Rio Summit 1992 are Convention on Biodiversity (CBD) and convention on climate change (CCC). “Rio” Declaration (consisted of 27 principles mostly stated the link of human rights and environment) and sustainable development agenda (agenda 21) consists of UN agenda on sustainable development. The leading bodies in this matter are UNEP (United Nation Environment

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<sup>17</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf), accessed in August 27, 2008

<sup>18</sup> <http://www.unhchr.ch/html/menu3/b/74.htm>, accessed in August 27, 2008

<sup>19</sup> Related conventions are The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Migratory Species, the Stockholm Convention on Persistent Organic Pollutants (POPs), the Rotterdam Convention on Prior Informed Consent, Vienna Convention for the Protection of the Ozone Layer, Montreal Protocol on Substances that Deplete the Ozone Layer, Cartagena Protocol on Biosafety adopted to address issue of GMO, etc

Program), UNDP, UNFPA, UNICEF, Commission on Sustainable Development (CSD). Also there is another important body under the Bretton Woods institutions such as GEF (Global Environment Facility) at the global level.

In the regional level, EU is one of the successful experiments in the regional environmental governance in the world, and in the same time as a global leader in environmental protection and sustainable development since 1972, the Stockholm conference symbolically adopted as policy within EU region, even though realized that it still has been fail to implement them in the ground(Collins 2007,Soveroski 2007). In national level, Indonesia has some regulations related to environment, as compilated by Sirait(Sirait 2008); article 18 of constitution 1945, Basic Agrarian Law number 5, 1960, Tenancy Laws 1960, Regulation no 5/1999 issued by National Land Bureau, and Forest Law 1999.

## **2.4 Multistakeholder Analysis**

### **2.4.1 Stakeholders and Multistakeholder**

*“Multilateralism as a modern principle was born....with the advent of multi-stakeholders, a new page in international relations is turning”* (Mountinot 2007:21)

There are some versions of the genesis of stakeholder discourse and how it becomes a trend in the globalise world, but mostly of the versions agree that the emergence of the stakeholder concept was not alienable with the emergence of economic globalization which is arising in the liberal tradition, and where the role of firms of corporations are more significant to be another player behind the states, and also somehow surpassing the power and the role of states. As Mountinot mentioned above, in the level of international relation, multi-stakeholder takes important chair beside the states. The end of cold war is also seen as one of factors of the new emergence power played by another power instead of states. *“Global companies are currently at the peak of their power, and it is currently accepted after the collapse of communism”* (Steger 2006:xxxii).

The erosion of the state sovereignty was noted by Laurent Mountinot long since the emergence of multilateral organization such League of Nations set up in 1919, followed by the emergence of Bretton Woods institutions such as World Bank and IMF in order to tackle the instability of global economy.

Another explanation given, it is not only all about the emergence of global companies. Non business and non government organization so called NGOs had a role in order to the emergence of stakeholder trend. The influences of NGOS in the level of international levels were already very recognized since its emergence in the late of 70s. In this context, the emergence of social movement represent by NGOs movements post the collapse of communist era becomes the metamorphosis of social movement to be more internationalized taking form as non government organizations. So that, the emergence of the stakeholder not only ignited by economic globalization, but also another form of power, non profit organizations and non government organizations, such as Amnesty International, HRW, Earth Summit, WSF, etc.

## 2.4.2 Stakeholder Theories

In the level of theoretical explanation, concept of stakeholder is apart of organization theory for the interest of the firm coming to its strong existence since Freeman published a book titled strategic management, a stakeholder approach in 1984 (Kochan and Rubinstein 2000, Mitchell et al. 1997:853). Freeman posed the important of so called non linear environmental entities of companies has to be taken to account such professional bodies, unions, consumer protection societies, local communities, and public in general (Mountinot 2007:27). Freeman defined Stakeholder as any group or individual who can affect or is affected by the achievement of the organization's objective. This definition called as classical definition of stakeholder, and one of the broadest definition of stakeholder (Mitchell et al. 1997:856). A bit Similar in terms of global society, Klaus Schwab, promoting 'Copernican diagram' as an anti theses for the linear relations of global society, to see the rise of many actors from non states in the international level (Mountinot 2007:29) The more broadly concepts on stakeholder then are raised by many academia.

Stakeholder theory by Ronald K. Mitchell et al tried to see the stakeholder from the perspective of manager of firm. Mitchell, together with Kochan and Rubinstein tried to identify who and what are to be counted as stakeholder, by promoting a theory of stakeholder identification and salience (Mitchell et al. 1997). Then, they tried to answer a question, why certain groups or individuals have to be counted as stakeholder, why the others are not, what factor that makes them important then which stakeholders do really count. Mitchell et al completely and chronologically gathered definitions of stakeholders from many sources then divided them into two classifications: Narrow view and broad view.

The narrow view sees Stakeholder as only groups or individuals who have direct relevance to the firms core economic interests, as mentioned by Bowie, necessity of the stakeholder to the firm's survival (Mitchell et al. 1997:857). In contrast, the broad view of stakeholder is based on the empirical reality that companies can indeed be vitally affected by, or they can vitally affect, almost anyone (Mitchell et al. 1997:857). In this sense, the stakeholder, in order to the survival of the firm, the firm manager has to consider economic well-being, damage control, taking advantage of opportunities, competition, winning friends, influencing public policy, coalition building, an so forth (Mitchell et al. 1997:859).

*We then propose that classes of stakeholders can be identified by their possession or attributed possession of one, two, or all three of the following attributes: (1) the stakeholders power to influence the firm, (2) the legitimacy of the stakeholders relationship with the firm, and (3) the urgency of the stake holder's claim on the firm. This theory produces a comprehensive typology of stakeholders based on the normative assumption that these variables define the field of stakeholders: those entities to which managers should pay attention. Building upon this typology, we further propose a theory of stakeholder salience (Mitchell et al. 1997).*

From the perfective of manager of the firm, the salience or the quality of each stakeholder to the organization is measured by using three testing circles: power, legitimacy, and urgency.

First circle, Mitchell quoted the definition of power given by Robert Dahl or Weber as a relationship among social actors in which one social actors, A, can get another social actor, B, to do something that B would not have otherwise done. Power of certain stakeholder, in this sense, has a coercive capacity to impose its willing. Second circle, Legitimacy, taken from Suchman (1995) is referred to socially accepted and expected structures, a generalized perception or assumption that the actions of

an entity (stakeholder) are desirable, proper, or appropriate within some socially constructed system of norm, values, beliefs, and definitions. This circle focuses on the moral aspect of the stakeholder. The last circle, urgency, taken from Merriam Webster Dictionary, refers to the degree to which stakeholder claims call for immediate attention. The classification of the stakeholder salience as mentioned by Mitchell at the figure above is determined by the accumulation of the three attributes. The more attributes stakeholder has, the more powerful and significant the stakeholder to the firm has.

Mitchell, Agle, and Wood started the theory by developing a core proposition: “*stakeholder salience will be positively related to the cumulative number of stakeholder attributes-power, legitimacy, and urgency-perceived by managers to be present*” (Mitchell et al. 1997:873). Then, from the main proposition, they explored three sub-propositions; first, stakeholder salience will be low where only one of the stakeholders attributes-power-legitimacy-urgency- perceived by managers to be present. Second, stakeholder salience will be moderate where two of the stakeholder attributes are perceived to be present, and the last, stakeholder salience will be high where all three of the stakeholder attributes are perceived to be present. By this definition on stakeholder in the context of the RSPO membership, the salience of the members can be measured through which member that has direct interests, indirect interests to the palm oil. The categorization of the member of RSPO will be explained later on.

## 2.5 RSPO and Power Relations

As introduced in the first chapter, besides explaining the compatibility of principles and criteria of RSPO with the third generation of human rights, I want to see the dominant idea works in RSPO and how do the actors use the RSPO in achieving their interests, how the powers are practiced investigated by power concept of Steven Lukes.

In his book, Power: a Radical View, to investigate power relation in sociological and political arena, Lukes firstly introducing questions on power, how do the powerful secure the compliance of those they dominate and, more specifically, how do they secure their willing compliance? How to think about power theoretically and how to study it empirically? (Lukes 1974). Then he argues that power is not only what is overt (Weber), where the one in a social relationship will be in a position to carry out his will despite of resistance, but can be also exercised by preventing grievances - by shaping perceptions, cognitions, and preferences in such a way as to secure the acceptance of the status quo since no alternative appears to exist, or because it is seen as natural and unchangeable, or indeed beneficial.

Lukes defined that “*power is decision making and control over the political agenda, decision-making and control over the political agenda (not necessarily through decisions) issues and potential issues, observable (overt or covert) and latent conflict, and subjective and real interests*”(Lorenzi 2006).

In the RSPO setting, there are two main interests and groups playing: business interests by firms institutions with its business and financial networks, and social and environment (third generation of human rights) by so called social and environmental NGOs with its social group networks. Figure 1 (Players in RSPO) at Chapter 1 shows that big corporations dominate the RSPO chains. They are oil palm growers, processor and traders, consumer goods manufacturers, retailers, banks and investors/shareholders.

The limited influence belongs to social and environmental stakeholder in the RSPO occurs not only because of the small number of social and environmental NGOs in the RSPO, but also they

problem of representation as too small in representing civil society dealing with the issue of palm oil plantation, internal constraints and the limited preferences available in the RSPO, rather than playing outside of it. Social and environmental NGOs, as members of RSPO, have to maintain their relationship with the other members which are standing on the corporation linkages.

## **2.6 Conclusion**

In this chapter, three types of approaches have been elaborated: the third generation approach; stakeholder analysis and the power approach of Lukes. The review of these theories suggests that the third generation of human rights approach was useful as it connected the two main areas of interest of this work: namely environmental and human rights. The stakeholder approach was found to arise from within the tradition of broadly 'liberal' approaches to power relations. The view suggests that a 'balance' will be found among different parties and individuals, companies and actors in relation to their interests. This approach thus failed to see the structural inequalities that may exist in power relations. For this reason, the approach proposed by Lukes proved useful as an addition to stakeholder analysis and has been explored in some detail for this reason. In the next chapter, the case study is approached through the combined

## Chapter 3

### Between the Idea and Practice:

### Third Generation of Human Rights in the PC RSPO and the Ground

#### **3.1 Introduction**

This chapter first considers how third generation human rights have been incorporated into the framework and principles of the RSPO. The second part of the chapter deals in detail with the implications of a legal case which was taken up in 2008 by a number of environmental and social NGOs (a case which is still in progress). This is the Wilmar Group case – and it is directly related to the third generation of human rights as already elaborated in Chapter 2. This chapter will explain how different RSPO member organisations responded as stakeholders to the legal case as it has progressed. Stakeholders are divided for the purposes of analysis according to their interests.

#### **3.2 A Note on Key Sources for the Case Study**

The elaboration of The Wilmar Group case study in relation to third generation human rights (mainly indigenous people rights and environmental rights) will rely quite heavily on two main studies. One is a joint publication of Milieodefensie Netherlands (Friends of the Earth, FOE), Lembaga Gemawan (Gemawan), and Kontak Rakyat Borneo (Kontak Borneo) published in July 2007 is entitled *Policy, Practice, Pride and Prejudice, Review of Legal and Social Practices of Oil Palm Plantation Companies of the Wilmar Group in Sambas District*. The 2007 study focuses on the environmental situation in Sambas after the establishment of The Wilmar Group in the area. Of the seven subsidiaries mentioned in Chapter 1, three are of particular significance in these studies on the Sambas District. The Wilmar Group operates in Sambas through the PT WSP (Wilmar Sambas Plantation, Limited), PT BCP (Buluh Cawang Plantation, Limited), and PT ANI (Agro Nusa Investama, Limited), and these are of particular importance therefore in this chapter. The second significant source is written by Martua Thomas Sirait, entitled *Environmental Conflict, Indigenous People of West Kalimantan and Oil Palm Plantation Expansion in Indonesia*. This is the most recent study and was published in May 2008. The two researches focused on a similar area located in West Kalimantan Province. The 2008 study focuses on the rights of local people, the *Dayak* communities and how they have been affected by the presence of palm oil plantations at Sambas and Sanggau District, West Kalimantan Province, Indonesia.

#### **3.3 RSPO's Provisions but few Mechanisms**

International society and business in the palm oil industry in the world have entered into formal multi-stakeholder dialogues through the Roundtable on Sustainable Palm Oil (RSPO) since 2004. The RSPO has grown rapidly in membership and now representing about 40% of global palm oil production and trade. RSPO aims to promote the production and use of palm oil from responsibly managed sources. In its preamble RSPO acknowledges the sector faces serious sustainability challenges. The RSPO claims that the stakeholders of sustainable palm oil are represented in the organization including business, social and environmental stakeholders. In fact, the organization does not recognize the local or indigenous people as stakeholders nor include the workers' union in their ethnic group acknowledgement.

From 8 principles of RSPO<sup>20</sup>, there are 5 principles that by definition attached to the definition of third generation of human rights, namely principle number 4 (Use of appropriate best practices by growers and millers), principle number 5 (Environmental responsibility and conservation of natural resources and biodiversity), Principle number 6 (Responsible consideration of employees and of individuals and communities affected by growers and mills), Principle number 7: Responsible development of new plantings, and the last, Principle number 8 (Commitment to continuous improvement in key areas of activity). Using categorization by Vasak, principle number 1 (Commitment to transparency) is seen more attached to the first generation of human rights, the rights to access to certain information (accountability). Principle 2 (Compliance with applicable laws and regulations) stands for national law interpretation, and principle 3 (Commitment to long-term economic and financial viability) is seen attached to the business interests/purposes. By looking at the table above, the concept of sustainable development (the linkage of social, environmental, and economic viability) is incorporated in the principles of the RSPO. Specifically, the ideas of social and environmental concerns presented in this paper are generally known as the third generation of human rights dominate the principles.

The significant number of social and environmental aspects can be seen as represented by the values of international covenants, conventions, and declarations such ICCPR, ICESCR, DRIP, CCC, DRTD, CEDAW, CERD, CDB and Rio '92 Declaration. Then how those ideal rights reflected in the RSPO body, has to be checked from the existing mechanism of the RSPO to fulfill such needs. Grievance Panel, is an RSPO body as a mechanism to address the complaints regarding to the violation of principle, criteria, and other RSPO regulations

The Grievance Panel of RSPO<sup>21</sup> is formed by Executive Board, in order to review, assess and formulate actions that can be carried out by the conflicting parties to mitigate conflict and provide solutions. The grievance can be done by other parties, non member of RSPO and also by RSPO member it self, as long the grievances can be proved that certain principle, criteria, code of conduct and other protocol of RSPO have been violated.

A consensus-based organization like the RSPO depends on the good will of its members. It has become then a dilemma as to how to enforce the consensus on the ground. Punishment for the member who breaches the RSPO principles is not clearly stated. According to the RSPO Grievance panel,, a violating "*member would be required by to take action to remedy or resolve the situation to the satisfaction of the Grievance Panel*"<sup>22</sup>. The means even if a serious violation of the principles of RSPO occurs, the harshest punishment a violator could face would be to be excluded from membership of RSPO. In reality, as a newly established organization, RSPO needs more members – especially major producers like The Wilmar Group - in order to be credible and to strengthen its capacity and legitimacy internationally. RSPO would therefore prefer to recruit more members rather than occupy itself with exclusion procedures for existing members who have violated the principles of the organization. The following sections in this chapter will deal with The Wilmar Group legal case and

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<sup>20</sup> See appendix number 4.

<sup>21</sup> See the Grievance panel mechanism at the Appendix 3

<sup>22</sup> [http://www.rspo.org/resource\\_centre/RSPO%20Grievance%20Procedure.pdf](http://www.rspo.org/resource_centre/RSPO%20Grievance%20Procedure.pdf), accessed in July 19, 2008

explore the early implications of this important case for the accountability mechanisms of RSPO in relation to its stakeholders, and how these mechanisms are working in practice.

### 3.4 Indigenous People: Ignored Rights Holder

Indigenous people's groups are not among the member organisations of the RSPO, even though indigenous people are recognized under Indonesia law. In order to understand the situation of indigenous people's rights in Sambas in West Kalimantan in relation to Wilmar's operations, their characteristics in the area first need to be clarified. The Dayak and Melayu ethnic groups are the largest population groups, as noted by the original settlers. The Dayak mostly live in the highland areas and are about one third of the total population. Dayaks are divided into some 151 sub-groups, with 168 local dialects just in West Kalimantan.<sup>23</sup> The Melayu ethnic group mostly live in the lowlands and coastal areas and rivers, and are also around one third of the total population (Sujarni Alloy 2008). These two indigenous ethnic groups thus make up two thirds of all inhabitants of West Kalimantan. The two ethnic groups also have a close relationship regarding their ancestry which is closely inter-connected one with the other. They are officially categorized as *masyarakat adat* or Indigenous People (Sirait 2008,Sujarni Alloy 2008)

*Masyarakat adat*, or indigenous people, practice hereditarily '*hukum adat*' (customary law) which regulates '*tanah adat*' (adat territory), '*hutan adat*' (adat forests) and is basically recognized by *Undang Undang pokok agraria UUPA no 5/1960*, the Basic Agrarian Law of Indonesia Number 5 of 1960 (BAL),<sup>24</sup> The BAL is considered to open to many interpretations, and is ambiguous particularly regarding the indigenous forest and state forest areas (Sirait 2008). According to the National Forest Act of 1999, local people, if recognized by the local government, are allowed to manage their indigenous forests.

Indigenous people are recognized in Indonesian law under Act No 5 (1960) of the Basic Agrarian Law. Chapter 9 Verse 2 states that indigenous people exist if some basic requirements are fulfilled. The requirements include that the society should still form an informal group or community, there should be a clear traditional law area, and there should be rules and people responsible for upholding those rules (customary laws). Traditional justice systems should be put in place, and should be respected. There is also recognition of indigenous people in Districts through a district regulation (known as *Perda*). In practice, government actually recognizes the indigenous people by allowing the indigenous land to be managed by them, and this is still the case in Sambas District of West Kalimantan.

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<sup>23</sup> West Kalimantan is a part of Kalimantan Island which is known as the third biggest island in the world after Greenland and Papua, belongs to three states; Malaysia, Brunei, and Indonesia. Except north Kalimantan which is belongs to Malaysia and Brunei, most of the area, about 73 % of the island is under Indonesia's government

<sup>24</sup> Basic Agrarian Law, article 3, stated: "*Masyarakat adat* rights and other similar rights of customary law community (*masyarakat hukum adat*) should be recognized, as long as these communities really exist, and it is consistent with national and state interest, based on the principle of national unity, and it is not in contradiction with this law and higher regulations. Article 5 stated: "customary law applies to the earth, water and air as long as it does not contradict national and state interests, based on national unity and Indonesian socialism, and also other related provision of this law, in accordance with religious principles.

### 3.5 The Land Conflict

One of the core concerns of the 2007 report is the issue of land disputes between the Wilmar Corporation and indigenous people in the Sambas and elsewhere in West Kalimantan. The research focused on five sub districts in Sambas District, where three of Wilmar subsidiaries have been in operation since 2005. These include PT WSP (Wilmar Sambas Plantation Limited), PT ANI (Agro Nusa Investama limited), and PT BCP (Buluh Calang Plantation Limited)

In July 2007 the report was sent to RSPO and shortly afterwards, when the report was made public it attracted responses from many quarters including from The Wilmar Group itself. The land dispute between Wilmar's subsidiaries and the local people is presented below in table form, in order to clarify the stakeholders involved. A more detailed discussion of the power relations among these stakeholders is undertaken in Chapter 4.

Table 1: Land conflicts; Wilmar vs Local People (Taken from: Adriani Zakaria 2007)

Wilmar's Subsidiaries	Hamlet	Village	Sub-District	Approximate dispute area (ha)
PT WSP	Tenggiling	Senujuh		400- 450 (cleared outside of location permit)
	Nante		Sejangkung	
	Sasak	Santaban	Sajingan Besar	1.500 (land sold off to Duta Palma Group)
PT ANI	Sidodadi	Sepantai	Sejangkung	Company encroached 3 km into village land
	Satai			
	Jambu	Beringin	Sajad	230
	Semakuan		Sejangkung	700
	Senabah			72
	Sajingan Kecil			2.800
PT BCP	Semanas	Tempapan Hulu	Galing	Hundreds of hectares

In relation to the table above, the three Wilmar subsidiaries practiced land clearing by fire in the customary land of the indigenous people groups without prior consultation to the people. Others are the companies occupying the land without permit from the people, and planting the village lands.

Still in Sambas, Sirait<sup>25</sup> focused his case study on the impact of palm oil expansion to the indigenous people in four sub ethnic groups of Dayak ethnic; they are Hibun, Sami, Jangkang jungkur tanjung, and Pompakang. The research proved that there was a replacement of land ownership system from the communal property to individual property then followed by companies' property. Another claim is that the company took the ancestral land through claim that the lands are the state's lands. Partnership schemes created by palm oil plantation companies shifted systematically the system of land ownership, particularly by practiced Plasma scheme and KKPA (Primary Cooperatives Credit for its Member).

<sup>25</sup> Martua Sirait, a prominent Indonesian researcher on Palm Oil Issues, published his research result titled "Environmental Conflict, Indigenous Peoples of West Kalimantan and Oil Palm Plantation Expansion in Indonesia. the research was conducted in 2007-2008. (Sirait 2008)

Sirait found that beside companies, government has a role in the replacement of the land ownership from community of indigenous people to the companies. Local government created task forces for acquiring the land from the indigenous people. Through *Perda* (a local government regulation) Number 3, 2004, Sanggau District, West Kalimantan, Local government established a Task Force for Land Acquisition at the District (TP3K), County (*Satgas*), and village (*Satlag*) levels. Members of the Satlak included village chiefs, *adat* leaders and other influential actors at local level (Sirait 2008:3-4). The Government thus coopted leaders of the indigenous people in their efforts to acquire indigenous land.

Before the expansion of palm oil plantations, indigenous people in West Kalimantan were mainly practicing another monoculture plantation, in the form of rubber plantations. They had been introduced to the rubber crop since early of 1900s. The difference is that the rubber plantation is not as large-scale as palm oil plantations, and come more under the control of the small producer. It can also be noted that rubber plantations have been preserved ancestrally and have a significant contribution to the indigenous people's sustainable livelihoods. Rubber can thus seem a more friendly crop for the human and natural environment than palm oil (Sirait 2008:9-10). The local people have set aside a number of hectares of land for their rubber and traditionally sell the latex to the market, including in traditional markets to smaller buyers.

Unlike rubber plantations, palm oil plantations are primarily owned by large companies, and characterised by large-scale production. For local people, having palm oil plantations means that almost all of the stages of the cultivation and production process, from providing land, land clearing, supplies of seed, cropping, fertilizing, to selling and refining, are completely dependent on the large companies involved. The conflict between indigenous peoples and the palm oil companies is thus difficult to avoid, given these huge imbalances of power relations. Moreover, one indicator that power relations tend to work very much in the companies' favour are the horizontal conflicts that frequently emerge among competing groups of producers, even when they share indigenous identities and indigenous rights concerns, for example over land rights and environment.

Horizontal conflicts can arise with differing ideas about the best way to respond to the actions of companies because of power differentials among stakeholders. This will be examined in more details in Chapter 4. In this chapter, what we have seen is that some groups have decided to accept the scheme put forward by the company, whilst others have decided to reject this. A fuller explanation of this diversity of responses will form part of the next chapter.

A plasma mechanism is a means by which large palm oil corporations take back and lease indigenous land back to indigenous people on condition that palm oil is grown. Among the Dayak, the leaders of the Hibun sub-group accepted the plasma mechanism while the leaders of the Sami sub-group did not. Another example of conflict is that between Javanese transmigrants given indigenous land tracts by the government, and the Jangkar Jungur Tanjung sub-ethnic group of the Dayak, who have persisted in their claims to this land since the 1980s. Into this context, the recently arrived company, PT CNIS, a company that trades with Wilmar, sided with the transmigrant groups. This resulted in conflict over land claimed both by transmigrants and indigenous people. Jangkar Jungur Tanjung, on the other hand, still claims the land as their ancestral domain. The company, PT CNIS sought to benefit from these complicated land disputes in the areas. This situation in Sanggau, an area adjacent to the Sambas, has resulted in land conflicts that are both vertical and horizontal. The study by Sirait analysed these conflicts as described in Table 2.

Table 2: Indigenous people vs. Palm oil companies in Sanggau, West Kalimantan (Synthesized by the researcher from Sirait 2008)

No	IPs Groups	IPs vs Company	Explanation
1	Hibun and Sami <sup>26</sup>	PT MAS II	Hibun groups accepted the plasma scheme offered by the company in cooperation with local government, leading to the conflict with Sami groups whom rejected the plasma scheme and stands to crop the traditional rubbers).
2	Jangkang Jungur Tanjung and transmigrants <sup>27</sup>	PT CNIS (Sinar Mas Group subsidiary)	Jankang Jungur Tanjung conflict with Javanese transmigrants - minority after the presence of PT CNIS.
3	Pompang and Melayu <sup>28</sup>	PTPN XIII (Stated owned palm oil plantation company) member of GAPKI (RSPO Member)	Pompang conflicts with Melayu after the presence of palm oil plantation in their area.

Sirait noted that later on, both of the disputed groups realized that the companies were taking advantage of their horizontal conflicts. The Hibun community had already been trapped into sub-contracting their own labour and land through the *plasma inti* scheme of PT CNIS, and in response the Hibun established the SPKS (*Serikat Petani Kelapa Sawit*/ Peasant association on Palm Oil) which aimed to demand their land rights back. In mid-2007, the Hibun and Sami sub-groups blockaded the entrance of PT MAS II with the demand that the land conflict be settled by the company (Sirait 2008:35-36). What is important to note from this study, and the above table, is that a range of vertical and horizontal conflicts need to be analysed and understood within and between stakeholders with very different power relations within the RSPO processes, procedures and mechanisms. Further data is needed on the legal case that has arisen from this conflict, a case that is being handled in the local courts in West Kalimantan. .

### 3.6 Environmental Rights: Deforestation

In addition to the land dispute, another main focus of the 2007 NGO report was the environmental impacts of the Wilmar Group's activities and of the rapid growth of their operations in the Sambas District. The report focussed on a number of key points, which will be treated in turn in this section:

- Evidence of illegal burning with the intention to clear land;

<sup>26</sup> Hibun group is majority having population about 18.502 persons, whether its neighbor, Sami group is the minority in population about 608 persons.

<sup>27</sup> Population of Jangkang Jungur Tanjung was 15.711 persons, and Javanese transmigrants is 58 household

<sup>28</sup> Population Pompang was approximately about 4.892 persons.

- Illegal plantation development without approved Environmental Impact Assessments and
- Land rights conflicts resulting from encroachment outside areas allocated and the absence of due consultation with relevant local communities, illegal encroachment in river buffer zones, (facilitating)
- Illegal removal of forest products and deforestation without a proper assessment of High Conservation Values which may result in the further destruction of the habitat of, among other endangered species, the orang-utan.

Firstly, the report found evidence of the use of fire. At present, PT WSP and PT BCP in Sambas District and PT ANI in Landak District have been sued by the Indonesian authorities for “intentional and systematic burning with the purpose to clear land for plantation development”. Some main arguments in support of this case are that PT BCP reported the outbreak of fires to the wrong authorities and PT WSP did not report the outbreak of fires at all. Furthermore during field investigations, it was observed that newly burnt areas were immediately planted with oil palms. In such areas, the ash fertilized and neutralized the acidity of the soils, making the otherwise poor and acid soils suitable for oil palm growth. No recently planted areas were destroyed in the fires (Adriani Zakaria 2007:23). The pattern of the fires was thus seen as evidence that the fires were started deliberately in spite of prohibitions on such a policy.

Secondly, the approval from the Provincial government for their Environmental Impact Assessment (EIA) reports before large-scale land clearing commences: Review of the PT WSP and PT BCP EIA reports showed that these documents have some important gaps as regards environmental and social impacts of the envisaged operations. Because PT BCP and PT WSP were clearing land and planting oil palms without the legally required approval of its EIA report, the Ministry of Environment in Jakarta ordered PT BCP and PT WSP on April 11, 2007 to halt all their physical activities on the ground and complete the environmental audits. PT ANI continues to expand its plantation area and operate a crude palm oil mill without having completed its EIA (Adriani Zakaria 2007:34)

Thirdly, The three Wilmar subsidiaries in Sambas commenced land clearing in customary rights land and other villagers' land without prior consultation and a due land acquisition process in relevant areas and affected communities. PT WSP and PT ANI cleared community land outside of the areas allocated to them. This triggered various land rights conflicts in the Wilmar areas which hamper the companies' ability to expand as foreseen (Adriani Zakaria 2007:43)

Lastly, PT WSP, PT BCP and PT ANI are clearing tropical forests without having secured the legally required endorsement and permits required to do so. The companies convert these forests without having conducted independent HCVF assessments, which renders the companies non-certifiable under RSPO (Adriani Zakaria 2007:49)

The main conclusion of this report is that the current plantation development practices of Wilmar's subsidiaries in the Sambas District are, on several accounts and several localities, in conflict with:

- the public CSR policies of the Wilmar Group;
- Indonesia's legislation and
- the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO).

This gap between policy and practice leads to environmental damage and social unrest and undermines good governance of the palm oil sector. By analyzing the report written by Adriani Zakaria, briefly, the activities and practices of Wilmar on the ground and the RSPO principles can be seen as follows (Adriani Zakaria 2007).

Table 3: Wilmar Practices and RSPO Principles (synthesized from: Adriani Zakaria 2007)

No	Reports on Wilmar Practices in West Kalimantan	RSPO Principles abused	
1	Land Clearing by using fire	<p>PT WSP and PT BCP in Sambas District and PT ANI in Landak District have been sued by the Indonesian authority for “intentional and systematic burning with the purpose to clear land for plantation development”.</p>	<p>Criterion 5.5 Use of fire for waste disposal and for preparing land for replanting is avoided except in specific situations</p> <p>Criterion 7.7 Use of fire in the preparation of new plantings is avoided</p>
2	Environmental Impact Assessments:	<p>Review of the PT WSP and PT BCP EIA reports showed that these documents have some important gaps as regards environmental and social impacts of the envisaged operations.</p> <p>PT BCP and PT WSP cleared land and planting oil palms without the legally required approval of its EIA report, the Ministry of Environment in Jakarta ordered PT BCP and PT WSP on April 11, 2007 to halt all their physical activities on the ground and complete the environmental audits.</p> <p>PT ANI continues to expand its plantation area and operate a crude palm oil mill without having completed its EIA</p>	<p>Criterion 7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.</p>
3	Community relations and free, prior and informed consent:	<p>The three Wilmar subsidiaries in Sambas commenced land clearing in customary rights land and other villagers’ land without prior consultation and a due land acquisition process irrelevant areas and affected communities. PT WSP and PT ANI cleared community land outside of the areas allocated to them. This triggered various land rights conflicts in the Wilmar areas which hamper the companies’ ability to expand as foreseen</p>	<p>Criterion 2.3 Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.</p> <p>Criterion 7.5 No new plantings are established on local peoples’ land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p> <p>Criterion 7.6 Local people are compensated for any agreed land</p>

		acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.
4	Deforestation/forest conversion:	PT WSP, PT BCP and PT ANI are clearing tropical forests without having secured the legally required endorsement and permits required to do so. The companies convert these forests without having conducted independent HCVF assessments, which renders the companies non-certifiable under RSPO Criterion 7.3 New plantings since November 2005 (which is the expected date of adoption of these criteria by the RSPO membership), have not replaced primary forest or any area containing one or more High Conservation Values (HCV).

The table explains that the three companies under Wilmar Group clearly breached the principles and criteria of the RSPO. Land clearing by using fire, inappropriate EIA, clearing the community lands without prior consultation and well informed to the people affected, and clearing the tropical forest reported are recognized by Wilmar. It can be seen from the response letters sent by Wilmar to the RSPO and to the complainant-NGOs (Adriani Zakaria 2007:71-76, 92-93). But again, the report and the response are mere arguments on paper, and do not propose any specific or appropriate action against the violators of the RSPO's principles and criteria. As a result, the lack of capacity of RSPO to enforce its own regulations becomes apparent. This makes it hard to place much faith in the willingness of RSPO to sanction stakeholders – especially powerful corporate stakeholders – of breaches of its regulations. The accountability issue will be explored further in Chapter 4.

### 3.7 Stakeholders and Power Relations

#### 3.7.1 Roles and Responses RSPO Stakeholders to the Case of Wilmar

When it was made public, the 2007 NGO report ignited responses and attention from the international community, from RSPO stakeholders and from Wilmar business networks around the world. In this section some of these responses will be reviewed by using stakeholder theory as developed by Mitchell, Agle, and Wood, and considering the salience of the actors involved in terms of their interest in palm oil sustainability. In the Wilmar legal case there are three core parties in the dispute which is taking place within the RSPO arena: firstly, the Wilmar business group, which is the subject of the complaint, secondly, environmental and social NGOs as the complainants, and finally the Government, which has interest in the case. The role and response of RSPO itself through its Grievance Panel has been to oversee the 'trial process' of the Wilmar legal case. Last but not least, one of Wilmar's financial supporter, the World Bank, through its private financial supporting scheme, IFC (International Finance Corporation), has taken further steps by asking one of its subdivisions, the CAO-IFC (Compliance Advisor Ombudsman of the IFC) to respond to the NGO report on the impact of Wilmar Group palm oil plantation activities in West Kalimantan.

#### 3.7.2 Wilmar and its Business Network Responses: the Company Interests

The NGOs report sent to the RSPO, media and some other international institutions forced Wilmar to respond seriously because of the huge potentially damaging impact the report might have on

Wilmar's European market in particular, including the major buyers – Unilever in The Netherlands and Electra Winds in Belgium. There were so many damning facts in the report that some of the main business partners of Wilmar felt obliged to react publicly to the report, including Unilever, IFC, and Essen.

A radical policy has been taken by Essen, a big electric company in the Netherlands, to boycott the purchase of palm oil for bio fuel since October 2007, after receiving the report from NGOs in July 2007. Unilever, the biggest buyer of palm oil in the world, asked for clarification from Wilmar, and IFC through its subsidiary, CAO, conducted its own investigation in the field in Sambas in West Kalimantan, and later on intervened to facilitate conflict resolution between local people and Wilmar companies (Adriani Zakaria 2007).

Instead of opening up to this public international debate on its practices, the Wilmar Group refused to acknowledge the report and instead sent a protest letter to the Friends of the Earth Netherlands, stating that “*We are indeed surprised by your comments made in this paragraph regarding the huge outcry on our practices, within government circles and the media. If these were true, we would not be still operating in the Sambas area. In reality, the general local acceptance of our presence and projects in Sambas attests to our credibility as a responsible plantation owner/developer.*” (Adriani Zakaria 2007:74). Wilmar also sent a letter to Unilever stating that the NGOs report was fake and had been produced without coordination with Wilmar in the field at all, and without proper evidence. In effect, their approach was to deny the validity of the report.

Another important insight of how the corporation has tried to protect their company's image can be seen from the comments of Wilmar on the ownership of PT Wilmar Sambas Plantation (PT WSP) which was reported in the NGO report as a Wilmar subsidiary and accused of deliberately conducting land clearing by fire. Wilmar International responded that PT WSP was not owned by Wilmar but **only under Wilmar management**. The second company referred to in the NGO report was PT Jatim Jaya Perkasa (JJP), also described as part of the Wilmar Group. Again the NGOs were informed by Wilmar that this company had been sold some years before because it was not found to be profitable. In this way, Wilmar again denied responsibility for any land conversion done by PT JJP in West Kalimantan (Adriani Zakaria 2007: :87-93).

However, Milieudefensie shows that PT WSP is nonetheless closely related to the Wilmar Group International, because this company is owned by the Sitorus family. Mr Martua Sitorus is a founder and main shareholder of Wilmar International (Adriani Zakaria, 2007: 71). The evidence is that PT JJP was sold a few years ago by Wilmar to companies owned by Martua Sitorus's wife and his brother, Mr. Ganda Sitorus. Rabobank, one of the main financiers of Wilmar, informed the NGOs that Wilmar refused to say to whom the company was sold. Thus there is the strong likelihood of a business connection between Wilmar International with both PT WSP and PT JJP.

The palm oil business networks i.e., planters, growers, distributors, buyers, shareholders, subsidiaries, bankers, and financiers, which are members of RSPO, show how the power of their interests can be pushed so then easily hampering the achievement of ideal principles of RSPO; social and environmental purposes brought by civil societies.

### 3.7.3 The role of NGOS responding the Case of Wilmar: Inside and Outside RSPO

In the case of the Wilmar case, it is interesting that environmental and social NGO members of RSPO did not get involved in the case. Instead they allowed outsiders and international NGOs such as FOE, Gemawan, and Kontak Borneo to take on the case. Yet some NGOs inside RSPO are closely associated with social and environmental rights issues in Indonesia, particularly Sawit Watch (Palm Watch), WWF, and FPP. For example, Sawit Watch started working in the social issue in palm oil plantation in Indonesia, WWF has a country office in Indonesia (WWF Indonesia)<sup>29</sup>, and FPP, an NGO based in London, has a number of environmental-based projects in Indonesia<sup>30</sup>.

Those NGOs that chose to engage with the RSPO include WWF, Sawit Watch, and FPP who are seen as having closer ties than before with the business sector. These ties have had to be created by the NGOs in order for them to push through issues of social and environmental concern, while remaining involved in advocacy work at the grassroots level. As Lely Khairnur, director of Gemawan West Kalimantan stated: *“They did not get involved in reporting and campaigning on this case, but they helped us a lot in the field”*<sup>31</sup> Claudia Theile, Campaign Coordinator of Milieudefensie Netherlands on palm oil also stated that, in the case of Wilmar, the RSPO NGOs:

*“have to show [to the RSPO] that they are impartial to the case faced by one of the RSPO members, but Sawit Watch is also bound by the code of conduct as a member of RSPO, and sometimes not in a position to be as bluntly critical as non-members can be. So this is a kind of inside/outside strategy that works well”*<sup>32</sup>

There is also some scepticism about those NGOS that have become involved in the issue of Palm Oil in Indonesia. Creating a consensus with business actors, whilst ignoring unequal power relations can pose problems, as Diapari Marpaung, Director of Lentera Rakyat, local NGO dealing with labour palm oil advocacy in Indonesia, stated:

*“If you get involved in it, you will be a part of giving more legitimacy for an organization that contributes to the forest devastation and palm expansion”*<sup>33</sup>.

In the same spirit, Longgena Ginting, Campaign coordinator for International Financial Institutions, FOE International stated that:

*“It is difficult to have a critical position once one joins a voluntary organization such RSPO. Rather than pushing the people agenda forward within the organization, those [who join] will tend to be co-opted by the power of corporations”*<sup>34</sup>.

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<sup>29</sup> <http://www.wwf.or.id/>, accessed in October 2, 2008

<sup>30</sup> <http://www.forestpeoples.org/>, accessed in October 2, 2008

<sup>31</sup> Correspondence via email, October 2, 2008

<sup>32</sup> Interview, at Amsterdam, August 3, 2008

<sup>33</sup> Discussion with the writer, Medan, July 2007

<sup>34</sup> Interview with Loggena Ginting, October 7, 2008

This results in pressures towards fragmentation at the level of civil society because of diverse responses to the RSPO as can be seen from the latest criticism stemming from international NGOs in October 2008 in what has come to be known as “International Declaration Against the 'Green washing' of Palm Oil by the Roundtable on Sustainable Palm Oil (RSPO)”. The Declaration was signed by more than 200 NGOs worldwide, and has also brought into the open criticism not only of corporations, but also of the NGOs involved in the RSPO process. The declaration, by taking the Wilmar legal case from Indonesia, illustrated how the RSPO tended to support the interests of the larger corporations and acted in ways contrary to indigenous people's interests and rights.

*Declarations by actors involved in RSPO such as the Indonesian Palm Producers Association (GAPKI), give a clear picture showing that it is a tool for the expansion of the palm oil business and not an authentic strategy to contain its environmental and social impacts. Many of the RSPO member companies continue to destroy vast stretches of rainforest and to violate human rights, such as in the case of Wilmar International ... in Indonesia.”<sup>35</sup>*

Another insight from the 2007 NGO report is that FOE makes effective use of the mechanisms available through the RSPO to show the public that RSPO cannot deal effectively with complaints put to it by third parties. Not only did FOE send the report to the RSPO as formal procedural mechanisms required, but also to the media, to international institutions and others concerned with social and environmental impacts of palm oil expansion. As Claudia Theile stated in an interview:

*We know that RSPO will not going to solve the problem raised in the report, but we were going to show that there is no improvement in the ground, with the presence of certification institution, even worsen the local people and environmental condition”.<sup>36</sup>*

The report was then circulated to financiers, shareholders, bankers, and purchasers of Wilmar in Europe (the main market for palm oil) and in Indonesia. What is important is that the fragmentation of civil society organizations involves different uses of concepts, strategies, and positions to response the RSPO. This may not always strengthen their position in terms of power relations compared to other interests represented in RSPO, especially business interests.

### **3.7.4 The Role of Government: Corporate “PR”?**

The role of government is evidence from official policies and regulations governing palm oil plantations generally and from certain actions in response to palm oil production generally. In Indonesia, there are also state producers, including PTPN (*PT Perkebunan Nusantara* or Palm Oil Plantation), also a member of RSPO.

TP3K (*Tim Pengawasan dan Pembinaan Perkebunan Kabupaten*), or District-Plantation Task Force consists of local community and government representatives established by government in order to verify land status in West Kalimantan. According to Sirait, the *modus operandi* of this organisation is geared towards taking over lands on behalf of big plantation companies. It does this by seeking to

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<sup>35</sup> <http://www.biofuelwatch.org.uk/docs/14-10-2008-RSPO-Ingles.pdf>, accessed at October 12, 2008

<sup>36</sup> Interview, at Amsterdam, August 3, 2008

give the process of land seizure legitimacy by involving the leaders of indigenous people, village and district heads (Sirait 2008:59).

After the critical NGOs report was widely circulated, particularly in Europe, the Indonesian and Malaysian Government jointly conducted a campaign to tackle the so-called negative campaigning, lies and distortions about palm oil plantations in the two countries. They made a joint announcement that they would hire a consultant for 500.000 euro for the counter campaign<sup>37</sup>.

*Indonesia's Agriculture Minister Dr. Anton Apriyanto said that the allegations by NGOS were baseless because Indonesia does not destroy its natural forest and they only plant on land already earmarked as agricultural. Plantation Industries and Commodities Minister Datuk Peter Chin Fah Kui said many misleading allegations on palm oil had been widely publicized in the US and Europe, undermining the commodity's image worldwide as green oil. These allegations included deforestation, climate change, the slaughtering of orang-utans and destruction of their natural habitats to open plantation land...<sup>38</sup>*

This statement implies that the Governments' position is to protect the corporations' basic interests and those of state companies so as to ensure continued economic investment in the palm oil plantation sector in these countries. In the context of our analysis of power relations in the palm oil industry, what this reveals is that palm oil expansion by large corporations is partly underpinned by official government positions.

### 3.7.5 The role of the Grievance panel RSPO: Business as usual?

The Grievance Panel is the particular body of RSPO that has dealt with the case of Wilmar since 2007. RSPO responded to the report sent by NGOs in July 2007 by requesting the intervention of the Grievance Panel, the first such request faced by the RSPO in its short history. Because resources are lacking, all the Grievance Panel's work is conducted without meetings, at which the Panel might invite groups involved in the dispute to give evidence, for example. As Claudia stated: "The entire process is done by email"<sup>39</sup>"

In order to respond to the report submitted by NGOS on the Wilmar case in Sambas, the Grievance Panel made some comments. These were formulated also on the basis of the NGOs report. The critical points made by the RSPO Grievance Panel are shown below in Table 4. This table shows how some of the points made in the NGOs' report have been taken into account by the Grievance Panel.

Table 4: Grievance Panel comments on Wilmar Case (synthesized from [www.rspo.org](http://www.rspo.org))

No	Grievance Panel comments	RSPO's Principles, Criteria, Code of Conduct breached by Wilmar
1	Wilmar International is not complying with article 2.1 of code of conduct of the RSPO	Code of Conduct article 2.1

<sup>37</sup> Jakarta Post, July 19, 2006

<sup>38</sup> (Taken from: Adriani Zakaria 2007, Business Time, May 26, 2007)

<sup>39</sup> Interview with Claudia Theile, August 3, 2008

	principle	
2	PT Wilmar Sambas Plantation, PT BCP and Agro Nusa Investama in Sambas District did not adhere to the 3 criteria in land clearing	Criterion 2.3 and 7.5
3	The EIA reports from PT WSP and PT BCP are of poor quality, provide no meaningful guidance to understanding the impacts of the companies' activities and do not allow for proper planning and monitoring	Criterion 2.1 and 7.1
4	PT WSP and PT BCP used fires in land clearing operations	Criterion 7.7
5	The 3 companies have allegedly converted forests within their control since November 2005 without having conducted independent HCVF assessments	Criterion 7.3

A positive aspect of the RSPO therefore is the way in which the Grievance Panel has been responsive to the claims contained in the NGO report about the Wilmar case. This may not have been what the company had in mind when they asked the Grievance Panel to intervene in the case. What this means is that the legal case on the ground may reach higher levels and raise an even wider level of international concern. Even though in the end, RSPO has no capacity to enforce its recommendations, and even though in this case the Grievance Panel did not conduct any further enquiries through field visitations, relying instead on secondary data provided in the NGO report.

Finally, the Wilmar claimed that the corporation reached resolution with RSPO by referring to the letter sent by RSPO to Wilmar on February 1<sup>st</sup>, 2008 in relation to the grievance report by NGOs. The report stated that: *“All the members of the Panel studied the response and replied. It was consensually decided by 31st January, 2008 that the response was acceptable to RSPO”*. What this suggests is that Wilmar has responded adequately. However, the process of investigation and follow-up initiated through the Grievance Panel, becomes meaningless. What this means is that the RSPO has come to the conclusion that Wilmar companies are conforming to its principles simply by considering correspondence from Wilmar. This does not take into account either actual conditions on the ground, or the issues raised by the Grievance Panel, which were not addressed by Wilmar. As a consequence, business as usual seems to be the watchword of RSPO in relation to Wilmar International, in spite of the findings of the NGOs and the Grievance Panel. Not surprisingly, NGOs feel the case is far from over, and intend to continue to raise issues of accountability of Wilmar in future meetings.

### 3.7.6 The Role and Response of the CAO-IFC: Lands Returned to Indigenous People

The CAO (Office of the Compliance Advisor/Ombudsman) is an independent body that reports directly to the President of the World Bank Group. The CAO reviews complaints from communities affected by development projects undertaken by the two private sectors which are lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)<sup>40</sup>. International Finance Corporation (IFC), one

<sup>40</sup> <http://www.cao-ombudsman.org/>, accessed in September 28, 2008

of the financial supporters of Wilmar published the finding that Wilmar scored C in social and environmental performance. Later one this was withdrawn after protest in July 2007 from FOE and the Forest People Program (FPP) an ordinary member of RSPO, based in UK,<sup>41</sup> which had attached the report by FOE, Gemawan and Kontak Borneo. CAO, an ombudsman body of IFC, conducted its own field visits in relation to the case referred to in the report in Sambas District. After these field visits, CAO conducted an independent report entitled “Preliminary Stakeholder Assessment Regarding Community and Civil Society concerns in relation to Activities of the Wilmar Group of Companies”. This was published in November 2007.

The investigation revealed a range of very serious social and environmental impacts, consisting of the illegal use of fire to clear lands, clearance of primary forests, clearance of areas of high conservation value, take-over of indigenous peoples' customary lands without due process, failure to carry out free, prior and informed consultations with indigenous peoples in order to obtain broad community support, failure to negotiate with communities or abide by negotiated agreements, failure to establish agreed areas of smallholdings, social conflicts triggering repressive actions by companies and security forces, failure to carry out or wait for approval of legally required environmental impact assessments, and clearance of tropical peat and forests without legally required permits<sup>42</sup>.

The CAO team was recommended by IFC to conduct further actions by facilitating meeting between stakeholders to resolve the conflict. In the field in Sambas, West Kalimantan, some ongoing agreements were being facilitated in 2008 between Wilmar and a number of local communities. These are being facilitated by the CAO, at Senujuh Village and Sanjungan Kecil Village respectively. It appears that some land may be returned to indigenous people, but the details remain confidential.

So far, there had been an agreement between Senujuh village and PT WSP convened by CAO on August 5, 2008. The results was the community land of about 86, 039 ha had been agreed to be returned to the local community, and about 231, 4 ha recognized by PT WSP as land belongs to Senujuh Village. Moreover, PT WSP apologized for land expansion without permit from the Senujuh village. PT WSP also agreed to pay Rp. 600.000 per ha for 231, 4 ha. Lastly, PT WSP asked a permit to manage the local community lands about 100, 554 ha as long 35 years, by compensating the people about Rp. 300.000 per ha every years.<sup>43</sup>

The agreement between Sanjungan Kecil community and PT ANI facilitated by CAO, on August 6, 2008, pointed out that about 1.493 ha of land known as PT ANI concession, was returned back to the Sanjungan Kecil community ( sub village) as well as adat forest (forests belongs to the local community), and *inti plasma* palm oil plantation about 1.166 ha. PT ANI promised not to expand palm oil plantation in Sanjungan village. Both of parties agreed to continue the consensus in order to implement the agreements at the technical levels facilitated by CAO.<sup>44</sup> Briefly, this process shows that the mechanism done by CAO is more effective comparing to RSPO mechanism.

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<sup>41</sup> [http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wilmar\\_fpp\\_let\\_jul07\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wilmar_fpp_let_jul07_eng.pdf), accessed in September 28, 2008

<sup>42</sup> [http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wilmar\\_fpp\\_let\\_jul07\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wilmar_fpp_let_jul07_eng.pdf), accessed in September 28, 2008

<sup>43</sup> Taken from unpublished-Internal Document of Gemawan, sent to the writer via email by Gemawan. 12 October 2008

<sup>44</sup> Taken from unpublished-Internal Document of Gemawan, sent to the writer via email by Gemawan, 12 October 2008, accessed in September 28, 2008.

### **3.8 Conclusion**

The first part of this chapter shows that the principles and criteria of the RSPO incorporate third generation human rights to a considerable extent. However as the legal case shows, it has proven difficult for RSPO principles to be enforced, perhaps due to the absence of appropriate institutions. The existing provisions have so far proved unable to address the environmental devastation and land conflicts on the ground. One of the reasons for the failure of RSPO implementation has been the exclusion of indigenous people and trade unions from the RSPO as full stakeholders. Finally, whilst the Constitution of Indonesia recognises indigenous rights, the policies of government are bent to the interests of the large corporations, and not to the interests of weaker, less powerful social actors. All this has made it especially difficult to address indigenous people's land expropriation by palm oil producing companies in West Kalimantan. The inequality of power relations among stakeholders in the palm oil industry is the key factor that prevents provisions protecting human and environmental rights violations by a company like The Wilmar Group from being effectively implemented. The fragmentation amongst the civil societies; within international NGOs, within local NGOs, and within the community groups hinder the provisions and advocacy on human and environmental rights in the issue of palm oil plantation. The following chapter will take some distance from the case study and reflect on some of the lessons of this experience.

## Chapter 4

### The Fate of Third Generation Human Rights under Economic Globalization

*Now it (the human rights idea) is taking on capitalism, the well-being of many millions depends on the success of this project* (Michael Freeman, at: Algan 2004, Dine and Fagan 2006).

#### 4.1 Introduction

Following the detailed review of the legal case against the Wilmar Group in the last chapter, this chapter will reflect on some of the networks that enable powerful companies to leverage concessions and avoid accountability through RSPO mechanisms. These complex connections exclude those institutions – the social and environmental NGOs – who are seeking to include indigenous people's rights in key decisions being made in West Kalimantan regarding palm oil plantation, and their environmental and human rights.

#### 4.2 Economic Globalization and the RSPO

It is clear that RSPO is an organization built under economic globalization, where many actors agreed to establish RSPO in order to tackle the palm oil sustainability in the world, by putting social and environment so called in this paper as third generation of human rights. The face of RSPO through its principles, criteria, and code of conduct, is seen eco-social friendly, or in another words, third generation of human rights friendly. But the nature basis of economic interest can not be eliminated and 'covered' by using environmental and social languages. It can be checked in reality in the ground level, that actually it is difficult to implement the human rights idea. The case of Wilmar International elaborated in the previous chapters shows that how the gap of the concept and the reality is occurred.

The agendas<sup>45</sup> in the roundtable meeting explain that the main actors in the formulating the agenda determined by companies interests and representations instead of the representation of the social and environment interests, as can be seen at the second and the third roundtable meeting. In formulating the principles and criteria of RSPO, there was no significant friction, by means that there is no reservation in signing the principles and criteria of RSPO, because there is no legally implication with the agreements. The friction between the stakeholders was started since the discussion coming to the implementation as trial project of RSPO. The RT4 meeting came in to the friction after evaluating some trial implementations by the companies discussed among the stakeholders. From the number of the participants can be seen that the public attention is getting bigger in every roundtable meetings. It means that a lot of hope put to the RSPO and in another side, on the situation and condition of environmental caused by the palm oil plantation expansion in the world.

#### 4.3 The Concept is Good on Paper, but not in the Ground

The difficulties in implementation is occurred because of it is not only the matter of how to implement the concepts, the idea behind the stakeholder theory itself is more attached to the neo liberal which drives the economic globalization. The genealogy of theory stakeholder as mentioned in chapter two comes from the theory of contract social by John Locke which has problem with the representation, for example the (lack of) representation of the local people, worker union in the

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<sup>45</sup> See the appendix 5.

RSPO. Trend of the eco-social friendly in the developed countries such Europe consumer drives the corporations to label its products

From the concept and case explained in the chapter two and three, it can be realized that there is a lot of messages sustainable development. In the context of palm oil global business, RSPO is established in order to manifest the message. Principles and criteria formed in RSPO enshrined the value of the third generation of human rights.

There is stakeholder inequality founded within the RSPO stakeholder by seeing the chains or networks of them which is influencing the role of them in making the decisions. In this case, Wilmar International actually has a complicated relationship with other stakeholders such as for example Unilever and Essent, the two biggest buyers of Wilmar in Netherlands. Wilmar is supported its finance by banks such as ABN AMRO, Fortis Bank, ING Bank, Rabobank, DBS Bank, Bank Mandiri, bank Tokyo, Standard Chartered Bank, Bank Central Asia, Bank and World Bank through IFC scheme<sup>46</sup> (Gelder 2007). It is also important to note that Rabobank and HSBC, the financiers of Wilmar, are also members of the RSPO (Wakker 2006)

In another side, social and environmental stakeholders have lesser capacity and power, so that their bargaining position is weaker compare to other stakeholders. Gemawan, Kontak Borneo and FOE are not members of the RSPO, even though the RSPO mechanism gives a space for them to exercise their interests on environment and social issues at West Kalimantan. By then the interests that they are struggling for, never been reached, as case raised. All of the grievances submitted to grievance panel of the RSPO are not achieved, even more been ignored and finally the case was closed by RSPO in February 2008. Lely Khairnur<sup>47</sup> stated:

*“no one case that we had raised is taken to the action-consideration, leaves as mere a report, we are going to demand the RSPO to uncover this case again at the roundtable meeting in Bali (November 2008)”*

It can be concluded that salience of the stakeholder influences the RSPO stakeholder interest served, where the core stakeholders of the RSPO can be seen from can easily impose their interests in the organization. The corporation, in this case, has capacity, networks, and power needed to sustain their interests in palm oil business sustainability. The chain of Wilmar business, outside and inside the RSPO can not be ignored in order to know the power protecting the Wilmar interests.

### 4.3 Shaping the debate on RSPO

Using Steven Lukes concept on Power explained in chapter two, firstly the stakeholders debate on the RSPO can be introduced by knowing their position on the existence of the organization.

Business or company stakeholder of RSPO sees that the RSPO has to be defended and then developed as a ‘certification institution’ in the future. They are well-known with the statement: “RSPO or nothing at all” (Adriani Zakaria 2007). They see that RSPO will be the future of the palm

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<sup>46</sup> Financial structure of Wilmar International consists of Shareholders, Banks, trading partners, tax agencies, and other creditors. Main shareholder yakni Wilmar Holdings controlled by Martua Sitorus and Kuok Khoon Hong di Singapura have 81,9 %, and Archer Daniels Midland (ADM) has 3 % from 32 % total asset. Unilever, the largest food producer in the Netherlands, consuming 1 million tonnes of palm oil every year which is about 3 % of total world production respective years, is one of Wilmar Palm oil customers(Gelder 2007).

<sup>47</sup> Interview with Lely Khairnur, october 2008

oil sustainability which will consider the social and environmental aspects as well. It is related to the raising demands of developed countries on palm oil as alternative energy, bio fuel, to tackle the fossil fuel crisis<sup>48</sup>.

International meetings are continued, and internal improvement is demanded by engaging and recruiting the more broad stakeholders of palm oil players in the world. The involvement of government also becomes the agenda which consists of making the national interpretation of the principle and criteria of the RSPO, inviting government representatives in the roundtable meeting done every year.

Another perspective from civil society, in this case represented by social and environmental NGOs has several different views on the RSPO. The first one who gets involved in RSPO sees that the organization as a neutral zone where every stakeholder can play within as a contesting space, the place for the local people to connect the issues on the ground to the international levels. Whoever can use or misuse the organization, so that civil society has to get involve if the one wants the organization will be supportive for social and environmental interests.

Some other civil societies choose not to join in the RSPO, argued that the presence of the RSPO is to bring the interest of business players rather than a neutral or 'value free' organization as believed by some civil society organization choosing to get involve in the RSPO. This kind of perspective can be seen from the NGO's declaration on 'anti RSPO' signed by more than 200 International and local NGOs to response the RSPO meeting at Cartagena Colombia in October 2008.

#### 4.4 A Reflection on Strategies and power

*"Human rights declarations are cheap, whereas human rights implementation is rather expensive. We are unwilling to pay the bill. We are disappointed at the gap between human rights ideals and human rights realities, but we are unwilling to recognize our fault in creating the gap, and find it easier to blame economic structures or ineffective institutions such as states or UN. We fail to locate sources of possible change. We are responsible for the structures that we support"* (Michael Freeman, Beyond Capitalism and Socialism, at: Dine and Fagan 2006)

The question of power relations within the so-called social and environmental stakeholders inside and outside the RSPO can be investigated through how they advocate the case of palm oil plantation impacts to the social and environment. The fragmentation of NGOs and civil societies in every level of advocacy is weakening their position whilst the other –business-stakeholders of palm oil plantation have a close link each other. Conservationist, such as WWF, has clearly different agenda and approach from other international environmental organizations such as Greenpeace and Friends of The Earth International. In Indonesia, most local NGOs prefer not to join the NGOs which are taking apart in the RSPO, such as Sawit Watch. And the last, the fragmentation in the Indigenous groups occurred; one side accepting the scheme of the corporations, and another side rejecting it.

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<sup>48</sup> So, the palm oil plantation business in Indonesia can not be separated to the global demands on this crop due to the energy crisis. Europe, as an example, has determined to use bio-fuel as much 10 % of total energy used in 2012(need citation).

In a reflective way, those civil society groups in international and national levels need to overcome fragmentation for specific purposes to protect third generation rights, with a need for third generation rights strategies. Not only may this include legal cases but also action to support the inclusion of stakeholders longer-term in organizations like RSPO. This is the only way that one can imagine a shift in power relations which will make it possible in the future for legal cases to have more or a positive impact, or perhaps not be needed because other means of tackling rights abuses can be found besides taking companies to court. NGOs can play a key role in bringing parties together, (only if they can first work together themselves). Conflict resolution has to be part of rights work, especially the third generation of rights particularly environmental and indigenous human rights. With the issues of power relations and dynamics involved, which can result in horizontal and vertical conflicts, the latter tends to weaken shared actions of key excluded stakeholders in relation to vertical conflicts of interest.

A quotation given by Michael Freeman above, in some extends must be understood as how complicated the gap between so many consensus with the reality that is faced by international society, and the problem is not only about how those consensus will be implemented, but also could be that the created structures, such as RSPO, deliberately are inadequate in the world mesmerized by global economic interests.

#### **4.5 Conclusion**

The idea in establishing the Roundtable Sustainable of Palm Oil (RSPO) incorporates some important principles of third generation of human rights, particularly in recognizing the collective rights of local community and environmental rights through a sort of so called Principles and Criteria of RSPO (PC RSPO), but RSPO has not had an appropriate mechanism for implementing the principles, so that the principles and criteria implementation can not be checked in the ground. The existing body in dealing with the members disputes in the field, Grievance Panel of the RSPO, has no appropriate capacity to enforce the principles and criteria of RSPO.

Considering that the RSPO is a voluntarily based organization, the principles of RSPO does not have any clear punishment to the members who abuse the RSPO principles and criteria, except, if the member is found guilty in certain case, the member is only going to be dropped from RSPO membership.

In the raised case, Wilmar International, a member of RSPO where one of its operation is taking place in West Kalimantan, Indonesia, RSPO succeeded to bring most of the salience stakeholders to the same table to discuss different interests and disputes in the ground, but RSPO fault to pursue the rights of local people and the protection on environmental. Instead of giving an appropriate action to the problem raised by Environmental and Social NGOs, RSPO has published that Wilmar International has succeed to improve its plantation companies and has already been labelled as having sustainable products.

RSPO has engaged some salience (important) stakeholders even though they have a vast diverse interests and purposes in engaging with the organization. The companies use RSPO in order to get recognition from public and consumers that their products are environmental and social friendly. Another side, in some extends, Non governments organizations have used RSPO in order to push their agendas, but in other extends realized that nothing to do with the implementation of RSPO principles and criteria, so that using RSPO to attract other international awareness, such as the

Compliance Advisor Ombudsman International Finance Corporation (CAO-IFC), on the issues raised. By means that CAO-IFC mechanism has been utilized to cover the absence of RSPO mechanism in the ground.

In the case of Wilmar International, the engagements of environmental and social stakeholders are limited in the RSPO, whether sadly the involvement of the local peoples; ethnic groups and workers are not represented at all. The limitation of some important (salience) stakeholders caused the difficulties in pushing their agendas, the agenda of environmental and people rights, instead of corporation agendas. It means that Economic agenda are the dominant power in the whole system and process run in the RSPO. Moreover, global economic demand, particularly European Union demand on palm oil causes severe environmental and social problem in Indonesia, because of the needs of plantation expansion across the Indonesia islands by then stimulating the food crisis.

From this research paper, there are some inputs that can be taken. Principles and criteria, and membership of the RSPO are needed to be redesigned and reframed then it has to be mandatory to all members instead of just voluntary. The membership of the RSPO is needed to be reorganized by involving broader other important stakeholders, such as local communities and the worker unions. Then, in order to implement the principles and criteria of the RSPO, to develop committees or bodies in enforcing the RSPO policies in the ground are needed.

The last, as an auto-critique, my critical points on the theories deployed in my research paper is that besides highlighting the new theory in human rights, the third generation of human rights, two theories that I am trying to expose are stakeholder theory and theory of power by Steven Lukes. The two last theories realized come from two different thought traditions. Stakeholder theory comes originally from theory of social contract, assuming that all person and groups have similar position in making certain decision, whether theory of power by Steven Lukes assuming that social position in making decision binds with interests that every individual and group has. In other words, there is no equality and a just in making decisions.

All in all the role of stakeholders by using stakeholder theory itself is difficult, without seeing the real individuals or groups interests and power playing within. But, my efforts to investigate not only normative matters of human rights ideas and practices, the matters that usually discussed in human rights debates, inspires and requires new notions in the human rights debate; the importance of investigating the matter of interests, power, and even ideology, instead of the matter of International/national/traditional law and normative views in the next debate of human rights theory.

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## Appendix 1: Profile of Wilmar International

Wilmar Group was Founded in 1991 is an Asian leading agribusiness group in palm oil trading company. Wilmar is the top three largest listed companies by market capitalisation on the Singapore Exchange. Wilmar activities include oil palm cultivation, edible oils refining, oilseeds crushing, consumer pack edible oils processing and merchandising, specialty fats, oleo chemicals and biodiesel manufacturing, and grains processing and merchandising<sup>49</sup>. Headquartered in Singapore and listed on Singapore Exchange, its operations are located in more than 20 countries in the world, with a primary focus on Indonesia, Malaysia, China, India and Europe. Its products are sold to more than 50 countries. Wilmar owns and operates 18 edible oil refining plants with total capacity of 5.4 million metric tonnes per annum. Now Wilmar Group is expanding in to bio energy sector by establishing three biodiesel plants in Riau Province with capacity 1,050,000 tonnes per year. Total investment is about US \$ 55 million(Gelder 2007)

Wilmar International is founded by Indonesian businessman, Martua Sitorus alias Thio Seng Hap<sup>50</sup> and with nephew of Malaysian tycoon Robert Kuok alias William. The name of the firm, Wilmar, was based on their name (Gelder 2007). Martua Sitorus, 47 years old, a palm king oil in Indonesia, was noted as the Indonesia's 40 Richest<sup>51</sup> by American Business Magazine in 2006, having asset net worth about \$ 475 million. But, in 2007, Martua Sitorus became the seventh richest in Indonesia by having assets net worth about \$ 2.1 billion<sup>52-53</sup>. Now, Wilmar International, one of Asia's largest palm oil producers that owns trees, refines oil and trades, and palm oil bio fuel plant

Wilmar has total land bank in Indonesia and Malaysia about 573, 405 ha. Wilmar also took over Malaysian Kuok Group, an oil business and American agricultural trading company (ADM)/edible oil business in Asia. The financiers of Wilmar International can be divided mainly into four forms namely shareholders, bank loans, investment banking services, and multilateral financial institution (IFC-WB). Bank Financiers are ABN Amro Bank, Rabobank, Fortis Bank, ING Bank, (Netherlands), Bank Central Asia, Bank Mandiri (Indonesia), Bank of Tokyo (Japan), DBS Bank, OCBC Bank (Singapore), Malayan Banking, Southern Bank (Malaysia), Standard Chartered Bank (United Kingdom). The most important banks are OCBC Bank, Rabobank, CIMB Group, and Standard Chartered Bank (Gelder 2007). The main shareholders of Wilmar International are Wilmar Holdings which is owned about 81, 9 % and the others are ADM and COFCO

Financial structure of Wilmar, end of 2006 (Adapted from Gelder 2007)

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<sup>49</sup> [http://www.wilmar-international.com/news/press\\_releases/News\\_Release\\_15Nov07.pdf](http://www.wilmar-international.com/news/press_releases/News_Release_15Nov07.pdf), accessed in August 20, 2008

<sup>50</sup> The other name of Martua Sitorus, written by SWA Sembada, a reputable business journal in Indonesia published an edition on Tauke Tauke Medan, also provided at website: <http://www.medanku.com/tauke-tauke-medan>, accessed in August 20, 2008

<sup>51</sup> [http://www.forbes.com/lists/2006/80/06indonesia\\_Martua-Sitorus\\_QGII.html](http://www.forbes.com/lists/2006/80/06indonesia_Martua-Sitorus_QGII.html), accessed in August 20, 2008

<sup>52</sup> [http://www.forbes.com/lists/2007/80/07indonesia\\_Martua-Sitorus\\_QGII.html](http://www.forbes.com/lists/2007/80/07indonesia_Martua-Sitorus_QGII.html), accessed in August 20, 2008

<sup>53</sup> Began trading shrimp, other marine products 1978, then switched to palm oil, buying first plantation 1994.

No	Financial stakeholders	Amount assets (million US \$)	Percentage (%)
1	Shareholders	584.8	32
2	Outside shareholders of joint-ventures	21.8	1
3	Banks	759.6	41
4	Trading Partners	319.3	17
5	Tax Agencies	71.1	4
6	Other Creditors	86.9	5

The graphic above shows that shareholders and banks hold the most important role, each respectively owned 32 % and 41 %. IFC (International Finance Corporation), part of World Bank which is supported the private sectors, also gave some schemes of loans and grants. In 2003, IFC provided shipment finance facility up to US\$ 50 million. In June 2006, IFC then provided a loan to Wilmar International about US \$ 17.5 million in constructing edible oil refinery, followed by approval of loan about US \$ 1,315.6 million at the end of 2006. In April 2007, IFC again announced a grant of US \$ 375,000 for three years period under the Biodiversity and Agricultural Commodities Program of the Global Environmental Facility, (Gelder 2007). Respectively about 25 % of the amount of the money would be used for a project in Indonesia titled “Working with smallholders to Reduce Biodiversity Impacts from Palm Oil Production in Indonesia” managed by Wilmar Group(Gelder 2007)

Buyers, main customers of Wilmar international are: Alfres C. Toepfer International, Cognis Deutschland (Germany), Arnott (Indonesia), Beijing Heyirong Cereals and Oils, Beijing Orient-Huaken Cereal and Oils, China Grains and Oil Groups, China National Vegetable Oil Corporation (China), Bunge, Cargill, Procter and Gamble ( US), Hindustan Lever, Nirma, WF ( India), Nestle ( Switzerland), and Savola (Saudi-Arabia). The biggest buyer is Unilever, which buys about 3 % of global supply, using palm oil in its product such as margarine, spreads, oils, soups, seasonings, ice cream, shampoo and detergents (Gelder 2007)

In Indonesia, Wilmar operates mostly in Sumatera, Kalimantan, Sulawesi, and now expanding to West Papua.

### **Wilmar operation in West Kalimantan**

The Wilmar Group (now Wilmar International) owns a large number of oil palm plantation and CPO mills in Indonesia. In 2005, Wilmar has 69,217 ha of oil palm plantation land: 49,809 ha were planted, 38,102 ha of plantation land for smallholders under the plasma programme in Indonesia. In August 2006, Wilmar acquired five plantation companies with a land bank of 85,000 ha in Kalimantan for a total sum of US \$ 5.8 million, about 750 ha has been planted and 1,200 ha has been cleared (Gelder 2007). Two Wilmar subsidiaries secured new land interests about 25,000 ha in Sambas and Sangau district, West Kalimantan. Wilmar Group also is connected to another big holding, Ganda Group, where the CPO production of it supplied to Wilmar Group. Some companies belongs to Ganda Group operated in West Kalimantan are PT. Patiware, PT Putralirik Domas, PT. Sentosa Asih Makmur, PT. Sumatera Unggul Makmur, PT Wawasan Kebun Nusantara, and PT Wilmar Sambas Plantation.

Land bank of Wilmar<sup>54</sup>

	Malaysia	Indonesia			Total
		<i>Planted</i>	<i>Unplanted</i>	<i>Plasma</i>	
Wilmar Group					
Expanded Wilmar Group	80,017	24,019	259,202	0	363,238
Share of total (%)	80,017	90,336	370,753	32,132	573,238
	14%	16%	65%	6%	100%

Note: excluding subsidiaries under the Wilmar Group not listed under Wilmar International.

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<sup>54</sup> Analyzed from Adriani Zakaria, Claudia Theile, Lely khairnur(2007)

## Appendix 2: WWF, To Lead in Mainstreaming Multistakeholder Engagement

The efforts in mainstreaming the stakeholder in practice of business non business relationship in international level can be seen from the role of World Wide Fund for Nature (WWF). It can be seen from the initiators of the idea of RSPO and the pre-research conducting in order to establish the organization. There are some multistakeholder organization which also initiated by WWF.

RTRS (Round Table on Responsible Soy), set up in 2004, and formally established in 2006, the international multistakeholder approach to discuss the concerns and develop sustainability criteria for soy is one of the leading multistakeholder organizations promoted by WWF<sup>55</sup>. Mainly RTRS works now throughout the supply chain in countries such as Brazil, Argentina, Germany, Netherlands, and the United Kingdom to ensure the roundtable reaches its full potential<sup>56</sup>. The members are divided in to three constituencies, namely producers, industry, finance and trade, civil society organizations, and observing members<sup>57</sup>. Another multi stakeholder organization, the Better Sugarcane Initiative (BSI) which was initiated by WWF together with International Finance Corporation (IFC-WB)<sup>58</sup>, set up the better management Practices (BMP) in order to reduce the social and environmental impact of Sugarcane plants. Similar with RTRS stakeholders, the Better Sugarcane Initiative (BSI) is a collaboration of sugar retailers, investors, traders, producers and NGOs who are committed to sustainable sugar by establishing principles and criteria that are applied in the sugar growing regions of the world through regionally specific strategies<sup>59</sup>. Beside some others, another multistakeholder organization initiated by WWF which is going to be discussed in this research paper is the RSPO (Roundtable Sustainable Palm Oil). By question then is that why is WWF as a global environmental institution and also as a short of environmental ideas in it looks like acceptable to the corporations and its chains? Importantly the explanation of WWF ideas and institution is needed.

WWF, World Wide Fund for Nature, changed its name from World Wildlife Fund, established in 1961 by some conservationists.

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<sup>55</sup> <http://assets.panda.org/downloads/claassensoyabерlinfebruary282007.pdf>, accessed in September 16, 2008

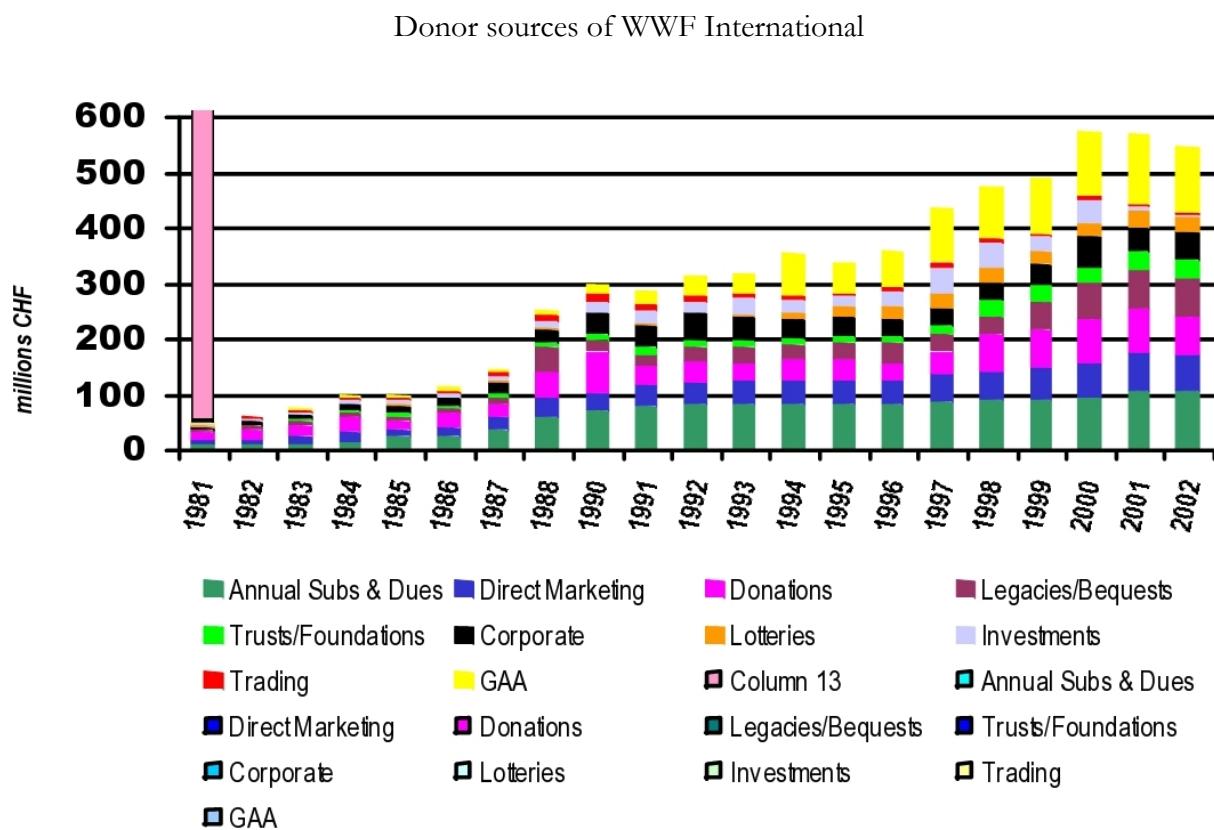
<sup>56</sup> [http://www.panda.org/about\\_wwf/what\\_we\\_do/forests/our\\_solutions/responsible\\_forestry/forest\\_conversion\\_agriculture/roundtables\\_soy\\_palmoil/round\\_table\\_on\\_responsible\\_soy/index.cfm](http://www.panda.org/about_wwf/what_we_do/forests/our_solutions/responsible_forestry/forest_conversion_agriculture/roundtables_soy_palmoil/round_table_on_responsible_soy/index.cfm), accessed in September 16, 2008

<sup>57</sup> <http://www.responsiblesoy.org/>, accessed in September 16, 2008

<sup>58</sup> [http://www.wwf.de/fileadmin/fm-wwf/pdf-alt/landwirtsgaft/WWF\\_Action\\_for\\_Sustainable\\_Sugar\\_05.pdf](http://www.wwf.de/fileadmin/fm-wwf/pdf-alt/landwirtsgaft/WWF_Action_for_Sustainable_Sugar_05.pdf), accessed in September 16, 2008

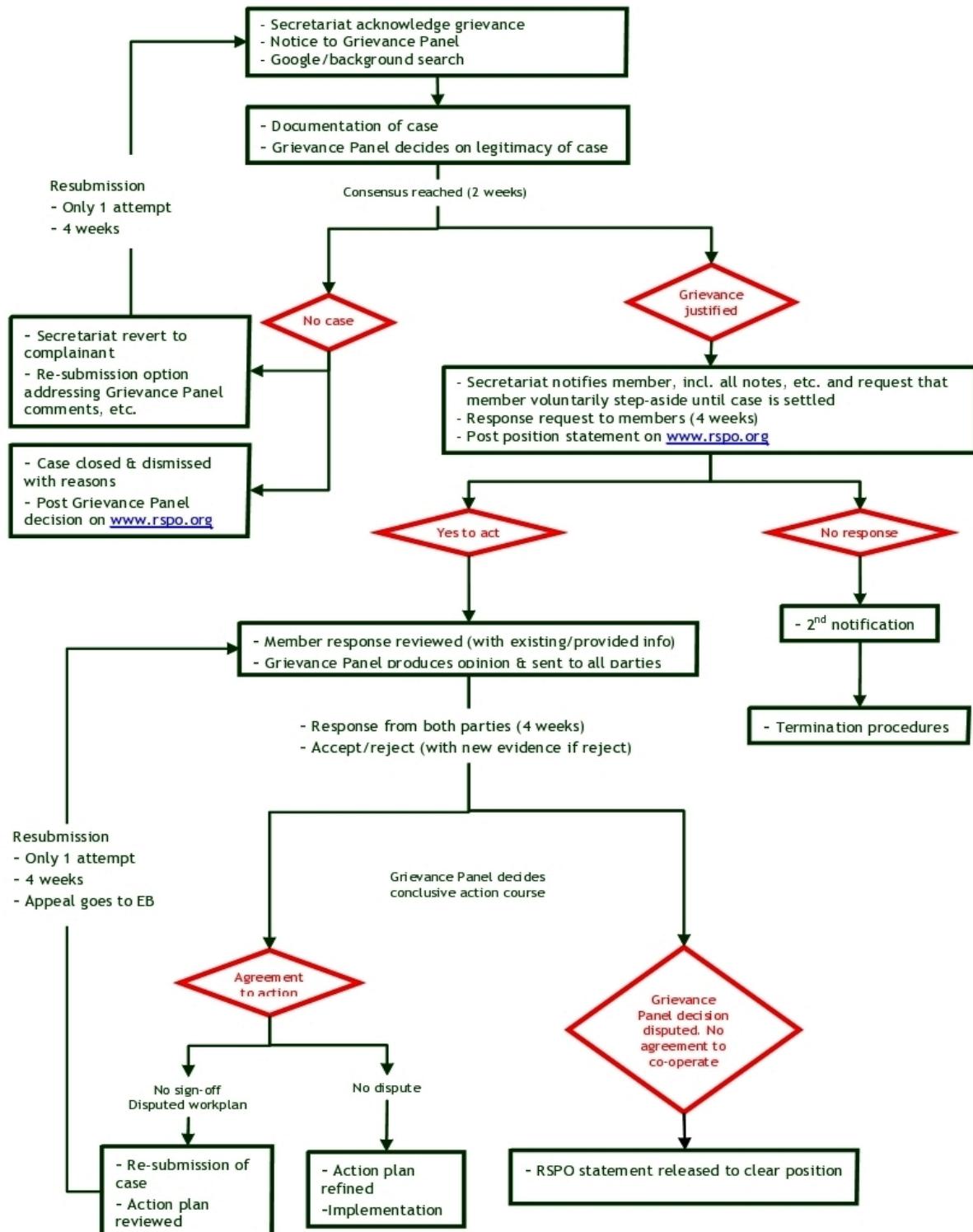
<sup>59</sup> <http://www.bettersugarcane.org/index.htm>, accessed in September 16, 2008

This global conservationist organization has been criticized because of not only its close relationship with corporations in doing its activities, but also its donor sources like shown at the figure below. Whether it is to be proved that most of the multi national corporations get involve in the environmental degradation. The conservationists from WWF do believe that something has to do with the business actors instead of taking a distance like Green Peace, Friends of The Earth, and many others international NGOs. Using categorization by Clapp and Dauvergne, WWF can be seen as more moderate view in the environmental debate, rather than radical view, for instance, social green (Clapp and Dauvergne 2005). In this sense, WWF is a global conservationist which closes to the corporations.



### Appendix 3: Grievance Panel Mechanism

Source: [http://www.rspo.org/resource\\_centre/RSPO%20Grievance%20Procedure.pdf](http://www.rspo.org/resource_centre/RSPO%20Grievance%20Procedure.pdf), accessed July 1, 2008



## Appendix 4: RSPO and Human Rights

No	Principles and Criteria RSPO	Human and Env. Rights
1	Principle 1: Commitment to transparency	
11	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.	ICCPR/ICESCR, DRIP, DRTD, CBD, RIO DECLARATION
12	Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.	Idem
2	Principle 2: Compliance with applicable laws and regulations	
21	There is compliance with all applicable local, national and ratified international laws and regulations.	ICCPR/ICESCR DRIP/DRTD
22	The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.	DRIP
23	Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent	DRIP
3	Principle 3: Commitment to long-term economic and financial viability	-
31	There is an implemented management plan that aims to achieve long-term economic and financial viability.	-
4	Principle 4: Use of appropriate best practices by growers and millers	DRIP
41	Operating procedures are appropriately documented and consistently implemented and monitored.	DRIP
42	Practices maintain soil fertility at, or where possible improve soil fertility to, a level that ensures optimal and sustained yield.	CCC CBD
43	Practices minimise and control erosion and degradation of soils.	CBD
44	Practices maintain the quality and availability of surface and ground water.	CBD
45	Pests, diseases, weeds and invasive introduced species are effectively managed using appropriate Integrated Pest Management (IPM) techniques	CBD/CCC
46	Agrochemicals are used in a way that does not endanger health or the environment. There is no prophylactic use, and where agrochemicals are used that are categorised as World Health Organisation Type 1A or 1B, or are listed by the Stockholm or Rotterdam Conventions, growers are actively seeking to identify alternatives, and this is documented	CBD
47	An occupational health and safety plan is documented, effectively communicated and implemented	DRTD
48	All staff, workers, smallholders and contractors are appropriately trained.	ICCPR/ICESCR
5	Principle 5: Environmental responsibility and conservation of natural resources and biodiversity	CBD DRTD
51	Aspects of plantation and mill management that have environmental impacts are identified, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement.	CBD/CCC
52	The status of rare, threatened or endangered species and high conservation value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and their conservation taken into account in management plans and operations.	CBD
53	Waste is reduced, recycled, re-used and disposed of in an environmentally and socially responsible manner.	CBD/CCC

54	Efficiency of energy use and use of renewable energy is maximised.	CBD
55	Use of fire for waste disposal and for preparing land for replanting is avoided except in specific situations, as identified in the ASEAN guidelines or other regional best practice	CBD
56	Plans to reduce pollution and emissions, including greenhouse gases, are developed, implemented and monitored.	CCC
6	Principle 6: Responsible consideration of employees and of individuals and communities affected by growers and mills	ICCPR/ESCR DRTD
61	Aspects of plantation and mill management that have social impacts are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement.	ICCPR/ESCR DRTD
62	There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties	ICCPR/ESCR DRTD/DRIP
63	There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all Parties	ICCPR/ESCR DRTD/DRIP
64	Any negotiations concerning compensation for loss of legal or customary rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.	ICCPR/ESCR DRTD/DRIP
65	Pay and conditions for employees and for employees of contractors always meet at least legal or industry minimum standards and are sufficient to meet basic needs of personnel and to provide some discretionary income.	ICCPR/ESCR DRTD/DRIP
66	The employer respects the right of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel.	ICCPR
67	Child labour is not used. Children are not exposed to hazardous working conditions. Work by children is acceptable on family farms, under adult supervision, and when not interfering with education programmes	CRC
68	The employer shall not engage in or support discrimination based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, or age.	CERD
69	A policy to prevent sexual harassment and all other forms of violence against women and to protect their reproductive rights is developed and applied	CEDAW
610	Growers and mills deal fairly and transparently with smallholders and other local businesses.	DRIP
611	Growers and millers contribute to local sustainable development wherever appropriate.	DRIP
Principle 7: Responsible development of new plantings		
71	A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.	DRIP
72	Soil surveys and topographic information are used for site planning in the establishment of new planting; the results are incorporated into plans & operations.	CCC
73	New plantings since November 2005 (which is the expected date of adoption of these criteria by the RSPO membership), have not replaced primary forest or any area containing one or more High Conservation Values.	CCC
74	Extensive planting on steep terrain, and/or on marginal and fragile soils, is avoided	
75	No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their	DRIP

	own representative institutions.	
76	Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.	DRIP
77	Use of fire in the preparation of new plantings is avoided other than in specific situations, as identified in the ASEAN guidelines or other regional best practice.	CCC
8	Principle 8: Commitment to continuous improvement in key areas of activity	-
81	Growers and millers regularly monitor and review their activities and develop and implement action plans that allow demonstrable continuous improvement in key operations	CCC

## Appendix 5: Agenda of the RSPO Roundtable Meetings (RTs)

Roundtable Meetings	Core Agenda	Main Results
RT1  Kuala Lumpur, August 2003, 200 delegates from 16 countries  Initiator: WWF	<ul style="list-style-type: none"> <li>• A presentation of WWF on the situation of Environmental degradation related to the Oil palm plantation expansion</li> <li>• Proposal of WWF to establish a Roundtable sustainable Palm Oil organization</li> </ul>	<ul style="list-style-type: none"> <li>• Consensus among the participants that a common code of conduct and practice has to be developed</li> <li>• Statement of Intent (SOI) was signed by participants as commitment to participate in a process to achieve sustainability in the palm oil sector</li> <li>• Legally RSPO established on April 2005</li> </ul>
RT2  Jakarta, October 2004 300 delegates from 17 countries  The meeting organized by IPOC, GAPKI, WWF- Indonesia, and RSPO	<ul style="list-style-type: none"> <li>• Elaboration of a Working Group on “Criteria to define sustainable palm oil” (CWG)</li> <li>• The first General Assembly of RSPO; elected the Executive Boards of RSPO</li> </ul>	<ul style="list-style-type: none"> <li>• Principle and Criteria of RSPO was finalized and would bring to the broader public consultation expected for 12 months</li> <li>• Executive Boards for 2 years are Jan Kees Vis (Unilever), Matthias (WWF), Borsani (Migros), Chandra (MPAO), Derom Bangun (APKSI), and J. Mesa Dishington (Fedepalma).</li> </ul>
RT3  Singapore, November 2005, Over 300 participants from 28 countries. RSPO had 95 members.	<ul style="list-style-type: none"> <li>• Presentation of the CWG on “Criteria and Principle of Sustainable Palm Oil”</li> <li>• Preparing Sustainable Palm Oil verification protocol options for RSPO members</li> <li>• Preparing a Code of Conduct of RSPO</li> </ul>	<ul style="list-style-type: none"> <li>• RSPO adopted the PC of RSPO 10 companies committed to conduct pilot testing of the PC RSPO for 2 years ( include Wilmar Group)</li> </ul>
RT4  Singapore, November 2006, 388 participants from over 28 countries	<ul style="list-style-type: none"> <li>• Discussion to the more technical of development of a verification protocol for RSPO members.</li> </ul>	<ul style="list-style-type: none"> <li>• Fragmentation between Producers, buyers, users, smallholders, and NGOs in order to response the PC and the reality in the ground.</li> </ul>
RT5  Kuala Lumpur, November 2007, 540 participants from 28 countries	<ul style="list-style-type: none"> <li>• Evaluation of the trial implementation of PC RSPO</li> <li>• RSPO Certification System ( CSPO)</li> <li>• Advancing the PC RSPO in the national level and smallholders</li> </ul>	<ul style="list-style-type: none"> <li>• RSPO certification Scheme for Sustainable Palm Oil Launched</li> </ul>
RT6	<ul style="list-style-type: none"> <li>• Trading in RSPO Certified Sustainable Palm Oil</li> <li>• Bringing smallholders more centre</li> <li>• Working more closely with Governments</li> </ul>	-

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