
[Nigeria – RSPO legal opinion ignores core of the complaint against Wilmar International subsidiary Biase Plantation Limited](#)

The government of Cross River State, Nigeria has given the go-ahead for development of large scale oil palm plantations, including on lands used by rural communities. One such case involves the acquisition by Biase Plantations Ltd. of lands used by the indigenous peoples of IBIAE community in the Biase Local Government Area. Wilmar International, one of the world's largest oil palm companies, with headquarters in Singapore (1), through its subsidiary, Biase Plantations Ltd acquired 5,561 hectares of land from the Cross River State government in 2011. 55% of this area (i.e. about 3,054 hectares) is existing natural forest, while about 2,419 hectares is already planted with oil palm - an oil palm estate was first established on this land by the government in the early 1960's but it was abandoned in the 1980s - and is being cut down for replanting.(2)

Nigerian NGO Rainforest Resource & Development Centre (RRDC) filed a complaint with the RSPO in November 2012 in which the organisation documents how this privatisation of land previously held by the state has resulted in human rights violations, environmental destruction, and the violation of municipal laws and legislations.(3) The acquisition of land for development of large-scale oil palm plantations by RSPO member Wilmar poses a particular threat to the future and survival of the indigenous IBIAE community. In addition to the complaint to the RSPO, RRDC also filed court cases in Nigeria related to shortcomings and inconsistencies in the privatisation of the land acquired by the Wilmar subsidiary.

Though not covered in the RSPO complaint about Wilmar's operations in Cross River State, the purchase of the land in the Biase Local Government Area is not the only controversial acquisition by Wilmar in Nigeria. Wilmar is involved in at least two additional controversial acquisitions. Through its Nigerian subsidiary, Wilmar also bought land from Obasanjor Farms Ltd, a company belonging to former Nigerian President Olusegun Obasanjo (see article 'Stolen Land: Nigerian Villagers Want Their Land Back From Wilmar' <http://intercontinentalcry.org/stolen-land-nigerian-villagers-want-land-back-wilmar-21559/>). The original donation of land to the president's company was shrouded in secrecy, communal land owners were not consulted, nor compensations paid to them when the Cross River State Government forcefully collected about 10,000 hectares of land belonging to the forest communities of Ekong Anaku, Mbobui, Mfamosing, Abiati, Anigheje, for the donation to the president's private company.

A 24 April 2014 RRDC news release exposes additional recent grabbing of forestland by Wilmar International in the vicinity of the Afi Wildlife Sanctuary in Cross River State. RRDC notes that this "has raised serious ethical issues pertaining to the commitment of Wilmar International to its International Policy Declaration to Protect Forest and Communities of 5th December 2013."

The RRDC complaint to RSPO

The RRDC complaint to RSPO is focused on five principal issues that should have prevented an RSPO member following the certification scheme's principles and criteria from starting preparatory

works at the IBIAE plantation site. These five principle issues are:

1. Failure by Biase Plantations Ltd. to reach an agreement with communities as outlined under clause 4(4) of the May 2012 “Fundamental Terms for Privatization of Ibiae Estate”. According to this government document, Wilmar is required to "assist landlord communities in the provision of such facilities as shall be mutually agreed by the investor and the landlord communities." (4) While meetings have been held, no such mutual agreement has been reached between Biase Plantations Lt. and the landlord communities living on the land the company acquired;
2. Unlawful acquisition by Biase Plantations Ltd. of land leased to farmers that are part of the government’s CARES programme;
3. Failure to properly account for migrant communities within the estate the company acquired;
4. Lack of commitment to transparency through refusal to make available key documents requested by the landlord communities affected by the privatisation; despite repeated requests to the government and Wilmar, none of the landlord communities have been provided with copies of the ‘Fundamental Terms of Privatisation’ document, which RRDC considers “not in the spirit of transparency, as advocated by the RSPO”; another document that the company refused to make available was the Environmental Impact Assessment required by Nigerian law before the work on the plantations could begin.
5. Lack of compliance with applicable federal and municipal laws and regulations, including on Environmental Impact Assessments. (5) In their submission to the RSPO complaints panel, RRDC suggest “that Wilmar halt all their activities on the estate until all comments are dealt with in a manner consistent with RSPO protocol.” (6)

In relation to 1., the RRDC submission documents how community acceptance of Wilmar establishing the oil palm plantations was contingent on community demands for road improvements, ...[include list just deleted] being incorporated into the ‘Fundamental Terms of Privatisation’ document. Communities are assuming that these demands have been included, but in reality they have not been. Withholding this key document from the communities thus leaves them in the false understanding that their demands have been met. Consequently, RRDC considers that community consent for Wilmar entering the estate was gained under false pretences.

In relation to 2., RRDC explains how land leased to farmers that are part of the Cross River State Agricultural and Rural Empowerment Scheme (CARES) has been unlawfully included in the privatisation of the old plantation estate to Wilmar.

Under CARES, a poverty alleviation program, approximately 1,100 hectares were allocated in 2009 to farmers for 25 years for the purpose of planting oil palm on a small scale. Each farmer received between 10 and 20 ha of land. According to the Ministry of Agriculture, 32 farmers had developed 470 hectares with oil palm at the time the estate was privatized to Wilmar. RRDC’s submission states that those farmers have been informed not to invest further on the land allocated to them because of the privatization. “Although compensation was promised - though has not been paid as of 5 November, 2012 - as per the CARES leasehold agreements, the government does not have the right to terminate the agreement unless the lessee: (i) fails to pay rent or is (ii) in breach of the covenants in the agreement. Considering that privatization is not included in the termination clause, the acquisition of the land and its allocation to Wilmar is unlawful” RRDC concludes its comments on this point in its submission to RSPO.

With regards to the presence of migrant communities living within the estate, comments pertaining to this issue 3. explain that Wilmar failed to properly account for migrant communities within the estate. “Based on data from the 1991 national population census and assuming population growth in line with state averages (3.0 %), approximately 3696 persons reside within the Ibiae estate. These persons originate from the neighboring state of Akwa Ibom, most of whom having migrated in search of plantation work in the early 1960's when the estate was first established. Since the estate was in a state of neglect since the 1980's and employment opportunities became less abundant, these migrant workers were permitted by former Ibiae management to farm parts of the undeveloped areas of the Ibiae estate. While Wilmar indicated that it will compensate those farming within the undeveloped parts of the estate, compensation has not been disbursed to date - nor has there been a consultative process to determine the appropriate nature and extent of compensation”, the RRDC submission reads. The document further explains the social consequences of privatisation for these ca. 3700 people: “With most migrant households residing in the estate not having any legal and customary rights to land, few alternative livelihood options besides plantation employment will be available to them once they lose access to their farmlands within the estate. Since Wilmar is seeking to rebuild the worker camps and only those employed at the estate will have right to be housed in those camps, those migrant households who are unable to regain plantation employment (e.g. those too old or physically unfit) will be forced to vacate the estate. In another estate acquired by Wilmar in Cross River State, Calaro, such workers were granted only a 'retirement package', which in no case exceeded Naira 10,000 (equivalent to approximately Euro 50). Clearly, this does not enable households to effectively reconstruct their livelihoods. Since many of those households have lost social ties to Akwa Ibom, having migrated generations ago, and have few alternative livelihood options within Cross River State, displacement from the estate could have dire implications. The Social Impact Assessment, dated April 2012, conducted by [RSPO accredited consultancy] ProForest makes no mention of this stakeholder group, raising serious questions as to the quality of the said Assessment.” (7)

On 14 May 2013, the RSPO Complaints Panel found that Ibiase Plantations Ltd. was not in compliance with the RSPO criterion 1.1. related to transparency by failing to make the Environmental Impact Assessment (EIA) necessary for establishing the plantations available on request. The EIA, which Wilmar had only submitted to the responsible authorities in Nigeria on 13th March, 2013, was missing crucial information that in the view of RRDC render the EIA invalid. For example, the pages that should have contained maps of the Ibiae territory that will be affected by the plantation, were left blank. The RSPO Panel further decided that a lawyer well acquainted with Nigerian law be appointed to assess whether Biase Plantations had complied with Nigerian EIA legislation. Finally the company was “instructed to stop all work” until the issues over the EIA have been clarified and implemented to the satisfaction of the RSPO complaints panel. (8)

Two things stand out. First, the points on which RSPO seeks legal advice are also part of cases that RRDC presented to the Nigerian courts. It is thus surprising that the RSPO would risk being seen to prejudge the outcome of a court case if they accepted the legal opinion on the very issues before a Nigerian court. In addition to the procedural question this raises, the legal opinion RSPO requested from a Nigerian law firm only covers some of the issues raised by RRDC in their complaint to RSPO while not addressing others. The question discussed in the legal opinion is whether Nigerian legislation on Environmental Impact Assessments, the publication of notices and the precise mandate of a government commission related to land privatisation has been complied with.

Questions such as whether the conditions set in the ‘Fundamental Terms of Privatisation’ document have been complied with are not addressed in the legal opinion. Yet, on the basis of this legal opinion that only covers some of the issues raised in the complaint, RSPO decided that Wilmar be allowed to

commence activities again on 'undisputed land.' That no agreement had been reached with informal settlers on the estate, that communities might have been misled over the content of the 'Fundamental Terms of Privatisation' document, or that the courts in Nigeria have yet to rule on the issues also covered in the legal opinion prepared by a consultancy for RSPO did not seem to matter when RSPO decided to allow Wilmar to proceed with preparing for the oil palm plantation.

The latest information on the RSPO webpage about the case dates from December 2013, and consists of a letter from Wilmar explaining how the company's new 'No deforestation' policy will be applied on the plantations acquired in Nigeria. Wilmar issued a statement in December 2013, (9) stating that they "are pleased to announce that the review has concluded, and the RSPO Complaints Panel is of the view that our plantation operations in Nigeria is in compliance with the national laws of Nigeria, including the lawful acquisition of land and that due process of environmental impact assessment (EIA) was followed." Communities affected by Wilmar's operations in Nigeria might beg to differ with that view. RRDC's demand for Wilmar to cease all its operations in Cross River State of Nigeria until all relevant laws and community interest and rights would have been completely complied with; and that Wilmar release to the interested public and the communities affected the maps that clearly indicate which are the communities that are currently and will in future be affected by Wilmar's oil palm operations.

(1) www.wilmar-international.com

(2) http://www.rspo.org/file/RSPO-NPP_Report_Ibiae-Assessment_Findings%20Final.pdf for Wilmar's New Planting Procedures as requested by RSPO for such activities.

(3) http://www.rspo.org/en/status_of_complaint&cpid=26

(4) RRDC Submission of complaint in respect of Wilmar Nigeria Ltd. 10 November 2012.

<http://www.forestpeoples.org/sites/fpp/files/news/2012/11/NGO%20Complaint%20to%20RSPO%20about%20Wilmar%20NPP%20in%20Nigeria.pdf>

(5) Ibid.

(6) Ibid.

(7) Ibid.

(8) <http://www.forestpeoples.org/sites/fpp/files/news/2012/11/RSPO%20-%20CPDecisionFinal%2014>

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(9) <http://www.wilmar-international.com/wp-content/uploads/2013/12/Wilmar-Affirms-Commitment-to-Open-Transparent-and-Responsible-Practices.pdf>