



# DEFORESTATION BY DEFINITION

THE PERUVIAN GOVERNMENT FAILS TO DEFINE FORESTS  
AS FORESTS, WHILE PALM OIL EXPANSION AND THE  
MALAYSIAN INFLUENCE THREATEN THE AMAZON



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# EXECUTIVE SUMMARY

Governments, donors, technocrats, activists, local communities and diplomats agree: Peru's forests must be protected. With 70 percent of its national territory covered by forests and 74 million hectares of forest land to its name, Peru has resources to protect.<sup>1</sup> Yet despite national and international commitments, a major new threat to Peruvian forests is being ushered into the country with open arms: large scale monoculture oil palm projects.

Significant commercial groups, both national and international actors, have begun aggressively pursuing palm oil projects in the Peruvian Amazon. These powerful economic players have already acquired tens of thousands of hectares of primarily undisturbed natural forest in the Peruvian Amazon for palm oil expansion. Grupo Romero, the largest economic actor in the country, already has 22,500 hectares of palm oil plantations in operation and has requested the allocation of more than 34,000 additional hectares of public land for palm oil. If allowed to proceed, the planned projects by Grupo Romero will result in 25,055 hectares of deforestation in violation of Peruvian law (See section 1.1). The Melka Group, a network of companies linked to massive deforestation and corrupt land deals in Malaysia, is illegally operating on 7,000 hectares of forest, has acquired over 450 units of rural private property in the Peruvian Amazon (mostly forested) and has requested at least 96,192 additional hectares of public land from the Peruvian government (See Section 2). Both groups have already illegally deforested massive tracts of forested areas to make way for agricultural plantations and are set to increase their operations.

International donors are dedicating unprecedented funds to forest protection in Peru, with the most recent commitment coming from Norway in September 2014 for US\$300 million to help reduce deforestation. In announcing the agreement, Peruvian President Ollanta Humalla noted, "[This]...is a major step

forward in realizing the vision of deforestation-free development, and we are firmly committed to implement its provisions faithfully."<sup>2</sup> The Peruvian government nonetheless continues to promote the expansion of palm oil, claiming that cultivation will not threaten forests.<sup>3</sup> Despite protections embedded in Peruvian law to safeguard forest resources for the benefit of all Peruvians, palm oil plantations continue to expand at an alarming and increasing rate throughout the Peruvian Amazon, in violation of national law. Illegal cultivation of agricultural plantations poses perhaps the greatest new threat to the forests of Peru, as the Peruvian government currently lacks the effective power to enforce laws and regulations, even when illegalities are clearly documented and reported.

## A NEW FRONTIER

Malaysia and Indonesia currently produce 85 percent of the world's palm oil. Global demand is projected to rise, but land suitable for palm oil expansion is expected to run out in this region by 2022, and costs of labor are rising.<sup>4</sup> With global demand for palm oil projected to increase, and diminishing available lands in Southeast Asia, companies are aggressively seeking new terrain for oil palm. The Peruvian Amazon provides an ideal environment for rapid palm growth and the Peruvian state an even more ideal political environment for palm investors. Peru has announced it has the capacity to dedicate a minimum of 1.5 million hectares of land for oil palm.<sup>5</sup> The government has not been able yet to show, however, where the suitable available land, as has been promised, will not have to be deforested.

The fate of oil palm cultivation in Malaysia provides a cautionary tale, as the same corporate actors that have decimated Malaysian forests are now pursuing forested land in Peru. Logging companies operating forest concessions, given by politicians to curry favor with local ethnic leaders,<sup>6</sup> subsequently

funneled their profits from harvesting and selling tropical timber<sup>7</sup> into oil palm plantations.<sup>8</sup> Start-up capital for palm plantations<sup>9</sup> was used to purchase new land and clear forests.<sup>10</sup> Land was repeatedly allocated at far below market rates and subsequently reappraised for its true value, with massive profits accruing to palm oil companies and hidden in offshore accounts (See Section 3). The massive allocation of land and forests for cheap and without public transparency constitutes, in essence, theft of resources that should be for the benefit of all Malaysia's citizens—especially those that depend directly on land and forests for their livelihoods. (See Section 3.)

While the links between these companies were initially obscured by a complex network of shell companies and offshore accounts, a closer look at financial records and leaked government data reveal a new empire of deforestation that reaches across the Pacific Ocean to Peru. The increasingly opaque corporate ownership structures are also globally relevant, as they complicate the implementation and enforcement possibilities of recent "zero-deforestation" pledges by powerful, multinational corporations.<sup>11</sup> These pledges rely on supply chain traceability and excluding suppliers that are responsible for deforestation and human rights abuses. However, if responsibility for such acts is obscured through a network of shell companies, commodities linked to deforestation will continue to enter the supply chain.

## ILLEGAL DEFORESTATION: FOREST DEFINITION WORD GAMES

Procedural loopholes and violations of national law are facilitating palm expansion in the Peruvian Amazon. While forest resources are protected by national law,<sup>12</sup> the Peruvian government has nonetheless approved private sector requests to clear massive tracts of forested land—mostly primary forests—for

agricultural plantations throughout the country. The government claims that land is classified according to a technical definition, known as “best land use capacity (BLUC),” that only includes soil and climatic characteristics and ignores the presence of standing trees. Relying solely on the BLUC assessments to determine the classification of the land ignores a critical piece of the law that recognizes standing trees as part of the national forest patrimony.<sup>13</sup> The law also holds that forests cannot be used for agriculture, or other activities that affect the vegetation cover, the sustainable use and the conservation of forest resources.<sup>14</sup> (See Section 1.1)

The illogical definition currently being used by the government not only runs afoul of national legal protections for forested land, but also results in perverse approvals of projects that result in significant deforestation. Often, BLUC classification studies are paid for by private investors interested in developing the land for which the assessment is being carried out. Relevant governmental authorities lack the resources or the political will to verify the accuracy of the company-conducted studies. This often results in the validation of BLUC studies that assert primary forested land is in fact best suited to agricultural production, including land that had previously been classified as forestry or protected land by the government under official methodologies (See Section 1.1).<sup>15</sup>

Currently, out of Peru’s 74 million hectares of forests,<sup>16</sup> there are approximately 20 million hectares of forests in the country that have not been classified and lack official studies to define their BLUC.<sup>17</sup> Forests within these 20 million hectares are vulnerable to BLUC assessments that, based on soil and climate characteristics, may define them as agriculture land.

Further, these companies acquired land through irregular procedures, revealing critical fissures in the chain of decision-making authority within the Peruvian government. Clear and consistent decisions about classification, ownership, and conversion of land are critical to good governance of large-scale agricultural projects. However, decision-making authority appears fragmented across national and regional authorities, with inconsistent and contradictory rulings. Particularly as Peru undergoes the full devolution of authority from national to regional authorities within the decentralization process, Peru must ensure that decisions about land use are clear, consistent, and fully in line with all relevant laws and policies.

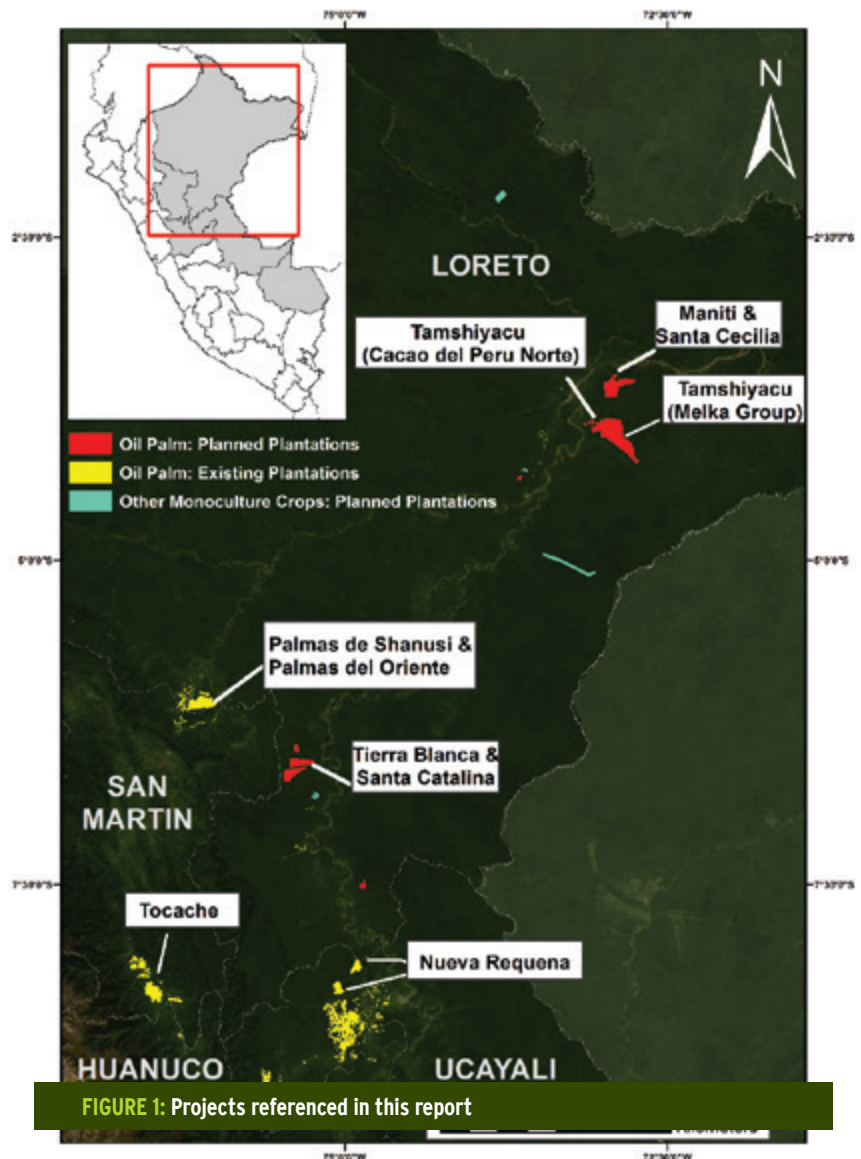
## FAILED GOVERNMENT OVERSIGHT

Illegal expansion and deforestation carried out by corporate groups has not gone undetected. Civil society groups, as well as government agencies and committed individuals within those agencies, have acted on the illegalities discussed in this report.

In August 2014, the Ministry of Environment initiated precautionary measures (*medidas cautelares*) to suspend the Melka Group’s operations in Tamshiyacu and Nueva Requena.<sup>18</sup> While investigations have been open at the national and regional levels, and some sanctions have been levied, no action has yet been able to halt the companies’ operations or ensure they effectively remediate the devastation they have

caused. In February 2015, the Judiciary also suspended approval of Grupo Romero’s four planned projects.<sup>19</sup> However, these actions are only temporary, intended to suspend significant and harmful activities pending further investigation and action.

Before further expansion is considered, it is imperative that there be a more comprehensive evaluation of Peru’s capacity to manage the entry of large-scale agricultural projects. Given the egregious illegalities repeatedly documented in existing plantations and the grave threat to the Amazon forests posed by expanding agricultural plantations, no new projects should be approved until the Peruvian government demonstrates the capacity to monitor and effectively enforce national laws and policies.



**FIGURE 1: Projects referenced in this report**

Source: GOREL, GOREU, Gutierrez & DeFries 2013, ACA. Background image: ESRI 2013.





# 1. GRUPO ROMERO: EXPANDING DEFORESTATION

Photo Credit: Yachay Productions.

Grupo Palmas,<sup>20</sup> a group of subsidiary companies fully owned by Grupo Romero, has become an established developer of palm oil in Peru, with three plantations in operation and several more planned or in development.<sup>21, 22</sup> Grupo Palmas has requested significant new tracts of land, the vast majority of which are intact primary forest, for the purposes of expanding its palm oil operations. Between 2012 and 2013, four different companies controlled by Grupo Palmas submitted to the Peruvian government requests for a total of 34,295 hectares of forested land for four new palm oil projects: Manítí, Santa Cecilia, Tierra Blanca and Santa Catalina. Analysis of the documents submitted by the companies to the Peruvian Government's Ministry of Agriculture and Irrigation (MINAGRI) reveals that the implementation of these four new agro-industrial oil palm projects by Grupo Romero will result in the clearing of nearly 23,000 hectares of primary forest, in violation of the current Peruvian legal framework,<sup>23</sup> the Minister of Agriculture's public commitments that palm oil production will not result in deforestation,<sup>24</sup> and Peru's international commitments to

safeguard its forests.<sup>25, 26</sup> These four projects alone will generate around 3.9 million tons of greenhouse gas emissions, equivalent to one fourth of the total emissions that the Peruvian Government has committed not to produce in the framework of the Forest Carbon Partnership Facility (FCPF).<sup>27</sup>

Grupo Romero's companies currently operate in a wide range of sectors and activities, including textile manufacturing, agroindustry, import and sale of petroleum and petroleum products, telecommunications, and commercial fishing.<sup>28</sup> Its President, Dionisio Romero Paoletti, is considered the most powerful businessperson in Peru and the seventh most powerful person in the country.<sup>29</sup>

The legality of Grupo Palmas' existing operational plantations in Peru (Palmas del Shanusi, Palmas del Oriente and Palmas del Espino)<sup>30</sup> has been called in to question repeatedly by government officials, civil society and indigenous organizations<sup>31</sup> (See Section 1.4). At the time of this report's publication, Palmas del Shanusi is facing at least seven legal cases related to illegal deforestation in which several of the group's high-level representatives have

been charged.<sup>32</sup> In four of these cases, charges have already been filed and are awaiting a decision by the judiciary; three are still being investigated by the prosecutor.<sup>33</sup>

According to the Environmental Impact Assessments submitted for the four new projects, Grupo Palmas supports the four companies financially and technically.<sup>34</sup> According to the Peruvian National Registry of Property (SUNARP), the president of Grupo Romero, Dionisio Romero Paoletti, is also the president for each of these four companies; several other members of Grupo Romero are also members of these companies' boards.<sup>35</sup> These officially documented connections demonstrate that these four oil palm projects are controlled by Grupo Palmas, a subsidiary of Grupo Romero.

Through multiple access to information requests, EIA gained access to information on the four proposed palm oil plantations including the Environmental Impact Assessments produced by the companies. This data allowed EIA to map the planned projects, analyze satellite images, and estimate the projected deforestation, as well as identify a

## What is Grupo Romero?

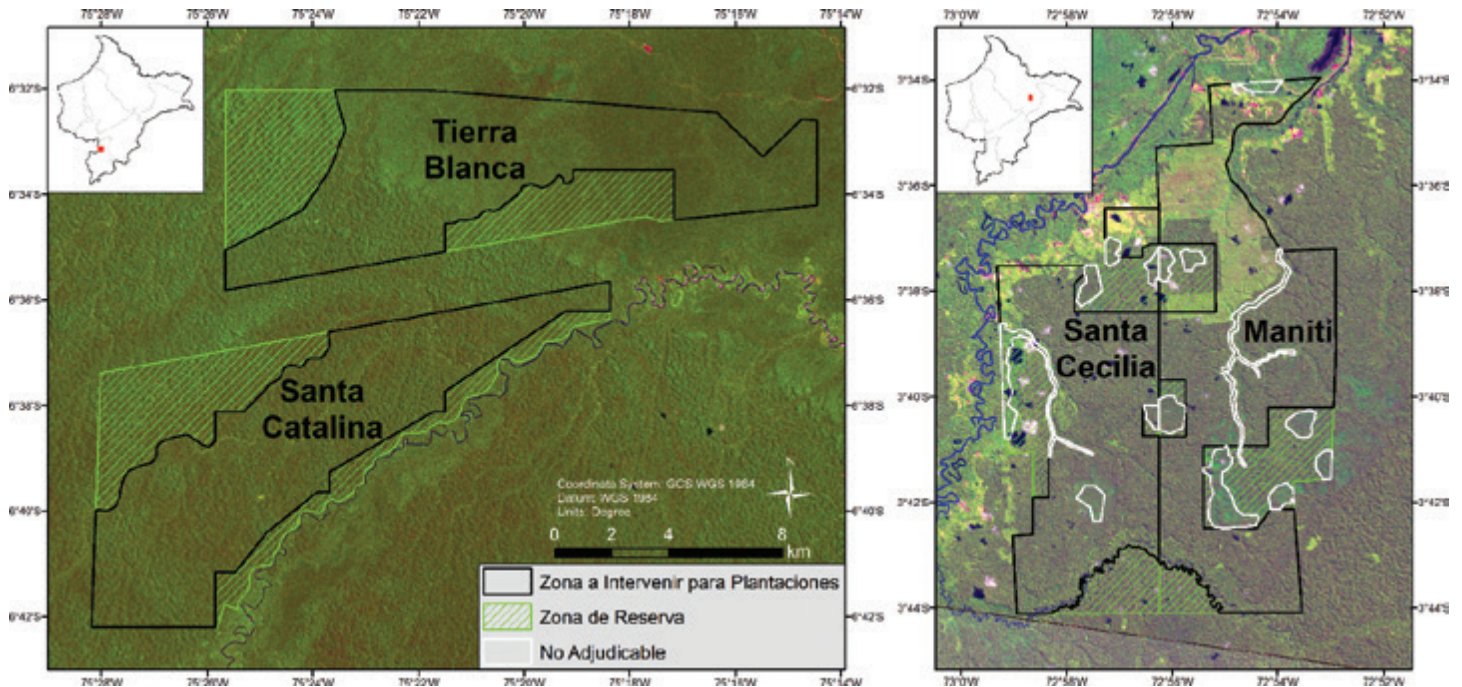
What is now known as Grupo Romero began in 1888 as an international manufacturer of straw hats. Over the next 127 years the Romero family purchased a Peruvian textile company and numerous other subsidiaries of foreign companies that were being nationalized by Peru's military government, and in 1979, Grupo Romero forayed into the finance industry by taking control of the directorship of the Credit Bank of Peru (*Banco de Crédito del Perú*). Now, it is estimated that the Peruvian company Grupo Romero has holdings valued at a market price of around US\$3.5 billion and, for 2013, the group reported income from sales and services for more than US\$5.5 billion. Neither of these numbers includes earnings or value of Grupo Romero companies in the financial sector.<sup>112</sup> For 2014, the assets of Credicorp, the group's financial sector companies, were estimated on US\$50 billion.<sup>113</sup>

Grupo Romero's companies operate in a wide range of sectors and activities, including textile manufacturing, agroindustry, import and sale of petroleum and petroleum products, telecommunications, and commercial fishing. In addition to Peru, the group has companies in Ecuador, Colombia, Panama, Ecuador, Honduras, Guatemala, Argentina, Uruguay, Bolivia, Spain, Chile, Brazil and the British Virgin Islands, and exports products to 23 countries around the world.<sup>114</sup>



## DEFORESTATION BY DEFINITION:

THE PERUVIAN GOVERNMENT FAILS TO DEFINE FORESTS AS FORESTS, WHILE THE MALAYSIAN INFLUENCE AND PALM OIL EXPANSION THREATEN THE AMAZON



**FIGURE 2:** Location of the four Grupo Romero future projects in Loreto.

Source: The four EIAs, GOREL, MTC, INEI, Grupo Romero. The total area for the four projects covers 34,295 ha. Santa Catalina and Tierra Blanca - in the southern part of Loreto - add up to 20,002 ha, while Maniti and Santa Cecilia - in the northeastern part of Loreto - add up to 14,293 ha.

series of discrepancies between the data submitted by the companies and data previously produced by the Peruvian government.<sup>36</sup>

The planned deforestation for these oil palm plantations violates the Peruvian Forest and Wildlife Law No. 27308,<sup>37</sup> which states that intact forest resources are part of the National Forest Heritage (*Patrimonio Forestal Nacional*) and “cannot be used for agriculture and cattle grazing or other activities that affect vegetation cover, sustainable use and the conservation of forest resources.”<sup>38</sup> Satellite analysis and the comparison of the companies’ data with Peruvian government maps show that these proposed plantations will be developed over intact primary forests.<sup>39</sup>

The planned palm oil plantations also violate a Supreme Decree<sup>40</sup> that was created to promote palm oil plantations, but limited their development to lands that have previously been deforested and are appropriate for agriculture. Several senior officials from the Ministry of Agriculture and Irrigation, including the former Minister Milton von Hesse La Serna, have made public commitments that oil palm development will not threaten primary forests.<sup>41</sup>

Between July and November 2013, the Environmental Investigation Agency shared these findings with the Peruvian government offices in charge of approving the projects and protecting the forests, the Ministry of Agriculture and Irrigation and the Ministry of Environment respectively. Regrettably, the Peruvian government approved the plans for all projects by the end of 2013. But according to a press release issued by the Peruvian NGO Sociedad Peruana de Ecodesarrollo (SPDE) on February 5, 2015, the Peruvian Judiciary accepted the precautionary measure submitted by SPDE and suspended the legal effects of the Environmental Impact Assessment approvals of the four Grupo Romero Projects.<sup>42</sup>



**CHART 1: Grupo Romero Project Summary**

	MANITÍ & SANTA CECILIA	TIERRA BLANCA & SANTA CATALINA
<b>DEFORESTATION OF 23,000 HA OF PRIMARY FORESTS</b>	<p>Grupo Romero's Environmental Impact Assessment documents show that these projects will deforest 7.579 ha of primary forests.</p> <p>EIA analysis of official Peruvian government maps and data show that these projects will deforests 9.148 ha of primary forests.</p>	<p>Grupo Romero's Environmental Impact Assessment documents state that these projects will deforest 9.167 ha of primary forest.</p> <p>EIA analysis of official Peruvian government maps and data show that these projects will deforests 13.997 ha of primary forests.</p>
<b>VIOLATION OF THE "RESERVE" REQUIREMENTS</b>	<p>Grupo Romero's Environmental Impact Assessment documents show that only 23% of the forested area will be set aside as a reserve. This is a clear violation of the Forest and Wildlife Law 27308 which requires a minimum of 30% be set aside as reserve land.</p> <p>Reduction from 30% of reserve land, would result in the illegal deforestation of 771 ha of primary forest in the Amazon.</p>	(None identified yet)
<b>QUESTIONABLE LAND USE CAPACITY STUDIES</b>	<p>Grupo Romero's Environmental Impact Assessment says that all land for these projects is agricultural land.</p> <p>The Ministry of Agriculture classified this land as Permanent Production Forest (<i>Bosque de Producción Permanente</i>) known by its Spanish acronym as BPP, which means there was an official decision to keep it as standing forests.</p> <p>(BPP is defined as natural primary forests to be used only for the selective harvesting of wood and other forest and wildlife resources. )</p> <p>Office of National Assessment of Natural Resources classify the land north and south of the projects as forestry land.</p>	<p>Grupo Romero's states that all of the land within these projects is agricultural land.</p> <p>The official map of the Office of National Assessment of Natural Resources (<i>Oficina Nacional de Evaluación de Recursos Naturales</i>) known by its Spanish acronym, ONERN classifies all the land in the project areas as forestry land, it means, mainly for selective sustainable forestry activities and reforestation.</p> <p>The official Regional Government of Loreto map shows that the entire Santa Catalina project and a significant portion of the Tierra Blanca project are located over land designated for forest production and protection.</p>
<b>CARBON EMISSIONS: ALMOST FOUR MILLION TONS OF CARBON</b>	<p>Applying Baccini et al., we find that the area to be deforested accumulates 3.2 million tons of biomass, equivalent to 1.6 million tons of carbon.</p> <p>EIA's analysis found an average biomass of 296 tons per hectare , equivalent to about 148 tons of carbon per hectare. An oil palm plantation captures only about 40 tons of carbon per hectare.</p>	<p>Applying Baccini et al., we find that the area to be deforested accumulates 4.6 million tons of biomass, equivalent to 2.3 million tons of carbon.</p> <p>EIA's analysis found an average biomass of 327 tons per hectare , equivalent to about 164 tons of carbon per hectare. An oil palm plantation captures only about 40 tons of carbon per hectare.</p>
<b>VIOLATION OF PERMANENT PRODUCTION FOREST CLASSIFICATION AND REGULATIONS</b>	<p>The land requested by Grupo Romero was part of a forest area previously classified by the Peruvian government as BPP.</p> <p>Through an erratic succession of events, the area was reclassified to agricultural land, and transferred to the regional government of Loreto so that it could be sold, deforested and replaced by palm oil. A year later, the land was returned to the national government. The reasoning behind this step back, as well as the final decision to keep it or not as BPP are still unclear.</p>	



# 1.1 HOW A SKEWED INTERPRETATION OF THE FOREST DEFINITION RESULTS IN DEFORESTATION

While intact forest resources are protected by national law,<sup>43</sup> the Peruvian government has nonetheless approved and allowed significant deforestation to occur by ignoring a crucial phrase in the law and by relying on a technical classification of the land that ignores the presence of standing trees in evaluating requests for land use change. Peruvian government officials have asserted, in multiple meetings with EIA, that forests are defined based on a technical classification known as *Best Land Use Capacity* (BLUC). It is clear that the legal definition of forests in Peru includes trees, yet the government continues to approve land use change based on BLUC alone.

According to the Peruvian forest regulations, BLUC<sup>44</sup> is the methodology to classify land and determine what activities are allowed on it. The BLUC is defined as the natural capacity of the land to be productive in a permanent fashion, under certain uses and procedures. The BLUC of an area is determined by a “technical - interpretative system”<sup>45</sup> that classifies the land among five categories:<sup>46</sup> intensive cultivation, permanent cultivation, pastures, forestry, and protection. These five categories are defined by two main sets of indicators: soil characteristics (inclination, texture, pH, etc.) and climactic conditions (precipitation, temperature, etc.). The coverage of the land—for example, if it is covered by primary forest, swamps or pastures—is not considered as relevant in this methodology. What would commonly be considered a forest, is not necessarily defined as such by the Peruvian government because it relies on BLUC studies to define forests. As a result of this skewed definition, massive stretches of the Amazon are vulnerable to deforestation.

Article 7 of the Forest Law 27308 defines “National Forest and Wildlife Patrimony” as the following:

*Forest and wildlife resources at their source and lands of the state whose best land use capacity is forestry with or without standing forests, constitute National Forest Patrimony. They cannot be used for agriculture ends or other activities that affect the vegetation cover, the sustainable use and the conservation of forest resources, regardless of their location in the national territory, except for the cases referred to in the present law and its regulations.*

However, the Peruvian government is acting as though the first part of the provision, “forest and wildlife resources at their source” (“los recursos forestales y de fauna silvestre mantenidos en su fuente”) does not exist, and is instead stating that the only way for land to be forest is if its best land use capacity has been determined to be forest. It is only through this omission that determination of best land use is decided.

A similar rationale is being applied to the definition of “forest resources” by the Forest Law 27308. Article 2.1 of the Law defines forest resources in the following way:

*Forest resources are those natural forests, forested plantations, and lands for which the best land use capacity is forest production and protection.*

In this case, again the initial phrase “natural forests are forest resources” (“son recursos forestales los bosques naturales”) is ignored and the only one considered is “lands whose best land use is productive and forest protection” (“tierras cuya capacidad de uso mayor sea de producción y protección forestal”).

The new Forest Law 29763 has very similar definitions to both forest patrimony<sup>47</sup> and forest resources,<sup>48</sup> with the difference that it enumerates the different components of the definitions in what seems to be an attempt to avoid potential misinterpretation.

The current interpretation for the definition of forests is incorrect, and the text of the new forest law, Law 29763, suggests so when it clarifies that the BLUC only applies for specific cases and is not key for the definition of forest. Natural forests are forest resources, independently of their BLUC and when “at their source” are also forest patrimony.

**A Grupo Romero oil palm plantation from the air.**  
PHOTO CREDIT: YACHAY PRODUCTIONS.





## TWENTY MILLION HECTARES OF FORESTS AT RISK

The Peruvian forest law 27308—at the time of this report's publication—does not allow for conversion; in other words, it does not allow for deforestation of land that has been defined as forestry or protection for its best land use capacity (BLUC).<sup>49</sup> According to Peruvian law, agro-industrial palm oil projects are only promoted on land designated, by its BLUC, as agricultural land.<sup>50</sup>

However, the government has not conducted a comprehensive assessment of the BLUC of Amazonian forested land. Currently, out of Peru's 74 million hectares of forests,<sup>51</sup> there are approximately 20 million hectares of forests in the country that have not been classified and lack official studies to define their BLUC.<sup>52</sup> Forests within these 20 million hectares are vulnerable to BLUC assessments that, based on soil and climate characteristics, may define them as agriculture land. Furthermore, BLUC assessments can even be used to declare that land previously classified as forestry or protected land is in fact best suited to agricultural production.<sup>53</sup>

Often, BLUC classification studies are paid for by private investors interested in developing the land for which the BLUC assessment is being carried out. Relevant governmental authorities lack the resources or the political will to verify the accuracy of the company-conducted studies. This often results in the validation of BLUC studies that assert primary forested land is in fact best suited to agricultural production. This is the case with the Grupo Romero projects discussed in this report.<sup>54</sup>

A map produced in 1981 by the National Office for Natural Resource Evaluation (ONERN)<sup>55</sup> clearly shows that all of the land requested by Grupo Romero for the Santa Catalina and Tierra Blanca projects is classified for forestry.<sup>56</sup> Another map produced by the Loreto Regional Government in 2008 shows that all of the Santa Catalina project, and a significant portion of the Tierra Blanca project, are located over land designated for forest production and protection.<sup>57</sup>

However, the Grupo Romero Environmental Impact Assessments assert that all of the land within the Tierra Blanca and Santa Catalina project areas are in fact agricultural land.<sup>58</sup> Given that the Ministry of Agriculture and Irrigation had previously designated all of the land within the Manítí and Santa Cecilia projects as Permanent Production Forests (*Bosques de Producción Permanente*, or BPP), it is seemingly impossible that none of the land in the project areas is designated as forestry under a BLUC analysis. A 1981 map produced by ONERN identifies the areas on the north and the south of the projects as forestry BLUC.<sup>59</sup>

While the Environmental Impact Assessments for Manítí and Santa Cecilia do identify several small pieces of land inside the boundaries of the project area, mark them as land to be protected ("*Tierras de Protección*"), and do not count these areas as part of the projects' land, those areas would stand in stark contrast to the entire project areas which will be deforested. These "protected areas" would be insignificant in the face of mass deforestation and would hardly fulfill any meaningful environmental role.

With the current BLUC practice, businesses can deforest thousands of hectares of primary forests to install agribusiness operations without this being officially considered "deforestation" but just "*retiro de cobertura forestal*" or forest cover removal. This also explains why the Grupo Romero assessments acknowledge that the majority of the requested land is primary forest, but claim that the BLUC is for agriculture.

The regulation to define the BLUC (Supreme Decree 017-2009-AG) was issued in 2009. Prior to this supreme decree, the BLUC was defined by the combined application of the ONERN map and the article 49.2 of regulations for the Forest and Wildlife Law 27308. Article 49.2 included five criteria,<sup>60</sup> one of which was forest cover. While forest cover has been recognized as a significant factor in Peruvian legislation to classify the land in the past, the current BLUC practice is ignoring this precedent.

In February 2014, following repeated complaints from civil society regarding the approval of large agribusiness projects over forested land, the Peruvian National Forest Service (SERFOR) invited representatives from the private and public sector who had been analyzing the oil palm industry to create a working group to better understand the challenges of the sector and for proposing solutions. One of the conclusions of this working group has been that the criteria for land allocation must be revised in a manner that incorporates the forest cover as a crucial factor before allocating the land for agribusiness projects.<sup>61</sup>

**CHART 2: Plantation/Reserved Land for Grupo Romero Projects**

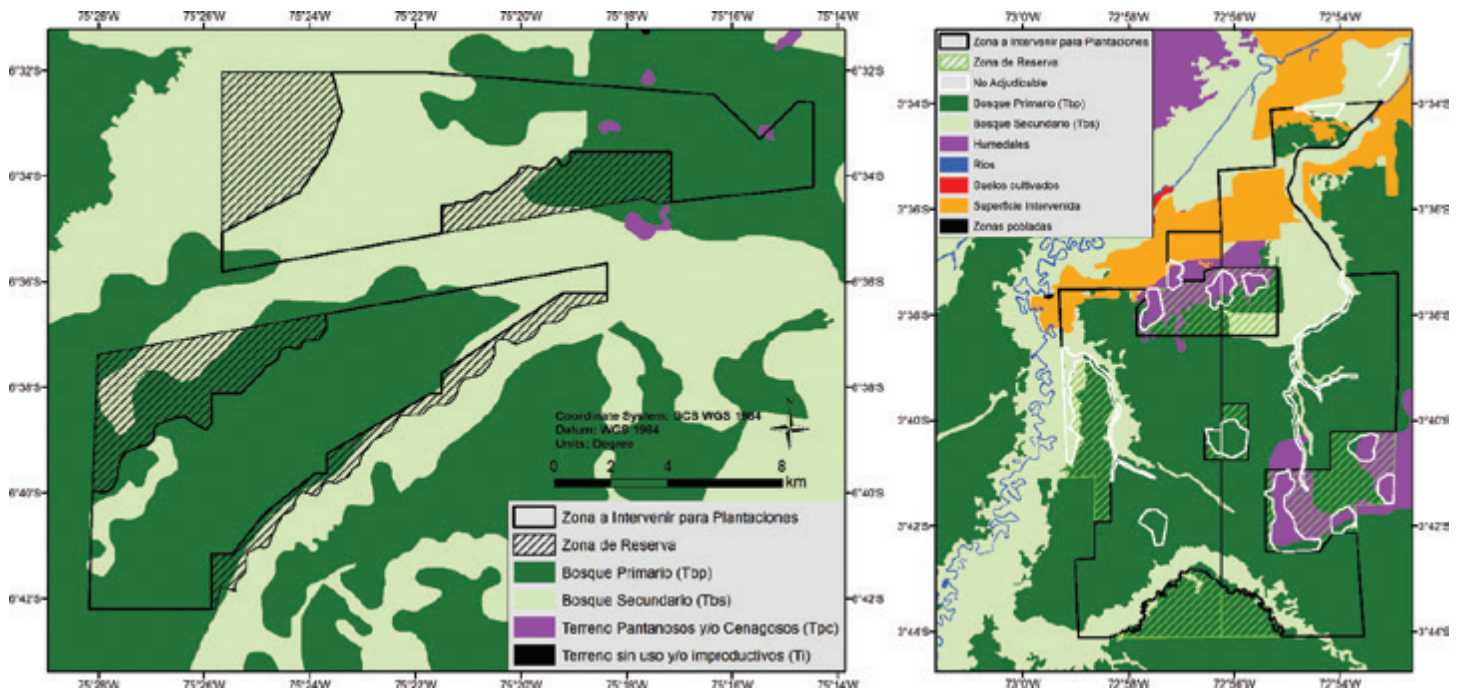
	SANTA CATALINA	TIERRA BLANCA	MANÍTÍ	SANTA CECILIA	TOTAL
Palma	7.003	7.002	6.440	4.610	25.055
Reserva	3.001	2.996	1.631	1.612	9.240
<b>TOTAL</b>	<b>10.004</b>	<b>9.998</b>	<b>8.071</b>	<b>6.222</b>	<b>34.295</b>

Source: AutoCAD data from the projects Environmental Impact Assessments. (The amounts for the EIAs were estimated using the AutoCAD data included in the Environmental Impact Assessments' annexes. Due to the methodology to build these numbers, it is possible that they slightly differ from those included in the text of the EIAs.)



## DEFORESTATION BY DEFINITION:

THE PERUVIAN GOVERNMENT FAILS TO DEFINE FORESTS AS FORESTS, WHILE THE MALAYSIAN INFLUENCE AND PALM OIL EXPANSION THREATEN THE AMAZON



**FIGURE 3:** Forest coverage according to the Grupo Romero projects' Environmental Impact Assessments. The scales are the same for both maps.

The irregular and at times contradictory processes involved in the decisions regarding the land for these palm oil concessions raises several questions about the Peruvian government's ability to reliably follow its own laws and policies. Additionally, the number of mistakes in terms of maps, dates, names of companies, location of the requested land, both in the Environmental Impact Assessment documents submitted by Grupo Romero and in Resolutions produced by the DGAAA, should be reason enough to reopen processes and reverse the permission granted to deforest these lands.<sup>62</sup>

## DEFORESTATION OF 23,000 HECTARES OF PRIMARY FORESTS

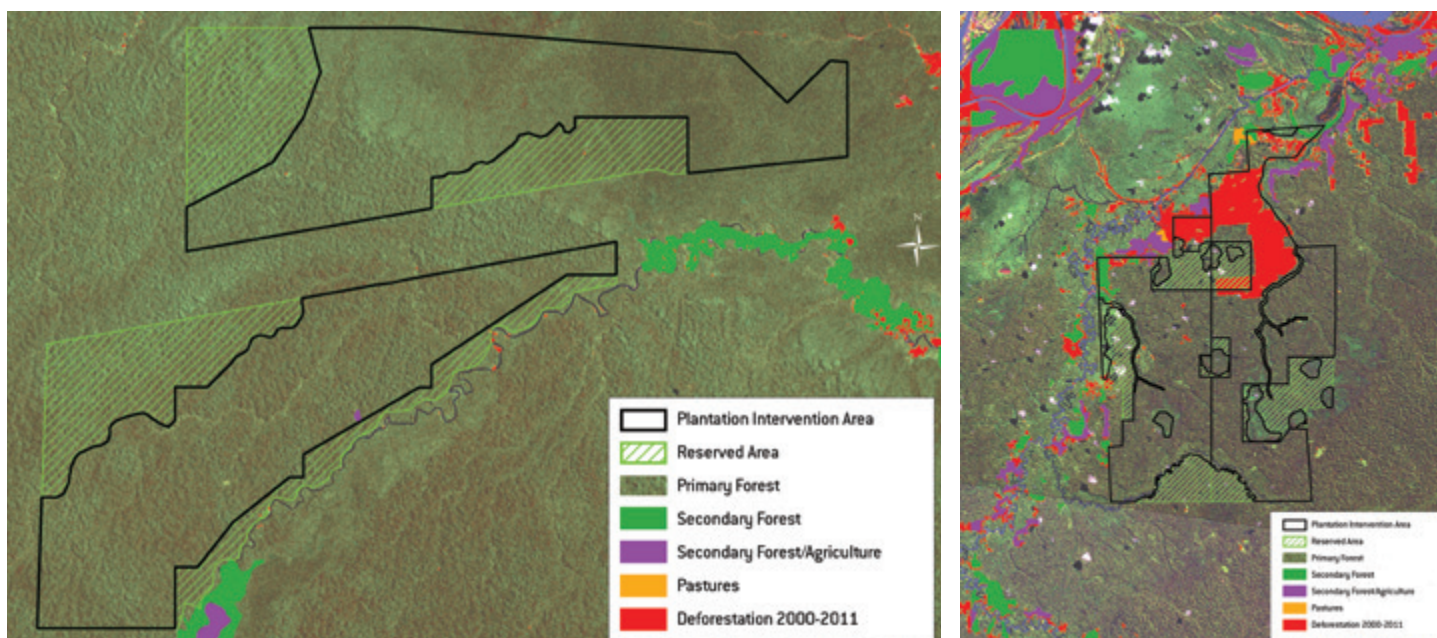
The vast majority of the 25,055 ha that Grupo Romero intends to convert for the identified four oil palm plantations are Peruvian Amazon primary forests.<sup>63</sup> This is roughly equivalent to the area of 30,000 soccer fields.

The Grupo Romero Environmental Impact Assessments indicate that 16,746 ha (or 66.8 percent of the total areas to be converted to palm oil) are primary forests. The Environmental Impact Assessments also indicate conversion of another 6,956 ha of secondary forest and 366 ha of wetlands (*humedales*). In other words, the Environmental Impact Assessment plans submitted by the Grupo Romero companies show that 96 percent (24,067.7 ha) of the area to be converted to palm oil plantations is currently covered by forests. According to the company's own data, these four projects alone will destroy 24,000 ha of Amazon forests.

In 2005, two offices from the Peruvian national government (The National Institute for Natural

Resources, or INRENA and the National Environmental Council, CONAM)<sup>64</sup> produced a map of deforestation in the Peruvian Amazon up to the year 2000, based on Landsat satellite imagery and fieldwork. Comparing the companies' Environmental Impact Assessment data to this map shows that 23,231 ha of Grupo Romero's planned palm oil concessions were primary forests in 2000. In 2012, the Peruvian Ministry of Environment (MINAM) produced two new maps with updated data on deforestation that occurred between 2000-2011. This new map indicated that only 86 additional ha had been deforested within the area corresponding to the Grupo Romero requested palm oil concessions since 2000, when the previous INRENA map was developed.<sup>65</sup> Using both the MINAM map, along with the INRENA and CONAM data, EIA documented that 92.4 percent (23,145 ha) of the area to be *intervened*—in other words, deforested—by Grupo Romero's new projects is primary forest.





**FIGURE 4: Forest cover for Grupo Romero projects**

Forest cover for the Grupo Romero projects according to the “Mapa de Deforestación de la Amazonía Peruana - 2000” by INRENA and CONAM, MINAM data, and “Mapa de Deforestación Departamento de Loreto al 2009” produced by the IIAP in 2012.

In July 2012, the Peruvian Amazon Research Institute (*Instituto de Investigaciones de la Amazonía Peruana* or IIAP) produced another map of deforestation in Loreto<sup>66</sup> which showed that 92 percent (23,056 ha) of the area to be converted to palm oil remained primary forests with no detected deforestation as of 2009. EIA's analysis of Landsat imagery up to 2015 found that no new significant deforestation has occurred in the project area in the last three years.<sup>67</sup>

Carlos Ferraro, an advisor to Grupo Palmas, told the Peruvian investigative journalism website, IDL Reporteros that the “the Environmental Impact Assessments (submitted by Grupo Palmas) never mention ‘primary forests’.”<sup>68</sup> When the journalist showed Ferraro and Grupo Palmas' Director of Communications, Victor Melgarejo, the sections of the Grupo Palmas' documents in which the company acknowledges that the vast majority of the land is “primary forest,”

Victor Melgarejo said, “If it is a primary forest, we will not go in. And if we didn't notice, or if we were being blind, you will see that they will not authorize us to go there.”<sup>69</sup>

By January 2015, the four projects had been approved by the DGAAA and, in at least two of the cases, the Loreto Regional Government (GOREL), had sold the land to the companies<sup>70</sup> and approved the land use change for agriculture.<sup>71</sup> In other words, Grupo Romero had been authorized by Peruvian government authorities to destroy at least 23,000 hectares of primary forest.

On February 5, 2015, according to SPDE, a precautionary measure approved by the Peruvian Judiciary suspended the legal effects of the Environmental Impact Assessment approvals of the four Grupo Romero Projects.<sup>72</sup> By the decision of the Second Constitutional Court of the Superior Court of Lima all the legal effects of the Resolutions that approved

the Environmental Impact Assessments for the projects have been suspended and any activities over the areas that could be considered non-reversible are forbidden.<sup>73</sup> However, precautionary measures are, per se, temporary measures to preserve the value of a resource in risk while the final decision on a case is made. This means that while the Manítí and Santa Cecilia areas are under judiciary protection at the moment, the situation can change at any time.<sup>74</sup>



## 1.2 VIOLATION OF RESERVE REQUIREMENTS

According to current Peruvian legislation, when an entity gains legal access to an area with forest cover for the purposes of developing the land, it must preserve untouched a reserve area of at least 30 percent of the forested area, plus a corridor of at least 50 meters width next to the rivers and any other water sources in the area.<sup>75</sup> If part of the land in question possesses certain characteristics meriting additional protections, for example wetlands, the government is required to increase the minimum 30 percent reserve to ensure the specially designated land is preserved.

According to the documents submitted by the Grupo Romero project developers to the national government, the company is not complying with this legal requirement.<sup>76</sup> The AutoCAD data submitted with the Manítí and Santa Cecilia planned projects reveal that only 23 percent of the forested area of Manítí and Santa Cecilia will be set aside as a reserve,<sup>77</sup> a

clear violation of current law. This violation alone would mean the illegal deforestation of 771 ha of primary forest in the Amazon. Among the documents received by EIA, there are no

documents referring to any assessments conducted by the Peruvian government to determine if the land merited special protection.

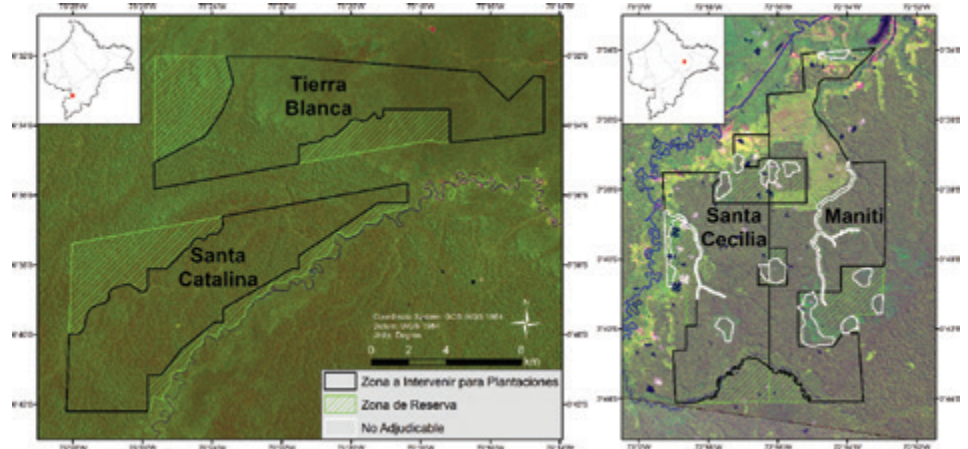


FIGURE 5: Plantation and reserve area for Grupo Romero projects

### Undermining REDD Commitments: 3.9 Million Tons of Carbon Dioxide

In addition to its national legislation, Peru has announced its intentions to the international community to reduce emissions from deforestation and forest degradation. Since deforestation is considered the primary source of greenhouse gas emissions in the country,<sup>78</sup> the Peruvian government has committed to preserving 54 million hectares of primary forest in the context of the Forest Carbon Partnership Facility (FCPF).<sup>79</sup> Additionally, Peru has pledged to reduce to zero the rate of deforestation from land use, land use change, and forestry activities by 2021.<sup>81</sup> Under Peru's agreement on REDD+ implementation with Germany and Norway, Peru has committed to end conversion of "soils under forest and protection categories to agricultural use."

Current cases indicate that the Peruvian government is unable to prevent deforestation by palm oil plantations. The government's continued encouragement of palm oil cultivation on forested land stands in stark contrast to its articulated commitments to combat climate change by protecting its forests.

Applying the data published by Baccini et al. in 2012, EIA estimates that the projected deforestation of the four planned new Grupo Romero oil palm plantations will result in a total loss of 7.85 million tons of biomass, which is equivalent to about 3.9 million tons of carbon emissions. (See Chart 16)<sup>82</sup>

Our analysis found an average biomass of 313 tons per hectare,<sup>83</sup> equivalent to about 157 tons of carbon per hectare. An oil palm plantation, on the other hand, captures only about 40 tons of carbon per hectare, according to estimations based on a typical cycle of 25 years.<sup>84</sup>

This means that if Grupo Romero's four projects are fully approved and the deforestation goes as planned, the oil palm plantations in a best case scenario, would only recapture one fourth of the carbon emissions released by the deforestation.

Replacing a natural forest with a monoculture plantation results in a radical and irreplaceable loss of biodiversity at a moment when Peru is promoting itself as a country proud of and respectful of its significant biodiversity.<sup>85</sup> The scale of the planned projects will imply the development of new roads, factories, processing plants, lodging for the workers, and other associated infrastructure, all of which bring additional social and environmental impacts to the forest.

## 1.3 AN INVALID LAND TRANSFER

The land requested for the Manítí and Santa Cecilia projects was part of a forest area that had been previously classified by the Peruvian Government as Permanent Production Forest (BPP), which is defined as natural primary forests only for activities compatible with standing forests, such as the selective harvesting of wood and other forest and wildlife resources.<sup>86</sup> The law states that “BPP...cannot be used for agricultural purposes or for other activities that affect plant coverage, sustainable use of the forest, or its conservation.”<sup>87</sup>

As described below, the areas of forested land requested for the Manítí and Santa Cecilia palm oil plantations have been part of an erratic succession of actions and reactions that have taken this area of primary Forest—once selected by the State to remain as standing forests for the value of their environmental services for the benefit of all Peruvians for this and future generations—to the verge of clear-cutting by a private company for private profit.

In 2001, the national government issued a ministerial resolution designating eight areas in the region of Loreto as BPP land.<sup>88</sup> This resolution, as well as a later one, clarified that private property with “accredited third party rights” would be excluded from the BPP designation.<sup>89</sup> The exclusion of these areas as well as any resizing (“*redimensionamiento*”) of the BPP land must be approved by a Ministerial Resolution from MINAGRI.

In 2011, the companies Islandia Energy SA and Palmas del Amazonas SA—the Grupo Palmas companies behind the Manítí and Santa Cecilia projects—submitted parallel requests<sup>90</sup> to the Regional Agriculture Office of Loreto for the allocation of land for their Manítí and Santa Cecilia plantations. At that time, the land in question was still property of the national government’s authority MINAGRI and classified as BPP.<sup>91</sup> The President of the Loreto Regional Government (GOREL) requested the transfer of the properties from MINAGRI to his region so GOREL could sell them to the companies.<sup>92</sup>

Without MINAGRI<sup>93</sup> having finalized its analysis of the viability of the request from GOREL, and therefore without having legal authority over

the land yet, the Regional Agriculture Office of Loreto confirmed to the companies the initiation of the land allocation process.<sup>94</sup>

Three months after the GOREL initiated this allocation process, the Peruvian forest authority at the time (the General Forest and Wildlife Office—DGFFS) verified that the requested area was located within an area designated as BPP<sup>95</sup> and stated that “due to its characteristics it remains important to maintain said areas as BPP, especially when the forest inventory conducted in July and August 2011 in part of the BPP (...) included these specific requested areas.”<sup>96</sup> In other words, the land requested by the companies has a defined purpose that is not compatible with a palm oil plantation.

The findings and the opinion of the DGFFS were communicated to the company.<sup>97</sup> In response, a representative of Islandia Energy asserted that the resolution that created the BPP of Loreto wrongly included the requested area, arguing that the land was MINAGRI’s private property, and therefore not eligible to be designated as BPP land.<sup>98</sup> At the same time, the company also submitted a request to resize (reduce) the BPP so it would no longer conflict with the proposed palm oil projects.<sup>99</sup> Following a series of analyses and reports carried out by both DGFFS and MINAGRI, the DGFFS eventually accepted that the requested land could qualify as an exception from the BPP since it was private property of MINAGRI before the BPP was created.<sup>100</sup>

In October 2013, without waiting for MINAGRI’s transfer of the title for the property in question, the regional authorities of Loreto went to the Public Registry (Superintendencia Nacional de los Registros Públicos, or SUNARP) office and requested the transfer, arguing that it was part of the already implemented decentralization process.<sup>101</sup> However, the authorities involved must have decided that this was not the correct process, because one year later in August 2014, they returned the title of the properties back to MINAGRI.<sup>102</sup> In September 2014, through respective ministerial resolutions, MINAGRI transferred the property to the Loreto Regional Government.<sup>103</sup>

### QUESTIONABLE LAND USE CHANGE

On December 24, 2014, eight days before the new administration came into office, the authorities from the Loreto Regional Government produced four technical reports<sup>104</sup> and two directorial executive resolutions<sup>105</sup> in order to approve the land use change in favor of Grupo Romero. According to the Transfer Record (*Acta de Transferencia*) from the previous administration to the new one,<sup>106</sup> the official transference was missing several documents. In two separate off-the-record conversations with EIA, two different high-level Peruvian government officials explained that when the new GOREL administration arrived to office in 2015, they found that the previous one had taken most of the archives and hard drives, leaving the current Regional Government scrambling to rebuild their archives.<sup>107</sup>

In summary, there are three main issues under discussion for the Manítí and Santa Cecilia cases, in addition to the Environmental Impact Assessment approval: 1) the property of the land; 2) the resizing of the BPP; and 3) if the land can (and should) be deforested for whatever purposes. Regarding the first point, the land has already been transferred from MINAGRI to GOREL and the latter has even sold it to Grupo Romero.<sup>108</sup> As for the second point, as far as EIA understands, the resizing has not been approved yet, but it might happen at any point.<sup>109</sup> The most crucial point in EIA’s assessment is the third: can and should this land be deforested?

The Ministry of Agriculture and Irrigation has the mission to protect Peru’s forest patrimony, and the government has the authority to approve or not approve land use change. In the case of both BPP and private property of MINAGRI, the government should not allow land use change that results in deforestation. The private versus BPP status of the land is in essence irrelevant. The government has the authority and power to prevent deforestation in both cases and should do so, particularly given Peru’s commitments that no land will be deforested for palm oil.



## NEXT STEPS

The irregular and at times contradictory processes surrounding the land use decisions for these palm oil concessions raise several questions about the Peruvian government's ability to reliably follow its own laws and policies.

The Peruvian government had already decided that the best use for the area is as standing forest. If the land is public, or private property of a national institution, does not change the fact that this forest is valuable and should remain intact according to the government's own direction. The option to resize the BPP was created to make sure that no private actor with previous rights would be negatively affected by the BPP creation.

Opening a 15,000 hectare clearing amid standing forest to replace it with a monoculture plantation, will have significant negative environmental impacts on the surrounding area, and will affect water resources, wildlife, biodiversity, and degrade the soils and forests.

Peru's Constitutional Tribunal, the highest authority on legal interpretation in the country, has already dictated precedents on the

importance of preserving natural resources.

"The natural resources, in totum, are part of the Nation's patrimony (*patrimonio*), which implies that their exploitation can never be separated from the national interest and the common good of being a universal patrimony (*universalidad patrimonial*) recognized for Peruvians of all generations. The benefits from using them must reach the Nation as a whole, which is the reason why their exploitation for purposes exclusively individualistic and private is banned."<sup>10</sup>

As of 2015, there is a new director of DGAAA, and a new administration in the Loreto Regional Government. These changes represent opportunity for a review of the processes followed in the Grupo Romero palm cases and, if irregularities are found, the possibility for an annulment of the process. In response to an access to information request submitted by EIA to the GOREL asking about the land use change approvals from 2013 to date (February 2015), the GOREL responded: "At the moment, there is no authorization for land use change or forest removal for the installation of agribusiness or agro energy crops."<sup>11</sup> While this statement could be an indication of an ongoing, contradictory,

and confusing process, it could also indicate that the GOREL is reviewing the prior process for the Manítí and Santa Cecilia land use change approval. Regardless, the current statement by GOREL, confirming that there were no authorizations issued for land use change between 2013 and February 2015, means that any deforestation happening in the Manítí and Santa Cecilia area is illegal.

While the Grupo Romero palm projects represent just a portion of palm oil projects in Peru, and projected palm oil investments on the horizon, they must be scrutinized by the Peruvian government and by the international community. If the irregular processes accepted, to date, in these projects set a precedent for land acquisition and palm expansion in Peru, the country's forests are in great peril. The Grupo Romero palm investments showcase illegalities, institutional weakness, and the inability of the Peruvian government to protect forest resources. These cases send a strong message to the international community that Peru is unwilling, if not unable, to meet international commitments and pledges to reducing deforestation and reducing emissions from forest degradation.

# 1.4 GRUPO ROMERO EXISTING PALM OIL PLANTATIONS

## LOCAL CONFLICT

According to Grupo Palmas' annual report for 2012 (the most recent annual report publicly available) Grupo Palmas had a total of 22,502 hectares planted with palm oil by the end of 2012.<sup>115</sup> In 2007, the group started planting cacao as a pilot project, and by the end of 2012 had a total of 720 hectares planted with cacao.<sup>116</sup>

Grupo Romero (through its Grupo Palmas companies) obtained possession of the land and conducted deforestation to install its plantations and infrastructure, both of which have been widely criticized by neighboring local communities. Grupo Palmas' activities have also undergone scrutiny by local and national authorities, the judiciary, the prosecutor's office, and even the Peruvian Congress. The media and nongovernmental organizations have continually followed and publicized these investigations into Grupo Palmas' activities.<sup>117</sup> In four of the cases brought against Grupo Palmas' activities, charges have already been filed and are awaiting a decision by the judiciary; three are still being investigated by the prosecutor.<sup>118</sup>

**CHART 3: Existing Grupo Romero projects**

PROJECT	PALM HECTARES	CACAO HECTARES	LOCATION/ PROVINCE
<b>Palmas del Shanusi – Agropecuaria del Shanusi SA</b>	<b>7,043</b>	495	On border between Lamas province (in San Martin region) and Alto Amazonas province (in Loreto region)
<b>Palmas del Oriente – Agrícola del Caynarachi SA</b>	<b>2,333</b>	–	Lamas province, in San Martin region
<b>Palmas del Espino</b>	<b>13,126</b>	225	Tocache district, in San Martin province, in San Martin region

Source: Grupo Palmas annual report 2012

## PALMAS DEL ORIENTE – AGRÍCOLA DEL CAYNARACHI

In 2006, representatives of Agrícola del Caynarachi, one of Grupo Palmas' companies, informed people in the Barranquita district of San Martin that the company had been given 3,000 hectares for its "Palmas del Oriente" project. It was not until 2007 that the San Martin forest authority formally granted Agrícola del Caynarachi a land use change for 3,000 hectares to be used for the Palmas del Oriente palm oil project.<sup>119</sup>

Before the land use change was formally granted, the local residents, who had inhabited this territory for more than 20 years, publicly expressed their outrage over Agrícola del Caynarachi's claim to the territory.<sup>120</sup> According to the national maps, the area requested by the company was categorized as "permanent production forest" (BPP)<sup>121</sup> and, according to the region's Economic Ecology Zoning Plan,<sup>122</sup> was designated "forest resource production forest."<sup>123</sup> Both of these designations mean that these

areas are only available for activities compatible with a standing forest.

Representatives of local farmers who had been impacted by Grupo Romero's presence in the nearby district of Caynarachi sent a letter to Peruvian Congressman Aurelio Pastor in May 2006 to bring his attention "to the mistreatment and abuse to which the farmers are subjected by Grupo Romero in the district of Caynarachi."<sup>124</sup> This letter accused Grupo Romero of deforesting a number of districts in the area and of taking over "the agricultural lands from possessors who had been there for 20 years," asserting that "they had also usurped farmers' agricultural properties that were properly registered and authorized."<sup>125</sup> It stated that the "passive and complacent attitude of the authorities" was allowing the company to keep "invading and displacing humble farmers from their properties," making the farmers "helpless" and unable to do anything to recover what belonged to them by law.<sup>126</sup> The letter also accused the company of "forcing farmers to sell their lands for little

value through notary letters, or to leave without receiving anything for their lands," and said that the company's claim to land title was invalid.<sup>127</sup> "[Grupo Romero states that] they are the owners and have property titles to these areas, when in reality they have only been in these places for one year, while we have been here for twenty years,"<sup>128</sup> added the letter.

The congressman forwarded the case to the Comptroller General,<sup>129</sup> who requested information<sup>130</sup> from the national forest authority.<sup>131</sup> The national forest authority's report concluded that Grupo Romero was acquiring lands without securing authorized rights to the lands, the soil use capacity classifications were biased in favor of the company's agricultural purposes,<sup>132</sup> and the land use change authorization "completely overlooked" the Economic Ecological Zoning Plan of San Martin,<sup>133</sup> which established that this forest must stay standing. In addition the study confirmed the existence of illegal logging activities, as well as an unauthorized access road.<sup>134</sup>



The Environmental Impact Assessment for the Palmas del Oriente project was approved by MINAGRI's General Directorate of Agricultural Environmental Affairs (DGAAA)<sup>135</sup> more than a year after the land use change was approved.<sup>136</sup> The Environmental Impact Assessment said that the area directly influenced by the project covered 3,000 hectares, 95.1 percent of which was primary forest and 4.9 percent was secondary forest.<sup>137</sup>

The San Martin Regional Government's Agricultural Office strongly condemned the approval of the land use change for the Palmas del Oriente project. This office stated that the San Martin Forest and Wildlife Intendancy's approval<sup>138</sup> of the land use change and the tree clearing on the Palmas del Oriente property was invalid and must be declared as void.<sup>139</sup> Specifically, it said that the approval was invalid because the Environmental Impact Assessment had not been approved by the time MINAGRI

approved the land use change for the 3,000 hectares, it did not respond to many concerns about the project, and the approval of the land use change went against the San Martin region's Economic Ecological Zoning Plan.<sup>140</sup>

During this time, the Conciliation Board for Combating Poverty in Barranquita (MCLP) tried to hold meetings between all the public and private stakeholders to prevent negative social and environmental impacts. In spite of these efforts, the conflict grew to a point where a group of local residents took over the municipality building in protest, and the National Ombudsman's Office had to intervene.<sup>141</sup>

## PALMAS DEL SHANUSI – AGROPECUARIA DEL SHANUSI

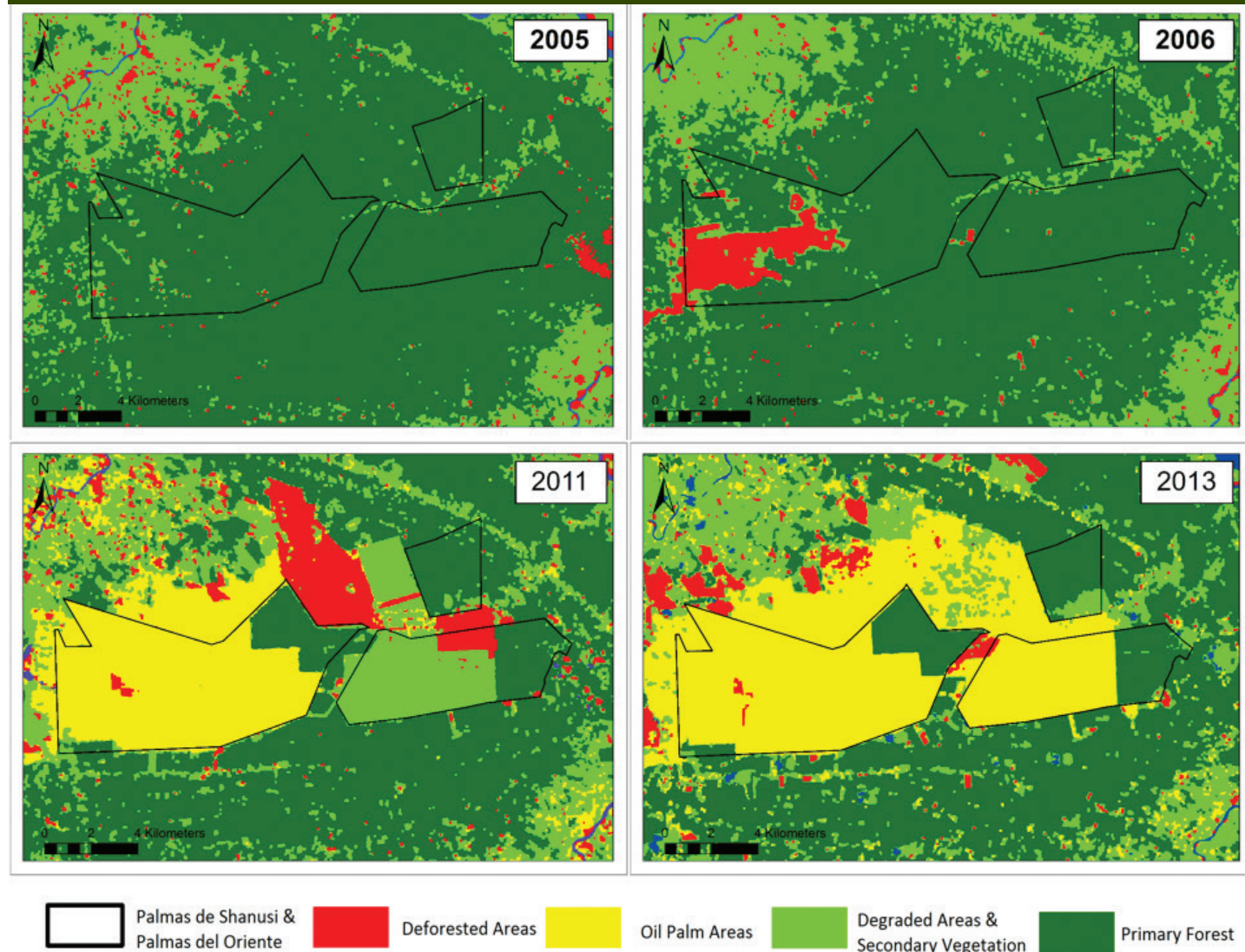
When responding to the letter from the Caynarachi farmers, the San Martin Regional Government also analyzed and conducted a

field visit of a palm oil project owned by another of Grupo Romero's Grupo Palmas companies, Agropecuaria del Shanusi. This project, called Palmas del Shanusi, was located on the border between the San Martin and Loreto regions.<sup>142</sup>

The report from this investigation stated the existing environmental regulations had been violated in several ways:<sup>143</sup>

- The technical dossier submitted by Agropecuaria del Shanusi for the change in use of lands did not contain a soil classification study, and therefore the ecological characteristics of the area had not yet been adequately shown,<sup>144</sup>
- The Environmental Impact Assessment that the company had submitted lacked "technical, scientific, legal and ethical basis,"<sup>145</sup>
- The quantity of cleared forest area led the regional government to suspect that the

**FIGURE 6: Landsat-based time series deforestation analysis in and around Palmas de Shanusi and Palmas del Oriente**



company's Annual Operating Plan<sup>146</sup> could be concealing "unjustified volumes" of timber extraction,<sup>147</sup>

- The company had not preserved the minimum 30 percent forest coverage required in the change in land use pursuant to Law 27308,<sup>148</sup> and
- The company had violated its obligation to preserve the 50-meter strip of forest coverage from the edge of the bodies of water inside or near its project land, as prescribed by law.<sup>149</sup>

Sitting on the border between two regions in the Alto Amazonas province, this project has affected both the Yurimaguas district in Loreto and the Lamas district in San Martin within the Alto Amazonas province of Peru. The overlapping jurisdiction has made regulation and oversight of the project difficult, leading to the national forest authority in Lima to urge these two jurisdictions to cooperate in investigating the project in 2008.<sup>150</sup>

In 2009, workers from Agropecuaria del Shanusi and local people from the village of Pampa Hermosa lodged a complaint against Agropecuaria del Shanusi, requesting an investigation into illegal timber extraction and labor-related issues.<sup>151</sup> When the national forest authority<sup>152</sup> ordered that an investigation be made into this project, the Yurimaguas forest authority<sup>153</sup> performed the requested investigation and recommended that Agropecuaria del Shanusi be sanctioned for violating the Forest and Wildlife Law.<sup>154</sup> However, the company subsequently appealed the decision and the sanction process was suspended.<sup>155</sup>

On August 5, 2009, confrontations over land occurred between the people from the Sector Nueva Italia—a village in Yurimaguas affected by one of the Grupo Romero plantations—and Palmas del Shanusi workers. The company stated that it was in legal possession of the disputed areas, but it did not allow the boundaries of its land to be verified. The local people refuted that the company had devastated the crops and houses of some villagers and had mistreated and detained others.<sup>156</sup>

In September 2012, in the village of Nueva Independencia some people sold their properties to the company, and those who did not sell their lands alleged that Agropecuaria del Shanusi was entering their properties and restricting access to their own plots. These allegations were brought to the Public Prosecutor's office of Alto Amazonas, which carried out a preliminary inspection.<sup>157</sup>

In November 2012, the Defense and Development Front of Alto Amazonas (FREDESAA) requested that the Environmental Prosecutor's office<sup>158</sup> of Alto Amazonas investigate the area for environmental violations, and alleged that Agropecuaria del Shanusi had deforested more than 200 hectares of permanent production forests (BPP).<sup>159</sup> FREDESAA has carried out public demonstrations demanding that the director of the Regional Agriculture Office be fired, because the director allegedly awarded proof of ownership to people who did not belong to the village so that those people could later sell illegally acquired plots to Agropecuaria del Shanusi.<sup>160</sup>

After a preliminary investigation, the Alto Amazonas Environmental Prosecutor's office proceeded with an official investigation into the representatives of Agropecuaria del Shanusi for the deforestation<sup>161</sup> of 500 hectares of tropical rainforest in the villages of Nuevo Japon and Independencia located in the district of Yurimaguas. These hectares are part of the company's plan to extend the project's agricultural borders to make way for more oil palm cultivation.<sup>162</sup>

## ONGOING SOCIAL CONFLICT

In May 2013, new demonstrations were held in Yurimaguas against deforestation in the area and other related problems. In response, national government authorities travelled to the area, where they held a meeting with representatives of FREDESAA and indigenous leaders to discuss the local peoples' demands.<sup>163</sup> The President of the Peruvian Congress, the vice-ministers of Environmental Management and of Agriculture, officials from the Presidency of the Council of Ministers, and the regional and the local authorities also participated in this meeting. As a result of the meeting, the President of the Congress pledged to transfer all complaints against Grupo Romero for deforesting primary forests for the Palmas del Shanusi project in Yurimaguas to the Congressional Committee on Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. The President of the Congress also pledged to coordinate with the National Attorney General's Office<sup>164</sup> to increase the number of prosecutors for the Environmental Prosecutor's office<sup>165</sup> of Alto Amazonas.<sup>166</sup>

The conflict between the people from the Shanusi Valley and Grupo Romero is ongoing. On November 2, 2014, FREDESAA declared an indefinite provincial strike.<sup>167</sup> One of the main goals of this strike was to investigate and sanction "the Palmas del Shanusi company" for "deforestation and contamination of the ravine Ushpayacu and Yanayacu."<sup>168</sup>



# ENVIRONMENTAL IMPACTS OF AGRO-INDUSTRIAL PROJECTS IN THE AMAZON: A TECHNICAL ANALYSIS<sup>304</sup>

Peru contains the second largest forest in Latin America, with an enormous potential for capturing carbon, mitigating climate change, sustaining ecotourism, achieving sounds conservation, and an enormous potential for development of new health, medicine, and industrial products.<sup>30</sup> Despite this, extensive areas of natural Amazonian forest are being removed for the establishment of agro-industrial projects.

## CLIMATE Microclimate

The process of clearing forests for agro-industrial projects will affect the local microclimate, which is regulated by the presence of forest cover.<sup>306</sup> The forest has a very unique microclimate compared to other types of vegetation.<sup>307</sup> Furthermore, multiple microclimates can exist within a single forest; the air space enclosed between trunks of trees in the forest has a climate of its own, and differs from that of open air and the forest floor.<sup>308</sup>

To try to understand the environmental impact of forest clearing on the microclimate of a forest,<sup>309</sup> we can first think of the impact of a clearing on the forest microclimate. Clearings are formed by the natural or intentional felling of a tree or part of a tree, and set off a chain of biological reactions related to silvigenesis, or all of the ecological and biological processes that create a mature forest.<sup>310</sup> A clearing is considered to be small when it is approximately 40 m<sup>2</sup> big, while a large clearing is between 150 and 400 m<sup>2</sup>.

It is important to note that the creation of clearings affects the microclimates of the forest by affecting solar radiation in the forest. Solar radiation regulates the temperature of the soil and air as well as the humidity of the air. When a clearing is created, these conditions are affected for more than 10 meters from the edges of the clearing.<sup>311</sup>

If a clearing creates such changes in the microclimate of the forest, it is easy to imagine the scope of impact of an area cleared for an agro-industrial project, given the dimensions of the affected area. Moreover, forest area cleared

and replaced by an industrial plant will become a permanent clearing. If this area is replaced by a palm oil plantation, it will only contain two strata of vegetation (kudzu and oil palms) instead of the many strata of a tropical rainforest.

## WATER Quantity and Quality of Above-Ground Water

An agroindustrial project can cause changes in the quality of surface water if construction activities are carried out without observing measures of precaution regarding earth moving activities and waste and effluent management.<sup>312</sup> The quantity of above-ground water can be impacted by the inadequate use of tube wells for the project's water supply.

According to complaints by local residents, two projects of Grupo Romero have unprecedented levels of mismanagement of water resources. In 2009, residents of the area of influence of the Palmas del Oriente project accused Palmas del Oriente of diverting the flow of streams, drying up several watersheds and appropriating the vast "Cocha Muerta" lake.<sup>313</sup> In November of 2014, FREDESAA alleged that Palmas del Shanusi, had contaminated the Ushpayacu and Yanayacu streams, and asked the government to investigate and sanction the company.<sup>314</sup>

## Quality of Groundwater

Agro-industrial projects can also affect the quality of groundwater. This can occur from poor construction of tube wells,<sup>315</sup> accidental spillage of oil and lubricants, or excessive usage of agrochemicals that reach the water table.<sup>316</sup>

Agro-industrial projects use fertilizers such as Triple Super Phosphate (TSP) and Potassium Chloride (KCl); herbicides such as Gesapex, Glyphosate and Gramocil (a compound formed from paraquat and diuron); fungicides such as Benopoint 50 PM (Benomyl) and Dithane (Mancozeb); and pesticides such as Gusadrin 2.5 percent P:S (Diazinon) and Sanpifos (Chlorpyrifos).<sup>317</sup> While these agrochemicals are permitted under Peruvian law, special

precautions must be taken in the application of these chemicals given the intensive nature of agro-industrial operations. The dosage and personnel safety precaution measures for applying these chemicals is particularly important.

The following list shows the potential toxic effects of these agrochemicals and their effect on human health, as shown in several studies:

- Fertilizers have the potential to contaminate water sources; their excessive use can cause eutrophication of surface water and nitrogen contamination in water tables.<sup>318</sup>
- Gesapax contains the active ingredient ametrine, which is on the European Union's list of prohibited and severely restricted chemicals.<sup>319</sup> A study in 2015 concluded that ametrine has a negative effect on testicles and can compromise the survival and fertility of animals.<sup>320</sup>
- Glyphosate, an efficient and well-known herbicide, has been the subject of various studies that generally conclude that the substance is "devastating to amphibian embryos",<sup>321</sup> can cause endocrine disruption within the cells it enters,<sup>322</sup> and interrupts of the process of enzymes for synthesizing steroid hormones when inserted at the active sites of aromatase within mammal cells.<sup>323</sup> Additionally, the inactive ingredients which help stability and absorption of Glyphosate's active ingredients change the permeability of human cells and increase Glyphosate's toxicity, which causes cell death and death of tissue.<sup>324</sup>
- Paraquat has been shown to cause hepatotoxicity in experiments with mice.<sup>325</sup>
- Diuron is a permissible agrochemical in the European Union,<sup>326</sup> but can only be used as an herbicide in quantities below 0.5 kg per hectare.<sup>327</sup> In addition, individuals applying Diuron must use protective equipment, and users must ensure that aquatic organisms and non-target plants are protected.<sup>328</sup> Diuron has also been found to cause to a high incidence of bladder cancer in mice exposed to high doses (2,500 ppm) over a two year study.<sup>329</sup>

- Benomyl has been identified as a risk factor for endocrine disruption that causes breast cancer.<sup>330</sup>
- Mancozeb was found in one 2014 study to potentially affect thyroid balance and reproduction at low doses.<sup>331</sup> Another 2014 study found that Mancozeb can damage the integrity of DNA in exposed organisms.<sup>332</sup>
- Diazinon was found to induce lipid peroxidation in the testicles of rats, which can cause cell damage leading to mutated or carcinogenic cells.<sup>333</sup>

## SOIL Soil Quality

Soil quality can be affected by the accumulation of wastes from worker encampments, machinery, and the digging of ditches. Additionally, it is likely that workers who have little education in environmental matters may not take precautions in management of solid waste, the accumulated deposit of which can change soil conditions.<sup>334</sup> Soil quality can also be changed by spills or accidental discharge of lubricants, gas and oils, or by inadequate equipment and vehicle maintenance systems.<sup>335</sup>

## Erosion

In areas designated for agro-industrial projects, tree cover will be eliminated leading to increased risk of erosion, particularly given the heavy rainfall in this region.<sup>336</sup> Forest clearing also can eliminate leaf litter and mulch deposited on the forest floor, both of which retain humidity and protect soil from erosion.<sup>337</sup> Erosion is defined as the removal, transport and deposition of soil particles, organic material, and soluble nutrients. Erosion manifests with varying levels of intensity, and can often become irreversible, thereby disrupting the equilibrium of key watershed areas.<sup>338</sup>

Erosion is an important factor because it eliminates the organic top layer of soil, it reduces levels of organic material in the soil, and destroys the soil structure. In doing so, erosion generally creates an environmental less favorable for the growth of vegetation. Additionally, eroded sediments can obstruct or fill in water pathways, and such sediments can damage fish habitats and degrade water quality in water bodies. Eroded soil particles can also become suspended in the air and, transported as dust, can affect human health on a large scale.<sup>339</sup>

## Change in Soil Structure (Compaction)

Construction activities for agro-industrial projects require the use of heavy machinery, which will compact the soil throughout the zone of the project.<sup>340</sup> Compacted soil cannot absorb rain water; rain water will instead flow across the surface of the land, carrying with it soil particles and causing erosion.<sup>341</sup> Additionally, compaction of soil does not allow vegetation to regenerate.<sup>342</sup>

## PLANTS

### Diversity and Abundance of Species

The areas where oil palm agro-industrial projects are being established in Peru are areas with natural forests<sup>343</sup> with high biodiversity. This loss of vegetated areas will reduce the habitats and density of plant species,<sup>344</sup> and will cause loss of timber and non-timber species.<sup>345</sup> If the zone of the project includes vulnerable or endangered species, danger to plant species is even more critical. This could well be the case, since the Comptroller General determined in 2012 that the national forest authority had not updated the forest and soil map, thereby “potentially putting forests at risk from projects that extract forest resources, because these projects could be extracting forest species that should be preserved for future rehabilitation or areas that should be destined for protection.”<sup>346</sup>

## ANIMALS

### Diversity and Abundance of Species

Agro-industrial projects require the removal of vegetation, which fragments habitats and reduces food sources for animal species in the area, thereby generating increased competition among species and possible migration of some species.<sup>347</sup> Furthermore, workers may hunt wild animals in the area within and around the project;<sup>348</sup> those species particularly vulnerable to capture for sale as pets are parrots, monkeys, snakes, while species such as the *majaz* (a type of rodent), peccaries, and lizards are vulnerable to capture for the purpose of selling to tourist restaurants in the region.<sup>349</sup> These factors create a high risk of loss of diversity and abundance of animal species.<sup>350</sup> If the zone of the project includes vulnerable or endangered species, danger to animal species is even more critical.

## ECOSYSTEM

### Fragmentation of Habitats

Fragmentation occurs when a large, continuous habitat is divided into two or more fragments.<sup>351</sup> This phenomenon can occur when an area of forest is cleared for conversion to another land use, and also occurs when an infrastructure project divides the area.<sup>352</sup> Habitat fragmentation has two main effects, called the “barrier effect” and the “fringe effect”.<sup>353</sup>

The barrier effect is created when mobility of organisms or their reproductive practices are impeded, leading to a restriction on the organisms’ dispersion and colonization.<sup>354</sup> Many species of insects, birds, and mammals are not able to cross the barriers fragmenting their habitats, and thus the dispersal of plants whose seeds are dispersed by animals are affected as well.<sup>355</sup> Additionally, animals may find their food sources restricted if the barriers separate these species.<sup>356</sup>

The fringe effect occurs when an ecosystem is fragmented and the biotic and abiotic conditions are altered of each fragment and of the surrounding ecosystem.<sup>357</sup> As a consequence, the distribution and abundance of species changes, which alters the vegetation structure, and the changed vegetation available results in a change in food sources for animal species.<sup>358</sup> In a landscape such that surrounding an oil palm plantation, fragmentation occurs when land is deforested to create space for palm oil cultivation. Then the new species (the palm oil tree) is introduced into this open space between the fragmented ecosystem. These changes primarily affect the species whose ecosystem has been fragmented, while the new species may thrive in conditions that are favorable to their survival and reproduction.<sup>359</sup>

### Carbon Emission

Where natural forests have been destroyed to cultivate biofuel crops, it is estimated that the medium term emissions resulting from this deforestation are in fact higher than those produced if fossil fuels were to continued to be used. The time it takes to restore the carbon that was emitted during the establishment of a palm oil plantation is a critical factor in determining how much carbon is emitted. In some ecosystems, it has been calculated that it takes 420 years for the biofuel plantations to compensate for the carbon emissions that were released when the plantations were established.<sup>360</sup>





## 2. THE MELKA GROUP: AMASSING LAND IN THE AMAZON

Corporate interests with a background in the Malaysian palm oil industry are expanding into Peru and committing significant and illegal deforestation in the Amazon. Prior to opening 25 agricultural companies in the Peruvian Amazon, Dennis Melka established numerous businesses, including investment holdings and land acquisitions for oil palm plantations in Sarawak, Malaysia, that have been linked to large-scale land acquisitions of forested land, expansive deforestation, a complicated ownership structure, and the use of offshore tax havens as the location the ultimate parent company of the corporate groups<sup>169, 170</sup> (See Section “Greasing the Palms”).

As the main actor in a network of 25 companies that have been established in Peru in recent years, Dennis Melka is pursuing significant expansion of agricultural commodity operations in the Peruvian Amazon.<sup>171</sup> Of these Peruvian companies, only one registers Dennis Melka as an owner.<sup>172</sup> For the remaining 24, according to documents filed with the official Peruvian property registry, Melka holds a special designation that grants him authority to act alone to make legal and commercial decisions for the company.<sup>173</sup> All other registered individuals with legal authority are below this status, and therefore unable to exercise the same control over the companies as Melka.<sup>174</sup> Due to Melka’s authority in each of these Peruvian companies, EIA refers to them as the Melka Group throughout this report.

Two of Melka’s agribusiness projects have generated significant and illegal deforestation

in Peru in the last three years,<sup>175</sup> and the Melka Group has acquired land for the purpose of expanding palm oil and other agriculture crops. Deforestation conducted by the Melka Group is currently estimated at nearly 7,000 hectares and is still increasing.<sup>176</sup> Despite claims to investors,<sup>177</sup> the Melka Group has repeatedly failed to abide by Peruvian environmental management laws and policies, thereby avoiding the regulatory scrutiny and environmental oversight that should have accompanied a new plan to deforest the Amazon for agricultural land.<sup>178</sup> The regional and national governments have levied sanctions against companies of the Melka Group, although there is no publicly available information that these fees have been paid or corrective action taken.

In addition to the more than 50 properties owned by the Melka Group where deforestation has been observed to be occurring in Tamshiyacu and Nueva Requena, the Melka Group has acquired another 456 rural properties, and appears poised to develop across large swaths of the Peruvian Amazon.<sup>179</sup> The Group has also requested the government allocate public land for at least thirteen other plantation projects through 12 different companies, all registered as palm oil producers.<sup>180</sup> These public land requests, many of them in the vicinities of Tamshiyacu, would add another 96,192 ha of forests to the Melka Group’s land for palm oil expansion in the Peruvian Amazon. Melka also recently oversaw the initial public offering of United Cacao Limited SEZC (United Cacao Ltd.), a company

based in the Cayman Islands,<sup>181</sup> on the London Stock Exchange’s Alternative Investments Market.<sup>182</sup> United Cacao Ltd. fully owns Cacao del Peru Norte SAC, its subsidiary in Perú.<sup>183</sup>

In parallel, at least one of the Melka Group companies in Peru has been active in negotiating the Roundtable on Sustainable Palm Oil (RSPO) national interpretation for Peru. The RSPO is a voluntary certification scheme for the palm oil industry based on company self-reporting, and has been widely criticized for being overly lenient on companies found to violate forest laws, rights to land and human rights.<sup>184</sup> At the moment, the Peruvian palm oil sector is working on a national interpretation of the RSPO standards that would facilitate the certification (and potentially open international markets) for their production in Peru. The director of Plantaciones de Ucayali (a Melka Group company) has been the vice-president for the Peru RSPO working group on environmental issues which, given the circumstances described in this report, is a poor choice for the industry.

The cases to be developed in this section indicate the national government currently lacks the effective power to enforce laws and regulations even when illegalities are clearly documented. It is clear that the Peruvian government does not have the capacity to evaluate, manage and monitor any additional large-scale agriculture projects and should refrain from approving new projects until it develops the internal capacity to monitor and effectively enforce national laws and policies.





**FIGURE 7:** Current deforestation and planned expansion of the Melka Group in Peru near Tamshiyacu



**DEFORESTATION BY DEFINITION:**
**THE PERUVIAN GOVERNMENT FAILS TO DEFINE FORESTS AS FORESTS, WHILE THE MALAYSIAN INFLUENCE AND PALM OIL EXPANSION THREATEN THE AMAZON**

COMPANY REGISTRY (PARTIDA)		COMPANY NAME	LOCATION	PURPOSE	CREATION DATE SUNARP	
1	11104525	ANDEAN RENTALS S.A.C.	PUCALLPA	Cacao	6-Dec-13	
2	11059685	CACAO DE REQUENA ESTE S.A.C.	MAYNAS	Cacao	6-Dec-13	
3	11059680	CACAO DE REQUENA OESTE S.A.C.	MAYNAS	Cacao	6-Dec-13	
4	11040645	PLANTACIONES DE IQUITOS S.A.C.	MAYNAS	Palma	17-Nov-10	
5	11040646	PLANTACIONES DE LIMA S.A.C.	MAYNAS	Palma	17-Nov-10	
6	11040957	PLANTACIONES DE LORETO ESTE S.A.C.	MAYNAS	Palma	21-Dec-10	
7	11059683	PLANTACIONES DE LORETO NORTE S.A.C. / PLANTACIONES DE NAPO NORTE SAC / COOPERATIVA DE CACAO PERUANO SAC	MAYNAS	Cacao	6-Dec-13	
8	11040647	PLANTACIONES DE LORETO S.A.C.	MAYNAS	Palma	17-Nov-10	
9	11040958	PLANTACIONES DE LORETO SUR S.A.C. / CACAO DEL PERU NORTE SAC	MAYNAS	Palma	21-Dec-10	
10	11052964	PLANTACIONES DE MANATI S.A.C. / INDUSTRIAS DE PALMA ACEITERA SAC	PUCALLPA	Palma	17-Nov-10	
11	11047252	PLANTACIONES DE MARIN S.A.C.	MAYNAS	Palma	8-Mar-12	
12	11098949	PLANTACIONES DE MASISEA S.A.C / PLANTACIONES DE MESISEA SAC	PUCALLPA	Palma	10-May-13	
13	11059682	PLANTACIONES DE NAPO NORTE S.A.C.	MAYNAS	Cacao	6-Dec-13	
14	11059684	PLANTACIONES DE NAPO S.A.C.	MAYNAS	Cacao	6-Dec-13	
15	11059681	PLANTACIONES DE NAPO SUR S.A.C.	MAYNAS	Cacao	6-Dec-13	
16	11040644	PLANTACIONES DE NAUTA S.A.C. / EAST PACIFIC CAPITAL PERU SAC	MAYNAS	Palma	17-Nov-10	
17	11052966	PLANTACIONES DE PUCALLPA S.A.C.	PUCALLPA	Palma	17-Nov-10	
18	11047255	PLANTACIONES DE SAN FRANCISCO S.A.C.	MAYNAS	Palma	8-Mar-12	
19	11052965	PLANTACIONES DE TAMSHIYACU S.A.C.	PUCALLPA	Palma	17-Nov-10	
20	11052963	PLANTACIONES DE UCAYALI S.A.C.	PUCALLPA	Palma	17-Nov-10	
21	11098944	PLANTACIONES DE UCAYALI SUR S.A.C	PUCALLPA	Palma	10-May-13	
22	11047253	PLANTACIONES DEL PACIFICO S.A.C. / PLANTACIONES DE PACIFICO / GRUPO PALMAS DEL PERU SAC	MAYNAS	Palma	7-Mar-12	
23	11040959	PLANTACIONES DEL PERU ESTE S.A.C.	MAYNAS	Palma	21-Dec-10	
24	11040080	PLANTACIONES NACIONALES DEL PERU S.A.C.	MAYNAS	Palma	9-Sep-10	
25	11114965	SERVICIOS RIPIO S.A.C. / COOPERATIVA LORETANA DE PALMA SAC	PUCALLPA	Palma	8-Mar-12	

**CHART 4: Melka Group companies in Peru. Elaboration: EIA**

Source: SUNARP, GOREL, EIA, SPDE. IDL-Reporteros

VALUE AT CREATION (IN SOLES)	OWNERS	APODERADO GRUPO A	REQUESTED AREA (HECTARES) <sup>185</sup>	REGISTERED PROPERTIES <sup>186</sup>
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	2,686 (3)	
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	3,000.00 (3)	45
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	10,000 (1)	
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	5,815.00 (3)	53
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	19,389 (1,2)	82
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	6,676 (2)	
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	5,771 (1)	
500	Freddy Oscar Escobar Rozas / Ruben Antonio Espinoza	Dennis Melka		
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
500	Freddy Oscar Escobar Rozas / Jorge Luis Torres Garay	Dennis Melka		
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	9,246.00 (3)	
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka		218
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	10,000 (1)	
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	8,850 (2)	55
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	4,759.00 (3)	5
500	Freddy Oscar Escobar Rozas / Ruben Antonio Espinoza	Dennis Melka		
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka		
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka	10,000 (1)	
1000	Alberto Diez Canseco Oviedo / Luis Guillermo de la Torre Bueno Wehrend / Dennis Melka			
1000	Freddy Oscar Escobar Rozas / Jeanette Sofía Aliaga Farfán	Dennis Melka		
		<b>TOTAL</b>	<b>96,192</b>	<b>458</b>



## 2.1 LOOMING DEFORESTATION: 458 PROPERTIES AND COUNTING

According to official records from the National Property Registry of Peru (SUNARP), the Melka Group companies have acquired vast new areas of land in the last three years. By March 2, 2015, the Melka Group owned at least<sup>187</sup> 458 properties, two of which are urban properties (*propiedad inmueble*) and 456 of which are rural land (*predios rústicos*) in the Peruvian Amazon: 232 in the Loreto region and 224 in the Ucayali region.<sup>188</sup> In 2013, EIA gained access to information that allowed for the mapping of close to 60 of the properties owned by Melka, one in Ucayali (in the district of Nueva Requena) and the rest in Loreto: 45 near the town of Tamshiyacu, and the remainder in an area called Panguana, north of Tamshiyacu. EIA has documented deforestation in the Tamshiyacu and the Nueva Requena properties.<sup>189</sup> EIA also determined that this forested land acquired by the Melka Group in Tamshiyacu and Nueva Requena has been *illegally* deforested, meaning deforested without the required governmental authorization (See Section 3.3).<sup>190</sup>

EIA has yet to determine the full size of the lands acquired by Melka Group, because the size of the properties can vary greatly. For example, while the parcels in Tamshiyacu owned by Cacao del Perú Norte measure about 50 hectares each (around the size of 100 soccer fields per unit of property), the Nueva Requena property owned by Plantaciones de Ucayali measures 4,759 ha (about 9,500 soccer fields).<sup>191</sup> If these new lands are developed in the same fashion as existing properties, considerably more deforestation is on the horizon for the remaining 400+ properties belonging to the Melka Group.

In addition to the 458 privately held lands that the Melka Group has bought from their previous private owners, it is also requesting the Loreto Regional Government allocate public land for at least 70,686 hectares.<sup>192</sup> Given the limited information publicly available, EIA has only been able to map five of these thirteen public land requests, equivalent to 45,000 hectares in Loreto, just next to the Melka Group's ongoing

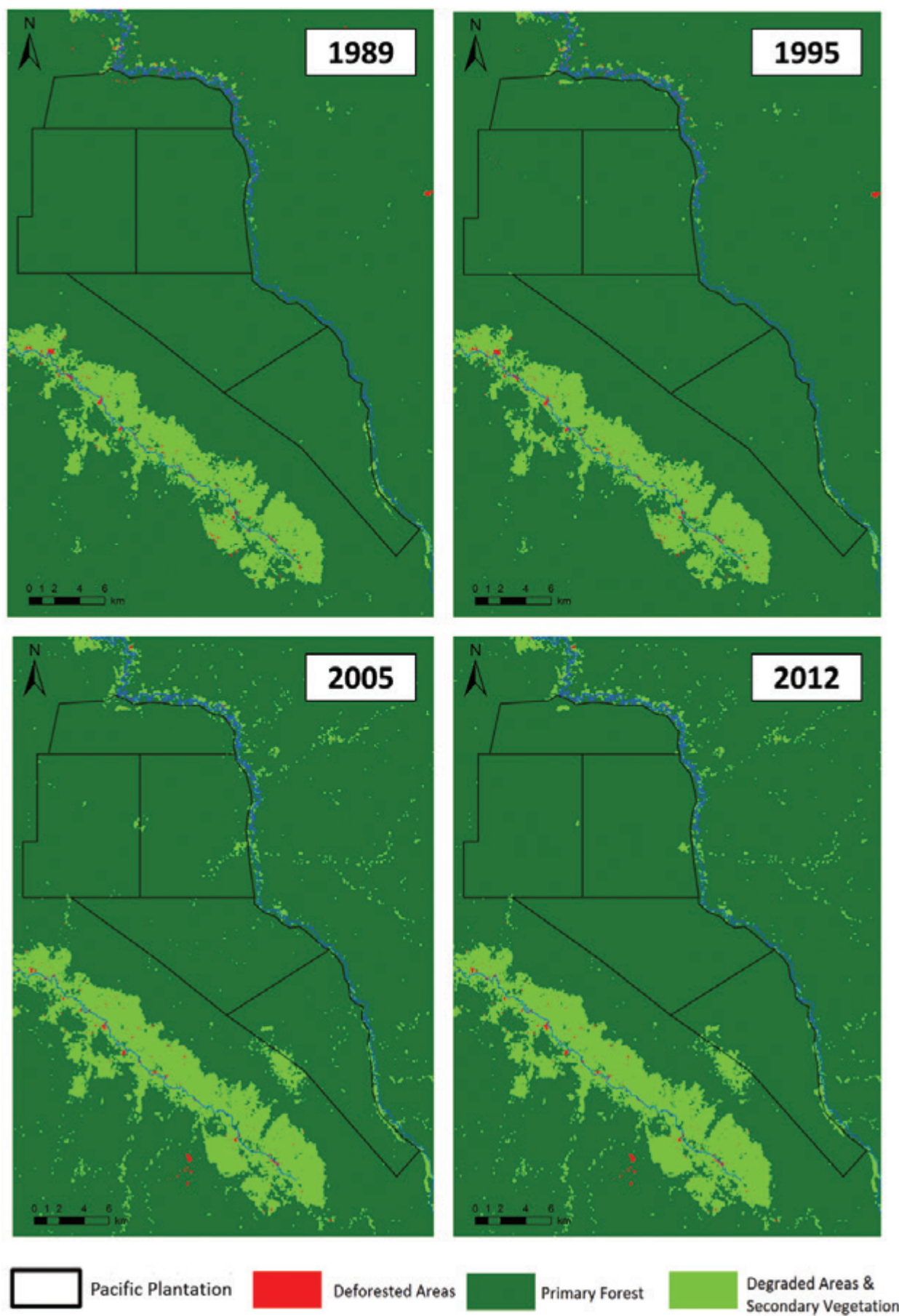
deforestation in Tamshiyacu.<sup>193</sup> According to the Loreto local newspaper La Región, the Loreto Regional Government has already granted 45,000 hectares of the public land requested by the Melka Group,<sup>194</sup> along with four plots requested by Romero Group (See Section 1: Grupo Romero) and an additional plot for another investor interested in planting white pine (*piñon blanco*).<sup>195, 196</sup>

According to La Región, these ten plots add up to 90,686 ha of forested land. This land was sold by the regional government administration that left office in December 2014, for a total of US\$3 million. The local newspaper indicates that US\$1 million "have already been paid, although there has been no public accounting of to whom the payments were made."<sup>197</sup>

**CHART 5: Five New Melka Group projects**

DATE	DEFORESTED AREA		PRIMARY FOREST		SECONDARY VEG. + DEGRADED AREAS		TOTAL
	HAS	% (TOTAL)	HAS	% (TOTAL)	HAS	% (TOTAL)	
10-Jul-95	5.52	0.01%	45,006.68	99.73%	118.30	0.26%	45,130.50
1-May-05	1.08	0.00%	44,476.83	98.55%	652.59	1.45%	45,130.50
18-Sep-12	-	0.00%	44,824.83	99.32%	305.67	0.68%	45,130.50

Chart 5: Forest cover situation for the area of Melka Group's planned plantations that EIA was able to map. The project names are Plantaciones del Perú Este SAC (10,000 ha), Plantaciones de Loreto Este SAC (10,000 ha), Plantaciones de San Francisco SAC (10,000 ha), Plantaciones de Marín SAC (5,771 ha), Plantaciones de Loreto Sur SAC (9,389 ha). Area defined in hectares.



**FIGURE 7A:** Landsat time-series deforestation analysis for Melka's Planned Plantations.





## 2.2 MELKA GROUP'S ONGOING DEFORESTATION: TAMSHIYACU AND NUEVA REQUENA

Cacao del Peru Norte Plantation near Tamshiyacu

### TAMSHIYACU: 2,093 HECTARES DESTROYED AND COUNTING<sup>198</sup>

In mid-2013, EIA received firsthand reports from local community members about ongoing deforestation in the Tamshiyacu area by what local people claimed was a “Malaysian oil palm project.”<sup>199</sup> In collaboration with the Center for International Environmental Law (CIEL) and based on the information shared by the local contacts, EIA was able to identify the exact location of the project, and eventually accessed the original title to the land on which the project was being developed. After cross-referencing the land titles in SUNARP, EIA verified the name of the company operating in the area: Cacao del Peru Norte SAC.<sup>200</sup> Through 2013-2015, EIA monitored Landsat images of these properties, and found deforestation growing at a rate of approximately 100 hectares a month.<sup>201</sup>

### A CONTESTED HISTORY

According to the United Cacao Limited SEZC Admission Document to the London Stock Exchange's Alternative Investment Market (AIM),<sup>202</sup> the company claims it acquired the land in Tamshiyacu in February 2013 and began agricultural activities “in or around May 2013.”<sup>203</sup> In the same document, the company states that the land was “previously owned by individual title holders who had undertaken agricultural activities since 1997,” implying that the land had already been deforested by such activities.<sup>204</sup>

The land was once held under individual title, but no relevant deforestation has previously taken place, as is shown in EIA's satellite analysis of historical maps. Approximately 20 years ago, the Peruvian National Government transferred small plots of forest to a group of local individuals for a project to raise buffalos.<sup>205</sup> However, this project was never implemented, and the area remained mostly as a natural forest until 2013, when the parcels were transferred to the Melka Group.<sup>206</sup> Satellite imagery analysis shows the deforestation on the Melka Group's land in Tamshiyacu started in June 2013, a little after the land parcels were transferred to the company. The deforestation continued into 2014. (Figure 8).

Greg Asner, an ecologist at the Carnegie Institute for Science at Stanford University who has conducted research in this region, concluded that the Tamshiyacu area remained largely forested until Cacao del Perú del Norte arrived. Writing about this area, Asner asserted in an email to the environmental science and conservation news organization, Mongabay.com, that “Forest cover of greater than 90 percent is not agriculture of any kind.”<sup>207</sup>

In 2014 Asner finalized a project called the High-Resolution Carbon Geography of Perú, the result of a collaboration between the Carnegie Airbone Observatory<sup>208</sup> at Stanford University, and the Ministry of Environment of Peru. The project sampled 6.7 million hectares of ecosystems distributed in Peru at a resolution of 1.1 meter.<sup>209</sup> “Instead of looking at tree cover

using satellite imagery, Asner used data gathered from an airplane that employed a combination of a laser-based technology called LiDAR to measure the landscape in three dimensions and an instrument called an imaging spectrometer to determine the chemical makeup of plants in the specific area,” wrote Mongabay's journalist John Cannon.<sup>210</sup> Using part of this data, Asner and his team evaluated the Melka Group's plantation site in Tamshiyacu before and after the deforestation, finding that the carbon stock values for the area are among the highest in Peru.<sup>211</sup> “The logical conclusion from the scientific data is that large-statured, intact forest was removed by this deforestation event,”<sup>212</sup> concluded Asner.

It is clear the land the Melka Group acquired was in its majority forested, and that it was only after that acquisition that deforestation began in earnest to clear land for the group's agribusiness projects. This group failed to follow the legal procedures required for development over forested land (see Chart 9: Melka Group). While the government has issued fines and sanctions, there is no publicly available information showing the company paid these fines.

## TAMSHIYACU

DATE	DEFORESTED AREA (HECTARES)	SECONDARY VEG. + AGRICULTURE (HECTARES)	TOTAL DEFORESTATION (HECTARES)
10-Jul-89	-	2.07	2.07
10-Jul-95	0.08	6.17	6.25
1-May-05	-	35.71	35.71
18-Sep-12	-	36.36	36.36
18-Dec-13	2,011.91	3.15	2,015.06
26-Nov-14	1,288.08	842.22	2,130.30

**CHART 6:** Estimated deforestation for the Melka Group's private land project in Tamshiyacu. Cacao del Perú Norte SAC is the main company involved.

Total Deforestation related to Melka Group's project: 2,093.94 (all deforestation minus deforestation before 2013)

**FIGURE 8:** Estimated deforestation for the Melka Group's private land project in Tamshiyacu. Cacao del Perú Norte SAC is the main company involved.





## **NUEVA REQUENA: 4,870 HECTARES DESTROYED AND COUNTING<sup>213</sup>**

The Melka Group has also been active in Ucayali Region (in the Nueva Requena district, Coronel Portillo province) through a palm project developed by another company affiliated with the group, over which Melka also exclusively holds the highest level of power of attorney: Plantaciones de Ucayali SAC.<sup>214</sup> According to the United Cacao Ltd. Admission Document to the AIM, “Mr. Melka has already planted more than 6,400 hectares of palm oil estates in the Pucallpa region of Peru.”<sup>215</sup> However, satellite analysis over Plantaciones de Ucayali—the only company that we have been able to identify as planting palm oil in Pucallpa and clearly linked to Dennis Melka—shows just 1,393.74 hectares planted.<sup>216</sup> This means that Melka is either overstating the dimension of his plantations in Ucayali, or has additional businesses already operating in the area.<sup>217</sup>

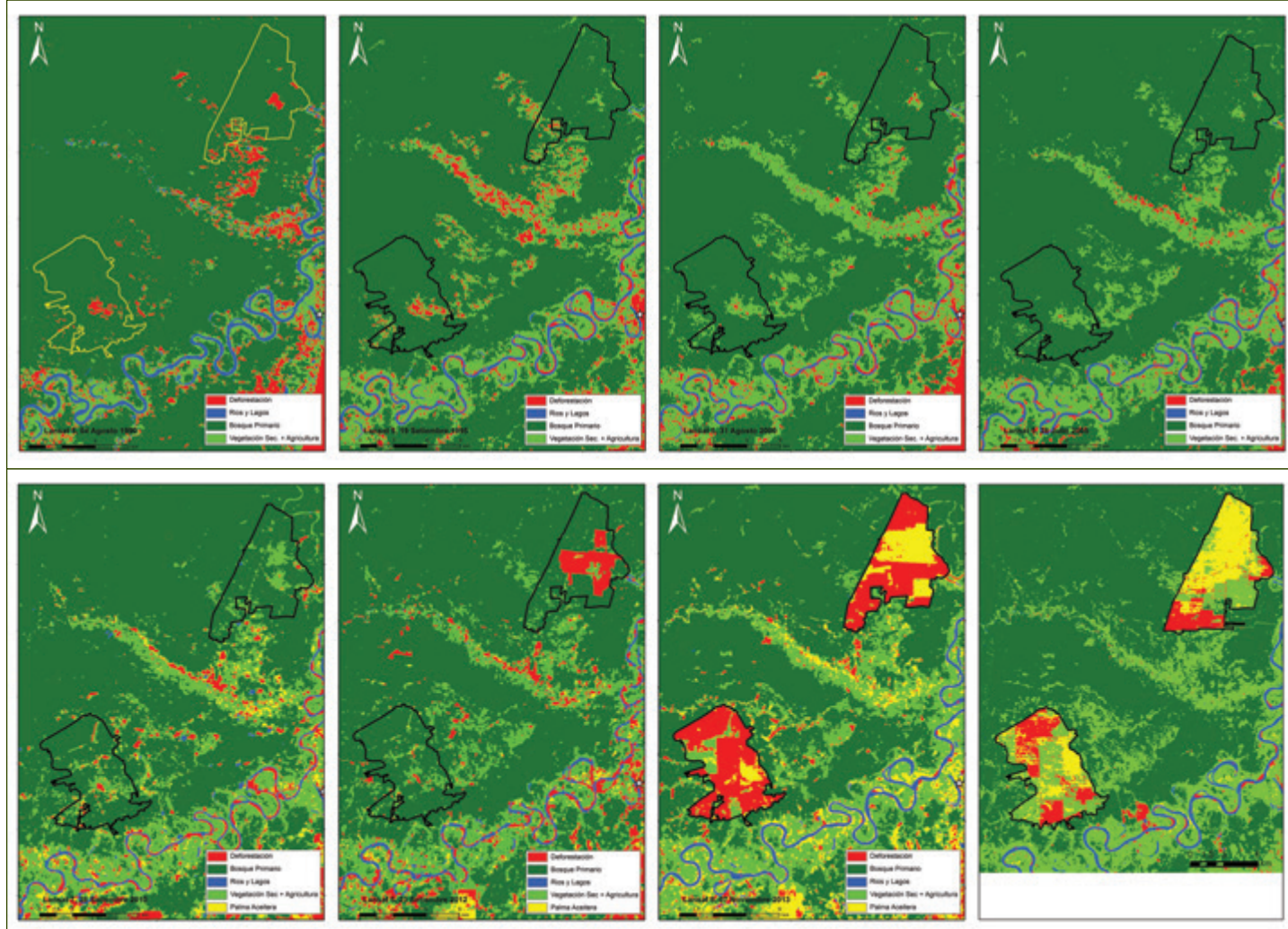
The analysis of satellite images from 1990 to 2014 shows that most of the area where Plantaciones de Ucayali SAC is located was natural forest until 2012 (see Figure 9).<sup>218</sup> From then, deforestation happened almost simultaneously between the Plantaciones de Ucayali SAC plot and another nearby plot belonging to a company called Biodiesel Ucayali SRL.<sup>219</sup> EIA has not found any company documents explicitly linking Biodiesel Ucayali SRL with the rest of the Melka Group’s companies, but Melka Group’s claims to 6,400 ha of palm oil estates in that area indicate that he holds more property than just that registered under Plantaciones de Ucayali SAC.

In July 2014, the Regional Government of Ucayali imposed administrative sanctions against Plantaciones de Ucayali for violations of the Forest and Wildlife legislation for deforesting 4,000 hectares of forest without the required land use change authorization by the Ucayali forest authority. The government imposed a fine of 300 UIT (approximately US\$400,000) and a fee for timber extraction of approximately US\$250,000.<sup>220</sup> There is no publicly available information showing Plantaciones de Ucayali paid these fines.



Plantaciones de Ucayali Palm Plantation in Nueva Requena.

**FIGURE 9: Landsat time-series deforestation analysis for the Nueva Requena area. Includes the Plantaciones de Ucayali and the Biodiesel de Ucayali land.**



### NUEVA REQUENA

DATE	DEFORESTED AREA	%	PRIMARY FOREST	%	SECONDARY VEG. + DEGRADED AREAS	%	OIL PALM CROPS	%	TOTAL
2010	47.00	0.81%	4,971.74	85.40%	803.00	13.79%	-		5,821.74
2014	1,836.45	31.54%	101.34	1.74%	2,490.21	42.77%	1,393.74	23.94%	5,821.74

**CHART 7: Estimated deforestation for the Melka Group's private land project in Nueva Requena. Plantaciones de Ucayali is the main company involved.**

Total Deforestation related to Melka Group's projects: 4,870.40 (deforested area + secondary vegetation and degraded areas + oil palm crops minus deforestation and secondary vegetation until 2010)



# LAUNDERING ILLEGAL TIMBER

## MELKA GROUP ILLEGALLY REMOVED ENOUGH TIMBER TO FILL MORE THAN 125 OLYMPIC SIZED SWIMMING POOLS

Illegal logging is increasingly recognized by the international policy community as a major threat to the environment and sustainable development. Illegal logging accelerates climate change through direct forest loss, and indirectly opens up forested areas to further degradation and conversion that would not otherwise occur.<sup>269, 270</sup> Illegal logging generates approximately US\$10 - 15 billion annually in criminal proceeds.<sup>271</sup> However, new legislation by timber consuming countries, such as the U.S. and the EU, prohibiting import of illegally sourced timber is generating unprecedented transparency and accountability in what was previously a “no questions asked” market.<sup>272</sup> Any timber harvested, transported, processed, bought or sold in violation of national laws is no longer welcome in the international market place.

While there are no such comparable laws currently in place prohibiting international trade in illegally sourced palm oil, any timber that enters the market from illegal clearance of forests for agricultural commodities is subject to these demand-side measures. According to EIA’s estimates, the forest cleared by the Melka Group projects in Nueva Requena and Tamshiyacu add up to almost 7000 hectares: 4,870.40 in Nueva Requena project, developed by Plantaciones de Ucayali SAC, and 2,093.94 in Tamshiyacu, developed by Cacao del Perú Norte SAC.<sup>273</sup>

According to the Peruvian Minister of Agriculture and Irrigation, neither of the companies had legal authorization to deforest the areas described above;<sup>274</sup> therefore the companies could not have had authorization to legally trade the timber. This means the Melka Group illegally removed from Tamshiyacu enough timber to fill more than 30 Olympic sized pools.<sup>275</sup> From Nueva Requena, the timber illegally removed would have filled around 95 Olympic sized pools. It would have taken more than 20,000 truckloads<sup>276</sup> to remove the timber from the project areas.

In 2012, EIA published an investigative report, “The Laundering Machine,”<sup>277</sup> that systematically documented fraud and corruption in the Peruvian timber market. The report showed how illegal timber is laundered using fraudulent documents and is being traded - nationally or internationally - with documents as if harvested from any authorized area (*título habilitante*) in the country. Since the companies could not have the legal documents to trade the timber removed for their operations, Plantaciones de Ucayali SAC and Cacao del Perú Norte SAC should be required to produce the documents used to sell the timber and explain how they were obtained.

EIA’s satellite analysis, which was used to determine the deforestation associated with these two Melka Group operations includes

images from as early as 1989.<sup>278</sup> In the cases where there was deforestation before the Melka Group started its operations, the numbers have been adjusted to reflect only the deforestation related to the Melka Group’s operations. Regarding the areas deforested by the Melka Projects, the satellite imagery analysis shows that the majority of the forests were primary natural forest, before the projects’ intervention.<sup>279</sup>

A different scientific approach used by Greg Asner to analyze the carbon stock values for the Peruvian forests concluded that the carbon stock values shown in the project areas “are found only in intact tropical forest in the region, and are among the highest values mapped within Peru during the joint Carnegie-Peruvian Ministry of Environment carbon mapping project”.<sup>280</sup> He went on to say, “The logical conclusion from the scientific data is that large-statured, intact forest was removed by this deforestation event.”<sup>281</sup>

While it is almost impossible at this point to know for sure the number of trees or the species that existed before the deforestation and that were destroyed by the Melka Group operations, it is possible to estimate the volume of timber in a natural Amazon forest.

Applying coefficients and ratios produced by the Peruvian government,<sup>282</sup> we estimate, as shown in the chart below, that around 80,000 cubic meters of roundwood were

CHART 8: Melka Group Illegal Timber Volumes							
	HECTARES DEFORESTED (HA)	COMMERCIAL TIMBER PER HECTARE (M3/HA)	CUBIC METERS OF COMMERCIAL TIMBER AS STANDING TREES (M3)	WASTE RATIO FROM STANDING TREE TO ROUNDWOOD <sup>283</sup>	CUBIC METERS OF ROUNDWOOD (M3)	THE VOLUME WOULD FILL THIS AMOUNT OF OLYMPIC POOLS <sup>284</sup>	THE ROUNDWOOD WOULD BE TRANSPORTED IN THIS AMOUNT OF TRUCKS <sup>285</sup>
Tamshiyacu	2,093.94 <sup>286</sup>	53.50 <sup>287</sup>	112,025.79	0.29	79,538.31	31.82	5,302.55
Nueva Requena	4,870.40 <sup>288</sup>	68.60 <sup>289</sup>	334,109.44	0.29	237,217.70	94.89	15,814.51
TOTAL	6,964.34		446,135.23		316,756.01	126.70	21,117.07

Elaboration: EIA

extracted from Cacao del Perú Norte's project in Tamshiyacu and around 240,000 cubic meters of roundwood were extracted from Plantaciones de Ucayali's project in Nueva Requena.

A valorization<sup>290</sup> study conducted in 2014 by the Peruvian NGO Sociedad Peruana de Ecodesarrollo (SPDE ) estimates that the value of goods and the ecosystem services destroyed by the Melka Group project in Tamshiyacu was more than 60 million U.S. dollars.<sup>291</sup> For the Nueva Requena area related to the Melka Group Plantaciones de Ucayali project, SPDE estimates the value of the destruction at about 128 million U.S. dollars.<sup>292</sup> This valorization study details the loss of several resources and services that used to be provided by the standing forests, including timber, carbon stocks, non-timber forest products, fauna, water, firewood, soils and restoration.<sup>293</sup> A more recent document released by SPDE in March 2015 estimates that 98,210<sup>294</sup> cubic meters of commercial timber were illegally extracted by the Melka Group from the Tamshiyacu area.<sup>295</sup> An overflight of the Grupo Melka Tamshiyacu project conducted by SPDE on March 13, 2015, identifies at least one illegal sawmill in the area.<sup>296</sup>

The attorney for Peru's Ministry of Environment<sup>297</sup> announced in December 2014 that his office is demanding reparation of 10 million soles (about 3.5 million U.S. dollars) in the criminal cases for deforestation related to palm oil plantations.<sup>298</sup>

According to him, the most important cases - out of the almost 12,000 cases for environmental crimes managed by his office - are those addressing the deforestation of the Amazon for palm oil plantations. "In terms of the environment, there is nothing worse than the Amazonian deforestation for land use change, which is happening in Loreto and Ucayali. In both regions, the Regional Presidents (Yvan Vásquez and Jorge Velasquez Portocarrero, respectively) are involved and under investigation for illegal allocation of rights," the attorney for Peru's Ministry of Environment declared.<sup>299</sup>

Other countries in the world and in the region have been also working on developing an official line of investigation and jurisprudence clarifying that illegal deforestation and its impacts are serious crimes for which prison sentences and fines are becoming the norm. For example, just across the Peruvian border in the Brazilian Amazon, "the single biggest deforester," according to the Brazilian Institute of

Environment and Renewable Natural Resources (IBAMA ), was detained in February 2015.<sup>300, 301</sup> IBAMA has stated that this person, Ezequiel Antonio Castanha, is responsible for 20 percent of the deforestation in the last few years and will be judged by the Federal Justice of Brazil, facing charges of illegal deforestation and money laundering for which he could receive more than 46 years in prison.<sup>302</sup> He and his criminal organization would invade forested land, deforest it, and then sell it to private actors for different projects that required clear cut land. The fines for the crimes committed by him and his closest family members add up to around 15 million dollars, without including violations committed by the rest of the members of his criminal organization.<sup>303</sup>

Companies sourcing timber from Peru should conduct heightened due diligence to ensure they are not sourcing timber from illegal agricultural commodity operations including the companies named in this report. Enforcement officials with laws prohibiting the import of illegally sourced timber should investigate whether any such timber is entering their markets from agriculture commodity plantations in Peru and take action to hold the importers accountable.





## 2.3 ILLEGALITIES IN TAMSHIYACU AND NUEVA REQUENA

In the United Cacao Ltd.'s Admission Document to the AIM, dated November 26, 2014, the company states that "all necessary environmental consents and approvals have been received from the relevant Peruvian authorities," referring to their operations in Tamshiyacu.<sup>221</sup> Since September 2013, there has been strong public controversy about the legality of both of these companies' operations—Cacao del Perú Norte and Plantaciones de Ucayali—with several national and regional authorities from the executive, the judiciary and the congress involved, and extensive media coverage.<sup>222</sup> In September 2014, the Peruvian Ministry of the Environment initiated legal precautionary measures (*medidas cautelares*) to stop the operations of the companies from conducting further deforestation without the legally required permits.<sup>223</sup>

On October 24, 2014 (nearly a month before United Cacao Ltd. submitted its Admission document to the AIM) the Peruvian Minister of Agriculture and Irrigation (MINAGRI), Juan Manuel Benites, documented the companies' violations in front of the Peruvian Congress.<sup>224</sup> Minister Benites explained to a congressional commission that the deforestation conducted by the Melka Group companies in Tamshiyacu and Nueva Requena, by Cacao del Perú Norte SAC and Plantaciones de Ucayali SAC, respectively, did not follow the legal requirements for undertaking this massive deforestation. During this presentation, Minister Benites recommended additional sanctions for the companies.<sup>225</sup>

Minister Benites' presentation was made in the context of an invitation by the Peruvian Congress' Auditing and Controlling Commission<sup>226</sup> to their special session to investigate "the alleged irregular logging and massive deforestation in the area of Tamshiyacu - Loreto and Ucayali, in order to benefit a private company for the plantation of cacao and other products without producing environmental impact studies."<sup>227</sup> In this session, the minister provided a detailed explanation of all the steps that the companies were required to follow at the national and the regional levels in order to

obtain authorization to deforest the primary forest that had been cleared by the companies. The minister's presentation confirmed: the companies did not comply with the procedures to "remove the forest cover"<sup>228</sup> or *legally deforest* private forested land in the Amazon.<sup>229</sup>

### TAMSHIYACU – STEP BY STEP THE FOREST IS DESTROYED

In Tamshiyacu, Cacao del Perú Norte SAC began clearing forested land in June 2013 without submitting any of the required documents or obtaining any of the approvals necessary to carry out this deforestation.<sup>230</sup> In company documents prepared by United Cacao Limited SEZC (the public holding company listed as an owner of Cacao del Perú Norte SAC), the company states that the land was previously logged of valuable tropical timber and did not require further authorization from the government to be cleared.<sup>231</sup> However, satellite imagery shows that the area was largely undisturbed tropical rainforest for at minimum a quarter century prior to clear-cutting by Cacao del Perú Norte, SAC in 2013.<sup>232</sup>

A joint team from EIA and CIEL went into the field in August 2013, to verify in situ the deforestation that they had observed through satellite imagery analysis. During our investigation, there were no fences or barriers and the team freely walked into the deforested area. A few weeks later, the local media published a story about ongoing deforestation.<sup>233</sup> The following day, September 3, 2013, the local prosecutor went to the field on an official mission to gather information about the situation, but he found that a gate had been erected and he was stopped from entering by an employee of the company who said he was following orders from Ruben Espinoza.<sup>234</sup> At that time, Espinoza was the general manager of the company.<sup>235</sup> The prosecutor, as well as the police that accompanied him, produced an official record stating that this obstruction occurred. The official verification could not be carried out.

The national investigative news outlet, *IDL Reporteros*, published articles on the

deforestation conducted in Tamshiyacu and included references to the projects the Melka Group was conducting in other regions of the country.<sup>236</sup> It was only after the media scandal and after the prosecutor's investigation started, that Cacao del Perú Norte SAC submitted to the authorities the Terms of Reference (TOR) for a PAMA, doing so on September 9, 2013. (See Box: Background on Regulations and Procedures for Agriculture Activities). However, the PAMA was intended to address environmental management of deforestation that occurred prior to November 2012, and, as EIA's analysis of satellite imagery found, the clear-cutting began around June 2013 (Figure 8). The company's own data claims that the deforestation started in May 2013.<sup>237</sup>

This information suggests that the company was under a legal mandate to prepare and submit a specific environmental management tool—different than the PAMA—for obtaining authorization to undertake deforestation for agricultural purposes occurring after November 15, 2012.<sup>238</sup> In the document submitted to the AIM, United Cacao Limited SEZC mischaracterizes the PAMA, claiming that "the group qualified for an expedited environmental approval process known as PAMA which allows agricultural activities to continue whilst the PAMA is underway."<sup>239</sup> By not submitting the appropriate environmental management tool, Cacao del Perú Norte SAC avoided the regulatory scrutiny and environmental oversight that should have accompanied a new plan to deforest the Amazon for agricultural land.

In terms of the applicable regulations under current law, Cacao del Perú Norte SAC failed to complete the necessary steps to legally convert forested land to agricultural plantations.

For any deforestation after November of 2012, the company is required to:<sup>240</sup>

1. **Request classification of environmental management instrument.** Request the DGAAA to identify the appropriate environmental management instrument (such as an Environmental Impact Assessment) to

apply to the proposed deforestation or land use conversion. Once the DGAAA responds identifying the appropriate environmental instrument to be used, the company must develop and submit the TOR, laying out how it will apply (use) the environmental management instrument. The TOR must then be evaluated and approved by the DGAAA.

2. **Develop and submit** to DGAAA the relevant environmental management instrument, in this case, an **Environmental Impact Assessment that fully meets the terms of reference**.
3. **Request land use change.** Once the Environmental Impact Assessment is approved by the DGAAA at the national level, the company has to request permission for land use change from the relevant Regional Government.
4. **Remove forest cover.** Once the land use change is approved, the company can legally deforest in accordance with the approved Environmental Impact Assessment.

In his presentation to the Peruvian Congress, Minister Benites noted that regarding the deforestation after November 2012, the company did not even fulfill the requirements in the first step: “the company did not comply with requesting the classification for the management tool for new activities. It is worth noting that the new intensive agricultural activity did not require a PAMA but an Environmental Impact Assessment.”<sup>241</sup>

According to MINAGRI’s documents and Minister Benites’ presentation to Congress, neither Cacao del Peru Norte SAC or Plantaciones de Ucayali SAC, followed the legal procedures and requirements to conduct a legal removal of forest cover,<sup>242</sup> which means that both companies conducted a combined illegal deforestation the size of 14,000 soccer fields.<sup>243</sup>

## NUEVA REQUENA

The Melka Group’s operations in Nueva Requena, through Plantaciones de Ucayali SAC’s, did not follow the required legal process either. Plantaciones de Ucayali started by submitting the terms of reference (TOR) for its environmental management instrument to the DGAAA. However, the company never submitted the actual environmental management instrument to the authorities (DGAAA). Also, at the time of approving the TOR for the environmental management tool, the DGAAA made it explicit to the company that after getting the final approval for this tool, the company had to request the land use change from the regional government, before being able to start operations. Neither of these ever happened.<sup>253</sup>

The TOR was approved in October 4, 2013<sup>254</sup>—after the media scandal about the deforestation by the same group in Tamshiyacu—and, according to EIA’s satellite imagery analysis, most of the deforestation in the area was conducted during 2013, meaning that most of the deforestation occurred before the TOR was approved. Minister Benites has confirmed, “The company never requested the land use change at the Regional Government level...The company has unrightfully used the TORs for the environmental management instrument for initiating its activities, removing the forest coverage.”<sup>255</sup>

## Background on Regulations and Procedures for Agriculture Activities

In November 2012, the Peruvian Ministry of Agriculture and Irrigation approved a decree containing regulations for the environmental management of new agricultural activities.<sup>250</sup> For projects developed prior to these regulations (prior to November 2012), the project developers are required to submit a report on how previous activities comply with the new environmental standards or how these activities will be remediated to come into compliance with the new environmental standards. This report is called a Program for Remediation and Environmental Management (PAMA).<sup>251</sup>

When a company acquires land that has undergone, for example, previous deforestation for agricultural activities, the company has to submit terms of reference (TOR) to the authorities to describe how it will implement a PAMA. Once the TORs are approved, the company needs to submit the fully completed PAMA, in accordance with the plan set out in its TOR. However, the PAMA only applies for activities conducted before November 15, 2012. For anything after that date, the company needs to produce a totally separate document.

The authority in charge of approving the TORs and the completed PAMA is an office from MINAGRI called General Directorate of Environmental and Agricultural Affairs (*Dirección General de Asuntos Ambientales Agrarios*, known as DGAAA).<sup>252</sup>



CHART 9: MELKA Group		
REQUIRED STEPS ACCORDING TO THE MINISTER OF AGRICULTURE <sup>244</sup>	CURRENT SITUATION: CACAO DEL PERU NORTE SAC IN TAMSHIYACU <sup>245</sup>	CURRENT SITUATION: PLANTACIONES DE UCAYALI SAC IN NUEVA REQUENA <sup>245</sup>
For deforestation prior to Nov. 15, 2012: PAMA <sup>247</sup> (PAMA is the acronym in Spanish for the Peruvian Government's Program to Administer and Maintain the Environment, <i>Programa de Adecuación y Manejo Ambiental</i> )		
<b>STEP 1:</b> Company submits Terms of Reference for PAMA to the Department of Environmental Affairs ( <i>Dirección General de Asuntos Ambientales</i> ) known by its Spanish acronym, DGAAA.	Submitted in September 9, 2013. The company only refers to deforestation produced before November 2012 and does not mention ongoing deforestation.	Not Applicable
<b>STEP 2:</b> DGAAA approves Terms of Reference for PAMA.	October 4, 2013: DGAAA approves the Terms of Reference for PAMA.	Not Applicable
<b>STEP 3:</b> Company develops PAMA and submits it to DGAAA.	Not submitted.	Not Applicable
For deforestation after Nov. 15, 2012 <sup>248</sup>		
<b>STEP 1:</b> Company requests that DGAAA classify the environmental management tool that applies to the project.	Not submitted. According to the Ministry of Agriculture and Irrigation, the appropriate environmental management tool for this type of project would have been an Environmental Impact Assessment ( <i>Evaluación de Impacto Ambiental</i> ) known by its Spanish acronym, EIA.	Company submitted to DGAAA the TOR for the environmental management tool. October 4, 2013: DGAAA approves TOR and explains that the company must obtain land use change approval by the Regional Forest Authority before starting operations.
<b>STEP 2:</b> Company develops and submits the environmental management tool requested by DGAAA	Not submitted. The company never informed DGAAA that it would start intensive and large-scale activities.	Not submitted. The company started operations without following the legal procedure: submitting the environmental management tool to the national government (DGAAA) and receiving the formal approval for it, and requesting from the Regional Forest Authority the land use change and receiving the formal approval for it.
<b>STEP 3:</b> DGAAA approves the appropriate environmental management tool	Not possible, since environmental management tool was not submitted.	Not possible, since environmental management tool was not submitted.
<b>STEP 4:</b> Company requests approval of land use change from the Regional Forest Authority	Company did not submit land use change request. Not possible, since environmental management tool was not submitted.	Company did not submit land use change request. Not possible, since environmental management tool was not submitted.
<b>STEP 5:</b> Land use change approval by Regional Forest Authority.	Not possible, since company did not submit land use change request.	Not possible, since company did not submit land use change request.
<b>STEP 6:</b> Operations may begin	The company was never authorized to proceed, since it did not follow legal requirements.	The company was never authorized to proceed, since it did not follow legal requirements.
<b>Conclusions</b>	Forest removal (deforestation) conducted by the company without land use change authorization. Forest removal (deforestation) conducted by the company is illegal. Even if they had secured all the necessary documents, and had followed the correct procedures, the company still violated the legal norm requiring preservation of at least 30 percent of the forest coverage. Total illegal deforestation estimated by November 2014: 2,093.94	Forest removal (deforestation) conducted by the company without land use change authorization. Forest removal (deforestation) conducted by the company is illegal. Even if they had secured all the necessary documents, and had followed the correct procedures, the company still violated legal norm requiring preservation of at least 30 percent of the forest coverage. Total illegal deforestation estimated by November 2014: 4,870.40

## 2.4 INSTITUTIONAL LIMITATIONS: THE GOVERNMENT'S INABILITY TO STOP DEFORESTATION FOR MONOCULTURE PLANTATIONS

Illegal expansion and deforestation carried about the Melka Group has not gone undetected. Civil society groups as well as government agencies and committed individuals within those agencies have acted on the illegalities discussed in this report. Despite their efforts, the cases are stalled and the companies continue to act with near total impunity.

In September 2013, a prosecutor in Loreto opened an investigation against Cacao del Perú Norte SAC for illegal deforestation in the Tamshiyacu area. From that moment on, several investigations and administrative processes have been opened against Cacao del Perú Norte SAC and Plantaciones de Ucayali SAC. According to the local NGO, Sociedad Peruana de Ecodesarrollo (known as SPDE), there are 14 open legal investigations related to the activities of these companies, including charges against the companies for illegal deforestation, abuses against local community members, and against public officers for facilitating these illegal activities.<sup>262</sup> The same document by SPDE includes pictures, testimonies, and public statements made by different national and

regional Indigenous and local community organizations against the deforestation and the human rights abuses committed by these two companies.<sup>263</sup>

In August 2014, after a national TV channel released two pieces accusing Cacao del Perú Norte SAC and Plantaciones de Ucayali SAC of illegal deforestation and human rights violations against landowners who refused to sell their lands to the company or leave the area,<sup>264</sup> the Ministry of Environment initiated precautionary measures (*medidas cautelares*) to stop the operations of the companies.<sup>265</sup>

As discussed, the Peruvian Congress has given these cases special attention, creating a working group to study the irregularities.<sup>266</sup> The Ministry of Agriculture and Irrigation (which houses the National Forest Service SERFOR and the DGAAA), has sent repeated requests for further information to the regional governments of Loreto and Ucayali regarding the authorizations obtained by the companies. Despite the time that has lapsed (MINAGRI began sending requests in December 2013) the Ministry has yet to receive a response.<sup>267</sup> MINAGRI

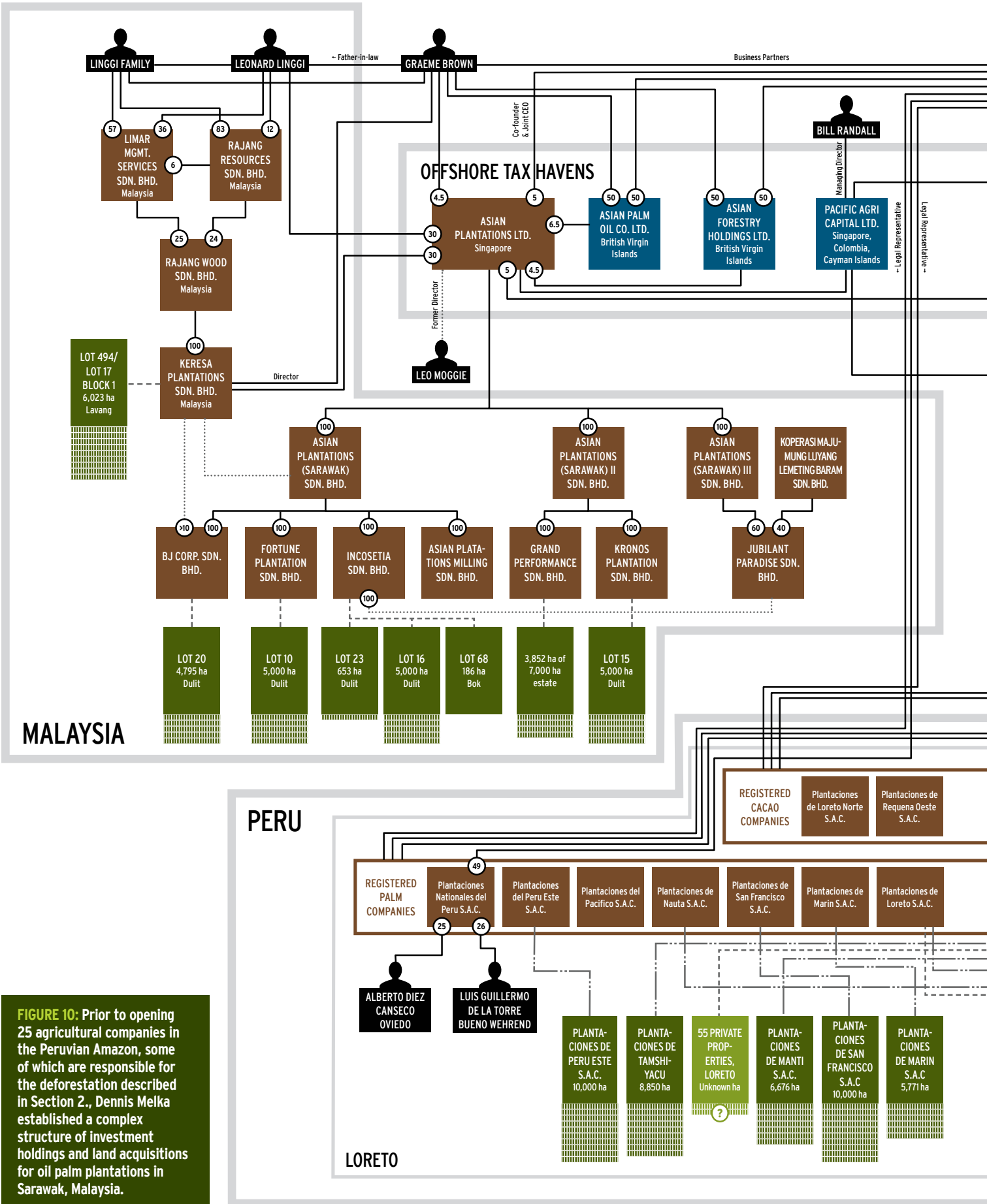
also requested that the national Prosecutor's office and the regional governments initiate investigations of these cases. While investigations have been open at the national and regional levels, and some sanctions have been levied and appealed, nobody has been able yet to stop the companies' operations or ensure that they effectively remediate the devastation that they have caused.

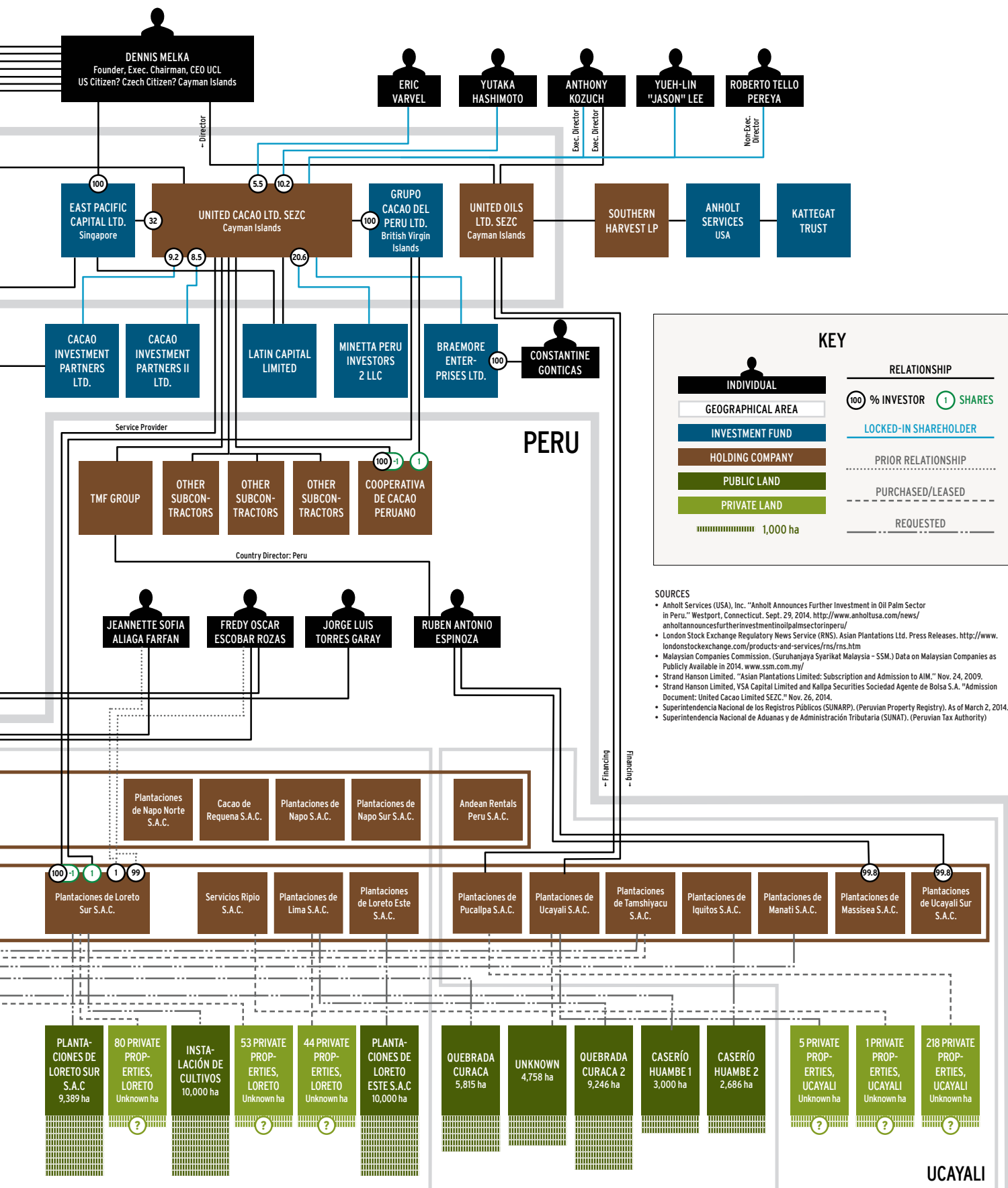
On December 9, 2014, the new director of the DGAAA issued two Directorial Resolutions (*Resoluciones de Dirección General*) ordering the immediate suspension of both of the Melka Group projects. Even after this most recent attempt to stop these illegal actions, members of the local communities claim that nothing has changed. "What happens is that the resolution came out days ago [in fact almost two months before] but in Tamshiyacu everything stays the same, nobody has gone there to implement what the Ministry of Agriculture is ordering. All of us here have seen that they are still working, nobody has stopped anything," stated the local leader Gremish Ahu Yumbato by mid-February 2015.<sup>268</sup>





DEFORESTATION BY DEFINITION:  
THE PERUVIAN GOVERNMENT FAILS TO DEFINE FORESTS AS FORESTS, WHILE THE MALAYSIAN INFLUENCE AND PALM OIL EXPANSION THREATEN THE AMAZON









### 3. GREASING PALMS: DENNIS MELKA, ASIAN PLANTATIONS LTD., AND FOREST DESTRUCTION IN SARAWAK, MALAYSIA

Tropical Forest in Sarawak, Malaysia

#### THREATS TO FORESTS ACROSS THE PACIFIC

Prior to opening 25 agricultural companies in the Peruvian Amazon, Dennis Melka established numerous businesses, including investment holdings and land acquisitions for oil palm plantations in Sarawak, Malaysia's biggest state, located on the South East Asian island of Borneo (See Figure 11). Shared with Indonesia and Brunei, the island of Borneo is home to one of the oldest, most biodiverse rainforests in the world. It is also one of the most devastated by logging, deforestation, and oil palm development<sup>361</sup> (See Figure 12 & 13).

Asian Plantations Limited was the main company through which Melka built his plantation portfolio in Sarawak. Just after the company was registered in Singapore, in October 2009, Asian Plantations Ltd.<sup>362</sup> held an initial public offering (IPO) on the Alternative Investments Market (AIM) of the London Stock Exchange on November 30, 2009.<sup>363</sup> From that time until its sale in late 2014, Asian Plantations Ltd. increased its revenues from zero to just short of US \$24,000,000 annually.<sup>364</sup>

Public statements about Asian Plantations Ltd.'s involvement in Peru are limited. A publication

covering agriculture business news, Agrimoney.com, stated in a July 2010 article that Asian Plantations owned a subsidiary in Peru.<sup>365</sup> The same article references statements made by Dennis Melka, who described South America as favorable for palm plantations, in contrast with African countries that have poor infrastructure, less reliable rainfall, and insufficient labor resources.<sup>366</sup> Additional indications about the group's involvement in Peru came in August, 2011, via news articles that included interviews with investor Bill Randall of Asian Agri Capital Ltd.<sup>367</sup> about plans and interest to invest money made in Asian Plantations Ltd. in new agricultural plantations in Peru, Ecuador, and Colombia.<sup>368</sup> In late 2014, Melka appeared on investing news segments to promote the launch of United Cacao Limited<sup>369</sup> on AIM. In those appearances, Melka stated that the management of the newly-formed United Cacao Ltd. included the same management group as Asian Plantations Ltd., including himself and "a few others."<sup>370</sup>

As this new corporate group emerged into prominence in agricultural commodity development in Peru, EIA looked into Asian Plantations Ltd.'s past operations in Sarawak, Malaysia. EIA's research revealed the group's

involvement in large-scale land acquisitions of forested land, expansive deforestation, a complicated ownership structure, and the use of offshore tax havens as the location for the ultimate parent company of the group. Asian Plantations Ltd. was set up to acquire land and quickly profit from it, and the company calculated, in detail, that the infrastructure, regulatory and legal framework, and land ownership system in Malaysia would facilitate this profit motive.<sup>371</sup>

The company was sold in 2014 to one of the biggest palm oil conglomerates in the world, Felda Global Ventures.<sup>372</sup> Sarawak has now lost the forests that once covered the group's plantation lands, while the profits from Asian Plantations Ltd.'s sale accrued to the shareholders of the Singapore-based company, in a jurisdiction with no taxes on foreign-sourced income for individuals who do not reside in Singapore.<sup>373</sup> The history of the group's activities in Malaysia, via Singapore, illustrates what effects the Melka Group's investments in the Peruvian Amazon, via the Cayman Islands, may have on forests, lands, and local communities in Peru, if current investments in that country are allowed to move forward.

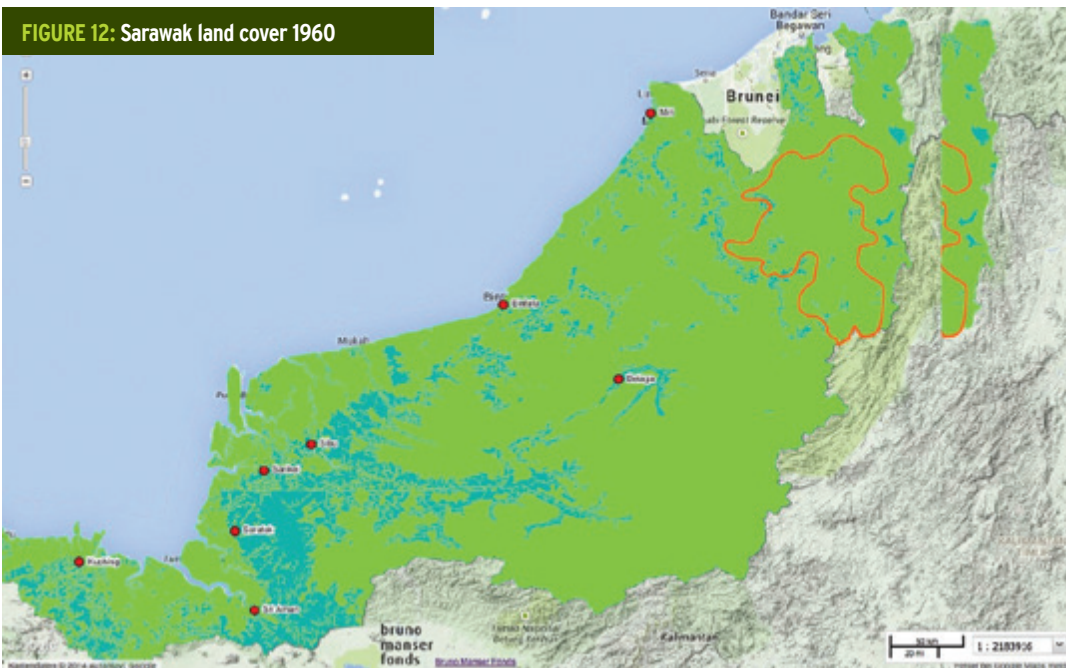


**FIGURE 11:** Sarawak, Malaysia's largest state, located on the island of Borneo



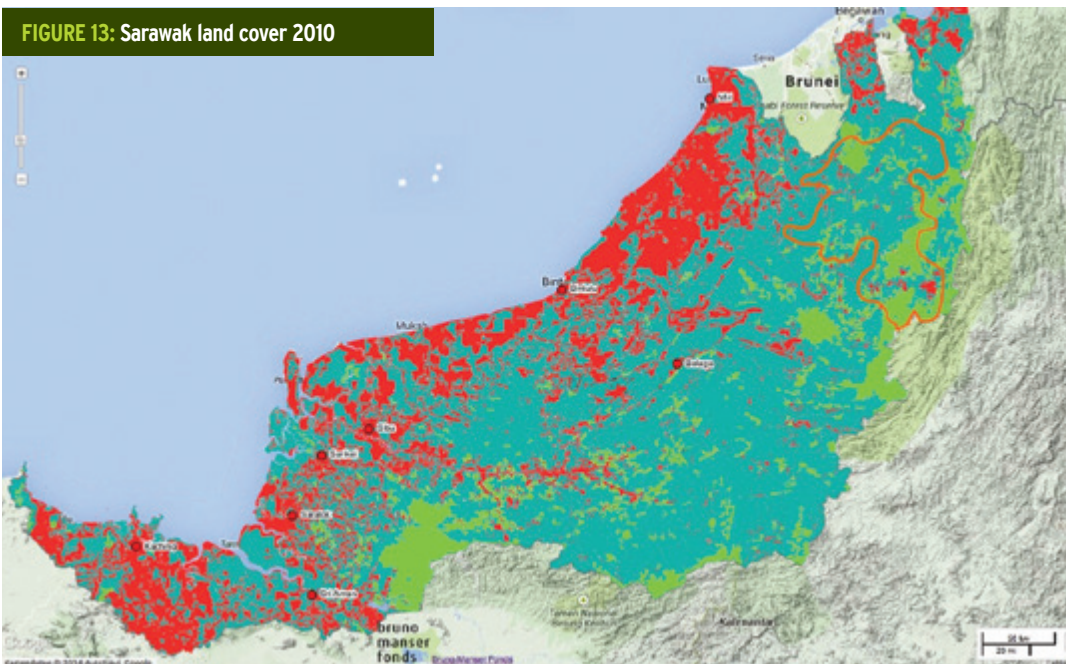
Source: Straumann, Lukas. *Money Logging*. Bergli Books. Basel, Switzerland. 2014.

**FIGURE 12:** Sarawak land cover 1960



Light green areas represent primary rainforest. Dark green areas represent secondary forest. Map courtesy of Bruno Manser Fund.

**FIGURE 13:** Sarawak land cover 2010



Light green areas represent primary rainforest. Dark green areas represent secondary forest. Red areas represent palm oil plantations. Map courtesy of Bruno Manser Fund.





## 3.1 A NEW EMPIRE OF DEFORESTATION

Source: Straumann, Lukas. *Money Logging*. Bergli Books. Basel, Switzerland. 2014.

Asian Plantations Ltd. appeared to be a picture of success in press releases publicizing its expansion in Sarawak. By late 2014, after just five years of being publicly listed on AIM, the company had increased its share price three times over (from £0.75 GBP per share to £2.20 GBP per share), acquired over 24,000 hectares of land for plantation development in Sarawak, and built up its annual revenue to tens of millions of dollars.<sup>374</sup>

However, through analysis of the company's financial statements,<sup>375</sup> and by cross referencing these statements with leaked information available about land acquisition in Sarawak,<sup>376</sup> EIA found that the company achieved its success by acquiring four out of its five plantations – approximately 20,000 hectares – from parties involved directly in acquiring plantation land at prices substantially lower than market rate from the Sarawak state government.<sup>377</sup>

In acquisition statements for each subsidiary, Asian Plantations Ltd. repeatedly cited local connections and non-competitive processes as the genesis for its land acquisitions.<sup>378</sup> (See Section 3.2.)

Asian Plantations Ltd.'s success and profit started with allocation of valuable forest land by the Sarawak state government, under the control of the Chief Minister, to political allies and family members for well below market value.<sup>379</sup> The giveaway of state forest land for plantations, at substantially below market value, amounts to theft of the Malaysian people's common resources.

Theft of public forest lands is not new in Sarawak. Scholars have noted how, since the 1970s, Leonard Linggi, the chairman of Asian Plantations Ltd., his immediate family members, and other political leaders have acquired logging concessions in return for political favors to Sarawak's ruling leaders – and subsequently profited from these concessions on a massive scale.<sup>380</sup>

Non-governmental advocacy groups have documented widespread corruption among other political leaders. The Bruno Manser Fund, established to support preservation of Sarawak's rainforests and the rights of the peoples who live there, has spent the last three decades

investigating the networks of corruption behind the destruction of Sarawak's forests.<sup>381</sup> More recently in 2013, Global Witness released video evidence documenting a continuing network of corruption and illegal land deals, emanating from the highest levels of power in the state.<sup>382</sup> Family members and lawyers of the Chief Minister and other Sarawakian politicians described to Global Witness' investigators how they thwarted the land ownership laws and avoided property taxes via a complicated network of kickbacks, offshore accounts, and shell companies.<sup>383</sup>

The public land giveaway in Sarawak is ongoing, and expanding beyond its borders, at the expense of forests. The proceeds from the reselling and revaluing of state land acquired at below-market value prices was channeled directly into deforestation for palm oil in Sarawak.<sup>384</sup> By leveraging bank loans in Malaysia, and international capital on the Alternative Investment Market (AIM) of the London Stock Exchange, based on the company's first plantation land (the company's primary asset), Asian Plantations Ltd. went on to finance further land acquisitions and deforestation in Sarawak, as described below.

Through a complicated network of holding companies, investment funds, and subsidiaries based in Malaysia and Singapore, a closely related group of companies and individuals played a shell game which effectively hid their links to deforestation in their plantations on the ground. Meanwhile, the publicly traded holding company, Asian Plantations Ltd. sought to distance itself from the forest destruction,<sup>385</sup> which, in the past several years, has begun to mar Sarawak's image in the international community.<sup>386</sup>

Further, Asian Plantations Ltd. received its initial injection of capital from parent companies—Keresa Plantations Sdn. Bhd. and Rajang Wood Sdn. Bhd.—that had profited for decades from corrupt land deals and forest clearance in Sarawak, in exchange for political favors.<sup>387, 388</sup> These political favors have helped to keep the ruling party (Parti Pesaka Bumiputera Bersatu, or PBB Party) in power in the state for decades.<sup>389</sup> These same companies also held shares of Asian Plantations

Ltd. on AIM, allowing them to profit from the company's sale in late 2014.<sup>390</sup>

With the increase in public share from 2009 to 2014, Asian Plantations Ltd.'s initial investors reaped profits of about 300 percent.<sup>391</sup> Other than Keresa Plantations and Rajang Wood, those who benefitted included:

- Three directors of the company: Dennis Melka, Graeme Brown, and Leonard Linggi;
- Related investment vehicles East Pacific Capital Ltd. (fully owned by Dennis Melka)<sup>392</sup> and Pacific Agri Capital Ltd. (formerly Asian Agri Capital Ltd.), both registered in Singapore at the same address as Asian Plantations Ltd.,<sup>393</sup> and, Asian Palm Oil Company Ltd.; and
- Asian Forestry Holdings Ltd., both registered in the British Virgin Islands and fully owned in equal parts by Dennis Melka and Graeme Brown.<sup>394</sup>

Dennis Melka, East Pacific Capital Ltd. and Pacific Agri Capital Ltd. are now investing in agribusiness development on forested lands in the Peruvian Amazon via United Cacao Limited, registered in the Cayman Islands, and 25 companies established in Peru (See Section Melka Group), claiming their business is sustainable and transparent<sup>395</sup> and touting its inclusion as "a member of the World Cocoa Foundation...which works to promote a sustainable cacao industry through economic and social development and environmental stewardship in growing communities."<sup>396</sup>

Global finance, raised in international stock markets, coupled with increasingly complicated corporate structures, is building a new empire of deforestation. This finance, and the actors behind it, is exceedingly hard to track, which raises doubts about the implementation and enforcement possibilities for recent "zero-deforestation" palm oil pledges by powerful, multinational corporations. The model here provides a case for close examination, and should serve as a cautionary tale for forests globally, as capital raised from logging and land acquisitions seeks new, profitable investments, with disregard for forest ecosystems or local land rights.

## 3.2 ASIAN PLANTATIONS LTD.

### OVERVIEW

Registered on October 20, 2009, Asian Plantations Ltd. prepared quickly for a public launch on the London Stock Exchange's AIM on November 30, 2009.<sup>397</sup> In the short weeks between these dates, the company would carry out a series of transactions to acquire two Sarawakian companies, Arus Plantation and its subsidiary, BJ Corporation, in exchange for issued shares in the Singapore company on November 2 and 9, 2009.<sup>398</sup> In the lead up to Asian Plantations Ltd.'s registration in Singapore, Asian Plantations Ltd.'s directors, Leonard Linggi, Graeme Brown, and Dennis Melka, had already become directors of Arus Plantation and BJ Corporation by mid-2008.<sup>399,400</sup> BJ Corporation held land lease rights to 4,795 hectares of land slated for plantation development in Sarawak.<sup>401</sup> A complicated network of companies, all connected through Asian Plantations Ltd., was taking shape.

According to documents filed with the London Stock Exchange, Dennis Melka "[took] responsibility for the Group's financial operations."<sup>402</sup> As a Co-founder and joint chief executive officer of Asian Plantations Ltd.,



Sarawak, Malaysia. PHOTO CREDIT ANDREW HETHERINGTON.

Dennis Melka managed the acquisition of land for palm oil plantations in Sarawak.<sup>403</sup> Along with Co-founder and Co-executive director Graeme Brown, Chairman Leonard Linggi, and Director Amar Leo Moggie, Melka oversaw an increase in the company's revenues from \$0 to almost \$24 million USD between 2009 and 2013 (See Figure 14), according to the company's year-end statement for 2013.<sup>404</sup>

All of the Directors of the company hold or have held substantial holdings in other

Malaysian and international companies, so their corporate network in the country is vast (See Chart 15 in Annex). According to EIA's analysis of publicly available corporate documents on file with the Malaysian Companies Commission (SSM), many of these companies share corporate ties with Asian Plantations Ltd. via their directors, shareholders, parent companies, and subsidiaries.

### Asian Plantations Ltd. Annual Revenue (USD)

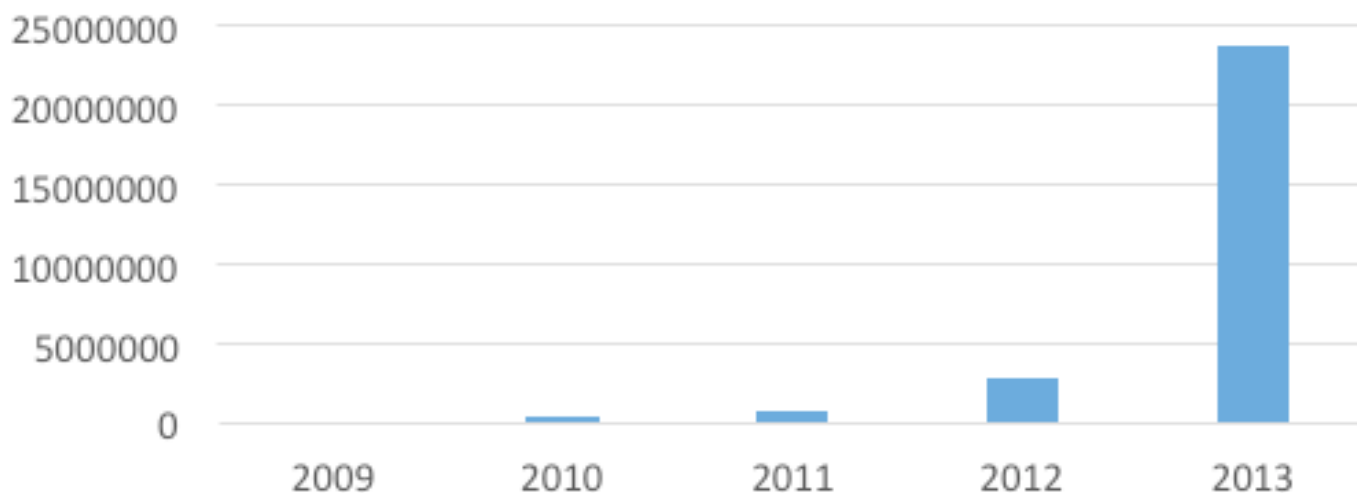


FIGURE 14: Asian Plantations revenues 2009– 2013.



## LAND ACQUISITIONS

In Asian Plantations Ltd.'s subscription to AIM, published just before the company began to publicly raise funds on the UK exchange, the group described its plan to acquire new land, in addition to the BJ Corporation land holding: "There are currently several titled and underdeveloped plantation parcels located in close proximity to the Sarawak Project Area, which are either currently for sale or which the

Directors expect to become available for sale in the near future...The Directors are confident that, based on the Group's experience in Sarawak and the Directors' experience in land acquisition and development, the Company is well placed to take advantage of such further land acquisition opportunities." <sup>405</sup>

From 2009 to 2013, Asian Plantations Ltd. acquired approximately 20,000 hectares of land in Sarawak by acquiring existing Malaysian companies that held land leases, and by directly

buying plantation land ("See Chart 10). Throughout this period, the company noted that it acquired these companies in "non-competitive process[es] based on "long standing local relationships."<sup>406</sup> EIA's analysis includes information about all of Asian Plantations Ltd.'s known subsidiaries in Sarawak, most notably, its five plantation land holdings in the state, as of late 2014 (See Chart 10).

**CHART 10: Asian Plantations Ltd.'s Subsidiary holdings in Sarawak, as at sale to Felda Global Ventures in 2014**

HOLDING COMPANY	DIRECT SUBSIDIARIES <sup>417</sup>	SUBSIDIARIES <sup>418</sup>	SARAWAK LAND HOLDINGS <sup>419</sup>	PRICE (MYR) AT ACQUISITION FROM LAND AND SURVEYS DEPT. (DATE) <sup>420</sup>	REVALUATION OF LAND OR NEW SALE PRICE (MYR)
ASIAN PLANTATIONS LTD. (APL)	ASIAN PLANTATIONS SDN. BHD.	Previously owned APL's subsidiaries before they were acquired by Asian Plantations Ltd. in Singapore		-	-
	ASIAN PLANTATIONS (SARAWAK) SDN. BHD.	BJ Corporation Sdn. Bhd.	4,795 hectares Lot 20, Dulit Land District	3,553,095 (May 7, 2007)	18,216,905 (Independent Firm, Feb. 6, 2007) <sup>421</sup>
		Fortune Plantation Sdn. Bhd.	5,000 hectares Lot 10, Dulit Land District	3,705,000 (Oct. 3, 2006)	5,174,572 (Paid for land use rights in 2007 <sup>422</sup> in a "non-competitive process driven by the board's local relationships") <sup>423</sup>
		IncoSetia Sdn. Bhd.	5,000 hectares Lot 16, Dulit Land District	3,705,000 (Feb. 20, 2003)	15,000,000 (Independent firm, Feb. 2003) <sup>424</sup>
			653 hectares Lot 23, Dulit Land District <sup>425</sup>	(2012)	-
			186 hectares Lot 68, Bok Land District <sup>426</sup>	(2012)	-
		Asian Plantations Milling Sdn. Bhd.	<i>Not a plantation.</i>	-	-
	ASIAN PLANTATIONS (SARAWAK) II SDN. BHD.	Kronos Plantation Sdn. Bhd.	5,000 hectares Lot 15 Dulit Land District	3,705,000 (May 20, 2003)	63,105,545 (paid for land use rights in 2012 <sup>427</sup> in a "negotiated, non-competitive situation") <sup>428</sup>
		Grand Performance Sdn. Bhd.	3,852 hectares <sup>429</sup>		
	ASIAN PLANTATIONS (SARAWAK) III SDN. BHD.	Jubilant Paradise Sdn. Bhd.	<i>No land held.</i>	-	-

## LOOKING FOR LAND RECORDS

To understand how much land Asian Plantations Ltd. acquired via subsidiaries in Sarawak, EIA compared corporate records from the Malaysian Companies Commission (SSM) to public documents and announcements published in relation to Asian Plantations Ltd. listing and trading on the Alternative Investment Market (AIM) of the London Stock Exchange (LSE). Asian Plantations Ltd.'s website contained published annual reports including financial statements, expansion planning, and locations of the plantations. Although in some cases, Asian Plantations Ltd. reported slightly varying numbers of hectares for its plantations in different company documents, it is clear that the lands referred to are the same<sup>407</sup> (See Chart 14 in Annex).

The lack of publicly available data from the Sarawak Land and Surveys Department has in large part prevented the public from understanding precisely where and how much forest has been lost via politically-motivated allocations of land across Sarawak.<sup>408</sup> In a rare disclosure of official land transactions, a well-placed government insider leaked a dataset of land transactions carried out by the Land and Survey Department to activists at Sarawak Report,<sup>409</sup> an online news blog, and the Bruno Manser Fund, a Swiss non-governmental organization (NGO) that campaigns for preservation of tropical rainforest and respect for the rights of those who traditionally inhabit them.<sup>410</sup> With the data subsequently published online in 2011, the public has gained a rare view into information about price, location, and owners of lands distributed by the ruling party in the state to individuals and companies, for free or well below market value.<sup>411</sup>

The leaked data covered the period between the 1980s and 2010, and represents information about individual land transactions - many of which were marked as "confidential" or "CONF" in the raw data as provided by the government insider.<sup>412</sup> Sarawak report identified a total of 1.5 million hectares across the state that were distributed during this time, and initially identified approximately 50 companies which acquired land as owned by Chief Minister Taib and his family members.<sup>413</sup> According to legal experts in Sarawak, Taib himself signed off on all logging concession allocations and plantation licenses starting in 1985.<sup>414</sup> According to the government source,

no public consultations took place around these land leases given, which span up to 99 years.<sup>415</sup>

In Section 3.5, EIA will outline how areas which correspond to four of Asian Plantation Ltd.'s five plantation land holdings are the same as those which appear as land transactions with companies owned by political allies and family members of the former Sarawak Chief Minister, Taib Mahmud. Three of Asian Plantations Ltd.'s Malaysian subsidiaries appear by name in the dataset of official land transactions from the Sarawak Land and Survey Department, while a fourth was identified based on the land parcel location and size identified in the transaction.<sup>416</sup>

It is important to note that the companies that held land-lease rights for the four plantations contained in this dataset, which were subsequently acquired by Asian Plantations Ltd., were not purchased by the Singapore-based company directly, but rather through its two Malaysian subsidiaries, Asian Plantations (Sarawak) Sdn. Bhd. (APS1) and Asian Plantations (Sarawak) II Sdn. Bhd. (APS2) (See Section 3.5).

Keresa Plantations Sdn. Bhd., Asian Plantations Ltd.'s major shareholder under the management of two of Asian Plantations Ltd.'s Directors, Graeme Brown and Leonard Linggi, also appeared in the leaked land transaction data, which indicated it acquired its plantation land for a sum less than 1 percent of the market value of the land. Keresa Plantations clear-cut the forest which stood on this land, profited from the sale of timber, and then established Sarawak's first RSPO-certified palm plantation (See Section 3.3).

Asian Plantations Ltd. published referential maps of its plantation areas, and their names, in May 2013. EIA analyzed satellite images<sup>430</sup> to compare the locations and areas as reported by the company with selected, cloud-free LANDSAT imagery from between 2003 and 2014, when the land was allocated and developed. The maps showed that natural forest had been clear-cut in areas corresponding to planned plantation areas, to make way for palm oil plantings. These maps demonstrate how and when clearing took place, which demonstrates deforestation attributable to Asian Plantations Ltd.'s subsidiaries, both before and after Asian Plantations Ltd.'s acquisition of these lands took place (See Section 3.5).

## FINDING THE FINANCE

To examine the historical financing, ownership, and relationships between Asian Plantations Ltd.'s subsidiaries and shareholders in Sarawak, EIA requested all documents on file with the Malaysian Companies Commission (SSM for its Malaysian name: Suruhanjaya Syarikat Malaysia) for companies identified as linked to Asian Plantations Ltd., according to public information. These official records include various forms and reports which companies, public and private, are required to file with the government of Malaysia, such as: articles of incorporation, changes in directorship and ownership of shares, annual financial reporting, changes of company name, and resolutions by company boards of directors, including increases in share capital. Although the SSM data did not include information about all years of each company's

Logging truck in Sarawak, Malaysia. PHOTO CREDIT: ANDREW HETHERINGTON.





operations, a historical analysis, completed by referencing surrounding years and related companies' filings, indicated some clear trends.

Through a shareholder analysis of the companies as provided in SSM documents, EIA documented historical links between Asian Plantations Ltd.'s major shareholder, Keresa Plantations Sdn. Bhd., which owned approximately 30 percent of the company before its sale in 2014, and Keresa Plantations' ultimate parent company, Rajang Wood Sdn. Bhd.<sup>431</sup> This analysis showed the extent to which Asian Plantations Ltd. was a reinvestment vehicle for the profits of its initial financiers and eventual major shareholders, themselves, which made money from corrupt land deals for logging concessions that took place in the 1970s and 1980s.<sup>432</sup>

Logging companies operating forest concessions, given by politicians to curry favor with local ethnic leaders,<sup>433</sup> subsequently funneled their profits from harvesting and selling tropical timber<sup>434</sup> into oil palm plantations.<sup>435</sup> These investments, via the same corporate networks, further decimated Sarawak's already-logged forests through clear-cutting for oil palm.<sup>436</sup> Start-up capital for palm plantations in the form of direct cash injections, loans, and share capital,<sup>437</sup> was used to purchase new land and clear forests, as the logging companies discussed here channeled investment into new sectors.<sup>438</sup>

Arus Plantation Sdn. Bhd. and its subsidiary BJ Corporation Sdn. Bhd., were the first Malaysian companies acquired by Asian Plantations Ltd. Asian Plantations Ltd.'s major shareholder and initial investor in the company, Keresa Plantations, traded shares it held in BJ Corporation and Arus Plantation for shares in Asian Plantations Ltd., itself, to become a major shareholder of the Singapore-based company.<sup>439</sup> In return Asian Plantations Ltd. acquired full ownership over BJ Corporation and Arus Plantation (which later changed its name to Asian Plantations (Sarawak) Sdn. Bhd.).<sup>440</sup> When Asian Plantations Ltd. was listed on AIM, BJ Corporation and Arus were the only subsidiaries the company held as assets, and the 4,795 ha held by BJ Corporation was the only plantation land to which the company had rights.<sup>441</sup> This land was acquired by BJ Corporation for lower than market value.<sup>442</sup> The initial shares in BJ Corporation and Arus

Plantation were paid for by applying the true value of BJ Corporations land holdings, as revalued by professional valuers, to issued, paid up shares allotted to Keresa Plantations. This convoluted share-swap resulted in Asian Plantations Ltd.'s initial acquisition of significant, valuable assets, the basis of which came from a revaluation of land that was allocated for below market value.

The equity (or value) of Asian Plantations Ltd.'s group of companies, provided via cash injections, loans, and share swap deals<sup>443</sup> from logging companies, as well as the land it purchased rights to, formed the base collateral against which Asian Plantations Ltd.'s subsidiaries later took out loans to finance palm oil plantation expenses, and the building of its own mill via subsidiary Asian Plantations Milling Sdn. Bhd. (See Section 3.5 and Annexes) Some of the loans that Asian Plantations Ltd. and its subsidiaries were able to obtain with the land as collateral show how, by acquiring land for cheap and quickly revaluing the land for its true value, Asian Plantations Ltd.'s subsidiaries were able to secure bank financing at much higher levels than the initial investment in acquiring the land.<sup>444</sup>

Asian Plantations Ltd.'s public listing and fundraising on AIM allowed for these investments by logging companies to then grow further - about 300 percent by the time the company sold to Felda Global Ventures in late 2014.<sup>445</sup> Now, a similar group of investors is clearing rainforest in Peru for plantations. (See Melka Group)

Because these plantations have different names, and are owned by companies registered abroad, ownership is difficult to trace. Nonetheless, EIA has proven the links between Sarawak, one of the biggest instances of rainforest destruction in modern history,<sup>446</sup> and new deforestation for oil palm and other agricultural commodities in the Amazon Basin. (See Section 3: Melka Group)

## LEONARD LINGGI: PBB PARTY LOYALIST AND TIMBER BARON

Since Malaysia's independence from Britain in the 1960s, Sarawak, as well as its land and forests, have operated as a "Malaysian political fiefdom" for a few key power brokers.<sup>447</sup> Since the 1970s, loyalty to Sarawak's ruling PBB political Party (Parti Pesaka Bumiputera Bersatu) was

rewarded with enormous timber and land concessions throughout the state.<sup>448</sup>

Leonard Linggi, son of a traditional leader of the Iban ethnic group, received such handouts, and established himself strategically in a political power structure led by Taib Mahmud (Chief Minister from 1981-2014).<sup>449</sup> According to economist David W. Brown,<sup>450</sup> Linggi helped unify portions of the Iban ethnic group in support of Taib, allegedly by engaging in widespread vote-buying to ensure election victory for Taib, thereby helping Taib to maintain political and economic control over the state for 43 years.<sup>451</sup>

In his research into Malaysian elite appropriation of timber rents, Brown identified three massive timber concessions, handed out by subsequent Chief Ministers of Sarawak, in which Linggi was a Director and shareholder: Rajang Wood (309,575 ha), Keresa Timber (49,996 ha), and Raplex (72,251 ha).<sup>452</sup> EIA's analysis of documents obtained from the Malaysia Companies Commission (SSM) confirms that the Linggi family's interests in Rajang Wood Sdn. Bhd., and its subsidiary, Keresa Plantations Sdn. Bhd. date back to the 1970s and 1980s, when these companies were established. Leonard Linggi was one of two initial directors and shareholders for both companies.<sup>453</sup> Leonard Linggi still owns substantial portions of Rajang Wood and holds a leadership role as a Director with both direct and indirect interest in the company,<sup>454</sup> as well as a Directorship in Keresa Plantations (2012).<sup>455</sup> Keresa Plantations was fully owned by Rajang Wood Sdn. Bhd. as of June 2014.<sup>456</sup>

Leonard Linggi also held major political power in his own right, reportedly operating as second in command in the Christian wing of the PBB party, and making decisions about which candidates could represent the party in state and federal elections.<sup>457</sup> Linggi was also the General Secretary of the PBB, described as the "PBB 'money man,' meaning the PBB comes to him for funds at campaign time."<sup>458</sup> Despite using the Iban population to support party politics, Brown notes that "other than election time bribes, timber rent is not redistributed to the larger Iban community," and that Linggi is considered "the richest Iban" "at home in Sarawak."<sup>459</sup> Throughout his career, Linggi also held positions as a "Deputy Public Prosecutor, Member of Parliament, and State of Sarawak Cabinet Minister for almost two decades" according to Asian Plantations Ltd.'s corporate literature.<sup>460</sup>

Aside from Leonard Linggi, Rajang Wood Sdn. Bhd.'s second director and initial shareholder of the company, upon its incorporation, is



Logging truck in Sarawak, Malaysia. PHOTO CREDIT: ANDREW HETHERINGTON.

identified in company documents as “Abang Abu Bakar Bin Datu Bandar Abang Haji Mustafah,” the Speaker of the Sarawak State Assembly from 1976 to 1981.<sup>461</sup> As Brown describes, the State Assembly is responsible for electing Sarawak’s Chief Minister, a post which from 1971 to 1981 was held by Taib’s uncle and predecessor, Abdul Rahman.<sup>462</sup>

Leonard Linggi’s son, Alexander Nanta Linggi, was also a director of Rajang Wood Sdn. Bhd.<sup>463</sup> and Keresa Plantations Sdn. Bhd.<sup>464</sup> until July 2013. Alexander Linggi continued to hold approximately a 15 percent share in Rajang Resources Sdn. Bhd., a part owner of Rajang Wood, until the latest financial records available from 2013.<sup>465</sup> He currently holds a seat in Malaysia’s national parliament, representing the PBB party from Sarawak, a post to which he was first elected in 1999. Alexander Linggi was also appointed as the Deputy Minister of Rural and Regional Development by the current Prime Minister of Malaysia, Najib Razak, after his successful reelection to parliament in 2013.

News reports about Malaysia’s General Election in 2013 show that the Sarawak region containing Asian Plantations Ltd.’s and Keresa Plantations’ planting areas are key swing vote areas for Sarawak’s ruling parties, and that the

PBB party connections at the local level are crucial for carrying these areas in the elections.<sup>466</sup> The PBB Party, in which Leonard and Alexander Linggi have held positions, forms part of the Barisan Nasional, the current ruling coalition at the national level in Malaysia.

Through its fully owned subsidiary, Keresa Plantations Sdn. Bhd., Rajang Wood Sdn. Bhd. owned an approximately 30 percent stake in Asian Plantations Ltd. – worth a market value of MYR 129,620,031 or USD \$38,700,000<sup>467</sup> by December 31, 2013.<sup>468</sup> By the time of Asian Plantations Ltd.’s sale in late 2014, Asian Plantations Ltd.’s directors were declaring that initial shareholders, including Rajang Wood, by way of Keresa Plantations, made a 300 percent return on investment after only 5 years of public trading.<sup>469</sup> In this way, the public listing of Asian Plantations Ltd. on AIM, its increase in value, and its final sale, in essence raised funds for timber companies linked to forest corruption in Sarawak.<sup>470</sup>

Having vacated the role of Chief Minister in early 2014 and becoming the Governor of Sarawak one day later,<sup>471</sup> Taib is currently under investigation by the Malaysian Anti-Corruption Commission for graft related to timber concessions during his time as Chief

Minister.<sup>472</sup> Wikileaks cables show that the US government considers Taib to be “highly corrupt.”<sup>473</sup> The Bruno Manser Fund estimates Taib’s net worth at US\$15 billion, with his total family wealth at US \$21 billion.<sup>474</sup> This net worth would make Taib the richest person in Malaysia by approximately US\$3.5 billion.<sup>475</sup>

Tracing this cascading finance through subsidiaries and investments in new companies with different names shows the importance of State maintenance of corporate records, transparent and fair land transactions, and accompanying concession or land ownership maps. When companies with known links to corruption can reinvest in new land using a complicated network of related companies, subsequent deforestation or degradation of forests is difficult and time-consuming to trace. Making links between the powerful players in the land sector, and the financing behind them, will be crucial to identifying which corporate and individual actors must be held accountable for destroying forests, in Sarawak and around the world.



# "SARAWAK POLITICS IS TIMBER POLITICS."

## - TAIB MAHMUD<sup>476</sup>

Sarawak and Sabah, in North Borneo, became part of the nation of Malaysia in 1963. Only one Sarawakian has continuously held political offices from 1963 until present day: Taib Mahmud.

Taib Mahmud's Parti Pesak Bumiputera Bersatu party (PBB Party) has ruled Sarawak for more than 50 years. Taib himself was Chief Minister—the highest elected position in the state—for 33 of those years until 2014.<sup>477</sup> The PBB Party is one member of the coalition that holds a majority in Parliament called the Barisan Nasional (National Front). The National Front has won majorities in 13 consecutive general elections since Malaysia's independence in 1957.<sup>478</sup>

According to the Global Corruption Barometer published by Transparency International, 69 percent of respondents in Malaysia viewed political parties as corrupt or extremely corrupt.<sup>479</sup> Malaysian law does not limit donations from corporations and individuals to candidates and political parties, and political parties are not required to report on funding spent during elections.<sup>480</sup>

Listed as a "flawed democracy" in the Democracy Index produced by the *Economist's* Intelligence Unit, Malaysia ranks 64th out of 165 countries analyzed, with a higher ranking indicating better democratic indicators. (Peru ties with Romania for 60th.)<sup>481</sup>

Corrupt sources of funding for Sarawakian politicians first garnered global attention in the late 1980s, when local indigenous peoples blockaded roads in an effort to prevent logging companies from continuing an extractive rampage in the old-growth rainforest where they lived.<sup>482</sup> Logging companies, accompanied by police protection, refused to enter into dialogue with the native Penan people, who they said did not have rights to the land they had inhabited for centuries.<sup>483</sup> Peacefully blocking logging roads was the only form of resistance left to the Penan, but they were eventually violently dispersed, with some indigenous leaders receiving jail time for protesting.<sup>484</sup>

As Minister of Communications and Works from 1963 to 1966,<sup>485</sup> Taib established his political career by overseeing the construction of roads into the rural areas of Sarawak—which gave him first-hand knowledge of the State's vast tropical rainforest.<sup>486</sup> Over the years, Taib consolidated

and controlled various Sarawakian government entities to ensure he controlled the state's forest resources.<sup>487</sup> Taib's rule as Chief Minister began in 1981, following on the heels of his uncle, Abdul Rahman, who ruled from 1971-1981.<sup>488</sup> By 1985, legal experts in Sarawak say, Taib was signing all logging concession and plantation licenses himself.<sup>489</sup>

In primary research completed in the 1990s, scholar David W. Brown dove into the deep networks that allowed elites to profit from state timber resources in Sarawak, Sabah, and Indonesia.<sup>490</sup> Brown asserted that only 20 percent of timber rent—or economic gain after normal company profit—in Sarawak was retained by the state.<sup>491</sup> Instead, Brown estimated that between 1970 and 1990, \$25 billion USD of state resources had been appropriated in Sarawak and Sabah by politically-connected individuals.<sup>492</sup> Therefore, the state lost out on revenues that could have been captured by the government, and thus contributed to economic development.<sup>493</sup>

Brown's research illuminated the mechanism through which Taib had retained and solidified his power up to that time.<sup>494</sup> Brown found that heads of state, their families, and their proxies controlled the four largest timber conglomerates in Sarawak,<sup>495</sup> because government agencies in charge of granting timber concessions and logging licenses did not maintain sufficient autonomy from their rulers.<sup>496</sup> Thus, state resources were disproportionately distributed to political and family connections of the state's top politicians.<sup>497</sup> The granting of logging licenses was the primary way for the state to capture economic benefits from the harvest of timber on public land. However, instead of maximizing the profits from these sales, Brown documented that concessions were granted to companies at extremely low prices, with substantial bribes and kickbacks paid directly to Taib.<sup>498</sup>

Brown interviewed politicians and businessmen in Sarawak, and found that party leaders would require campaign contributions from their favored logging companies around election time.<sup>499</sup> If the companies refused to cooperate, their concession could be cancelled, and they would lose their sources of income.<sup>500</sup> Strategically building economic ties across different ethnic constituencies in the state, Taib

made sure to grease the palms of a majority of ethnic constituencies in order to win popular elections, including Leonard Linggi, a descendant of traditional Iban leaders.<sup>501</sup> With Taib and his allies in control of invaluable timber and land concessions, the opposition parties have never managed to gain a strong foothold. The PBB Party still leads Sarawak today.<sup>502</sup>

In 2010, a government insider weary of such corruption turned over a list of concessions in the state, allocated by the Land and Survey Department in Sarawak to palm and timber companies, including the locations, prices, and company control of concessions. This information is normally kept highly confidential. The leaked information showed 1.5 million hectares of land had essentially been given away between the 1980s and 2010 by Taib, much of it to his family, friends, business associates, and political allies. Most of this land was given under 60 or 99 year leases, and was soon resold for a huge profit.<sup>503</sup>

For example, Incosetia Sdn. Bhd., a company owned by a group of politicians in Malaysia's Melaka state, received a 5,000 ha estate in February 2003 for MYR 3,705,000 from the Sarawak government, according to the leaked land transaction data. This same land was revalued at MYR 15,000,000 by independent valuation experts the same month, without any operations or land use change having been reported.<sup>504</sup> This company was later acquired by Asian Plantations Ltd. for a reported MYR 41,301,958,<sup>505</sup> through a "non-competitive process, driven by [Asian Plantations Ltd.]'s local relationships."<sup>506</sup>

According to the data released by Sarawak Report, four of Asian Plantations Ltd.'s five land holdings in Sarawak, all within the Dulit land district, were a part of this major giveaway of undervalued land from the Sarawak Land and Surveys Department.<sup>507</sup>

- BJ Corporation Sdn. Bhd. (Lot 20), 4,795 hectares
- Incosetia Sdn. Bhd. (Lot 16), 5,000 hectares
- Fortune Plantation Sdn. Bhd. (Lot 10), 5,000 hectares
- Harta Mastira Sdn. Bhd. (Lot 15), 5,000 - referred to in company documents as "Dulit," owned via Asian Plantations Ltd. subsidiary Kronos Plantation Sdn. Bhd.<sup>508</sup>

### 3.3 KERESA PLANTATIONS: GRAEME BROWN, THE LINGGI FAMILY, AND CLEARCUTTING FOR OIL PALM

Keresa Plantations Sdn. Bhd. is an oil palm production company based in Sarawak, Malaysia, established in 1981, which operates approximately 6,000 hectares of oil palm plantations in the state.<sup>509</sup> Keresa Plantations reported 20,437,618 Malaysian Ringgit (MYR) or approximately USD \$6.21 million in after-tax profits for the financial year ending December 31, 2012.<sup>510</sup> Rajang Wood Sdn. Bhd., Keresa Plantations' parent company and 100 percent owner, reported MYR 16,227,861 or approximately USD \$5.9 million in after-tax profits for the same period.<sup>511, 512</sup>

Public records on file at the Malaysia Companies Commission (SSM) show that Keresa Plantations Sdn. Bhd. continued to be a fully owned subsidiary of Rajang Wood Sdn. Bhd. as of

December 31, 2013,<sup>513</sup> which in turn is approximately 50 percent-owned by Leonard Linggi or his immediate family members. Among Leonard Linggi's immediate family members are his daughter, Melia Linggi, and her husband, Graeme Brown.<sup>514</sup>

Graeme Brown, originally from New Zealand, is a co-founder and joint chief executive officer of Asian Plantations Ltd., and shares ownership in numerous companies based in Malaysia, Singapore, and the British Virgin Islands with both Dennis Melka and the Linggi family. (See large infographic and Chart 15.) In its Subscription to AIM, Asian Plantations Ltd. notes Brown's significant leadership role in Keresa Plantations,<sup>515</sup> of which Brown became a director in 1997.<sup>516</sup> The same year, Brown also became a

director of Rajang Wood. Sdn. Bhd., according to SSM documents.<sup>517</sup>

Keresa Plantations (and therefore Rajang Wood), along with other direct and indirect holdings of the Linggi family, continued to control approximately 60 percent of Asian Plantations Ltd. shares until its sale in late 2014,<sup>518</sup> by which time Asian Plantations Ltd.'s shares were valued at about 300 percent of their IPO listing price.<sup>519</sup> An analysis of who benefitted from the below-market-price land acquisitions and forest clearance carried out by Asian Plantations Ltd. would be incomplete without an understanding of how Keresa Plantations, which held a significant stake in Asian Plantations Ltd., created and profited from a similar model, just a few years before.

FIGURE 14A: Keresa Plantation



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



## LAND ACQUISITION

According to the leaked Land and Surveys Department Data as published by Sarawak Report, Keresa Plantations Sdn. Bhd. received a 6,023 hectare concession in the Lavang Land District on December 28, 1995.<sup>520</sup> As described in the data, reproduced below, this concession was given to plant rattan (abbreviated “rat”). The land area, Lot 1, Block 17 in Lavang Land District is the same as listed in Keresa Plantations RSPo audit from 2013,<sup>521</sup> as well as in Keresa Plantations’ annual financial reports from 2007 onward.<sup>522</sup> This 99 year lease applied retroactively to the period between 1981, when Keresa Plantations was founded by Leonard Linggi and another business partner,<sup>523</sup> until 2080.<sup>524</sup> In published RSPo audits of Keresa Plantations, the plot identified as belonging to the company is also Lot 1, Block 17, Lavang Land District, for 6,023 hectares.<sup>525</sup> The transaction appeared as follows in the leaked Land and Surveys data, published in 2011 by Sarawak Report:

Applicant / Owner (Name Origin)	Liaison Officer / No. Tel. / Fax	Land Alienated / Approved For Alienated				Premium (MYR)	Approval Headquarters (Number Date)	Document Title (Type)	Dates	Notes
Keresa Plantations Sdn. Bhd Level 5, Tun Jugah Tower, No.18, Jalan Tunku Abdul Rahman, P.O.Box 734, 93714 Kuching. (4 -13/16)	George Kuvuvilla (Pengurus Estate) Tel: 082 412187	Lot 1 Blk. 17 Lavang L.D.	rat	6,023	True left bank of Btg. Kemena, Bintulu	44,640	101/4-13/390 bertarikh 6.11.1989 & 105/4-13/390 bertarikh 3.4.1990	II	28.12.1995	(99 tahun mulai dari 2.1.1981 hingga 1.1.2080)

For each of these tables, the heading titles for columns 4 through 6 were not included in the data as published by Sarawak Report in 2011. However, the meaning of the 4th column is understood to mean the type of concession (rattan, palm, logging) that was issued and the 5th column is understood to mean the area in hectares of the issued land lease.”

The price for this transaction is extremely low, even lower than the transactions by which Asian Plantations land was allocated by the government: MYR 44,640 (USD \$17,410) - or just MYR 7.41 (USD \$2.89) per hectare.<sup>526</sup> The same land was valued at MYR 6,097,600 in 1988 by “a firm of professional values...by using the open market value comparison method.”<sup>527, 528</sup> The price paid, therefore, amounts to *less than one percent* of the land’s true market value.

It is unclear why and how a lease over this land was given out retroactively by the Sarawak Land and Surveys Department, for such a low price. However, satellite data cross-referencing GPS coordinates provided by the company shows that the deforestation that followed was carried out by Keresa Plantations, as laid out below.

## DEFORESTATION FUNDED BY LOGGING AND BANK LOANS

According to an RSPo audit, almost 60 percent (3,100 hectares) of Keresa Plantation’s currently planted oil palm was planted between 1998 and 2002.<sup>529</sup> By cross referencing maps and GPS coordinates provided by the company,<sup>530</sup> with satellite imagery from the United States Geological Survey, EIA determined that massive clear-cutting of forest cover on Keresa Plantations’ land occurred during the same period.

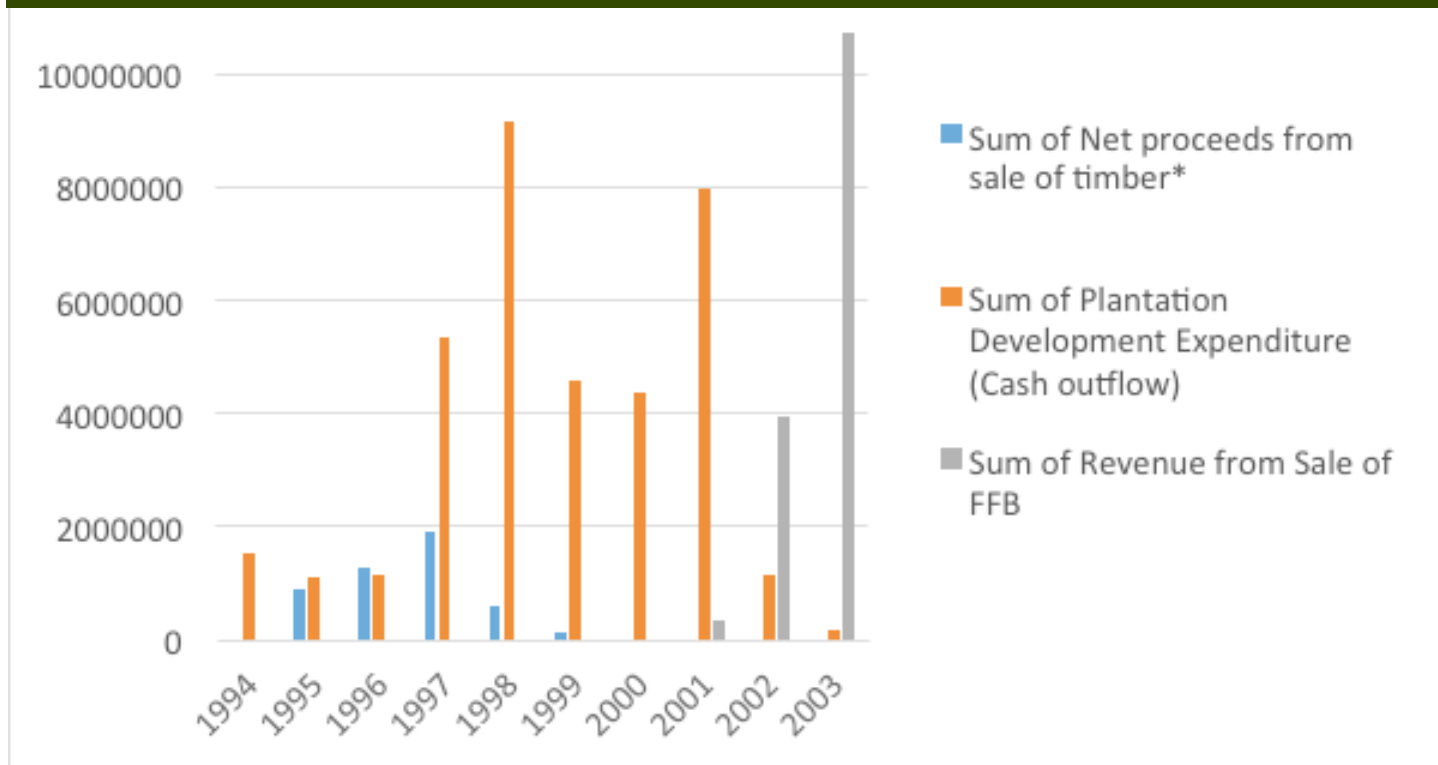
Keresa Plantations Sdn. Bhd.’s company documents show that at least some of the timber cleared from the land was sold, and proceeds were reinvested in the plantation development expenditures<sup>531</sup> – forest clear-cutting, as evidenced by satellite imagery.<sup>532</sup> As timber revenues began to decrease in 1998, plantation development expenditures, likely for land clearing, sharply increased. Keresa Plantations also obtained its first major bank loans: credit worth MYR 32,500,000 (worth approximately USD \$8,125,000 at the time)<sup>533</sup>

with Malayan Banking Berhad, which was secured against the company’s long-term lease-hold valued at MYR 6,097,600.<sup>534</sup> Fresh fruit bunches (FFB) produced by oil palms were available for harvest starting in 2001, at which time they began to contribute to the revenue stream.<sup>535</sup>

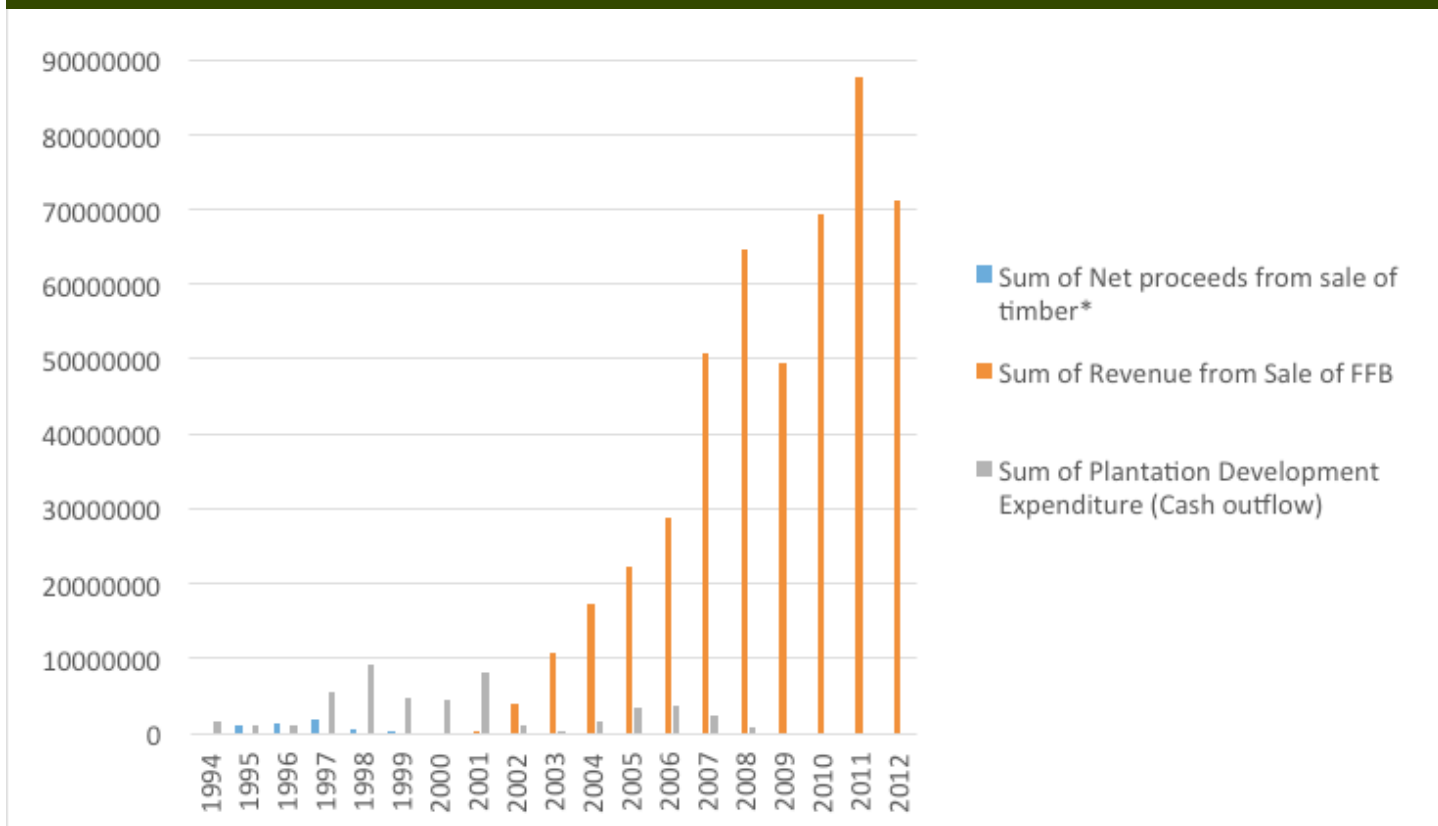
An analysis of another source of satellite imagery (See Annexes) also confirms, in greater detail, that periods of greater forest clearance, starting in 1997, correspond with major spikes in the line item “Plantation Development Expenditure,” as noted in the annual reports filed with SSM. (See Figure 3 and Annexes).

The forest cleared for oil palm plantings by Keresa Plantations was not untouched. However, the ample logging roads visible throughout the concession in satellite imagery, and the company’s own sale of timber sourced there for several years shows that, before clearance by the company, this forest was rich enough to support marketable tropical timber species. When an assessment of nearby smallholder lands was carried out in 2011, “several endangered species [were] identified.”<sup>536</sup>

**FIGURE 15: Keresa Plantations Sdn. Bhd.: Timber Revenues, Plantation Development Expenditure, and Revenues from Sale of Fresh Fruit Bunches, 1994-2003**



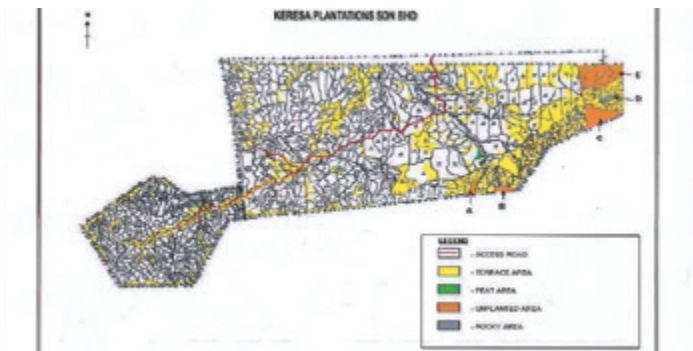
**FIGURE 16: Keresa Plantations Sdn. Bhd.: Timber Revenues, Plantation Development Expenditure, and Revenues from Sale of Fresh Fruit Bunches, 1994-2012**



Source: Keresa Plantations Annual Financial Reports (1994-2003). SSM.



FIGURE 17: Keresa Plantations deforestation



- **Map:** Image Published of Keresa Plantations Sdn. Bhd. plantation area according to the company's submissions to the Roundtable on Sustainable Palm Oil.



- **Map: 1986-1990** – This image shows a natural forest with logging roads throughout and beyond the eventual plantation areas, outlined in red and orange shapes. The orange-shaped outline in this and subsequent images was drawn by EIA,<sup>537</sup> and corresponds directly with the shape and location of the plantation as described in documents submitted by Keresa Plantations Sdn. Bhd. to the Roundtable on Sustainable Palm Oil. The ownership and name of the red-outlined plantation below Keresa Plantations Sdn. Bhd. is unknown at this time.



- **Map: 1990-1994** – This image shows a natural forest (darker green) with logging roads throughout and beyond Keresa Plantations Sdn. Bhd.'s plantation areas, outlined in orange.

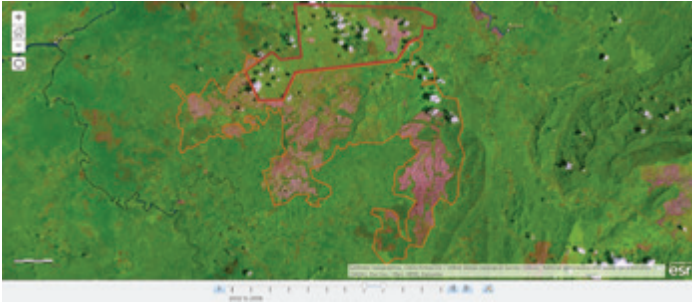


- **Map: 1994-1998** – This image shows a natural forest (darker green) with logging roads throughout and beyond Keresa Plantations Sdn. Bhd.'s plantation areas, outlined in orange.



- **Map: 1998-2002** – This image shows a clear-cut of the standing natural forest (darker green) which covered much of the Keresa Plantations Sdn. Bhd.'s plantation areas, outlined in orange.

Source: USGS LandsatLook Viewer, Earthstar Geographics, Esri



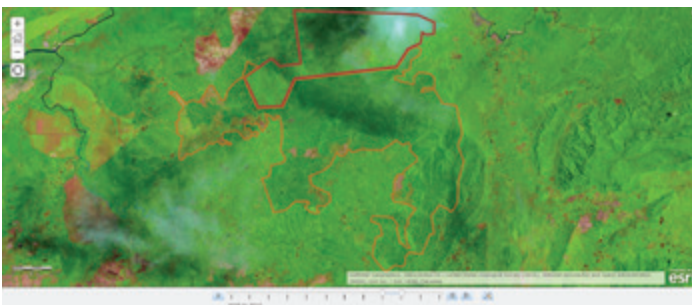
- **Map: 2002-2006** – Plantation growth (light green) can be seen growing over the previously clear-cut area within Keresia Plantations concession area. Additional clear-cutting takes place of natural, logged forest in Keresia Plantations' plantation areas, outlined in orange. (During this period, the neighboring concession, outlined in red, also experiences a clear cut of much of its forest land.)



- In Digital Globe satellite images from the first half of 2003, young palm plants are growing - contrasting with the remaining natural forest, on Keresia Plantations' plantation areas.



- **Map: 2006-2010** – Palm vegetation can be seen growing over almost the entire Keresia Plantations plantation area. The neighboring plantation outlined in red has also been replanted, but the vegetation seen there is not palm. Rather, this vegetation appears to be another type of tree plantation.



- In a zoomed view of the boundary between the two plantation areas and an area outside of both, clear differences can be seen between palm plantation, other plantation, and natural forest.



Source: USGS LandsatLook Viewer, Earthstar Geographics, Esri



## 3.4 RSPO-CERTIFIED FOREST DESTRUCTION

The first oil palm firm in Sarawak to be RSPO-certified,<sup>538</sup> Keresa Plantations Sdn. Bhd. became a member of the Roundtable on Sustainable Palm Oil (RSPO) on June 2, 2009,<sup>539</sup> and received its RSPO certificate on October 21, 2010.<sup>540</sup> Despite clearance of natural forest by the company in the years leading up to their membership, Keresa Plantations has been selling their oil palm products as a certified sustainable grower since 2010.

The RSPO requires that an evaluation to determine whether land planned for plantations contains high conservation value (HCV) area be carried out prior to new plantings, in an effort to prevent the destruction of primary forests or other important areas for conservation.<sup>541</sup> This audit report also says that the earliest oil palm planting took place in 1997.<sup>542</sup> Keresa Plantations asserted to auditors assessing compliance with RSPO standards that their land previously hosted a rattan plantation, and therefore concluded that the company had not developed over High Conservation Value Forest (HCVF).<sup>543</sup> In the same audit report, Keresa Plantations said that “an independent body...approved by the RSPO as an assessor,” had undertaken a High Conservation Value (HCV) Assessment “prior to development” in 2005, and found an absence of “protected, rare, or threatened species.”<sup>544</sup> In yet another area of the report, the auditors note that the land was initially a logging concession which was given permission to plant rattan, and which, in 2005, got government approval to convert an area previously used for rattan to oil palm plantation.<sup>545</sup>

Satellite imagery of Keresa Plantations operations shows that this area contained natural forests until its conversion for plantations by Keresa Plantations beginning in 1997. An assessment in 2005, several years after deforestation began, to evaluate whether HCV areas existed in the plantation is functionally meaningless. Satellite imagery from LANDSAT confirms that by 2005, much of the forest which previously covered the plantation had been cleared.

The Land and Survey Department transaction for Keresa Plantation's land in Lavang Land District indicates that the concession was allocated to the company with the purpose of cultivating rattan,<sup>546</sup> a fast-growing non-timber species of vine that grows naturally in South East Asia.<sup>547</sup> Plantation development by Keresa Plantations included both oil palm and rattan, and company financial statements indicate that the two were developed in parallel beginning in 1996.<sup>548</sup> Keresa Plantations' financial reports make references to trial plantings for rattan being harvested as early as May 2000.<sup>549</sup> However, after a negative assessment by agricultural consultants, the rattan plantings were written off as losses in 2003.<sup>550</sup> From then on, development of and revenues from oil palm dominate the company's financial reports, and eventually, by 2007, rattan disappears from the company financial statements entirely.<sup>551</sup> If palm oil was developed over land that previously hosted rattan planting, it is clear that the rattan plantings also corresponded to Keresa Plantations operations,<sup>552</sup> and therefore should

not be excluded from assessment of the company's responsibility for clearing forests.

Although the company's RSPO audit from 2013 does report some encouraging progress in terms of operational policies on staffing, chemical use, and smallholder engagement. The RSPO auditors, nonetheless, were not able to provide consistent information about when Keresa Plantations began operations and planting, throughout the report.<sup>553</sup> EIA has not found further reference to the 2005 HCV assessment in any other publicly available company documents, and Keresa Plantations annual financial report on the year 2005 was missing from publicly available SSM files.

The completion of the conversion on Keresa Plantation's land from forest to plantation takes place around the same time the company was accepted as an ordinary member of the RSPO, in 2009, led by director Graeme Brown. The group used their RSPO membership status to promote a sustainable image, not only in Keresa Plantations Sdn. Bhd., once land had already been deforested, but also in pitches to potential investors in Asian Plantations Ltd.<sup>554</sup>





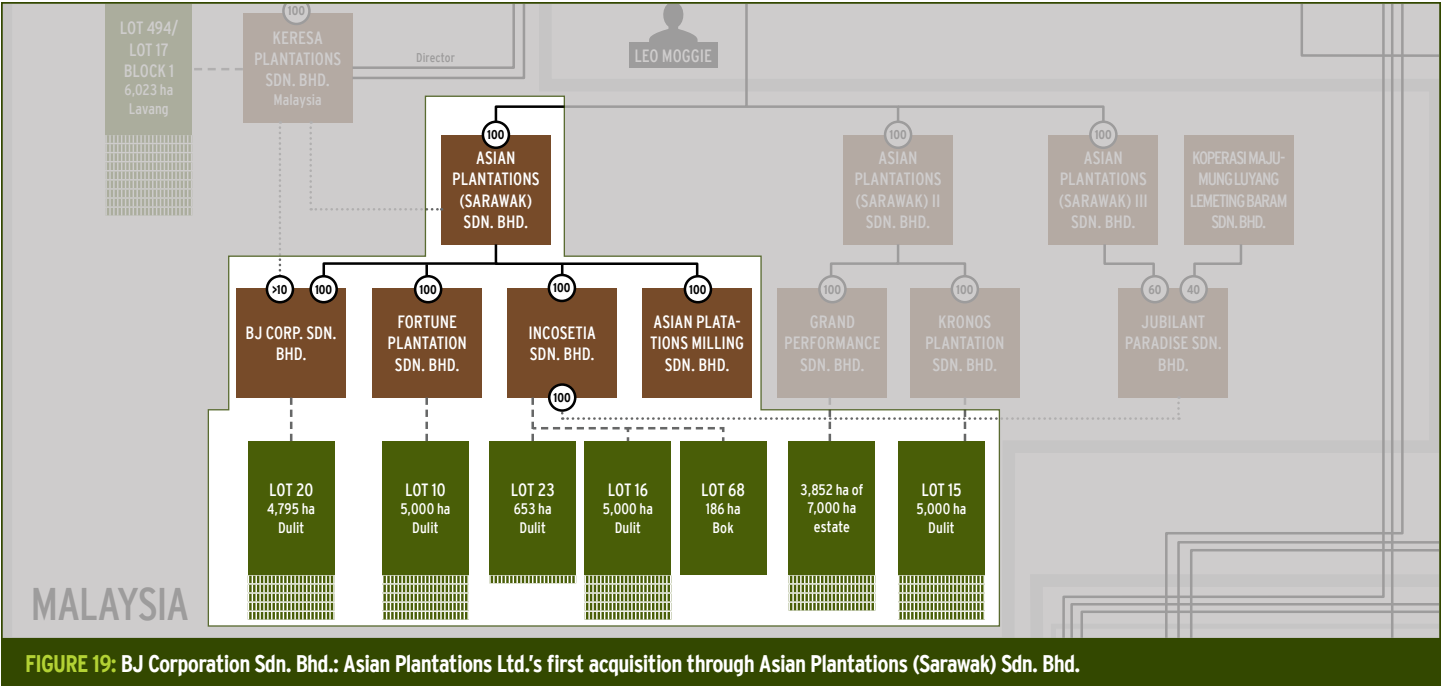


FIGURE 19: BJ Corporation Sdn. Bhd.: Asian Plantations Ltd.'s first acquisition through Asian Plantations (Sarawak) Sdn. Bhd.

BJ CORPORATION SDN. BHD. : LAND ACQUIRED FOR BELOW MARKET VALUE

BJ Corporation was the first acquisition by Asian Plantations Ltd. that held land from the Sarawak Land and Surveys Department, which it acquired for only 20 percent of its true value.

For BJ Corporation Sdn. Bhd., as well as other companies ultimately owned by Asian Plantations Ltd., it is important to understand the differences between the corporate entity and the land it acquired. Whereas a corporate entity might change names, management, and ownership, land holdings of the company depend on whether a company has land lease or ownership rights to a designated area, at a designated period in time. In other words, a company can change names and ownership, and still hold and operate upon the same land. In this particular case, the company changed names three times and had various directors and shareholders during different periods since its incorporation in 1984, although the corporate entity itself appears to have had only minor or completely absent business operations until acquiring land in 2007.<sup>566</sup>

BJ Corporation was originally created as Sebelas Edar Sdn. Bhd. in 1984 by director and shareholder Sahlan Sidik.<sup>567</sup> During the period between 1987 and 1998, its name was changed to Harta Strata Sdn. Bhd., although the company maintained some of the same directors and ownership during this time.<sup>568</sup> Company filings state only in general terms that the primary company operations were as a “general merchant” for its first two decades of existence,<sup>569</sup> but the company annual reports declared that operations completely ceased between 2000 and 2006.<sup>570</sup> This pause occurred just before the company acquired the land, on which Asian Plantations Ltd. would develop oil palm, in 2007.<sup>571</sup>

BJ Corporation’s annual reports for 2007 document a number of company activities occurring: Arus Plantations Sdn. Bhd. becomes BJ Corporation’s holding company, and leasehold land appears as an asset category - with an addition worth MYR 3,553,095 during the year equal to the amount paid for land lease rights.<sup>572</sup>

This amount corresponds exactly with the amount recorded for the sale of the property in the leaked Land and Surveys Department data, published in 2011 by Sarawak Report:

Applicant / Owner (Name Origin)	Liaison Officer / No. Tel. / Fax	Land Alienated / Approved For Alienated	Premium (MYR)	Approval Headquarters (Number Date)	Document Title (Type)	Dates	Notes
BJ CORPORATION SDN. BHD. 35-1-2, Jalan 3/50 Daimond Square Off Jalan Gombak, 53000 Kuala Lumpur	Dato' Sahlan Bin Sidik 03-40248073 03-40249957	Lot 20 Dulit L.D. Oil Palm 4,795 Terletak di Long Aya, Tinjar, Baram	3,553,095	35/HQ/AL/47/ 99 (4D) bertarikh 22.9.2006	III	07.05.2007 (60 years)	1. Mengantikan Lot 2 Patah L.D

Source: Sarawak Report. 2011. <http://map.sarawakreport.org/data.html>

This land was acquired in May 2007 directly by BJ Corporation, for the price listed according to both the leaked Land and Surveys Department data and the Annual Report for 2007. The price per hectare for this transaction was approximately MYR 740 MYR or USD \$218 – far below the market value already established by independent valuation experts.<sup>573</sup> BJ Corporation annual financial reports indicate that, in February 2007, the land was revalued by Donald Lam Joon Omn of Rahim & Co. Chartered Surveyors, and found to be worth MYR 18,216,905, or approximately MYR 3,800 or USD \$1,121 per hectare.<sup>574</sup> This means that, even before the allocation of the land by the Land and Surveys Department, the land's true value had been evaluated and found to be worth five times what the Sarawak government sold it for to BJ Corporation. Publicly available documents at SSM for BJ Corporation do not indicate why the price of acquiring the land was only 20 percent of its true value.

During January 2008, a host of new directors came on board at BJ Corporation Sdn. Bhd.: Graeme Brown, Alex Ting Kuang Kuo @ Ting Kwang Kuo, and Thye Hwee Yan (who resigned one day after his appointment).<sup>575</sup> The previous directors resigned at that same time, and Arus Plantation became a 90 percent owner of the BJ Corporation – equivalent to the shareholding percentage no longer held by previous directors and individual shareholders – by June 2008.<sup>576</sup>

The revaluation of the land in 2007 provided the basis for two important financing opportunities, which BJ Corporation secured based on this same land lease holding over the next several months: a loan worth MYR 41,200,000 from Malayan Banking Berhad secured for BJ Corporation on August 20, 2008 affecting Lot 20, Dulit Land District; and a share issuance of 18,216,905 based on the same revaluation, in 2009.<sup>577</sup>

Of these new, issued and paid-up shares in BJ Corporation valued at MYR 18,216,905, Arus Plantation was issued 16,485,215 (90 percent) and Keresa Plantations was issued 1,831,690 (10 percent).<sup>578</sup> However, Arus Plantation and Keresa Plantations did not pay cash for these shares; rather, BJ Corporation's new Directors "capitalised a sum of [MYR] 18,216,905 from the Asset Revaluation Reserve Account arising from the revaluation of the Company's landed property and the same applied towards

payment in full."<sup>579</sup> Therefore, the new directors of BJ Corporation used their knowledge of the true value of BJ Corporation's land to issue the new, paid up shares. This allowed related companies, Arus Plantation and Keresa Plantations, to acquire ownership in the company and its land holdings, without paying cash for shares or the true value of the land.

By the end of 2009, through the swaps in shares of BJ Corporation and Arus Plantation between Keresa Plantations and Asian Plantations Ltd. in Singapore, as mentioned in the section above, the ultimate holding (parent) company of BJ Corporation and its land holdings had become Asian Plantations Ltd., with the immediate holding company being Arus Plantation.<sup>580</sup>

This complicated and murky land acquisition and takeover process by related actors in the same group made it difficult to understand who was responsible for the massive deforestation that followed the acquisition of this land by Asian Plantations Ltd. Using satellite imagery,<sup>581</sup> EIA cross referenced the plantation areas for BJ Corporation as referenced by Asian Plantations Ltd. in their report to shareholders published May 2013, and identified huge swaths of clear-cutting of natural forest in Sarawak between 2008 and 2013.<sup>582</sup>

## ARUS PLANTATION (APS1) AS INTERMEDIARY

Prior to its acquisition by Asian Plantations Ltd., Arus Plantation's parent company was Keresa Plantations Sdn. Bhd., with its ultimate parent company being Rajang Wood Sdn. Bhd.<sup>583</sup> However, additional shareholders appear in the latest available shareholder detail prior to this transaction, in APS1's Annual Return from June 30, 2009: Leonard Linggi (10 percent), Graeme Brown (5 percent), and Asian Palm Oil Ltd. (30 percent), a company registered in the British Virgin Islands, owned in equal halves by Graeme Brown and Dennis Melka.<sup>584</sup>

Already an owner of 90 percent of BJ Corporation, Arus Plantation acquired the remaining 10 percent worth of shares in BJ Corporation from Keresa Plantation Sdn. Bhd., its own immediate holding company at the time.<sup>585</sup> BJ Corporation Sdn. Bhd., became a fully owned subsidiary of Arus Plantation Sdn. Bhd. on November 2, 2009, less than one month

before Asian Plantations Ltd.'s initial public offering.

On November 9, 2009, one week after BJ Corporation became fully owned by Arus Plantation, shareholders of Arus Plantation entered into a direct share swap agreement for shares in Asian Plantations Ltd., with the result that Arus Plantation became a fully owned subsidiary of Asian Plantations Ltd., registered on October 2009 in Singapore.<sup>586</sup> In return, Keresa Plantations became a major shareholder in Asian Plantations Ltd.<sup>587</sup>

Additionally, Arus' audited financial information<sup>588</sup> demonstrates that the parent companies, Keresa Plantations and Rajang Wood, had injected MYR 20,259,998 into Arus Plantation in 2007, equivalent to US \$6,732,141 according to average exchange rates for 2007<sup>589</sup> and adjusted for inflation.<sup>590</sup> This investment was paid back to the parent company via an issuance of shares to Keresa Plantations in Arus Plantation, equivalent to the amount advanced.<sup>591</sup>

Financing from Arus Plantation's parent companies, Rajang Wood and Keresa Plantations, thus kick-started the development of Asian Plantations Ltd. business model in Sarawak, Malaysia, via share swaps and direct financial transfers to and with Arus Plantation and its fully owned subsidiary plantation, BJ Corporation.

The presence of an existing land lease and local financing for planting of oil palms, through ownership of and loans to BJ Corporation, made an important financial case for the Singapore-based Asian Plantations Ltd.'s entry onto the AIM market. Investors make decisions about share purchases based on and assessment of a company's viable land holdings (in the agriculture sector), capital, and corporate structure prepared to mobilize potential shareholders' investment, which in this case came from revaluation of land acquired from the Sarawak government at a below-market value price and the injection of capital from companies linked to politically-motivated land handouts for timber and plantation land. Subsequent shareholder investment in Asian Plantations Ltd. contributed capital for further land acquisitions and deforestation via a complex network of holding companies, transfers, and physical plantations in Sarawak itself.



Fully owned by Asian Plantations Ltd. from 2010 until the latest available records, Asian Plantations (Sarawak) Sdn. Bhd. went on to acquire two additional land holdings, via Incosetia Sdn. Bhd. and Fortune Sdn. Bhd., and also set up an oil palm mill, Asian Plantations Milling Sdn. Bhd., between 2009 and 2014. EIA identified a similar, if not identical, pattern of deforestation and acquisition of land for below market rates for Asian Plantations Ltd.'s other holdings in Sarawak, including immediate holding companies, APS2 and APS3, as well as the four other plantation estates which Asian Plantations Ltd. acquired. These transactions and related deforestation are discussed in further detail in report annexes.

## **A PATTERN OF MISSING RECORDS**

In 2009, the same group of individuals directing Arus Plantation, or APS1, (Linggi, Brown, and Melka) created Asian Plantations Ltd. in Singapore; went public on AIM; and acquired an initial land holding for oil palm plantation development, BJ Corporation Sdn. Bhd.<sup>592</sup> The annual financial records for APS1 are missing from the Malaysia Companies Commission (SSM) for 2009.<sup>593</sup> Annual financial records are complete for years prior to and after 2009.

Documents from before and after 2009 demonstrate that the combination of companies and individuals who owned APS1 prior to Asian Plantations Ltd.'s public launch (Keresa Plantations, Leonard Linggi, Graeme Brown, and Asian Palm Oil Ltd. (BVI)), morphed to consolidate ownership of APS1 in Asian Plantations Ltd. prior to the launch.<sup>594</sup> The details about how these ownership changes were transacted are unavailable, because of the missing records.

Another notable gap is in Asian Plantations Ltd.'s subscription documents to AIM, dated November 24, 2009: the documentation does not include financial statements for BJ Corporation at the time when it acquired the

plantation land, in late 2007, and when Arus acquired BJ Corporation, on December 31, 2007.<sup>595</sup> The AIM launch document includes audited financial documentation for Arus plantation for years 2007 and 2008, but information about BJ Corporation only covers 2006.<sup>596</sup> This means that from the AIM launch documentation, it is not possible to know how, and at what price, BJ Corporation and its land holding were acquired without further information about BJ Corporation's financial records from that time. Without clear documentation of land acquisition practices, prices, and values of its subsidiaries in Malaysia, Asian Plantations Ltd. AIM Subscription documents do not show a complete picture of company financials to potential investors.

The absence of an Annual Report from Arus Plantation (APS1) for the year 2009 in SSM records also means that the specific transaction via which Asian Plantations Ltd. became full owner of APS1 is not available in audited financial statements. However, the AIM Subscription document, which the London Stock Exchange rules required Asian Plantations to publish, shows how Rajang Wood and Keresa Plantations played a central role as shareholders and financiers of the land acquisitions.<sup>597</sup>

## 3.6 ASIAN PLANTATIONS LTD.'S MODEL OF INTERNATIONAL FINANCING FOR OIL PALM

Unlike Keresa Plantations, which financed its operations from bank loans in Malaysia and timber extraction (see Section 3.3), Asian Plantations Ltd. raised significant international capital on the London Stock Exchange's Alternative Investment Market (AIM).<sup>598</sup> Asian Plantations Ltd.'s document for admission to this exchange described AIM as a "market designed primarily for emerging or smaller companies to which a higher investment risk tends to be attached than to larger or more established companies," noting that "[t]he rules of AIM are less demanding than those of the Official List of the United Kingdom Listing Authority."<sup>599</sup>

Indeed, in that same document, various risk factors are outlined for potential investors in Asian Plantations Ltd., including "environmental risk," "expansion risk," "native claims," and the "Sarawak land code" which "contains restrictions on foreigners (non-Malaysian persons and companies) from owning land in Sarawak."<sup>600</sup> The document states that classification of the land as "mixed zoned land" by the Sarawak government means that its land is not part of any land designated as native

customary rights land, but that "native claims could, however, exist."<sup>601</sup>

At the time of Asian Plantations Ltd.'s launch on the London Stock Exchange, Melka held a 50 percent share in two offshore corporations located in the British Virgin Islands: Asian Palm Oil (BVI) Limited and Asian Forestry Holdings (BVI) Limited. Graeme Brown owned the other 50 percent of these companies. These two companies held shares in Asian Plantations Ltd. from as early as its launch on the Alternative Investment Market of the London Stock Exchange (in 2009)<sup>602</sup> until as late as August 2014, just before the company's sale.<sup>603</sup> East Pacific Capital Ltd., a company wholly owned by Dennis Melka<sup>604</sup> and registered at the same address as Asian Plantations in Singapore, held shares in Asian Plantations Ltd. for the same period.

One of Asian Plantations' key investors during its first years of public trading on AIM, Asian Agri Capital, which is registered at the same address as Asian Plantations Ltd.'s Singapore offices, gained 104 percent return on investments in 2010, most notably from its investments in Asian Plantations Ltd.<sup>605</sup> The fund

then went on to change its name to Pacific Agri Capital<sup>606</sup> and in 2011 announced plans to invest \$50 million in oil palm, cacao, and rubber plantations in Peru.<sup>607</sup>

In March 2012, Asian Plantations Ltd. became an Ordinary Member of the Roundtable on Sustainable Palm Oil,<sup>608</sup> although the RSPO website does not indicate that the company ever became RSPO certified by undergoing audits for compliance. Despite clear links between the initial financing and land allocation from corrupt actors in the company's corporate documents, and the use of clear-cutting as shown in satellite imagery, the membership of both Keresa Plantations Sdn. Bhd. and Asian Plantations Ltd. in the RSPO have served as a marketing point for the company to international investors.<sup>609, 610</sup>



# OFFSHORE TAX HAVENS: A MONEY MAGNET FOR AGRIBUSINESS.

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Jurisdictions with lax tax laws and low requirements of disclosure of financial transactions, such as Singapore and the Cayman Islands, while often used by legitimate businesses, are often used to hide illicit financial flows, allow for deliberate trade misinvoicing<sup>611</sup> to disguise profits as costs, and avoid taxes that could otherwise contribute to development in poor countries.<sup>612</sup>

Although all its subsidiary holdings are physically located in Malaysia, Asian Plantations Ltd., is registered in Singapore, a notorious tax haven and secrecy jurisdiction ranked fifth globally in the 2013 Financial Secrecy Index.<sup>613</sup> Pacific Agri Capital (formerly called Asian Agri Capital), which manages an “Asian Agriculture Fund” with the sole purpose of financing Asian Plantations Ltd., listed the same address as Asian Plantations Ltd. in Singapore on its website until 2013.<sup>614</sup> (Pacific Agri Capital Ltd. has also set up locations in Bogotá, Colombia and the Cayman Islands.)<sup>615</sup>

## FINANCIAL MODELS IN SARAWAK MIRRORED IN PERU

The complicated corporate web built by Asian Plantations Ltd., including a multi-level ownership structure, makes it difficult to track relationships and transactions between the related companies. This structure also obstructs transparency or knowledge of palm oil concession ownership and therefore who is responsible for deforestation when it occurs. It appears that a similar structure is being used in the creation of an even more complex web of agribusiness subsidiaries in Peru, via United Cacao Ltd. and United Oils Ltd., both registered in the Cayman Islands. EIA's analysis of the investment and ownership structure of United Cacao Ltd. and United Oils Ltd., shows they are using a similar model to the one employed by Asian Plantations Ltd. in Sarawak. Both groups use offshore financial centers made to establish parent companies for subsidiaries whose profits come from land-based agricultural investments..

## SINGAPORE

Singapore is expected to overtake Switzerland as the world's largest offshore wealth center by 2020.<sup>616</sup> The Banking Act in Singapore allows criminal prosecution and jail time for revealing information about a company's corporate relationships, and the country has built strong barriers against tax authorities searching for untaxed profits leaking from companies and individuals in neighboring South East Asian nations, including Malaysia.<sup>617</sup> Having headquarters in Singapore benefits companies in multiple ways due to its attractive tax incentives for corporate actors, including a full tax exemption for foreign-sourced income received by individuals who do not reside in Singapore.<sup>618</sup>

Behind only China, Russia, Mexico, and India, Malaysia ranks fifth on the global list of “Illicit Financial Outflows from Developing Countries.”<sup>619</sup> Based on averaged data from 2003-2012, the list shows an average of approximately \$39 billion USD leaving Malaysia annually (more than 10 percent of the country's gross domestic product)<sup>620</sup> with a total of more than \$394 billion USD illicitly leaving the country during that period.<sup>621</sup>

In 2013, an undercover investigation by Global Witness revealed in detail how land and forestry concessionaires in Malaysia used Singapore for business deals in order to illegally avoid paying the Malaysian Real Property Gains Tax on land transactions, and to circumvent other laws that prevent foreigners from controlling land in the country.<sup>622</sup> Malaysia also has laws restricting the flow of Malaysian Ringgit and foreign currency transactions and payments,<sup>623</sup> which developing countries often put in place to avoid outflows of wealth, and to encourage re-investment of profits domestically.

Until its sale in late 2014 to Felda Global, several of the beneficial owners of Asian Plantations Ltd. and its shareholders were Malaysian companies and individuals linked to Asian Plantations Ltd.'s subsidiaries in Malaysia; Asian Plantations Ltd.'s major shareholder, Keresa Plantations Sdn. Bhd.; and Keresa Plantations' parent company, Rajang Wood Sdn. Bhd.<sup>624</sup> EIA found evidence of dozens of transactions per year between Asian Plantations Ltd.'s subsidiaries in Sarawak, Malaysia and with the Singapore-based company.<sup>625</sup> However, largely due to Singapore's corporate secrecy laws, further evidence of whether Asian Plantations Ltd.'s transactions were illegal, or simply exploited due to easy tax loopholes, is uncertain. However, the business model of obtaining profits in resource-rich, forested countries, while declaring profits in offshore financial jurisdictions with major tax loopholes, is common of both Asian Plantations Ltd. in Sarawak and more recently, United Cacao Ltd. in Peru.

## CAYMAN ISLANDS

Still an Overseas Territory of the United Kingdom, the Cayman Islands are ranked fourth (just ahead of Singapore) in the Tax Justice Network's Financial Secrecy Index (2013).<sup>626</sup> The Cayman Islands collect no direct taxes, and are notable for tolerance of tax avoidance, allowing corporations and individuals to hold accounts and funds there in order to avoid paying taxes on income or corporate profits from another jurisdiction.<sup>627</sup> Further, the Cayman Islands do not maintain company ownership records, and the law dictates penalties for not only revealing, but asking about company ownership details by unauthorized parties.<sup>628</sup> UK news outlet the *Guardian* has reported on the use of the Cayman Islands, and other UK-linked jurisdictions such as British Virgin Islands and Bermuda, by forest and palm oil conglomerates from South East Asia to hide fraudulent accounting practices.<sup>629</sup>

In United Cacao Ltd.'s subscription to the London Stock Exchange's Alternative Investment Market (AIM), the company lists several favorable tax conditions for its corporate residence in the Cayman Islands.<sup>630</sup> In addition to the lack of "income, corporation, capital gains or other taxes in effect in the Cayman Islands," the company notes that it has received an "undertaking from the Governor-In-Cabinet of the Cayman Islands dated 19 June 2013."<sup>631</sup> This agreement between United Cacao Ltd. and the Cayman government states that any tax laws enacted in the next 20 years in the Cayman Islands will not apply to United Cacao Ltd., and that the Cayman Islands will not tax "the shares, debentures, or other obligations of the company," and that taxes will not be payable "by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Company to its members or dividends."<sup>632</sup> In short, United Cacao Ltd. has made a concerted effort to avoid taxes on profits of the company

in its place of residence, the Cayman Islands, even though operations of United Cacao Ltd.'s subsidiaries all take place in the Peruvian Amazon.<sup>633</sup> As of its admission to AIM, assets held by United Cacao Ltd. in the Cayman Islands are 15 times greater than the assets held in Peruvian banks.<sup>634</sup> Most recently, as of June 2014, total assets of United Cacao Ltd. were listed at \$8,694,524, USD while assets held in Peruvian banks (in USD and PEN) held the equivalent of \$552,812 USD.<sup>635</sup>

This report lays out EIA's detailed analysis of company-published documents and information gained about agribusiness companies via public records requests in Peru and Malaysia. This evidence gives a unique view into the operations of agribusiness companies with primary operations in developing countries—rich with forests—and headquarters in known tax havens and secrecy jurisdictions. United Cacao Ltd. is connected to illegal deforestation in Peru, and Asian Plantations Ltd. is linked to politically-motivated land handouts in Malaysia.<sup>636</sup> Profits from these companies' activities in forested countries are entering the international marketplace through their parent companies, in offshore jurisdictions, which are publicly listed on the AIM of the London Stock Exchange.<sup>637, 638</sup>

As a development model, natural resource extraction is not likely to bring many benefits to developing countries as long as corporations around the globe are allowed, under national laws, to hide profits from land investments, forest clearance, and commodities production in offshore jurisdictions. Until further scrutiny of and transparency about this major black hole in global finance is required on a consistent and international scale, developing countries will continue to fight an uphill battle to attract sustainable investments that can provide much needed development.



## LACK OF TRANSPARENCY IN GLOBAL MARKET

The international financing model outlined here demonstrates a cascading flow of capital for the acquisition and expansion of plantation land in remote areas of the planet, where corruption and transparency remain a challenge. The massive allocation of land and forests for less than fair market value and without public transparency constitutes, in essence, theft of resources that should be for the benefit of all a nation's citizens—especially those which depend directly on land and forests for their livelihoods.

Selling land for less than fair market value which is revalued at a higher rate, as the pattern in this report indicates, benefits a few, well-connected power players, and contributes minimally, if at all, to overall economic development. Companies that, even indirectly, engage in business with politically-connected individuals and companies that benefit from behind-the-scenes land handouts, show that they are willing to overlook economic injustice, land rights, and the protection of natural resources crucial to survival, in the name of corporate profits.

The use of a complicated ownership structure that employs a web of holding companies, subsidiaries, and investment funds located in offshore tax havens, greatly thwarts public scrutiny of land deals and deforestation. In a global context in which major corporate traders of oil palm, as well as consumer goods companies, have made commitments to zero-deforestation and zero-exploitation for palm oil in their supply chains, the common use of complex, multi-national corporate structures, without clarity about land locations and ownership, makes monitoring ongoing deforestation and potential rights violations a challenge. The purchase of a company previously involved in deforestation by new actors, or the transfer of recently-deforested land between companies, should not be an acceptable basis for deforestation-free claims by suppliers, traders, or other downstream companies. Without accountability on the ground for deforestation, past and present, supply chain linkages purporting to showcase sustainable, ethical sourcing carry little meaning.

Keresa Plantations' switch from rattan to oil palm plantations, later claiming that their land had already been deforested before oil palm operations began, shows that sustainable supply chains must not be limited to one sector. As land holdings, themselves, increase in value, while commodities prices shift on global markets, the value of the commodity grown could easily drop relative relevance to the value of the land itself. Commitments to sustainable commodities in some sectors will not deter companies from the search for cheap, desirable farmland and market access in other sectors. Land and forest governance should be prioritized by national governments and by investors who truly desire sustainably-sourced commodities.

National governments also have an important role to play in regulating companies' actions in their country. At a minimum, corporate records about land holdings, corporate ownership, investors, and operations should be available through simple processes to the public, without charge. Missing filings should not be tolerated, and penalties for breaking transparency and records laws should be strong enough to significantly deter non-compliance. Transparency about corporate operations and profits will allow the public to better analyze sustainability claims and the potential benefits brought by corporations that profit from resource extraction.

Above all, the global marketplace must not consider land and governance failures in the developing world to be irrelevant to capital raised on international stock exchanges. Without proper transparency and safeguards against disastrous practices like clear-cutting and politically motivated land handouts, international capital investment in agribusiness will only exacerbate forest destruction and land rights violations, while emboldening local power-players content to enrich themselves by capitalizing from collective resources relied on by land and forest dependent peoples around the world.

# SOCIAL AND ENVIRONMENTAL IMPACTS OF TROPICAL TIMBER PRODUCTION AND FOREST DEGRADATION

Healthy forest ecosystems are central to maintaining biodiversity, storing climate-changing carbon, and keeping soils and waterways robust. The selective removal of large trees decreases sources of fruit and nuts, as well as habitat for humans and many forest species.

By 1986, a combination of logging and forest clearance, primarily for oil palm plantations, had affected at least 30 percent of Borneo forests.<sup>639</sup> After experiencing decades of logging and palm expansion, by 2010, about 30 percent of the island's forests had been cleared outright.<sup>640</sup> Of the areas on the island, Sarawak had the highest density of logging roads by 2010.<sup>641</sup> Trends over the last two decades have seen an acceleration of clearance: over half of carbon-storing peat swamp forests were lost between 2000 and 2010 in Sarawak.<sup>642</sup>

After decades-long degradation of forests by industrial-scale logging and clearance for oil palm plantations in Sarawak and Sabah, these states only retain three and eight percent respectively, of intact forests under protection. The extent of forest degradation in Malaysian Borneo conveys exploitation well in excess of the 60-year rotation recommended in forest management plans.<sup>643</sup>

As detailed in research by scholars and activists around the world, the felling of Sarawak's forests has benefited a small number of elite actors with powerful political and economic connections. The most infamous, Taib Mahmud, ruled as Sarawak's Chief Minister from 1981 to 2014, and held government positions from the time of Malaysia's independence in 1963.<sup>644</sup> In 2011, national media reported that the Malaysian Anti-Corruption Commission had launched an investigation related to evidence showing Taib's use of government power to award timber and land concessions to political allies in return for their allegiance (a practice coined "timber corruption").<sup>645</sup> In 2013, Global Witness released evidence of bribes paid in exchange for land and forestry concessions among a tight network of Sarawakian power players—headed by Taib himself.<sup>646</sup> By 2014, so much controversy around Taib's massive wealth had gained while he was holding government office that he was forced to step down from his Chief Minister position and he assumed the role of Governor of Sarawak.<sup>647</sup>

Unsustainable timber extraction practices coupled with a massive expansion of oil palm plantation development—and thus deforestation—are threatening to demolish all forests in Sarawak and Sabah.<sup>648</sup> Conservation organizations are arguing that the government should make it a priority to avoid conversion of logged forests to oil palm plantations.<sup>649</sup>

## PALM OIL IN MALAYSIA

Despite massive exploits of high-value timber in the recent past, many of Sarawak's forests still provided non-timber forest products and livelihood generating activities for communities, as well as canopy cover for biodiverse forest ecosystems, until promotion of palm oil plantation development at the national level facilitated a new wave of land handouts. For local communities, the expansion of palm oil has further threatened their land and resource rights.<sup>650</sup>

Around the turn of the 21st century, the Malaysian palm oil industry exploded. In 2000, the central government in Malaysia created a specialized government agency mandated to drive growth in production and to "promote the use, consumption, and marketability of oil palm," the Malaysian Palm Oil Board (MPOB).<sup>651</sup> By 2005, the land under cultivation for palm oil was estimated at 4.2 million hectares.<sup>652</sup>

Malaysia produced over 20 million metric tons of palm oil annually as of 2014, according to the United States Department of Agriculture, second globally only to its neighbor Indonesia.<sup>653</sup>

In Sarawak, the country's largest state, land for palm oil plantations can be obtained more cheaply than in Sabah or Peninsular Malaysia. By 2014, acquisitions of developed agricultural land (or brownfield) were valued at 17,500 to 25,000 Malaysian Ringgit (MYR) (\$5,250 to \$7,500 USD<sup>654</sup>) per hectare, while undeveloped (or greenfield) land requiring more investment was valued at MYR 12,500 to 17,500 per hectare (\$3,750 - \$5,250 USD), according to industry news reports.<sup>655</sup> Land in neighboring Sabah and in Peninsular Malaysia, where much of the area available had already been allocated, was valued at three to four times those amounts.<sup>656</sup>

Satellite imagery analysis has suggested that on the entire island of Borneo, industrial agriculture now covers about 10 percent or more than 73,000 km<sup>2</sup> (7,300,000 ha) of the land area.<sup>657</sup> The forest area loss has been concentrated in the elevations lower than 1000 m on the island, with over 21,000 km<sup>2</sup> (2,100,000 ha) of forest loss documented between 1973 and 2010 in Sarawak alone.<sup>658</sup>

## IMPACTS ON LOCAL COMMUNITIES

Deforestation for industrial oil palm development has devastated resources upon which Sarawak's traditional inhabitants, rural communities of various ethnicities which reside in the state's interior, depend. Studies have documented that on average 15 percent of the species found in natural forests are found on palm plantations,<sup>659</sup> so animals that communities hunt for protein, and plants used traditionally for food are much harder to find.<sup>660</sup> Erosion from logging and plantations has also led to contamination of water sources, and native fishermen have reported that fish stocks have plummeted.<sup>661</sup>

Many traditional communities in Sarawak have lost out, as companies were permitted to establish plantations on their land without their consent—sometimes destroying small community farms without notice or compensation.<sup>662</sup> Without pre-existing, legally recognized land titles to community farms and forests, native customary rights claimants must navigate lengthy and costly court battles against powerful corporate actors.<sup>663</sup>

Harmful social and environmental impacts of agribusiness expansion for palm oil across Sarawak, the country of Malaysia, and South East Asia in general, have been well documented and widespread.<sup>664</sup> Now, countries and regions outside of industrial oil palm's traditional center in South East Asia are witnessing new capital and investments for industrial-scale palm oil. Projected demand for palm oil could require up to seven million hectares of additional production,<sup>665</sup> and investors are looking to Africa's Congo Basin<sup>666</sup> and Latin America<sup>667</sup> as potential expansion areas.

# CONCLUSION

The investment thirst for new lands, the incentives to grow and sell palm oil, and Peru's announcements that there is "land to be had" in the country is drawing agribusiness to the Amazon. The tragedy of this draw is environmental destruction, including deforestation in one of the world's most biodiverse regions. As cultivation of this highly valued and sought after global commodity shifts from its traditional production centers in Southeast Asia, few countries have in place adequate legal frameworks and enforcement capacity to respond to this new and significant threat but are nonetheless seduced by promises of rural development and economic growth. The history of palm oil expansion, more often than not, however, tells a very different story.

The same corporate actors that have decimated Malaysian forests are now pursuing forested land in Peru. In Malaysia, logging companies operating forest concessions, given by politicians to curry favor with local ethnic leaders<sup>670</sup> subsequently funneled their profits from harvesting and selling tropical timber<sup>671</sup> into oil palm plantations.<sup>672</sup> Start-up capital for palm plantations<sup>673</sup> was then used to purchase new land and clear forests, as the logging companies channeled investment into new sectors.<sup>674</sup> The massive allocation of land and forests for cheap and without public transparency that occurred in Malaysia, is in essence, theft of resources that should be for the benefit of all the nation's citizens, especially those that depend directly on land and forests for their livelihood.

With this precedent set in Malaysia, oversight and enforcement in Peru's expanding palm oil sector is critical. Palm oil operations in the country are growing at an alarming rate, yet the Peruvian government lacks the effective power to enforce laws and regulations, even when illegalities are documented and denounced. The Peruvian government currently does not seem to have the capacity to evaluate, manage and monitor large-scale agriculture projects and should refrain from

approving new projects until it develops the internal capacity to monitor and effectively enforce national laws and policies.

This does not mean that all government actors lack the will or the commitment to affect change. On the contrary, progress can be made and some efforts are underway to strengthen capacity, and improve upon and enforce laws.

In December 2014, the Ministry of Agriculture published their Guidelines for Agrarian Policy (*Lineamientos de Política Agraria*)<sup>675</sup> with the goal of streamlining procedures, and helping national and regional offices to understand and implement the national priorities for land use. The first three guidelines are directly related to forests: Sustainable management of water and soil; Forestry development; and Legal security over the land.<sup>676</sup> The guidelines represent an important advance in that they prioritize forest management, a subtle yet critical shift away from the historical promotion of agriculture at the expense of forests.

At the moment, the way in which large national and foreign agribusinesses in Peru are allowed to remove forest and replace it with monoculture commodity crops such as palm oil, is through a skewed interpretation of the forest definition as established in Peruvian law. The Peruvian authorities are using the Best Land Use Classification (BLUC) regulations - which only consider soil and climate, and not the trees on top of the land - as the only way to officially define forests. If a private investor submits a BLUC study arguing that the soil under the forest they are considering for development has some agricultural capacity, the trees can be removed and the government does not call this deforestation. The current BLUC practice also means that about 20 million hectares of Peruvian forests that have not been classified yet by the government, are at risk of being deforested. If a private investor submits a BLUC study arguing that the soil under the forest they are considering for development

has some agricultural capacity, the trees can be removed and the government does not call this deforestation.

While there is some hope in Peru's new Forest and Wildlife Law (29763), particularly related to the relation between forest definition and the Best Land Use Classification (BLUC), there are also new risks. Forest Law 29763 attempts to clarify that BLUC applies only in specific cases, and is not to be relied upon for defining forests. Although still only text in the law, it has the potential to limit government reliance on BLUC studies in defining forests and determining activities to be carried out in them. This change may help deter future deforestation in the Amazon. However, the Peruvian environmental law organization Derecho Ambiente y Recursos Naturales (DAR) has warned<sup>677</sup> that Forest Law 29763 allows for "elimination of forests for agro-development activities, such as palm cultivation, if it is shown that the lands where said forests grow have agro-production capacity, which is provided for through a process called 'Authorization of Soil Use Change' that allows for elimination of up to 70 percent of trees in a specific area..."<sup>678</sup> The most dangerous issue, according to DAR, is article 38 of Forest Law 29763, since it opens the window for land use change for lands of public domain (*dominio público*) without solving pending land titling and land zoning issues, and does not clarify the capacity and attributions of relevant institutions.<sup>679</sup>

To some extent, Peru is experiencing a moment of opportunity as the authorities who approved irregular documents or ignored mandatory procedures at the national level have been replaced. At the regional level, in Loreto, a new administration took office in January 2015. Where there is change, there is the chance for improvement. Yet the conflicts and uncertainties between the national and regional governments must be resolved. A clear chain of authority for deciding over which land and under which criteria agro-industrial projects will be approved, and when



and how national land will be allocated for such projects must be established. Until this happens, companies like the Melka Group or the Grupo Romero, will be able to take advantage of institutional weaknesses and destroy national resources.

As discussed in this report, plans for four Grupo Romero palm oil projects show that they will result in illegal deforestation of more than 20,000 hectares of primary forests<sup>680</sup> (See Section 1: Grupo Romero). This deforestation would be an open violation of the current Forest and Wildlife Law, and a violation of Supreme Decree 015-2000-AG. Likewise, at least two of the projects will fail to meet the 30 percent reserve requirement that companies must abide by when developing on forested land (See Section 1.2).<sup>681</sup>

Penalties for non-compliance with mandatory requirements must be appropriately significant to dissuade similar actions in the future. Minor fines or sanctions for egregious violations risk becoming a perverse incentive, encouraging companies to not follow the law and then simply pay a minor fine for land that they would not have otherwise been able to acquire or deforest to install their plantations.

Leading government officials and the new administration in Loreto have the great opportunity of not only ending impunity in the cases highlighted in this report, but protecting vast tracts of existing forests that remain vulnerable to the Melka Group's actions.

The Melka Group has already requested from the government another 96,192 ha of public Amazon land for thirteen additional agro industrial projects.<sup>682</sup> Due to limited access to information, EIA has been able to map only five of those projects: 45,130 hectares of forested land for five additional oil palm projects between the Tamshiyacu and Maniti rivers, in the Fernando Loes province, in the Loreto region.<sup>683</sup> As the map on Figure 7 shows, the mapped projects border Permanent Production Forests – natural forests determined by the state to hold

value as standing forests.<sup>684</sup> Satellite analysis documents that the deforestation in the area targeted for development thus far has been minimal and most of the area remains primary forest (Figure 7a).<sup>685</sup>

Given the illegal deforestation already conducted by the Melka Group and its resistance to follow the law in spite of legal processes and requests from different national and regional authorities, no new land should be granted to these companies until past violations have been resolved and assurances have been put in place that there will be no repeat of those or other violations in the proposed projects.

In a global context in which major corporate traders of oil palm, as well as consumer goods companies, have made commitments to zero-deforestation and zero-exploitation for palm oil in their supply chains, the common use of complex, multi-national corporate structures, without clarity about land locations and ownership, makes monitoring ongoing deforestation and potential rights violations a challenge. The purchase of a company previously involved in deforestation by new actors, or the transfer of recently-deforested land between companies, should not be an acceptable basis for deforestation-free claims by suppliers, traders, or other downstream companies. Without accountability on the ground for deforestation, past and present, supply chain linkages purporting to showcase sustainable, ethical sourcing carry little meaning.

What occurred in Malaysia, sale of State lands at below market value and subsequent logging and palm expansion is tantamount to the theft of public goods, goods that could have benefited all people in Malaysia. In Peru, land is allocated in violation of national legislation for agribusiness expansion. To do any less than prosecute companies that violate the law and stop them from repeat offense, is to expose Peru's national forest patrimony to rampant illegality and ultimately deforestation. When it comes to the Amazon, the cost is simply too high, the victims too many, for Peru not to act.

# RECOMMENDATIONS

## FOR THE GOVERNMENT OF PERU:

### Strengthen land use policy:

- The General Directorate of Environmental Affairs (DGAAA) should create and publish a map of lands classified by best land use capacity (*capacidad de uso mayor*). This is a critical tool for making decisions regarding titling processes, land adjudication, land use change authorizations, and ecological and economic zoning.
- The national government must allocate resources to finalize the Economic and Ecological Zoning (ZEE) in Amazon regions, regions where palm oil expansion is planned and taking place, which includes Ucayali and Loreto. This process can help identify already deforested areas that may be suitable for agriculture, or other uses in the future. The ZEE process should be a participatory one, and its results should be published to help ensure civil society has access to information necessary for monitoring land use in these regions.
- The government must adhere to the definition of forest patrimony found in the Peruvian Forestry Law, and not disregard forest cover when making decisions about land use capacity and land use change.
- Current authorization for land use change is dependent upon the best land use classification. If land is classified as appropriate for pastures or agriculture, the land use change is approved. Once legislation is modified to include forest cover in the best land use classification process, the government should then require field visits by the competent authorities (DGAAA) to areas under consideration for land use change. Such field visits are key to ensuring that all information in requests (*expedientes*) is true. Without field verification, protected areas and forested lands are, and will continue to be, deforested.

### Guarantee the enforcement of Peru's environmental law and respect for the rights of affected populations through the Environmental Impact Assessment process:

- The Peruvian Government should make field verification a required step in the Environmental Impact Assessment (EIA) evaluation process. Before any detailed or semi-detailed EIA is approved, officials from DGAAA should make field visits to corroborate information provided to them in writing by the companies or individuals requesting the land and their consultants.
- Public hearings should be held during the EIA process at the local, regional and national levels, and prioritize outreach to civil society actors. This will allow civil society and affected communities to provide critical input and observations to authorities. Currently, DGAAA issues official observations before public hearings are held, making it impossible for public observations to be taken into consideration or adequately included in the DGAAA's observations in the EIA process.
- Public comments must be solicited and included as official comments on EIAs.
- Opinions issued by the National Forest Service (SERFOR) must be classified as binding opinions in both the detailed and semi-detailed EIA process. Currently, the Forest Authority's opinions are non-binding and therefore EIA's can be approved without input from the SERFOR.
- The Minister of Agriculture and Irrigation has said that the approval of the EIA is a prerequisite to authorization of land use change for agro-industrial projects, and all other agrarian activities that must secure environmental certification. The government must reinforce this interpretation of the law and be vigilant about enforcing this process.
- If land has been illegally cleared for agricultural development, all operations on that land should cease, and an assessment of how to best restore the land should be undertaken, with broad civil society consultation.

### Ensure enforcement of the Forestry and Wildlife Law:

- The government must insist on full application of the 30 percent reserve requirement, which is established in Law 27308 (The Forest and Wildlife Law) and requires that at least 30 percent of any forested area intended for conversion must be set aside as "reserve" land. Ideally reserves should be established to create biological corridors, avoiding piece meal reserves across conversion lands in the Amazon.

### Promote transparency:

- Governments should collect information on the identity of people who own and control companies, and basic information on beneficial ownership should be shared by companies with all competent authorities in the country where they are operating and/or investing.
- Publish information about illegally cleared land, so that investors can avoid proposing projects in those areas and carry out due diligence in their supply chains.

### Protect the rights of local and indigenous communities to preserve their traditional territories through effective land titling:

- The government must prioritize the land titling and recognition process of the 20 million hectares of land currently claimed by native communities in the Amazon. Secure title and full recognition of Indigenous land rights in the Amazon is currently the single most effective step to controlling illegal deforestation and illegal expansion of oil palm and other agro-industrial crops in the region.

### Fully comply with obligations under international law to protect the rights of citizens and communities impacted by development projects:

- Small holder palm oil production may represent a viable sustainable development opportunity for rural communities, but only

when investments in palm oil projects ensure formal recognition of land rights and are carried out in consultation with local and Indigenous communities according to the International Labor Organization Convention No. 169. In order to comply with its obligations to provide free, prior and informed consent to communities affected by development projects, the Peruvian government must “take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories [that indigenous and tribal peoples] inhabit.”<sup>686</sup> In addition to following the Peruvian law on prior consultation of Indigenous communities, the Peruvian government must employ a results-oriented approach that ensures these communities’ rights to self-determination, political participation, access to justice, culture and cultural identity, communal ownership of their traditional territory, and environmental integrity.

## FOR THE GOVERNMENTS OF NORWAY AND GERMANY:

*In September, 2014 the governments of Norway and Germany entered into a historic Letter of Intent with Peru, referred to as the “Cooperation for the Reduction of Greenhouse Gases from Deforestation and Forest Degradation and the Promotion of Sustainable Development in Peru.” As part of the agreement, Norway committed 300 million dollars for forest protection and forest related emissions reduction, to be disbursed progressively through three phases of implementation. Promising in scope and spirit, the agreement has potential to halt mass deforestation in Peru and reorient development efforts towards forest protection. The following recommendations will help ensure that the agreement is not undermined by tendencies and mechanisms currently allowing for palm expansion into forested areas*

- Condition dispersal of committed funds<sup>687</sup> on rigorous documentation of Peru’s progress toward ending the conversion of soils under forest and protection categories to agricultural use.
- Prioritize funding and technical support to track deforestation caused by land use classification and therefore land use change (conversion) in Peru.
- Maintain support for the regularization of five million hectares of native community

land, and begin scaling up support to help secure recognition of *communal and territorial reserves* in the Amazon.

- Given Peru’s notoriously delayed titling process for Indigenous lands, actively monitor the regularization progress during the tenure of the LOI, insisting that Peru meet targets set up in the “transformation” phase of the agreement.
- At the regional and national level, support capacity building for comprehensive land used planning focusing on entities in charge of land allocation or land classification.
- Contribute and prioritize technical support for the creation of a national cadastre, to be used for improved sustainable development planning and land rights allocations in the Amazon.
- Prioritize diplomatic attention to the security and protection of environmental and land rights defenders, and as necessary monitor, and act, on cases of human rights violations and threats to these defenders, particularly as related to lands and resources in the Peruvian Amazon.

## FOR THE GOVERNMENT OF UNITED STATES:

- Cease to fund all support for palm oil activities and other agribusiness crops that threaten forests, until the Peruvian government demonstrates the ability to enforce national environmental and land use laws.
- When funding palm oil and other agriculture activities, USAID should implement due diligence processes with special attention given to the process by which land for agriculture development projects was classified.
- The United States Trade Representative should enforce environmental obligations in the United States-Peru Free Trade agreement, taking action related to Peruvian Law 30230 of 2014, which is a violation of such obligations and has weakened the Environmental Impact Assessment process<sup>688</sup>
- Prioritize diplomatic attention to the security and protection of environmental and land rights defenders, and as necessary monitor, and act, on cases of human rights violations and threats to these defenders, particularly as related to lands and resources in the Peruvian Amazon.

## FOR THE PALM OIL INDUSTRY:<sup>689</sup>

- Adopt and implement zero deforestation policies, and ensure that no forest land is converted into plantations or used for non-forest-based production.
- Introduce policies and methodologies that are applicable to all of a company’s subsidiaries and suppliers, and to their global operations.
- Ensure the rights of Indigenous peoples and local communities who will be affected by plantation operations are respected. Free, prior and informed consent of the communities shall be ensured to develop oil palm plantations on their legal and/or customary lands.

## FOR INTERNATIONAL ORGANIZATIONS:

- Support community-led mapping and monitoring initiatives. Such initiatives should strengthen community land titling and recognition processes, and lead to greater community knowledge and control of natural resources in their territory.
- Support transparency through documentation efforts, including community monitoring and reporting of environmental crimes. Offer ample legal and political support to leaders and communities engaged in documentation and advocacy efforts and the local, national and international level.
- Invest in livelihood and economic initiatives that respond to local needs and proposals. Prioritize non-palm oil and non-agro-industrial crop initiatives.
- Prioritize outreach to communities in current and projected agriculture expansion areas.



## **FOR PRIVATE INVESTORS:**

- Employ rigorous due diligence processes, ensuring that all investments and the projects they fund comply with national legislation and regulations. Subcontractors or financial intermediaries should be subject to these due diligence processes as well.
- Invest in consultations with all project-affected communities and organizations and ensure that a free prior and informed consent process be carried out for all agribusiness projects targeting lands held, inhabited by, or depended upon by Indigenous and forest dependent communities.
- Do not invest in companies that are contributing to clearance of natural forests.
- Require recipients of funding to publish geo-referenced information about their plantations on the ground, their subsidiaries and ownership structure, and relationships with any politically exposed persons.
- Be wary of unsubstantiated claims about “sustainability” by agricultural companies seeking investment, particularly in tropical regions known to support natural forests. Ground-truth or require independent verification of these claims whenever and wherever possible.

## **FOR COMPANIES OPERATING IN-COUNTRY (INCLUDING PLANTATION OPERATIONS):**

- Publish information about their sources of financing, in particular for initial land clearance.
  - Publish information about their ownership structure (corporate and individuals) and all subsidiary holdings. This should include information about any subcontractors, their company names, and their role in the business.
  - Publish geo-referenced maps of any land to be developed for agriculture, and the legal land classification (ecological) and tenure situation.
- Highlight ownership or decision-making power within the company which lies with any politically exposed persons.
  - Publish volumes of agricultural commodities produced by each of their estates, annually, as well as indicate the buyers of plantation crops (such as mills), and subsequent buyers if that information is available (for example, in cases where a plantation company also owns/operates mills which process raw materials).
  - Track and publish and inventory any timber being logged, transported, sold, and/or exported from land on which they carry out agricultural projects.

# GLOSSARY OF TERMS AND ACRONYMS:

ACRONYMS and ABBREVIATIONS	
<b>AIDSEP</b>	Interethnic Association for the Development of the Peruvian Amazon ( <i>Asociación Interétnica de la Selva Peruana</i> )
<b>AIM</b>	Alternative Investment Market
<b>APL</b>	Asian Plantations Ltd.
<b>APS1</b>	Asian Plantations (Sarawak) Sdn. Bhd.
<b>APS2</b>	Asian Plantations (Sarawak) II Sdn. Bhd.
<b>APS3</b>	Asian Plantations (Sarawak) III Sdn. Bhd.
<b>BCP</b>	National Credit Bank of Peru ( <i>Banco de Crédito del Perú</i> )
<b>BLUC</b>	Best Land Use Capacity ( <i>Capacidad de Uso Mayor</i> )
<b>BPP</b>	Permanent Production Forest ( <i>Bosque de Producción Permanente</i> )
<b>CIEL</b>	Center for International Environmental Law
<b>CONAM</b>	National Environmental Council ( <i>Consejo Nacional del Ambiente</i> ). Peru's previous national environmental agency before the creation of MINAM in 2008
<b>DGAA</b>	General Directorate of Environmental Affairs ( <i>Dirección General de Asuntos Ambientales</i> )
<b>DGAAA</b>	General Directorate of Environmental and Agricultural Affairs ( <i>Dirección General de Asuntos Ambientales Agrarios</i> )
<b>DGFFS</b>	General Directorate of the Forest and Wildlife Service. This agency was dissolved in 2011 with the creation of SERFOR, which took over as the national forest authority.
<b>EIA</b>	Environmental Impact Assessment or Environmental Investigation Agency
<b>FFB</b>	Fresh fruit bunches, from which palm oil is extracted
<b>FREDESAA</b>	Defense and Development Front of Alto Amazonas ( <i>Frente de Defensa y Desarrollo de Alto Amazonas</i> )
<b>GOREL</b>	Loreto Regional Government ( <i>Gobierno Regional de Loreto</i> )
<b>GOESAM</b>	San Martin Regional Government ( <i>Gobierno Regional de San Martín</i> )
<b>IIAP</b>	Research Institute of the Peruvian Amazon ( <i>Instituto de Investigaciones de la Amazonía Peruana</i> )
<b>IFFS</b>	National Forest and Wildlife Intendancy ( <i>Intendencia Forestal y de Fauna Silvestre</i> )

ACRONYMS and ABBREVIATIONS	
<b>INRENA</b>	National Institute for Natural Resources ( <i>Instituto Nacional de Recursos Naturales</i> )
<b>IPO</b>	Initial Public Offering
<b>LANDSAT</b>	A joint program by NASA and the United States Geological Survey that compiles satellite imagery of Earth's surfaces.
<b>LSE</b>	London Stock Exchange
<b>Ltd.</b>	Limited. Designation of a partnership or association whose partners enjoy limited liability from corporate activities
<b>MCLP</b>	Concertation Board for Combating Poverty in Barranquita ( <i>Mesa de Concertación de Lucha contra la Pobreza de Barranquita</i> )
<b>MINAGRI</b>	Ministry of Agriculture and Irrigation ( <i>Ministerio de Agricultura y Riego</i> )
<b>MINAM</b>	Ministry of Environment ( <i>Ministerio del Ambiente</i> )
<b>ONERN</b>	National Office for Natural Resource Evaluation ( <i>Oficina Nacional de Evaluación de Recursos Naturales</i> )
<b>OSINFOR</b>	Supervisory Body for Forest Resources and Wildlife ( <i>Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre</i> )
<b>PAMA</b>	Program for Remediation and Environmental Management ( <i>Programa de Adecuación y Manejo Ambiental</i> )
<b>PBB</b>	Parti Pesaka Bumiputera Bersatu. A Malaysian political party
<b>PETT</b>	Special Program for Land Titling ( <i>Programa Especial de Titulación de Tierras</i> )
<b>PGMF</b>	General forest Management Plan ( <i>Plan General de Manejo Forestal</i> )
<b>POA</b>	Annual Operating Plan
<b>Pte. Ltd</b>	Private Limited. Designator for private corporations registered in Singapore.
<b>REDD</b>	Reduced Emissions from Deforestation and Degradation ( <i>Reducción de Emisiones derivadas de la Deforestación y la Degradación de los bosques</i> )
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>SA</b>	Anonymous Society ( <i>Sociedad Anónima</i> ). Designator for public corporations registered in Peru.
<b>SAC</b>	Closed Anonymous Society ( <i>Sociedad Anónima Cerrada</i> ). Designator for private corporations registered in Peru.
<b>Sdn. Bhd.</b>	Sendirian Berhad. Designator for private corporations registered in Malaysia.
<b>SERFOR</b>	Peruvian National Forest Service ( <i>Servicio Forestal Nacional Forestal y de Fauna Silvestre</i> )
<b>SEZC</b>	Special Economic Zone Company. Designator for companies registered in the Cayman Islands.



## ACRONYMS and ABBREVIATIONS

<b>SPDE</b>	Peruvian Society for Ecological Development ( <i>Sociedad Peruana de Ecodesarrollo</i> )
<b>SSM</b>	Companies Commission of Malaysia ( <i>Suruhanjaya Syarikat Malaysia</i> )
<b>SUNARP</b>	National Property Registry of Peru ( <i>Superintendencia Nacional de Registros Públicos</i> )
<b>SUNAT</b>	National Tax Administration of Peru ( <i>Superintendencia Nacional de Administración Tributaria</i> )
<b>TOR</b>	Terms of Reference
<b>UCL</b>	United Cacao Limited SECZ
<b>ZEE</b>	<i>Economic Ecology Zoning Plan (Zonificación Ecológica Económica)</i>

## TERMS

**Alternative Investment Market:** AIM is the London Stock Exchange's (LSE) sub-market for smaller companies. AIM has different reporting requirements than LSE.

**Annual Operating Plan (*Plan Operativo Anual – POA*):** Document that sets out the previous year's operations within a forest concession and establishes the types and amounts of tree species within a forest concession that will be protected or removed in the upcoming year. This plan is overseen by OSINFOR.<sup>690</sup>

**Annual report:** A document submitted by a company to the government of the country where it is registered, in accordance with that country's laws. The purpose of annual reports is to inform all stakeholders of the financial situation of the company, and thus include the company's financial statement (see definition below) for the year as well as all other relevant financial information.

**Apoderado:** Legal representative or agent holding the legal power to represent or speak for another entity

**Articles of incorporation:** A document submitted by a corporation to the government for purposes of registering as a corporation in that country. The articles of incorporation generally contain basic information about the corporation, how directors and officers will be elected, and other fundamental rules of operation.

**Casual labor:** Employment involving the performance of services usually on a temporary or part-time basis. Such labor arrangements often avoid duties that the employer would have to perform under a formal employment arrangement.

**Capital:** Value in the form of money or other assets (stocks, bonds, equipment, land, etc.) owned by an individual or organization, usually for the purpose of investment or starting a company.

**Comptroller General (*Contraloría General de la Republica*):** The Comptroller General is in charge of controlling the efficient use of national resources and assets, ensuring transparency and responsibility of officials' use of these resources.

**Concessionaire:** The entity or individual who has rights to a concession.

**Conversion:** the process of legally and physically preparing land for agricultural production.

**Council of Ministers (*Consejo de Ministros*):** The Council of Ministers is made up of all of the Ministers who lead each Ministry. It is in charge of directing and managing public services, and must approve some of the acts of the President of the Republic such as the President of the Republic's legislative decrees. The President of the Council of Ministers is the entity that guides this body's actions.

**Directoral Resolutions (*Resoluciones de Dirección General*):** Resolutions emitted by Ministries concerning the activities under their jurisdiction.

**Economic Ecology Zoning Plan (*Zonificación Ecológica Económica - ZEE*):** Instruments that characterize territory by its recommended use and propose ways that territory can be used so as to maximize profit as well as minimize local conflict. Such plans can be approved on various levels of government. ZEEs by municipal governments must be approved by both the regional government and by the Ministry of the Environment.<sup>691</sup>

**Executive Directorial Resolution (*Resolución Directoral Ejecutiva*):** Directorial Resolution by an Executive Director of an agency in Peru.

**Forest Carbon Partnership Facility (FCPF):** An international initiative that provides monetary compensation to developing countries for their standing forest, in order to assist those countries in their efforts to reduce carbon emissions from deforestation and forest degradation, manage forest resources sustainably, and foster forest conservation.<sup>692</sup>

**Financial statement:** A document submitted by a corporation to the government of the country in which it is incorporated containing the all of the financial activities of a company, usually for one year.

**Forest and Wildlife Intendancy (*Administración Técnica Forestal y de Fauna Silvestre*):** local and regional forest authorities under DGFFS prior to the creation of SERFOR.

**General Directorate of Environmental and Agricultural Affairs (*Dirección General de Asuntos Ambientales Agrarios*):** Body under MINAGRI that provides technical information and advice about land use and use of natural resources for the purpose of sustainable management of those resources.

**General Directorate of the Forest and Wildlife Service (*Dirección General Forestal y de Fauna Silvestre - DGFFS*):** Now called SERFOR; name for the national forest authority before the creation of SERFOR.

**General Forest Management Plan (*Plan General de Manejo Forestal*):** Document submitted by a holder of a forest concession, which sets out the concessionaire's plan for how the concession will be managed. This plan considers the technical and financial capacity of the concessionaire, as well as concerns for preserving biodiversity and the environment.<sup>693</sup>

**Graft:** Generally, a legal claim against an individual for obtaining a benefit (money, assets, legal rights) by illegal means.

**Guidelines for Agrarian Policy (*Lineamientos de Política Agraria*):** A norm passed in late 2014 by the Ministry of Agriculture and Irrigation to guide the impact of agrarian policy on rural populations.

**Hectare:** A unit of area equal to 10,000 square meters.

**Holdings:** The contents of an investment portfolio held by an individual or entity such as a mutual fund or pension fund. Portfolio holdings may encompass a wide range of investment products, from stocks, bonds and mutual funds to options, futures and exchange-traded funds, and relatively esoteric instruments such as private equity and hedge funds.<sup>694</sup>

**Holding company:** A company that owns a controlling share of another company (the subsidiary), thereby enabling it to control the subsidiary's policies and management while shielding the individual owners from liability.<sup>695</sup> Generally, a holding company differs from a parent company in that the holding company does not partake in its own business ventures, but rather exists to manage the financing and acquisition of its subsidiaries (also see "parent company"). An immediate holding company is a holding company that itself is a subsidiary of (controlled by) a holding company. An ultimate holding company is a company that is not controlled by any other company.

**Initial public offering (IPO):** The first sale of stock by a private company to the public.

**Interethnic Association for the Development of the Peruvian Amazon (*Asociación Interétnica de Desarrollo de la Selva Peruana - AIDESEP*):** National association of indigenous peoples of the Amazon

**Land title:** Legal grant of possession or ownership of land.

**Land grabbing:** Possession or ownership of land obtained through illegal means that violate the rights of third parties

**Legislative Decree (*Decreto Legislativo*):** Decree by the President of the Republic or the executive branch, which is authorized by a delegation of legislative power to the Executive. Such a delegation is usually only for a certain period of time and confined to a certain scope of subject matter.

**Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego - MINAGRI*):** National ministry in charge of managing the development of agricultural policies.

**Ministry of Environment (*Ministerio del Ambiente - MINAM*):** Peruvian national ministry in charge of developing and enforcing national environmental policies

**National Forest and Wildlife Intendancy (*Intendencia Forestal y de Fauna Silvestre - IFFS*):** national forest authority which coordinates technical management of forest resources

**National Institute for Natural Resources (*Instituto Nacional de Recursos Naturales - INRENA*):** Institute under the Ministry of Agriculture and Irrigation that ensures the sustainable use of renewable resources, in particular rural resources and biodiversity.

**National Ombudsman's office (*Defensoría del Pueblo*):** Autonomous entity of the government created by Peru's 1993 Constitution to ensure that all citizens' fundamental rights are respected, supervise government's compliance with its duties, and ensure that citizens in all regions of the country benefit from the efficient use of public services. This entity receives citizens' complaints about government action and emits reports in response to those complaints.

**National Property Registry or Peru (*Superintendencia Nacional de los Registros Públicos--SUNARP*):** Institution under the Ministry of Justice that coordinates the National Public Registry System and dictates this system's policies and procedures.

**Parent company:** A company that either wholly owns or owns more than 50 percent of another company (the subsidiary), thereby enabling it to control the subsidiary's policies and management. (also see "holding company")<sup>696</sup>

**Permanent Production Forest (*Bosque de Producción Permanente - BPP*):** Term used by the Ministry of Agriculture and Irrigation in its territorial organization plans to categorize areas granted to third parties for timber logging and use of forest resources, in accordance with the Forest and Wildlife Law No. 29763. These areas are first proposed by INRENA and approved by MINAGRI.

**Portfolio:** A range of investments held by an individual or an organization.

**Power of attorney:** A legal right to act in the place of, or as an agent or representative of, another individual or organization.

**Precautionary measures (*medidas cautelares*):** Measures dictated by a court or administrative body for the purpose of stopping the occurrence of an event or preventing harm to legal interests.

**President of the Congress (*Presidente del Congreso*):** In Peru, the President of Congress and the President of the Permanent Assembly are the leaders of each house of Congress. The President of the Republic, on the other hand, is the president elected to lead the executive branch.

**Program for Remediation and Environmental Management (*Programa de Adecuación y Manejo Ambiental - PAMA*):** Document required to be submitting by companies for projects that implicated environmental obligations under Peruvian law. These documents set out the actions, policies and investments that the company must undertake to reduce and control the generation of waste, prevent pollution and comply with environmental law and regulations.

**Regional Agriculture Office (*Dirección Regional Agraria*):** Entities within each regional government tasked with promoting sustainable agriculture, business development, and technological use and innovation for productivity in the region.

**Revenue:** The amount of money that a company receives during a specific period of time. Costs are subtracted from this amount to determine net income.

**Roundtable on Sustainable Palm Oil (RSPO):** The RSPO is a not-for-profit association formed in 2004 to promote sustainable palm oil production and transparency in palm oil supply chains by certifying “sustainable” palm oil producers. The RSPO is made up of palm oil producers, manufacturing and retail companies, banks and financial investors, and civil society organizations.<sup>697</sup>

**Secrecy jurisdiction:** Secrecy jurisdictions are places that intentionally create regulation for the primary benefit and use of people and legal entities not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use secrecy jurisdictions also create a deliberate, legally backed veil of secrecy to ensure that the people from outside the jurisdiction making use of its regulation cannot be identified.<sup>698</sup>

**Seed funding/seed capital:** The initial capital used to start a business.

**Share swap:** This occurs when shareholders’ ownership of the shares in the company being acquired are exchanged for shares of the acquiring company as part of a merger or acquisition.

**Shareholder meeting (*Junta General de Accionistas*):** Meeting in which shareholders of a partnership or corporation discuss actions to be taken by the partnership or corporation

**Soil use capacity (*capacidad de uso mayor - CUM*):** A technical determination of an area of land’s natural capacity for long-term production.

**Special Program for Land Titling (*Proyecto Especial de Titulación de Tierras - PETT*):** A specialized institution within the Ministry of Agriculture and Irrigation that coordinates procedures for titling and registering rural land.<sup>699</sup>

**Subsidiary:** a company whose voting stock is more than 50% controlled by another company, usually referred to as the parent company or holding company. While the holding company must still report on the subsidiary’s activities as part of the holding company’s financial statements, the subsidiary is a distinct legal entity for the purposes of liability, taxation and regulation.<sup>700</sup> A fully-owned subsidiary is a subsidiary whose holding company owns 100% of its shares and thus completely controls its activities. Such an arrangement is often used to shield the holding company from liability for actions it commits through the subsidiary.

**Supervisory Body for Forest Resources and Wildlife (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre-OSINFOR*):** National entity under the Council of Ministers that is in charge of supervising and enforcing the titles granted to parties for the use of forest resources and other environmental services.

**Supreme Decree (*Decreto Supremo - DS*):** Decree by the President of the Republic that is signed by at least one Minister and regulates activities under one or more Ministries at the national level.

**Swing vote area:** An area where citizens’ votes are important to determining the outcome of an election.

**Tax haven (*paraíso fiscal*):** Any country or territory whose laws may be used to avoid or evade taxes which may be due in another country under that country’s laws.<sup>701</sup>

**Terms of reference (*términos de referencia - TOR*):** Document submitted by a company describing how it will implement a PAMA

## OTHER TRANSLATIONS

**District Attorney’s Office:** Fiscalía

**District Attorney of Alto Amazonas’ Office on Environmental Affairs:** Fiscalía Especializada en Materia Ambiental de Alto Amazonas

National Attorney General’s Office: Fiscalía de la Nación

## INFORMATION ABOUT PUBLICLY TRADED COMPANIES

**Asian Plantations Limited (APL)** – ticker number symbol (PALM)

**United Cacao Ltd., also called United Cacao Limited SECZ (UCL)** – ticker symbol (CHOC)



# MAPPING DEFORESTATION: ONGOING AND PROJECTED

## MELKA GROUP MAPS METHODOLOGY

Since 2013, EIA has been producing maps for monitoring and analyzing the deforestation generated by two Melka Group projects:

- The Cacao del Perú Norte SAC project, in Tamshiyacu, Fernando Lores district, in the region of Loreto, in the Peruvian Amazon.
- The Plantaciones de Ucayali SAC project, in the Nueva Requena district, in the region of Ucayali, in the Peruvian Amazon.

By mid-2013, EIA found out about deforestation occurring in these areas from local sources. EIA then started looking at Landsat satellite imagery for the areas. EIA used the Landsat imagery first to locate the areas of ongoing deforestation, and then to analyze the areas over the previous 25 years to determine when deforestation in these areas actually occurred. Finally, EIA began to analyze new Landsat imagery to monitor the evolution of the deforestation as it has been happening. EIA officially requested all the data related to these projects from both the national and regional governments. However, EIA did not receive the official UTM coordinates for the external boundaries of either of these projects. But even without the UTM coordinates, EIA was able to connect Plantaciones de Ucayali SAC with the deforestation under development in the mapped area through the information obtained from the Peruvian property registry (SUNARP),<sup>702</sup> as well as from official documents from the Ucayali Regional government that include UTM coordinates for specific illegalities happening inside the area of the projects, as well as printed maps.<sup>703</sup> Therefore, the maps presented here delineate the observed deforestation that has been conducted in the field since the time that the respective Melka Group projects began, regardless of whether it occurred within or outside of project properties.

In the case of the Tamshiyacu area, in addition to the process above described, EIA obtained access to the UTM coordinates for the first 45 private properties that Cacao del Peru Norte acquired until early 2013.<sup>704</sup> Mapping these 45 properties, shown on the maps in the shape of vertical rectangles, aided EIA to locating the Cacao del Peru Norte project area and understanding the patterns of the deforestation conducted since June 2013. Cacao del Peru Norte continued buying more private properties and, by March of 2015, it owned 80 rural properties in all the region of Loreto, where Tamshiyacu is located. According to the DGAAA, by December 2015 Cacao del Peru Norte owned around 60 properties in the Tamshiyacu area.<sup>705</sup> This explains why some of the most recent deforestation mapped in Tamshiyacu is showing out of the initial 45 units of property mapped by EIA. While EIA has not been able to obtain the UTM coordinates to map the other 15 properties referred by the DGAAA, the similarities in the results of the satellite analysis conducted by the DGAAA (1,944.21 ha deforested) and EIA (2,093.94) provide strong reasons to believe that they are part of the same area.

In the case of the Nueva Requena area, EIA's maps document that the expansion of the deforestation in the area during the development of the Plantaciones de Ucayali SAC project, removed 5,821.74 hectares of forest. However, the Regional government only sold Plantaciones de Ucayali 4,759.77 hectares for the project. Since EIA has not been provided with the official UTM coordinates, it is impossible for EIA to identify exactly which part of the deforestation is expanding beyond the legal limits of the project. EIA's investigation did not uncover any other entity conducting clear cutting in this area.

Official inspections conducted in 2013 by the Ucayali Regional Government authorities documented that Plantaciones de Ucayali deforested at least 827 ha outside of their legal project boundaries.<sup>706</sup> There have also been complaints from the local populations that Plantaciones de Ucayali has come onto their lands and clearcut the forests.<sup>707</sup> The documentation by the government that Plantaciones de Ucayali conducted logging operations well outside the limits of its lands, together with the complaints against Plantaciones de Ucayali, as well as the patterns and timeline of the additional deforestation identified on EIA's satellite imagery analysis, provide substantial reason to believe that. Plantaciones de Ucayali is responsible for most if not all of the additional deforestation that EIA documented in the area.

By November 26th, 2014, the date for the most recent satellite images incorporated in EIA analysis, a portion of the areas that had been clear-cut by the companies were deforested, while others had either been planted or had some minor secondary vegetation (*purma*) growing on top of it. This is why, to estimate the total area that has been clear-cut by the companies, we add up the deforested areas, the plantation areas and the secondary vegetation areas, and subtract the area that was already deforested before the arrival of the projects.

**CHART 13: Melka Group deforestation**

	Total area	Total deforested	Previous deforestation*	Deforested during project time
Plantaciones de Ucayali – EIA estimations	5,821.74	5720.4	850	4870.4
Plantaciones de Ucayali – DGAAA estimations	4,759.77	4,593.00	545	4,048.00
Cacao del Peru Norte – EIA estimations	2,238	2,130.30	36.36	2,093.94
Cacao del Peru Norte – DGAAA estimations	3,097.41	1,949.36	5.15	1,944.21
<b>TOTALS – EIA estimations</b>		7,850.70		6,964.34
<b>TOTALS – DGAAA estimations</b>		6,542.36		5,992.21

\* pre 2010 / 2011 for Nueva Requena  
pre 2012 for Tamshiyacu

Elaboration: EIA

Sources: For EIA estimations: Landsat satellite imagery time series 1989 - November 2014.

For DGAAA estimations: Resolución de Dirección General 462-2014-MINAGRI-DVDIAR-DGAAA (Cacao del Perú Norte SAC) and Resolución de Dirección General 463-2014-MINAGRI-DVDIAR-DGAAA. (Plantaciones de Ucayali), based on Landsat images 2011 - August 2014.

**CHART 16: Summary of the forest coverage for the areas of the four Grupo Romero projects. All the areas in the chart represent number of hectares. The numbers in bold correspond to the key amounts quoted in the text. The amounts for the EIAs were estimated using the AutoCAD data included in the Environmental Impact Assessments' annexes. Due to the methodology to build these numbers, it is possible that they slightly differ from those included in the text of the EIAs. The amounts for the other sections of this chart have been estimated using the sources described in the text of this report.**

#### Forest coverage according to the Grupo Romero EIAs

Palm	<b>16.746</b>	6.956	366	987,5	<b>25.055</b>
30% Reserva	4.778	3.782	679	0,2	9.239
<b>TOTAL</b>	<b>21.523</b>	<b>10.738</b>	<b>1.045</b>	<b>987,7</b>	<b>34.294</b>

#### Deforestación de la Amazonía Peruana - 2000 (INRENA y CONAM)

	Primary forest	Secondary forest	Deforested	Total	MINAM Deforestation 2000-2011	Total Primary forest
Palm	<b>23.231</b>	190	1.634	25.055	<b>86,0</b>	23.145
30% Reserva	9.123	2	114	9.239	1,7	9.121
<b>TOTAL</b>	<b>32.354</b>	<b>192</b>	<b>1.748</b>	<b>34.294</b>	<b>87,7</b>	<b>32.266</b>

#### Mapa de Deforestación Departamento de Loreto al 2009 (IIAP 2012)

	Forest	Deforestation	Total
Palm	<b>23.056</b>	1.998	25.054
30% Reserva	9.105	135	9.240
<b>TOTAL</b>	<b>32.161</b>	<b>2.133</b>	<b>34.294</b>

#### Biomass (tons)

Palm	<b>7.851.888</b>
30% Reserva	2.989.117
1,7	9.121
<b>TOTAL</b>	<b>10.841.005</b>

## GRUPO ROMERO MAPS METHODOLOGY

Based on the AutoCAD data provided in the Environmental Impact Assessment plans by Grupo Romero for their four new palm oil projects in Loreto, EIA mapped the projects and mounted this data over Peruvian government official maps (GOREL,<sup>708</sup> MINAM,<sup>709</sup> ONERN,<sup>710</sup> INRENA & CONAM,<sup>711</sup>) as well as Landsat satellite imagery, as a way to demonstrate how the projects overlap with primary forest according to both: the Peruvian government as well as the historical satellite images.

# ANNEXES

CHART 14: Replication of Asian Plantations Ltd.'s declared land holdings in Sarawak, Malaysia, as it appeared in the company report on 2013 <sup>668</sup>		
BJ Corporation	4,795	ha
Incosetia	5,839	ha (acquired 30th December 2009)
Fortune	5,136	ha (acquired 30th December 2010)
Dulit	5,000	ha (acquired 28th February 2012)
GP	3,852	ha (acquired 21st August 2013)
TOTAL	24,622	HA (APPROXIMATELY 60,840 ACRES)



**CHART 15: Holdings and Directorships of Asian Plantations Ltd. Directors**

<b>Dennis Melka</b> Full or Partial Holdings as of Nov. 2009	<b>Graeme Brown</b> Full or Partial Holdings as of Nov. 2009	<b>Leonard Linggi</b> Full or Partial Holdings as of Nov. 2009**	<b>Leo Moggie</b> Directorships and Partnerships as of Mar. 2010*
<p>East Pacific Capital Pte Ltd Tune Hotels.Com Limited Micro Hotel Holdings Pte Ltd Asian Starch Sdn Bhd Asian Forestry Holdings Limited Pte Ltd Asian Palm Oil Limited Arus Plantation Sdn Bhd BJ Corporation Sdn Bhd Asian Forestry Company Sdn Bhd Brown &amp; Melka Sdn Bhd Sagajuta Sdn Bhd Tune Ventures Sdn Bhd Asian Plantations Capital Partners Pte Ltd Asian Plantations Limited South Asian Farms Pte Ltd</p> <p><b>Previous holdings:</b> Tune Money Sdn Bhd Tune Talk Sdn Bhd Tune Retail Sdn Bhd Palm Oil Investment Trust Asian Palm Oil Company Limited</p>	<p>Rajang Wood Sdn Bhd Premier Space Sdn Bhd Tera Management Sdn Bhd Pascali Sdn Bhd Keresa Plantations Sdn Bhd Waddell Holding Sdn Bhd Sarawakiana Management Sdn Bhd Pro-Formula Sdn Bhd Malesiana Tropicals Sdn Bhd Alkaz Sdn Bhd Borneo Plant Technology Sdn Bhd Sarawakiana Leisure Sdn Bhd Keresa Mill Sdn Bhd Sarawakiana Realty Sdn Bhd Keresa Sdn Bhd South Asian Farms Sdn Bhd Asian Forestry Company Sdn Bhd BJ Corporation Sdn Bhd Arus Plantation Sdn Bhd Straits Hospitality Company Sdn Bhd Begaraya Sdn Bhd Brown &amp; Melka Sdn Bhd Waddell Holding Ltd K2 Hotel Sdn Bhd</p> <p><b>Previous Holdings:</b> Palm Oil Investment Trust Pte Ltd Asian Palm Oil Company Limited</p>	<p>Keresa Transport Sdn Bhd None Syarikat Ulu Rejang Sdn Bhd Keresa Sdn Bhd Keresa Timber Corporation Sdn Bhd Limar Management Services Sdn Bhd Sarawakiana Sdn Bhd Rajang Wood Sdn Bhd Permodalan Sarawak Bhd Tanah Bungas Sdn Bhd Premiere Space Sdn Bhd Tera Management Sdn Bhd Rajang Resources Sdn Bhd Terabai Sdn Bhd Keresa Plantations Sdn Bhd Sarawakiana Realty Sdn Bhd Tun Jugah Foundation Pascali Sdn Bhd PSB Corporation Sdn Bhd PSB Properties Sdn Bhd PSB Construction Sdn Bhd PSB Estate Sdn Bhd Antara Sinar Sdn Bhd Solid Timber Sdn Bhd Ajau Sdn Bhd Solid Particle Board Sdn Bhd Malesiana Tropical Sdn Bhd Sarawakiana Leisure Sdn Bhd KP Premiere Sdn Bhd Alkaz Sdn Bhd Borneo Plant Technology Sdn Bhd Sim Swee Joo Shipping Sdn Bhd Keresa Mill Sdn Bhd Permodalan Dayak Bhd Arus Plantation Sdn Bhd BJ Corporation Sdn Bhd</p>	<p>Amarcorp Sdn. Bhd. Commonwealth Partnership For Technology Management Limited DiGi.Com Bhd. HMS Capital Sdn. Bhd. Knight Capital Sdn. Bhd. Tenaga Nasional Berhad The News Straits Times Press (Malaysia) Berhad</p>

\* "Since 2004, Tan Sri has been the Chairman of Tenaga Nasional Berhad ([www.tnb.com.my](http://www.tnb.com.my)), the integrated national power utility company of Malaysia, which is listed on the Kuala Lumpur Stock Exchange with a market capitalisation in excess of US\$10 billion. In addition, he is an Independent Non-Executive Director of DiGi.Com ([www.digi.com.my](http://www.digi.com.my)), one of the leading mobile telecommunication companies in Malaysia, which is listed on the Kuala Lumpur Stock Exchange with a market capitalisation in excess of US\$4 billion." Source: Asian Plantations Ltd. (2010). Directorate Change: London Stock Exchange Alternative Investment Market.

\*\*All other data for this table sourced from "Subscription and Admission to AIM."<sup>669</sup>

## ANNEX: ASIAN PLANTATIONS LTD.'S SUBSIDIARIES IN SARAWAK: VARIATIONS ON A THEME (CONTINUED)

These annexes provide additional details about the land holdings in Sarawak acquired by subsidiaries of Asian Plantations Ltd. and the financing—in the form of loans—these subsidiaries leveraged on the property they obtained. Primarily from Malaysian banks, this financing allowed Asian Plantations Ltd. to clear forested land, develop oil palm plantations, and build a palm oil mill to process fresh fruit bunches. Official inspections conducted in 2013 by the Ucayali Regional Government authorities documented that Plantaciones de Ucayali deforested at least 827 ha outside of their legal project boundaries. There have also been complaints from the local populations that Plantaciones de Ucayali has come onto their lands and clearcut the forests. The documentation by the government that Plantaciones de Ucayali conducted logging operations well outside the limits of its lands, together with the complaints against Plantaciones de Ucayali, as well as the patterns and timeline of the additional deforestation identified on EIA's satellite imagery analysis, provide substantial reason to believe that Plantaciones de Ucayali is responsible for most if not all of the additional deforestation that EIA documented in the area.

By November 26th, 2014, the date for the most recent satellite images incorporated in EIA analysis, a portion of the areas that had been clear-cut by the companies were deforested, while others had either been planted or had some minor secondary vegetation (purma) growing on top of it. This is why, to estimate the total area that has been clear-cut by the companies, we add up the deforested areas, the plantation areas and the secondary vegetation areas, and subtract the area that was already deforested before the arrival of the projects.

### SUBSIDIARIES OF ASIAN PLANTATIONS (SARAWAK) SDN. BHD.

#### Incosetia Sdn. Bhd. and its holding company, Jubilant Paradise Sdn. Bhd.

Established in 2001, Incosetia Sdn. Bhd. switched hands multiple times within its first two years, and by 2003 the company was owned and managed by a group of politically powerful members of Malaysia's national ruling coalition (Barisan Nasional) in Melaka State,<sup>72</sup> in Peninsular Malaysia.<sup>73</sup> Directors included the former Chief Minister of Melaka from 1999-2013, Mohd Ali Rustam, and Latiff Tamby Chik, currently a member of the Executive Council of the Melaka State Government for the period from 2013-2018.<sup>74</sup>

Incosetia's annual report from 2004 describes the company's acquisition of "5,000 hectares of government land in the form of a lease of 60 years commencing from 20 February 2003 with a premium of MYR 3,088,750."<sup>75</sup> This land deal coincides with an entry from the leaked Sarawak Land and Surveys Department land transaction data, appearing as follows:

Applicant / Owner (Name Origin)	Liaison Officer / No. Tel. / Fax	Land Alienated / Approved For Alienated			Premium (MYR)	Approval Headquarters (Number Date)	Document Title (Type)	Dates	Notes
INCOSETIA SDN. BHD. Lot 208 Section 8, Jalan Haji Taha, 93400 Kuching.	Sadiah Basri 082-232208/082-422209	Lot 16 Dulit L.D.	Oil Palm	5,000	Batang Tinjar, Baram	3,705,000	43/HQ/AL/107/99(4D) bertarikh 28.6.2002 dan 51/HQ/AL/107/99 (4D) bertarikh 13.7.2002	III	20.02.2003 (60 years)

Similarly to the process undergone by BJ Corporation, Incosetia Sdn. Bhd. completed a revaluation process of the land, the same month it acquired the parcel in 2003, during which "Registered and Certified Appraisers" reassessed the property at MYR 15,000,000 in February 2003 (almost five times the premium paid to the Sarawak government for the lease).<sup>76</sup> The Annual Report on the year 2003, when Incosetia acquired land, was not available when EIA requested historical company records for Incosetia, although reports for years before and after were available.

Sadiah Basri, whose name appears in the land transaction data, had been a former director of Incosetia Sdn. Bhd., but on Aug. 21, 2002, before the land transaction took place, she and another director resigned and were replaced by Latiff Bin Tamby Chik and Ng Lei Na, who were both related to state-run corporations in Melaka.<sup>717</sup> Yusof Bin Jantam, who would later become the Mayor of Melaka from 2008<sup>718</sup>-2010,<sup>719</sup> was appointed as a director in late 2002,<sup>720</sup> and Mohd Ali Rustam was appointed as a director in early 2003.<sup>721</sup> This case shows how members of the national ruling coalition (Barisan Nasional) acquired land for below market value, even beyond the state of Sarawak in the early 2000s. The PBB Party in Sarawak makes up part of the Barisan Nasional, as does the United Malays National Organization (UMNO) party<sup>722</sup> of Mohd Ali Rustam, now a Senator (2013-2016) in Malaysia's national parliament.<sup>723, 724</sup>

In 2005, Incosetia secured a loan from a commercial bank for MYR 28.5 million to finance palm oil plantation development.<sup>725</sup> The first charges to this available loan funding were secured on Incosetia's land lease. In 2006 the land was revalued again for MYR 25,788,000.<sup>726</sup>

Asian Plantations Ltd., via its subsidiary APS1, acquired Jubilant Paradise Sdn. Bhd. (a holding company) and Incosetia Sdn. Bhd. (Jubilant Paradise's only significant asset) on December 30, 2009. With this acquisition just a month after its listing on AIM, Asian Plantations Ltd. was not required to disclose details about ownership and assets of the company or about the land acquisition, as it had for BJ Corporation in its AIM Subscription.<sup>727</sup> In public statements, Asian Plantations Ltd. indicated that it had acquired 5,850 hectares in the Incosetia estate, via its holding company Jubilant Paradise Sdn. Bhd., for USD\$12,023,000<sup>728</sup> or MYR 41,301,958.<sup>729</sup> This price of USD\$6,900 per hectare favored Asian Plantations Ltd., according to the company's director Graeme Brown. "Through our long standing local relationships and on-the-ground presence, we were able to secure the parcel in a negotiated, non-competitive situation," he explained.<sup>730</sup>

Jubilant Paradise's Annual Report for 2009 is missing from publicly available SSM files, but the company's 2010 report says that Jubilant Paradise purchased Incosetia for MYR

31,174,080, by purchasing shares in Incosetia in 2009.<sup>731</sup> This purchase was financed by an advance from the parent company of Jubilant Paradise-APS1-for MYR 58,250,000. Public statements by Asian Plantations Ltd. said funding for the purchase of Jubilant Paradise and Incosetia was furnished by a new debt facility in Malaysia for MYR 55,000,000 and "new equity capital raised at the time of the Company's admission to trading on AIM in November 2009."<sup>732</sup> The loan for MYR 55,000,000 was secured by BJ Corporation against the land lease it held.<sup>733</sup> Asian Plantations Ltd. financed further land acquisition by raising funds publicly on AIM and obtaining loans against its previously acquired land (held by BJ Corporation).

Jubilant Paradise transferred all ownership of Incosetia, and thus Incosetia's land lease, to APS1 the same year which it acquired it, 2009.<sup>734</sup> Under its new leadership, Incosetia acquired two additional properties in 2011 (a total of approximately 850 ha in addition to its initial 5,000 ha).<sup>735</sup> The prices paid for these properties were MYR 621,699 and MYR 1,250,000.<sup>736</sup> It is unclear which price paid corresponds to which land.

Between 2009 and 2012, Incosetia, with the help of its new parent companies, APS1 and Asian Plantations Ltd., took out loans secured on its own land leases.<sup>737</sup> The lands located at Lot 23, Sungai Bok, Dulit, Baram (Miri, Sarawak), containing 653 ha; Incosetia's initial 5,000 ha (Lot 16) land holding; and the land located at Lot 68, Bok Land District, containing 186 ha, were used as collateral to secure:

- a MYR 42,000,000 loan for Incosetia,<sup>738</sup>
- a MYR 5,000,000 loan for Incosetia,<sup>739</sup>
- additional bank loans for APS1 for MYR 24,750,000,<sup>740</sup>
- and as collateral for BJ Corporation's MYR 255 million medium term notes facility (a multi-year loan), in 2012.<sup>741</sup>

Asian Plantations Ltd. also restructured its holding companies in 2011, to separate Jubilant Paradise and Incosetia completely. Jubilant Paradise, again a holding company with no significant assets, was acquired by a newly formed holding company of Asian Plantations Ltd., Asian Plantations (Sarawak) III Sdn. Bhd. (APS3), while Incosetia and the actual plantation land continued to be held by APS1.<sup>742</sup>

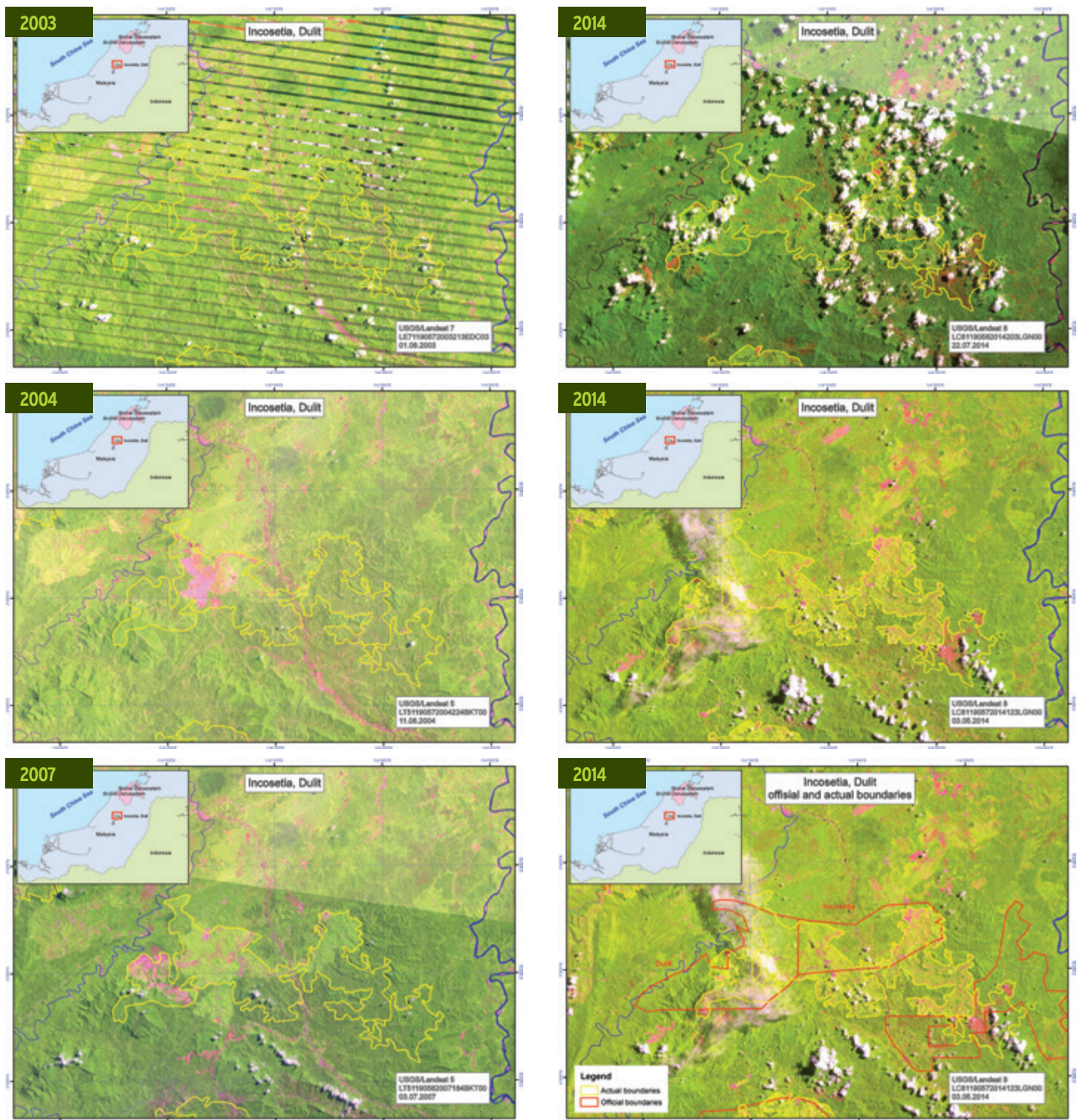
Imagery from USGS Landsat satellites shows that the two areas reported as the "Incosetia" estate in Asian Plantations Ltd.'s corporate update from May 2013 retained forest cover as of August 2003. Forest clearing for the smaller Incosetia site started in 2011 and continued until 2014, while clearing for the larger site began as early as 2004. Planting took place as early as 2007 and was finalized as of 2014.<sup>743</sup>

Meanwhile, APS1 pursued the acquisition of another plantation land holding, to be completed around Asian Plantations Ltd.'s one year anniversary of trading on AIM.



## INCOSETIA CONCESSION LOT 16 MAPS 2003-2014

FIGURE 20



Actual" boundary maps, in yellow, were drawn by mapping experts at Transparent World, based on analysis of LANDSAT data. These areas indicate Incosetia property. Source 2: Data for "Official" boundary maps, in red, was drawn using Asian Plantations Ltd. published information in the "Corporate Update 1H 2013." These areas indicate cleared land. Published by APL in May 2013.

## FORTUNE SDN. BHD.

Fortune Sdn. Bhd. was incorporated in March 2003,<sup>744</sup> also in the era marked by widespread large scale land acquisitions by politically-connected Malaysians facilitated by the Sarawak Land and Survey Department.<sup>745</sup> Several directors were appointed in the articles of incorporation, including Mohammed Ali Mahmud.<sup>746</sup> The brother of Sarawak's Chief Minister, Taib Mahmud, Mohammed Ali Mahmud owned twice as many shares as any other director by November 30, 2005.<sup>747</sup>

The next month, in October 2006, Fortune Sdn. Bhd. acquired a 5,000 hectare lot in the Dulit Land District for MYR 3,705,000.<sup>748</sup> Details in the 2007 financial statement indicate that leasehold land was acquired at a cost of MYR 5,174,572 by new owners, Yong & Yong, which constituted the primary asset for the company at that time.<sup>749</sup>

Applicant / Owner (Name Origin)	Liaison Officer / No. Tel. / Fax	Land Alienated / Approved For Alienated	Premium (MYR)	Approval Headquarters (Number Date)	Document Title (Type)	Dates	Notes
FORTUNE PLANTATION SDN. BHD. Lot 1035, Jalan Cattleya 5, Piasau Industrial Area, CDT 139, 98009 Miri	Robert Galang 085651778 /085-652480	Lot 10 Dulit L.D. Oil Palm 5,000 Batang Tinjar, Baram	3,705,000	2/HQ/AL /71/ 2003(4D bertarikh 29.10.2003	III	3.10.2006 (60 tahun)	

In the annual reports on 2006 and 2007, the new owners and directors (Yong & Yong) stated that operations had not begun.<sup>750</sup> However, satellite images show that between mid-2006 and mid-2007, heavy logging took place in the area that would subsequently be clear cut for oil palm. In 2008 the company stated it officially commenced operations, and was principally engaged in the development of oil palm estates.<sup>751</sup> Satellite imagery shows that massive clear cutting of remaining forest land on the Fortune Estate took place during that time. (SEE Figure 21)

On December 30, 2010, all former directors resigned and were replaced by Leonard Linggi and Graeme Brown.<sup>752</sup> Asian Plantations Ltd. announced its acquisition of Fortune Plantation to shareholders the same day, at a price of USD\$12.2 million for 5,139 hectares, or USD\$2,374 per hectare.<sup>753</sup> Commenting on the events, Dennis Melka issued a public statement to shareholders on the London Stock Exchange: "The Fortune Estate was acquired in a non-competitive process, driven by the Board's local relationships, and at an attractive valuation per hectare, being within 5 per cent of the value the Company paid for its original estate acquisition in 2007...the Board believes that the Company has secured an attractive

valuation of the Fortune Estate, relative to other publicly announced land transactions in East Malaysia, at a time of increasing scarcity of agricultural land in Malaysia."<sup>754</sup>

In the annual reports which cover late 2010, the new holding company is APSI, and the ultimate holding company is Asian Plantations Ltd.<sup>755</sup> Dennis Melka was appointed as a director shortly after in May 2011.<sup>756</sup> Fortune Plantation went on to obtain at least two separate loans from Malaysian banks secured on the land in Lot 10, Dulit Land District, where Fortune Plantation lies, for at least MYR 39,000,000.<sup>757</sup>

## ASIAN PLANTATIONS MILLING SDN. BHD.

Directors of Asian Plantations Ltd., Dennis Melka and Graeme Brown, along with Leonard Linggi's son Gerald, registered Asian Plantations Milling Sdn. Bhd. for incorporation in Malaysia in October 2009, held in equal parts of one share each by Dennis Melka and Arus Plantation (later, APSI).<sup>758</sup> In 2012, the holding company, Asian Plantations Ltd., secured the following assets against an ambitious Medium Term Notes Programme designed to finance the construction of a new

palm oil mill, as well as refinance some of the company's existing debt at that time:<sup>759</sup>

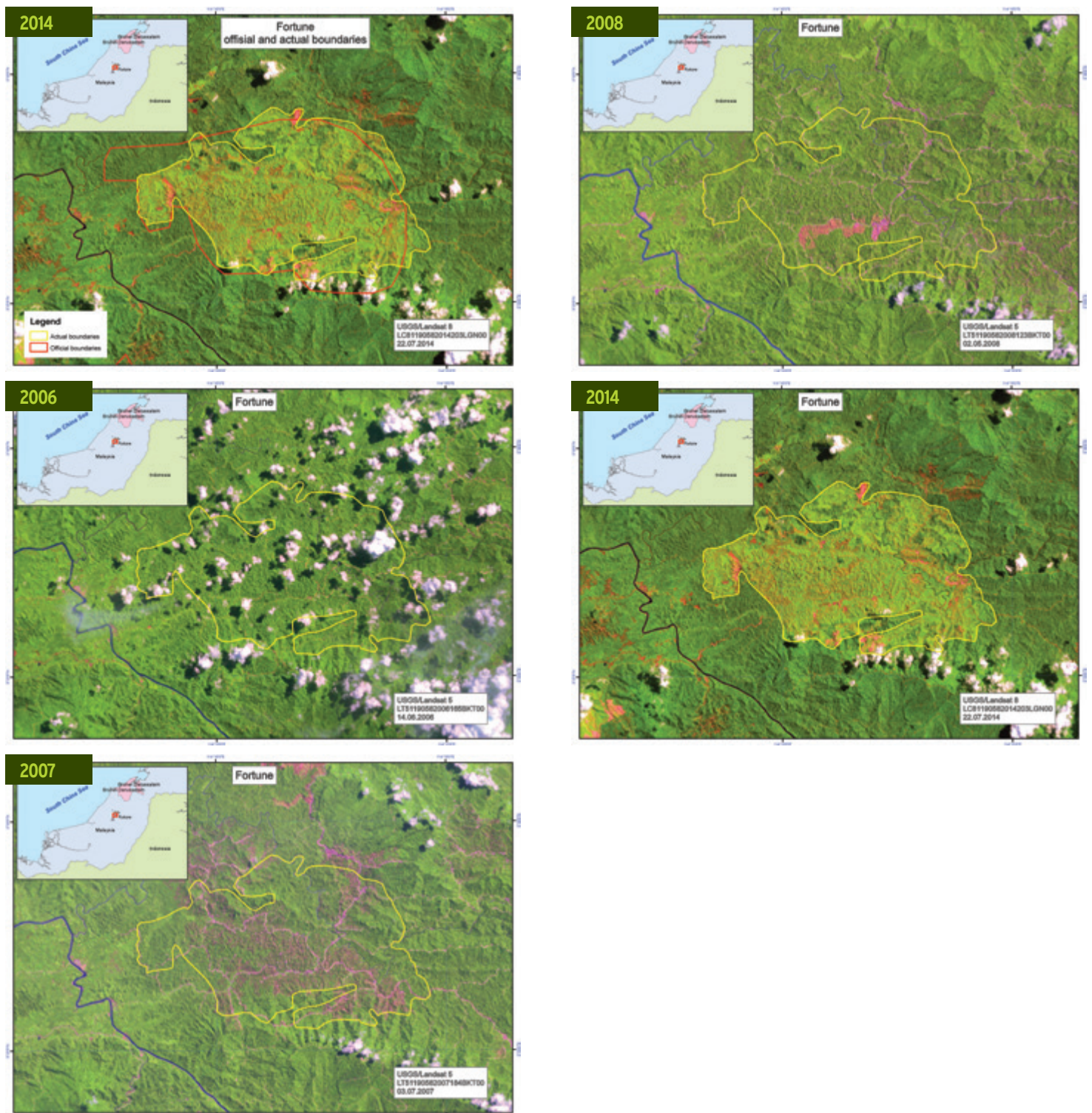
- "All leasehold land of the group which the group prepaid rights to use,
- Leasehold land of related subsidiary, Kronos Plantation Sdn. Bhd.
- All shares in subsidiary Asian Plantations Milling Sdn. Bhd.
- Fixed and floating charges over all assets of subsidiary Asian Plantations Milling Sdn. Bhd.
- Corporate guarantee from its holding company and its fellow subsidiary Asian Plantations (Sarawak) II Sdn Bhd."<sup>760</sup>

Significant land holdings which the company acquired over its first few years of operations were used as the basis for loans to finance expansion of oil palm development and industry, this time in the form of a mill. The presence of a mill with capacity to process dozens of tons of palm oil per hour, (Asian Plantations Ltd.'s mill processes 120 tons/hr),<sup>761</sup> responds to supply of oil palm fruit, but also creates greater demand for fresh fruit bunches in the surrounding area. Sources familiar with the palm oil industry estimate that a mill can receive fruit from anywhere within a 24 hour journey of the mill site.<sup>762</sup>



## FORTUNE CONCESSION LOT 10 MAPS 2006-2014

FIGURE 21: Fortune Sdn. Bhd. deforestation



Source 1: "Actual" boundary maps were drawn by mapping experts at Transparent World, based on analysis of LANDSAT data.

Source 2: Data for "Official" boundary maps was drawn using Asian Plantations Ltd. published information in the "Corporate Update 1H 2013." Published by APL in May 2013. "



## ASIAN PLANTATIONS (SARAWAK) II SDN. BHD. (APS2)

(Until June, 2011: Asian Starch Sdn. Bhd.; until May, 2009: Asian Ethanol Sdn. Bhd.)

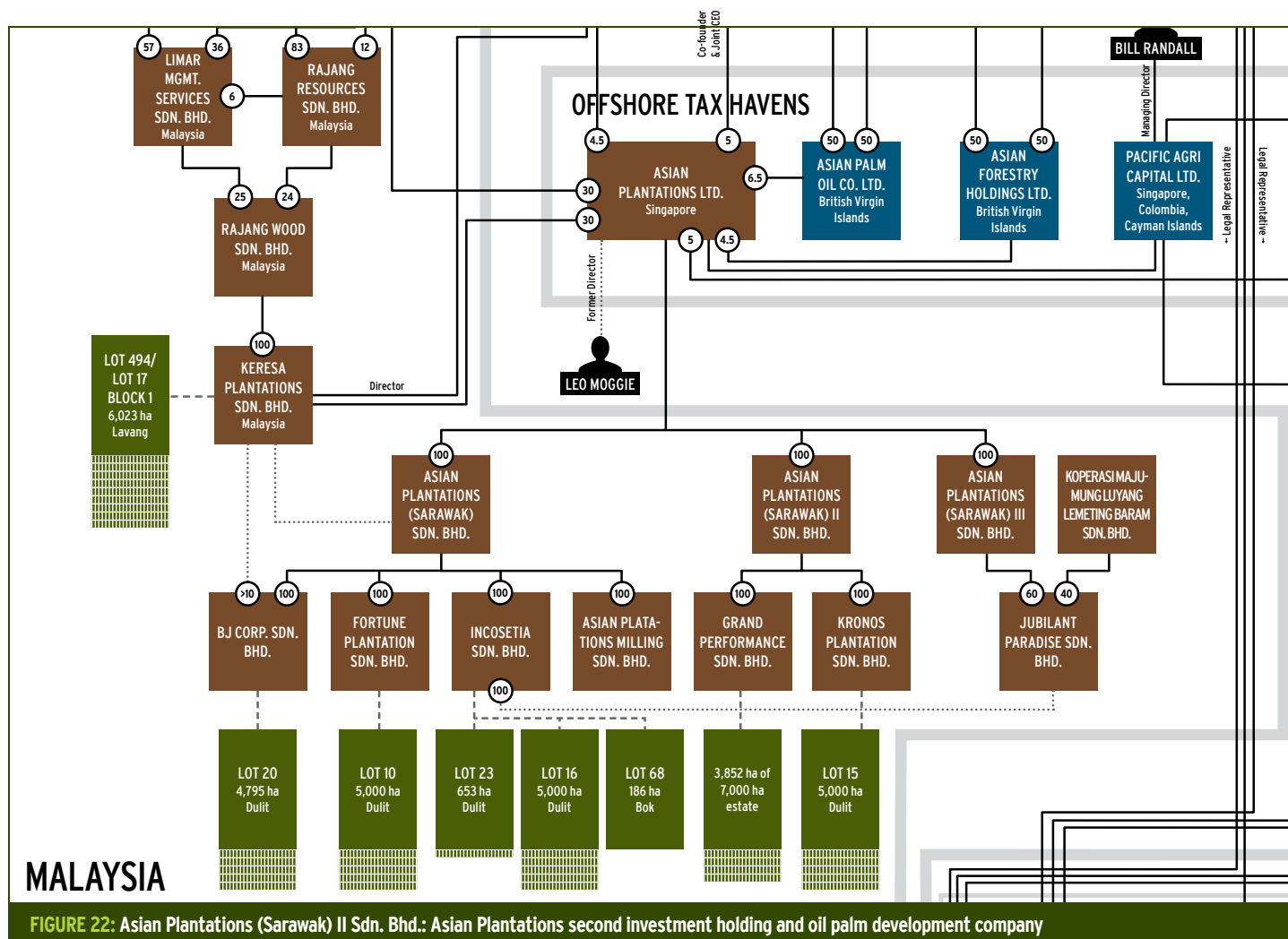


FIGURE 22: Asian Plantations (Sarawak) II Sdn. Bhd.: Asian Plantations second investment holding and oil palm development company

Dennis Melka and his fully owned investment fund, East Pacific Capital Ltd., incorporated Asian Ethanol Sdn. Bhd. in February 2009 as an investment holding and oil palm development company.<sup>763</sup> The company changed its name to Asian Starch Sdn. Bhd. in 2009, and later to Asian Plantations (Sarawak) II in 2011 (APS2).<sup>764</sup> The two issued shares in the company belonged to East Pacific Capital Ltd. until 2011,<sup>765</sup> when the company, now called APS2, became a subsidiary of Asian Plantations Ltd.<sup>766</sup>

Other directors of the company, Graeme Brown and Alexis Lawrence Marcel Wan Ullok, joined in July 2010.<sup>767</sup>

APS2 did not state any ongoing business activities during 2009 or 2010.<sup>768</sup> In October 25, 2011 however, the company acquired Kronos Plantations Sdn. Bhd., a holding company which had previously been inactive.<sup>769</sup> Two months prior, Kronos Plantations had entered into an agreement to purchase land lease rights to another plantation lot in the Dulit Land District.<sup>770</sup>

In February 2012, APS2 obtained a loan of MYR 71,400,000 from Malayan Banking Berhad secured on the land lease rights held by Kronos Plantation with remaining tenure of 51 years.<sup>771</sup> In 2012, APS2 began to report revenue

from fresh fruit bunches produced by oil palms.<sup>772</sup>

Leonard Linggi became an APS2 company director in October 2012.

A second land acquisition in 2013 completed the APS2 portfolio by purchasing a company with access to 3,852 hectares in Sarawak, Grand Performance Sdn. Bhd. (GP), for MYR 24,700,000, according to public press releases.<sup>773</sup> or MYR 25,762,750 according to APS2's financial statements.<sup>774</sup> The Annual Return for APS2 for 2013 the year GP was acquired is missing from publicly available SSM records.

### 4.3.1 KRONOS PLANTATION SDN. BHD. AND DULIT LAND DISTRICT, LOT 15

As founders of Kronos Plantation, Alexis Lawrence Marcel Wan Ullok and Wong Choong Git each held one share in early February 2009.<sup>775</sup> By late February 2009, Wan Ullok held a total of 99 of the company's 100 shares, and thus controlled the company.<sup>776</sup>

Kronos Plantation's annual financial statements for 2011 detail the sequence of events for purchasing the land. On the same day that APS2 acquired Kronos Plantation, October 25, 2011, it also nominated Kronos to acquire on its behalf "a parcel of land situated at Batang Tinjar, Baram, containing an area of 5,000 hectares, more or less, and described as Lot 15, Dulit Land District for the purchase price of [MYR] 102,000,000."<sup>777</sup> The report refers to an agreement to transfer the land dated August 25, 2011, between APS2 and the current holding company of the land, whose name is not mentioned.<sup>778</sup>

The agreement made by APS2 to acquire the land (August 25, 2011) from its previous owner pre-dated APS2's acquisition of Kronos Plantation (October 25, 2011).<sup>779</sup> This agreement also came before Kronos Plantation, itself a holding company, acquired the land.<sup>780</sup> This information further outlines how crucial the use of Malaysian shell companies was, as nominees to acquire land, for their parent companies. In this case, Kronos Plantation's immediate parent company was APS2, and ultimately Asian Plantations Ltd. based in Singapore and listed on AIM.<sup>781</sup>

By referencing the leaked data from the Land and Survey Department, EIA identified the plot indicated for acquisition by APS2 via Kronos Planation.<sup>782</sup>

Applicant / Owner (Name Origin)	Liaison Officer / No. Tel. / Fax	Land Alienated / Approved For Alienated	Premium (MYR)	Approval Headquarters (Number Date)	Document Title (Type)	Dates	Notes
HARTA MASTIRA SDN. BHD. Lot 208 Section 8, Jalan Haji Taha, 93400 Kuching.	YB Mohd. Naroden Majais 082-232208 082-234208082-422209	Lot 15 Dulit L.D. Oil Palm 5,000 Batang Tinjar, Baram	3,705,000	62/HQ/AL/107/99 (4D) bertarikh 23.11.2002	III	20.05.2003 (60 tahun)	

This land transaction lists the same land lot, "Lot 15 Dulit L.D.," and same area, 5,000 has, as the land described by APS2 for acquisition. The land lease term also coincides with the land acquired by APS2 - stated as 60 years upon its allocation in 2003, and at 51 years in APS2 Annual Reports on 2012.<sup>783</sup>

The recipient of the land lease for a company called Harta Mastira Sdn. Bhd. was Mohd Naroden Majais, a State Assemblyman for the State of Sarawak,<sup>784</sup> Assistant Minister in the Sarawak Chief Minister's office,<sup>785</sup> and referred to by local bloggers asserting Native Customary Rights claims as the "king of oil palm."<sup>786</sup> The online news blog, *Sarawak Report*, has uncovered corruption implicating Mohd Naroden and reported on Native Customary Rights violations perpetrated by companies he owned.<sup>787, 788</sup>

In the proposed acquisition announcement by Asian Plantations Ltd., the company issued the following statement:

“Through our long standing local relationships and on-the-ground presence, we were able to secure the parcel in a negotiated, non-competitive situation, which demonstrates our continued ability to source acquisition opportunities for the Company, as well as securing attractive local currency bank financing, which we believe creates long term shareholder value...Assuming a conservative market value of approximately RM 9,000 (c. US\$3,000) per hectare for the unplanted land in the Dulit Estate, the purchase price per planted hectare is approximately RM 31,400 (US\$10,600), which the board of APL (the “Board”) believes represents a substantial discount to recently transacted, planted parcels in the East Malaysian market.”<sup>789</sup>

In 2012, the land use rights over the same area were officially acquired by Kronos Plantation, but at a significantly lower price, roughly 62 percent of the initial price of MYR 63,105,545.<sup>790</sup> This land holding in Dulit Land District, Lot 15, once acquired by APS2 (via Kronos Plantation), was used to secure a loan of MYR 49,800,000, in 2013.<sup>791</sup>

The plantation land is identified as “Dulit” in maps from Asian Plantations Ltd.’s corporate literature. Much of the land was already deforested before acquisition by Kronos, but satellite images provided by Transparent World show that when the land was doled out to Mohd Naroden, thousands of hectares of natural forest still stood.<sup>792</sup> This forest was wiped out—clear cut in a few short years following the land lease allocation. By 2014, the forest had been completely replaced by oil palm.<sup>793</sup>

## GRAND PERFORMANCE SDN. BHD.

Grand Performance Sdn. Bhd. is the most recent acquisition by Asian Plantations Ltd., via its subsidiary, APS2. Asian Plantations Ltd. made the following statement about its acquisition of Grand Performance, which already held rights to land in Sarawak at the time the company was acquired by APS2:

“The Board believes that the Company has secured an attractive valuation of the GP Estate relative to other publicly announced land transactions in East Malaysia, at a time of increasing scarcity of agricultural land in Malaysia.”<sup>794</sup>

APS2 acquired the land area of 3,852 hectares of its subsidiary, Grand Performance, for MYR 25,762,750 in cash on August 19, 2013, when the plantation had not yet begun operations.<sup>795</sup>

Without further information from the Land and Survey Department about who acquired this land, when, and for how much, it is impossible to know whether this land was acquired by politically connected individuals for below market value, similarly to BJ Corporation, IncoSetia, Fortune Plantation, or Kronos Plantation. The information available shows apparent deforestation exhibited by Grand Performance at its purported operation site.

Based on a map published by Asian Plantations Ltd., EIA identified plantation clearing in an area which Asian Plantations Ltd. identified as Grand Performance, according to satellite imagery. The actual land cleared in this area differs greatly from the map of land which Asian Plantations Ltd. said it had access to via Grand Performance. The satellite images show that clear cutting of forest continued to take place in this area until Asian Plantations Ltd.’s sale in 2014.

## ASIAN PLANTATIONS (SARAWAK) III SDN. BHD. (APS3)

(Called Asian Pineapple Sdn. Bhd. until July 2011)

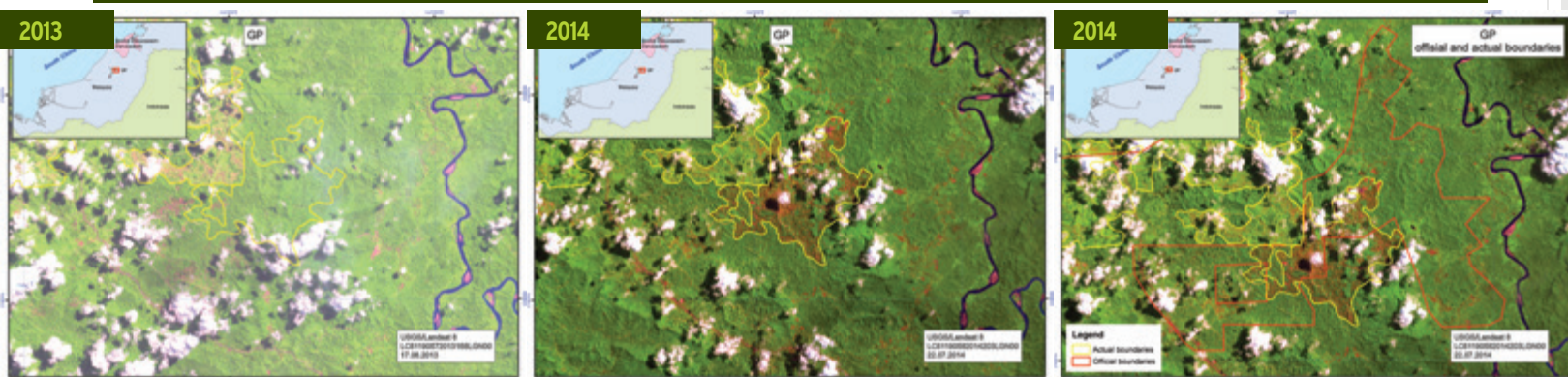
Created by Dennis Melka and Graeme Brown in 2009, Asian Plantations (Sarawak) III was initially owned by a company held by directors of Asian Plantations Ltd., “Brown and Melka Sdn. Bhd.”<sup>796</sup> until June 2012, at which point it was acquired by Asian Plantations Ltd. directly.<sup>797</sup>

The only company held by APS3 is Jubilant Paradise, formerly the holding company for IncoSetia Plantation, which was subsequently split off and transferred to APS3. (See Section 4.2.4) This company is used as a corporate entity for Asian Plantations Ltd.’s ownership what the company refers to as its community planting project. Asian Plantations Ltd.’s annual report on 2012 stated that by December 31, 2012, 200 hectares of oil palm had been planted.<sup>798</sup>

SSM documents show that indeed, Jubilant Paradise is 60 percent owned by Asian Plantations Ltd. and 40 percent owned by an entity called “Kooperasi Majumung Luyang Lemeting Baram Bhd.”<sup>799</sup> Documents for the “Kooperasi” entity could not be located in the Malaysian Companies Commission, and further research is needed on the terms of the group’s agreements with the communities, and whether promises have been kept.

What is clear is that the company segregated financing, revenues, and ownership of this community planting project from all other financing and revenue streams by giving the community ownership in a holding company with no significant assets, Jubilant Paradise.

FIGURE 23: Grand Performance plantation clearing



Source 1: “Actual” boundary maps were drawn by mapping experts at Transparent World, based on analysis of LANDSAT data.

Source 2: Data for “Official” boundary maps was drawn using Asian Plantations Ltd. published information in the “Corporate Update 1H 2013.” Published by APL in May 2013. ”



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    - a. Los ecosistemas forestales y otros ecosistemas de vegetación silvestre.
    - b. Los recursos forestales y de fauna silvestre mantenidos en su fuente.
    - c. La diversidad biológica forestal y de fauna silvestre, incluyendo sus recursos genéticos asociados.
    - d. Los bosques plantados en tierras del Estado.
    - e. Los servicios de los ecosistemas forestales y otros ecosistemas de vegetación silvestre.
    - f. Las tierras de capacidad de uso mayor forestal y tierras de capacidad de uso mayor para protección, con bosques o sin ellos.
    - g. Los paisajes de los ecosistemas forestales y otros ecosistemas de vegetación silvestre en tanto sean objeto de aprovechamiento económico.
    - h. Las plantaciones forestales en predios privados y comunales y sus productos se consideran recursos forestales pero no son parte del patrimonio forestal y de fauna silvestre de la Nación."
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    - a. Los bosques naturales.
    - b. Las plantaciones forestales.
    - c. Las tierras cuya capacidad de uso mayor sea forestal y para protección, con o sin cobertura arbórea.
    - d. Los demás componentes silvestres de la flora terrestre y acuática emergente, incluyendo su diversidad genética."
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 Case Palmas de Shanusi - terrenos, prosecutor's file 148-2012  
 Case Palmas de Shanusi - terrenos, prosecutor's file 129-2012  
 Case Palmas de Shanusi - Quinayoc, prosecutor's file 30-2011  
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  129. *Contraloría General de la República*
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  132. "The file on the evaluation of Major Soil Use Capacity presents inconsistencies in the interpretation of the results concerning what was established by Article 9 - Regulations on Land Classification According to their Major Soil Use Capacity (*Reglamento de Clasificación de Tierras por su Capacidad de Uso Mayor*). This corroborates a deficiency in the interpretation of field data, thereby leading to partiality or bias... in the sense of allowing a type "c" classification, when it is in fact a category "f" soil." *Technical Report N° 001-2008-INRENA-ATFFS-SM/AREA TECNICA/CHTS*. (2008)
  133. "As in the previous case, the Economic Ecological Zoning of San Martín ... has been completely overlooked, as was evidenced with the authorization of change in use of the territories that belong to this allocation, since in fact 86% of said territories contain lands suitable for forestry." *Technical Report N° 001-2008-INRENA-ATFFS-SM/AREA TECNICA/CHTS*. (2008).
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  144. *Ibid*.
  145. *Ibid*.
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  147. *Technical Report N° 001-2008-INRENA-ATFFS-SM/AREA TECNICA/CHTS*. (2008).
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171. National Property Registry of Peru
172. National Property Registry of Peru. *Partida Registral 11040080: Plantaciones Nacionales del Peru SAC*.
173. For all these companies, Dennis Melka appears as the only "Apoderado Grupo A"
174. Original text in Spanish: "Apoderados Grupo A (...) quienes de manera individual y a sola firma podrán ejercer todas las facultades del régimen de poderes establecidos en la cláusula sexta del presente reglamento".
175. According to the satellite imagery analysis, the deforestation in Tamshiyacu started in 2013 and the deforestation in Nueva Requena started in 2012. Landsat satellite imagery analysis. (1985-2015).
176. According to Landsat satellite imagery analysis up to November 2014, the deforestation during the implementation of the projects is estimated on 2,093 ha for the Cacao del Peru Norte Project and 4,870 ha for the Plantaciones de Ucayali Project. A total of 6,964.34 hectares deforested during the implementation of the projects. EIA analysis of Landsat satellite imagery from 1985 to 2015. (2010-2015).
177. Strand Hanson Limited, VSA Capital Limited, Kallpa Securities Sociedad Agente de Bolsa SA. (2014). Admission Document: United Cacao Limited SEZC. Page 39.
178. Refer to chart "Melka Group" in this report.
179. National Property Registry of Peru.
180. The project names are Plantaciones del Perú Este SAC (10,000 ha), Plantaciones de Loreto Este SAC (10,000 ha), Plantaciones de San Francisco SAC (10,000 ha), Plantaciones de Marín SAC (5,771 ha), Plantaciones de Loreto Sur SAC (9,389 ha) neighboring the Tamshiyacu area, National Property Registry of Peru. *Partida Registral 11040959: Plantaciones del Peru Este SAC*. National Property Registry of Peru. *Partida Registral 11040957: Plantaciones de Loreto Este SAC*. National Property Registry of Peru. *Partida Registral 11047255: Plantaciones de San Francisco SAC*. National Property Registry of Peru. *Partida Registral 11047252: Plantaciones de Marín SAC*. National Property Registry of Peru. *Partida Registral 11040958: Plantaciones de Loreto Sur SAC*.
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189. EIA analysis of Landsat satellite imagery from 1985 to 2015. (2010-2015). Tamshiyacu and Nueva Requena areas, years 2013 – 2014. National Property Registry of Peru. Tamshiyacu and Nueva Requena.
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191. National Property Registry of Peru.
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193. The project names are Plantaciones del Perú Este SAC (10,000 ha), Plantaciones de Loreto Este SAC (10,000 ha), Plantaciones de San Francisco SAC (10,000 ha), Plantaciones de Marín SAC (5,771 ha), Plantaciones de Loreto Sur SAC (9,389 ha) neighboring the Tamshiyacu area. National Property Registry of Peru. *Partida Registral 11040959: Plantaciones del Peru Este SAC*. National Property Registry of Peru. *Partida Registral 11040957: Plantaciones de Loreto Este SAC*. National Property Registry of Peru. *Partida Registral 11047255: Plantaciones de San Francisco SAC*. National Property Registry of Peru. *Partida Registral 11047252: Plantaciones de Marín SAC*. National Property Registry of Peru. *Partida Registral 11040958: Plantaciones de Loreto Sur SAC*.
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198. According to the satellite imagery analysis by November 2014, the area deforested in Tamshiyacu during the implementation of the Melka Group project was of 2,093.94 ha. EIA analysis of Landsat satellite imagery from 1985 to 2015. (2010-2015).
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