



global witness

Japan's timber imports fuelling rainforest destruction in Sarawak and violation of indigenous land rights: New findings from recent research and field investigations

Summary and recommendations

The tropical rainforests of Borneo are internationally recognized for their cultural and ecological significance, but they are under serious threat from unsustainable logging and agriculture. This threat is particularly acute in the state of Sarawak, Malaysia, where rampant unsustainable and often illegal logging, increasingly followed by clearance for palm oil and timber plantations, is resulting in one of the highest rates of deforestation in the world. New data shows that between 2000 and 2012 alone, Sarawak lost 15 percent of its natural forest cover, with deforestation rates increasing in recent years.¹ Now less than 5 percent of Sarawak's forests remain in an intact state.²

Japan is the largest buyer of timber products from Sarawak, accounting for around one third of its exports of all timber products and half of its plywood exports.³ The Japanese government and private sector therefore have an obligation to address the rapid deforestation in Sarawak and take urgent action to prevent further harm to Sarawak's indigenous communities and biodiversity which rely on its forests.

Logging and deforestation are harming the livelihoods of indigenous communities that rely on the forests for their daily needs, often in violation of communities' rights to their traditional lands as recognized under the Malaysian constitution. Hundreds of legal challenges by indigenous communities are currently making their way through the court system, even as forests in the areas claimed by the communities continue to be logged and cleared.⁴

Forest destruction also threatens Sarawak's globally significant biodiversity. A large area of the Sarawak highlands is included in the Heart of Borneo, an internationally recognized, transnational priority conservation area. Some areas within the Heart of Borneo have been proposed as conservation areas by the government of Sarawak. However, these are currently being subject to rapidly expanding and grossly unsustainable logging operations.⁵

This brief describes the findings of recent Global Witness research and field work looking into the operations of two major logging companies in Sarawak, Samling Group and Shin Yang Group. A number of recent independent studies have exposed systemic illegal and destructive logging by both companies,⁶ providing additional evidence of the environmental and legal issues surrounding logging in Sarawak. On this basis, and the continued opposition and ongoing legal challenges to logging operations by indigenous communities affected by logging operations in Sarawak, Global Witness recommends the following:

Japanese companies should:

- Carry out due diligence on all sourcing of timber products from Sarawak and cease sourcing from Sarawak unless such products can be independently verified as legal, sustainable and free of human rights violations.
- Under no circumstances source timber from forest areas with outstanding indigenous claims to land, documented illegal logging, or intact or high conservation value.
- Immediately cease all sourcing from Shin Yang Group, which recent satellite imagery reveals is carrying out grossly unsustainable logging operations in ecologically sensitive areas.

The Japanese Government should:

- Level the playing field for legitimate timber producers at home and abroad by passing legislation that prohibits illegal timber products from entering the Japanese market and requires companies and individuals placing timber products on the market to carry out robust due diligence on their supply chains.

Global Witness put the allegations in this briefing to the companies concerned, but they did not respond.

Indigenous Land Claims

The state of Sarawak is home to over a million indigenous peoples who have for centuries relied on the region's rainforests for their livelihoods. The Malaysian federal state recognizes indigenous peoples' native customary rights (NCR) to the land and forests they have historically used and occupied, consistent with Malaysia's endorsement of the UN Declaration of the Rights of Indigenous Peoples. However, the Sarawak government has failed to enshrine these rights in its Land Code, giving rise to hundreds of claims before the Sarawak courts contesting the government's allocation of their ancestral land for purposes such as logging and plantations.⁷

In several key cases, the Sarawak judicial system has found in favor of the indigenous claimants, but the legal decisions have not prevented or provided compensation for the often irreversible harm caused to indigenous communities by logging and clearance of their forest lands. The Sarawak courts have interpreted NCR as including traditional uses of forests such as hunting, fishing, and collecting medicine, in contrast to the Sarawak government's interpretation of NCR under the Land Code that it is limited to agricultural cultivation and settlement.⁸

However, even where the court has supported indigenous claims to the land, the forests in the disputed land have often been logged and cleared while the case is pending in court,⁹ making the victory in court essentially meaningless.

In May 2014, Global Witness visited three Penan communities involved in outstanding NCR claims over land that has been allocated by the government to Samling Group, one of the largest of the logging companies in Sarawak. In each community, namely Long Kerong, Long Sepigen, and Long Lamai, residents expressed their desire to prevent logging of their forest and attested to their longstanding disputes with Samling and the Sarawak government over land.¹⁰ A common element in many such disputes has been the Sarawak Government's issuance of timber and plantation licenses to companies for use of land that is claimed by indigenous peoples.¹¹ This problem was recently highlighted by a report of the Malaysian Human Rights Commission (SUHAKAM),¹² but no actions have been taken to date by the Sarawak Government to better account for NCR land when awarding licenses.

Evidence of Destructive Logging by Samling Group and Shin Yang Group

Illegal and destructive logging activities by both Samling and Shin Yang have been documented by past independent investigations,¹³ and recent evidence obtained by Global Witness through high-resolution satellite imagery and field work, provided in the Annex to this brief, suggests these problems continue to plague forest governance in Sarawak.

In 2009, the Malaysian Auditor-General found illegal logging on steep slopes and close to riverbanks in two of Samling's concessions in Sarawak, resulting in erosion and water pollution.¹⁴ A subsequent investigation in 2009 of six Samling concessions in Sarawak by the Council on Ethics for the Norwegian Government Pension Fund, the world's largest sovereign wealth fund, identified "extensive and repeated breaches of license terms, regulations and other requirements in all the six concession areas that were surveyed," and determined that "the company's unacceptable practice will continue."¹⁵ The Council's investigation included concession T/0413, which is reviewed in this brief, and its findings included clear-cutting inside river buffer zones and pollution of rivers with logging debris, logging of protected species and undersized trees, and false tagging of protected species. Samling responded to the Council's findings by stating that all of its operations were in compliance with relevant laws and regulations, but it did not provide specific information to counter these findings, and the Norwegian Pension Fund chose to divest from Samling in 2010.

In 2012, Global Witness investigations of Shin Yang concession T/3342, which is also reviewed in this brief, uncovered illegal land-based logging on steep slopes as well as excessive clearance of forests for construction of logging roads.¹⁶ Satellite imagery at that time showed logging in the proposed Danum Linau National Park and extension areas located within the Heart of Borneo conservation area.

The images provided in the Annex of Samling concessions T/0413, T/0412, T/0411, and T/0390 and Shin Yang concessions T/3342 and T/3228 show both companies continuing to carry out intensive logging in ecologically sensitive areas such as the Heart of Borneo and areas proposed by the Sarawak Government for conservation. In addition to the extreme environmental damage revealed, the data presented here raises serious concerns about compliance with key legal requirements for logging operations in Sarawak.

Considering past independent reports documenting illegal activities by these companies, this new evidence of highly destructive logging operations by Samling and Shin Yang in the last rainforests of Sarawak reinforce the questionable legality and sustainability of the timber products supplied by these companies.

Conclusion

In light of the destructive logging being carried out by two of the largest suppliers of timber products from Sarawak, Samling Group and Shin Yang Group, buyers must exercise robust due diligence on timber products coming from Sarawak. Unless timber products can be independently verified as legal, sustainable and free of human rights abuses and competing land claims by indigenous communities, there can be no assurance of their legality or sustainability. Nor can there be any assurance that the buying of such products are not fuelling the destruction of invaluable biodiversity in areas intended for conservation.

The burden of proof now rests on companies to demonstrate that their supply chain is legal, sustainable and free of human rights violations. The Japanese government should pass legislation that ensures the due diligence of companies meets this standard and prevents illegal timber from entering the Japanese market.

Endnotes

1. Hansen, M. C., P. V. Potapov, R. Moore, M. Hancher, S. A. Turubanova, A. Tyukavina, D. Thau, S. V. Stehman, S. J. Goetz, T. R. Loveland, A. Kommareddy, A. Egorov, L. Chini, C. O. Justice, and J. R. G. Townshend. 2013. "UMD Tree Cover Loss and Gain Area." University of Maryland and Google. Accessed through Global Forest Watch on 28 May 2014 at www.globalforestwatch.org
2. Global Witness estimate, explanation available at: <http://www.globalwitness.org/sites/default/files/library/Sarawak%20myths%20and%20reality.doc.pdf>
3. See Global Witness, *An Industry Unchecked* (2013), p. 8, available at <http://www.globalwitness.org/japanmalaysia>.
4. See, for example, *Tr Sandah ak Tabau & 7 Ors v Kanowit Timber Sdn Bhd & 2 Ors*, No 21-2-2009 (High Court of Sabah and Sarawak in Sibiu); *Tr Gayan anak Tupai & 3 Ors v Vita Hill Sdn Bhd & 2 Ors*, No 21-4-2009 (High Court of Sabah and Sarawak in Sibiu).
5. See Global Witness, *An Industry Unchecked* (2013) and data in this brief.
6. For a summary, see Global Witness, *An Industry Unchecked* (2013).
7. See the Bruno Manser Fund's Sarawak Geportal. <http://www.bmfmaps.ch/EN/composer/#maps/1001>
8. See, for example, *Nor Anak Nyawai & Ors v Borneo Pulp Plantation Sdn. Bhd. & Ors*, No. 22-28-99-I (High Court in Kuching, 12 May 2001); *Numpang Suntain & 13 Ors v Quality Concrete Holdings Berhad & 6 Ors*, No. 22-218-2010-II (High Court in Kuching, 21 May 2012).
9. See, for example, *Tr Sandah ak Tabau & 7 Ors v Kanowit Timber Sdn Bhd & 2 Ors*, No 21-2-2009 (High Court in Sibiu); *Tr Gayan anak Tupai & 3 Ors v Vita Hill Sdn Bhd & 2 Ors*, No 21-4-2009 (High Court in Sibiu).
10. See, for example, *Kelasau Naan & 3 Others v. Sarawak Government, Samling Plywood (Baramas) Sdn. Bhd., Samling Timber Sdn. Bhd. & 3 Ors*, No. 22-46-98 (High Court in Miri) (A claim brought by the indigenous headmen of Long Kerong, Long Sepigen, Long Sait and others challenging the issuance of logging licenses for T/0411 and T/0412); *Lija Agang & 3 Ors v. Samling Plywod(Miri) Sdn Bhd & 2 Ors*, No. 21-07-2010 (High Court in Miri) (A claim brought by the indigenous headman of Ba Jawi and others challenging issuance of a logging license for T/0413); *Balare Jabu & 4 Ors. v. Merawa Sdn Bhd, Sarawak Government & 1 Ors*, No: 22-21-2007 (High Court in Miri) (A claim brought by indigenous representatives of Long Lamai challenging issuance of a logging license to Merawa Sdn. Bhd., a subsidiary of Samling Global, for T/0390).
11. See, for example, *Jawa Lawing & 7 Ors. v. Shin Yang Forestry & 4 Ors*, No. 22-11-2004 (High Court in Bintulu) (a claim brought by indigenous communities of Belaga and others challenging Shin Yang's oil palm plantation licenses); *Nyalang Tahe & 5 Ors v. Samling Plantation & 2 Ors*, No. 22-62-2002 (a claim brought by indigenous communities of Belaga and others challenging Samling's oil palm plantations).
12. SUHAKAM, Report of the National Inquiry into the Land Rights of Indigenous Peoples. 2012. Sec. 7.6.
13. See Malaysian Auditor-General, Laporan Ketua Audit Negara, Aktiviti Kementerian/Jabatan/ Agensi Dan Pengurusan Syarikat Kerajaan Negeri Sarawak, Tahun 2008, 2009, p. 68-91. https://www.audit.gov.my/docs/BI/4Auditor%20General's%20Report/2States/Sarawak/3.SARAWAK_aktiviti.pdf; Council on Ethics, The Norwegian Government Pension Fund Global, *To the Ministry of Finance, Recommendation of 22 February 2010*, http://www.regjeringen.no/upload/FIN/etik/Recommendation_Samling.pdf; Global Witness, *In The Future There Will Be No Forests*, November 2012, <http://www.globalwitness.org/sites/default/files/library/HSBC-logging-briefing-FINAL-WEB.pdf>.
14. See report by Malaysian Auditor-General, op. cit. Concessions investigated were T/3112 and T/3284.
15. Council on Ethics of the Norwegian Pension Fund, op. cit., pp. 41, 42. The Council investigated the following Samling concessions: T/9082, T0390, T/0411, T/0413, T/0404 (LPF/0021), and T/0294.
16. Global Witness, *In The Future There Will Be No Forests*, op. cit.

The satellite images and photos below provide evidence of destructive logging by two of the largest suppliers of timber products from Sarawak, Samling Group and Shin Yang Group. They show the extent of logging taking place in lands claimed by indigenous communities as well as in ecologically sensitive areas and areas proposed by the Sarawak Government for conservation.

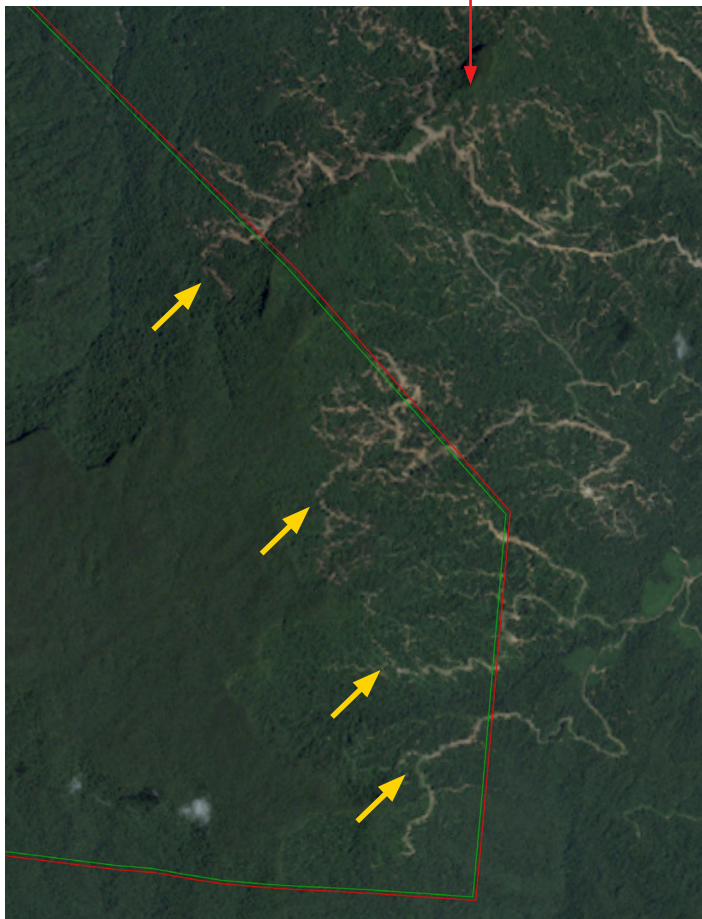
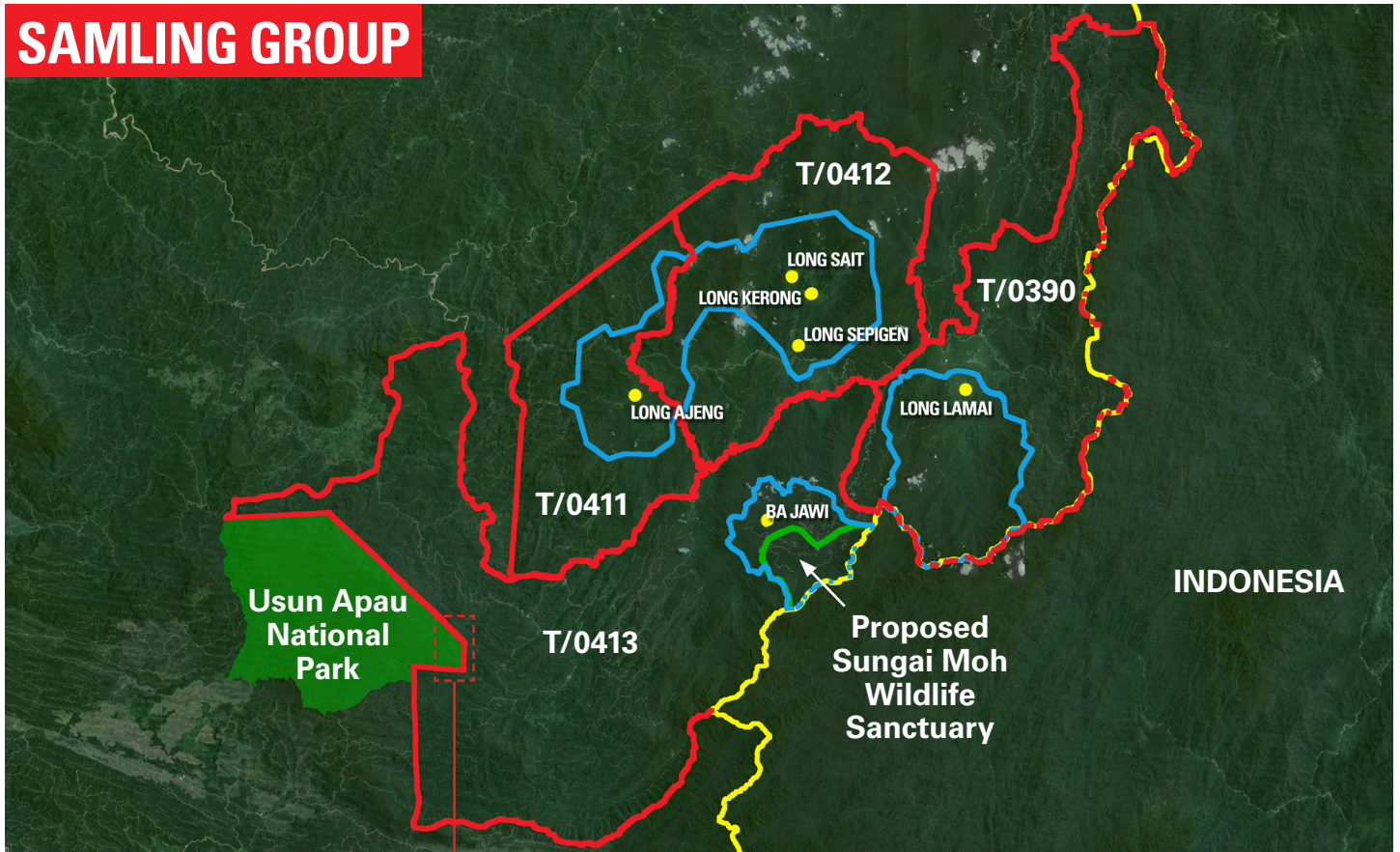


Figure 1 (above): Overlap between Samling timber licenses, land claimed by indigenous communities, and a proposed conservation area

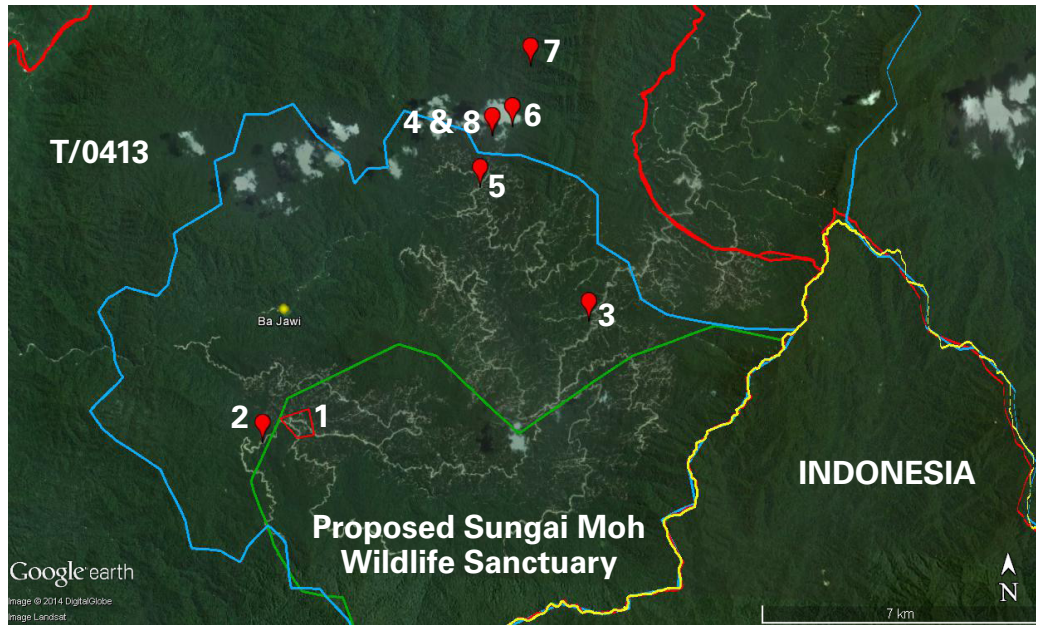
Samling timber licenses T/0411, T/0412, T/0413, T/0390 (red boundaries) overlap with land claimed by the Penan communities of Long Lamai, Ba Jawi, Long Sait, Long Sepigen, Long Kerong and Long Ajeng (blue boundaries) and with the proposed Sungai Moh Wildlife Sanctuary (green boundary). The adjacent Usun Apau National Park is shaded green. The yellow line shows the border with Indonesia. The background is satellite imagery available from Google Earth.

Figure 2 (left): Logging inside a National Park

Satellite imagery from February 2013 shows recent large-scale logging inside Usun Apau National Park (green boundary) accessed from Samling timber license T/0413 (red boundary). Such logging is usually prohibited in gazetted National Parks in Sarawak. The area in the red rectangle above is enlarged in the image to the left. Areas where logging has occurred are indicated by yellow arrows.

Figure 3 (right): Intensive logging on land claimed by indigenous community and in a proposed conservation area

Satellite imagery available from Google Earth shows intensive logging since 2011 on land claimed by the Penan community of Ba Jawi (blue boundary) in a court case currently under appeal and within the boundaries of the proposed Sungai Moh Wildlife Sanctuary (green boundary) in the Heart of Borneo, a trans-national priority conservation area. The numbers indicate the locations of the examples of destructive logging described in this brief.



Logging and road construction in river buffer zones

Logging operations in river buffer zones and erosion and landslides from road construction were observed in Samling timber license T/0413 by high resolution satellite imagery from June 2012 and field work in May 2014. The Sarawak Forestry Code typically prohibits logging within 20 meters of streams, or a greater distance for larger waterways, and that efforts are taken to minimize erosion and siltation. The red arrows in the satellite image above (1) available from Google Earth indicate logging along the banks of a large river shown by the blue line. The photo to the left (2), taken in May 2014, shows logging and severe erosion at a nearby location involving the same river.



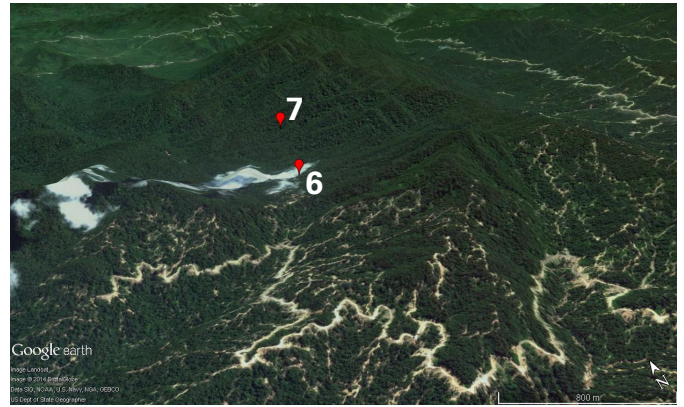
Logging and erosion in buffer zones around waterways

Examples of widespread disruption and pollution of waterways in Samling timber license T/0413 resulting from logging and erosion and landslides caused by construction of logging roads. Photos were taken by a field team in May 2014 at the locations indicated in Figure 3.



Severe canopy damage from logging operations and landslides resulting from road construction

Severe damage to intact rainforests used by indigenous communities in Samling timber license T/0413 caused by recent intensive logging and landslides due to road construction on steep slopes. The photos below were taken by a field team in May 2014 at the locations shown by the numbers in the satellite image above taken in June 2012. Imagery provided by DigitalGlobe ©2014 and made available by Google Earth.





Logging and road construction on steep slopes is widespread in Samling timber license T/0413 resulting in landslides and severe canopy damage of previously intact rainforest. Photo was taken by a field team in May 2014 at the location indicated in Figure 3.

SHIN YANG GROUP



Figure 4: Overlap between Shin Yang timber licenses, a proposed National Park, and the Heart of Borneo priority conservation area

Shin Yang timber licenses T/3342 and T/3328 (red boundaries) overlap with the proposed Danum Linau National Park and two extension areas (areas shaded green) within the Heart of Borneo trans-national priority conservation area (blue boundary). The Indonesian border is shown in yellow.

Figure 5:

High resolution satellite imagery of recent logging of intact forests in a proposed National Park (green boundaries) and the Heart of Borneo (blue boundary) in Shin Yang timber license T/3342 (red boundary).

Middle: Intensive logging, landslides and erosion along the river shown by the blue line as indicated by the yellow arrows. The river is partially obstructed and heavily polluted from erosion.

Bottom: Severe canopy damage resulting from intensive logging in intact forest.

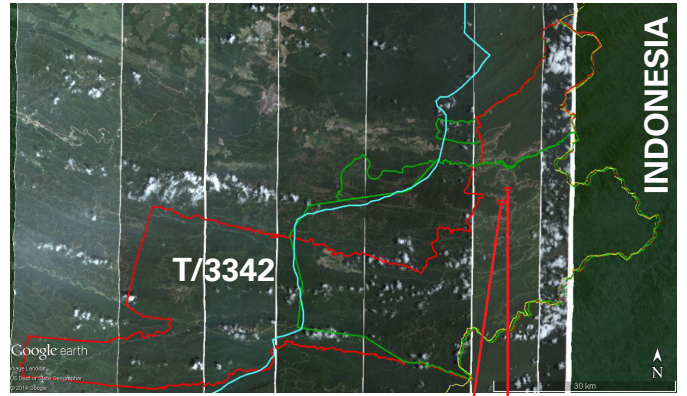
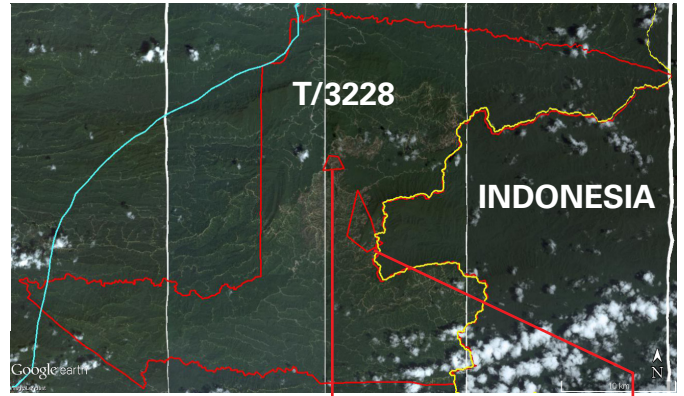


Figure 6:

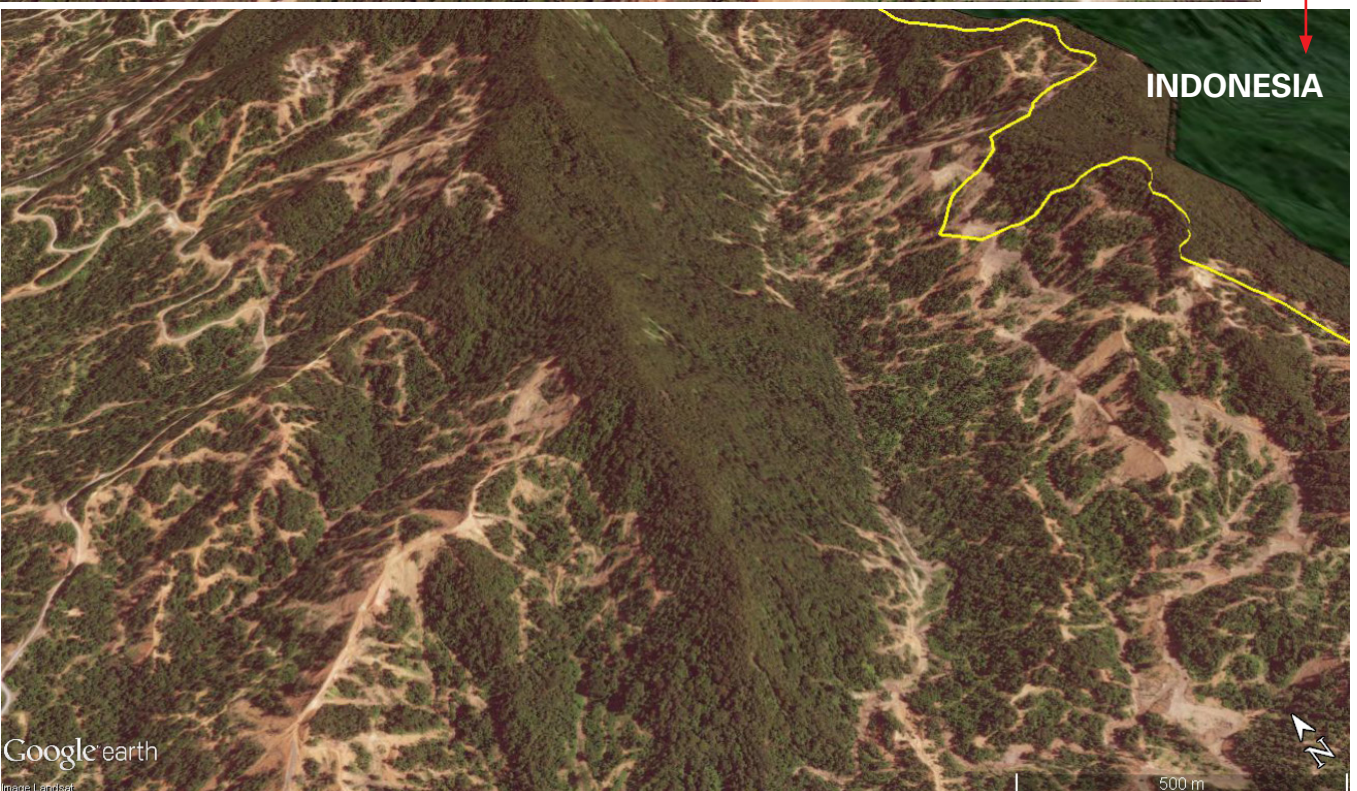
High resolution satellite imagery of recent intensive logging in the Heart of Borneo (blue boundary) in Shin Yang timber license T/3228 (red boundary).

Middle: Severe canopy damage caused by intensive logging.

Bottom: Intensive logging on steep slopes and within meters of the Indonesian border (yellow) resulting in severe landslides and erosion.



Imagery provided by DigitalGlobe ©2014



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