

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

To the Ministry of Finance

Recommendation of 22 February 2010

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1 Introduction

At a meeting held on 2 March 2008, the Council on Ethics for the Government Pension Fund Global (GPF) decided to assess whether the investments in the Malaysian logging company Samling Global Ltd may imply a risk of the Fund contributing to severe environmental damage under the Ethical Guidelines, point 4.4.

As of 31 December 2009 the Government Pension Fund Global held a total of 16 060 000 shares in the company.

Producing timber, plywood and veneer, Samling Global Limited is a Malaysian forest resource company with logging concessions, plantations and freehold land in Malaysia, Guyana, New Zealand and China. All logging concessions are located in natural tropical rainforests, covering an area of 1.4 million hectares in Sarawak, Malaysia and 1.6 million hectares in Guyana. Samling harvests more than 2.3 million m³ of timber a year, over 80 per cent of which is felled in Malaysia.

Seeing as there is little information available on how Samling Global runs its operations, the Council has carried out its own investigations of the company's forestry activities in Sarawak, Malaysia and Guyana. In Sarawak the company has a total of 15 logging concessions, and five of these have been selected for further examination, including field surveys and analyses of satellite images. The assessment of the operations in Guyana is primarily based on publicly accessible sources. The Council has focused its assessment on illegal logging and the environmental damage that occurs when laws and regulations are not being observed. The term 'illegal logging' designates felling, transport, purchase and sale of timber in contravention of national legislation.

The Council on Ethics' own investigation of Samling's logging operations have documented what seems to be extensive and repeated breaches of the licence requirements, regulations and other directives in all of the six concession areas that have been examined. Some of the violations constitute very serious transgressions, such as logging outside the concession area, logging in a protected area that was excluded from the concession by the authorities in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments. Other violations which, seen in isolation, may appear less serious are aggravated because they seem to be a systematic part of the company's logging operations. Moreover, the Council attaches importance to the fact that the Malaysian Auditor-General has documented illegal logging in another two of Samling Global's concessions and that Samling Global's subsidiary Barama has been fined several times for irregularities related to logging operations in Guyana.

The Council has contacted the company twice. In January 2009 the Council made an enquiry requesting copies of the timber licences and the forest management plans for the concessions in Malaysia and Guyana, as well as information on the company's logging operations. Samling rejected the Council's request in a letter dated 2 February 2009.¹ Following further investigations another letter was sent to Samling on 17 December 2009, providing the company with an opportunity to comment on the Council's draft recommendation, as prescribed by the Ethical Guidelines, point 4.5. The Council received the company's reply on 12 February 2010.² Samling denies any involvement in illegal logging, stressing that the logging operations comply with government requirements. However, Samling fails to offer sufficient information to indicate that

¹ Letter from Samling to Norges Bank and Council on Ethics, 2 February 2009.

² Letter from Samling to the Council on Ethics, 12 February 2010.

the Council's recommendation is based on a faulty foundation. An account of Samling's reply is given in Chapter 5 and under relevant sections of the recommendation.

According to the preparatory work for the Fund's Ethical Guidelines, illegal logging may be in contravention of the Guidelines. When assessing the company, the Council has placed particular importance on the extent of illegal logging in Samling's concessions and on the extent to which this practice shows signs of being systematic, as well as the risk that it will continue in the future. The Council finds that the violations detected in the investigated concessions in Malaysia and Guyana are extensive and, in part, severe. Even if the violations are of a varying character, the seriousness is reinforced by their recurrence, which, in the Council's view, indicates systematically irresponsible behaviour on the part of the company. This is inconsistent with Samling's assurances that its logging operations are sustainable, environmentally sound and in line with the regulations.

In light of the lack of transparency relating to all aspects of Samling's forestry operations, the fact that the company has not presented documentation showing the Council's information on illegal logging to be wrong, and that there seems to be few incentives for change, the Council finds reason to believe that there is an unacceptable risk that the company's illegal and destructive forestry operations will continue in the future.

The Council concludes that, under the Ethical Guidelines, subsection 4.4, there are grounds to recommend that Samling Global Ltd. be excluded from the investment universe of the Government Pension Fund Global due to an unacceptable risk of contributing to ongoing and future severe environmental damage.

2 Sources

The available information on the environmental performance of Samling Global's operations is very limited. The company does not disclose any substantial information on its forest operations in the concessions. Forest management plans or the specific requirements the company has to comply with are not available either, as neither the company nor the Sarawak authorities disclose such information.

The Council therefore contacted Samling Global, through Norges Bank, requesting copies of the official timber licences and forest management plans for the various concession areas operated by Samling Global and its subsidiaries in Malaysia. The company declined the Council's request in a letter dated 2 February 2009.

To be able to assess the company's operations, the Council commissioned its own research targeted at evaluating the legal and environmental performance of Samling Global's forestry operations in Sarawak, Malaysia. Earthsight Investigations³ carried out the research in the period from April 2008 until December 2009. This included a field investigation into four of Samling's logging concessions in Sarawak, as well as information gathering and numerous interviews with Sarawak government officials, labour unions, local NGOs and residents in the concession areas. The field investigations were conducted in April and September 2009.

³ www.earthsight.org.uk

In addition, the most recent available Landsat imagery for the relevant concession areas have been obtained, analysed and compared with earlier images.⁴ Landsat imagery of 15-30 m spatial resolution is sufficiently detailed to clearly show logging roads, forest degradation and recent clearances. This information was used to help identify locations of recent logging activity within the Samling concession areas and to assess whether logging is occurring in prohibited zones within and outside of licence areas.

The Council has obtained timber licences for four of Samling's timber logging concession areas in Sarawak, and a Forest Management Plan for one of these areas (though this has expired). The Council has also had access to the Environmental Impact Assessments (EIAs) for the re-entry logging of three of Samling's timber logging concession areas and for all six of Samling's forest plantation (clearance) licence concessions. Furthermore, the Council has obtained maps showing land use planning within the concessions, including routes of logging roads, areas reserved as green belts, community forests and riparian buffers, classified steep Class IV terrain and areas permitted to be selectively logged or cleared.⁵ These documents, as well as documents pertaining to Sarawak forest and environment legislation, have been used as a basis for assessing the company's operations.

Regarding Samling's operations in Guyana, the Council has for the most part relied on publicly available sources.

This recommendation is mainly based on the Council's own research. Other sources are referred to in footnotes.

3 The Council's considerations

The Council on Ethics decided to assess Samling Global at a meeting on 3 March 2008, shortly after the company was included in the Fund's portfolio. The Council was already aware of the serious allegations against the company regarding illegalities in its forest operations in several countries. The Council has also received requests from the Swiss NGO Bruno Manser Fund and the Norwegian Rainforest Foundation to investigate Samling Global's operations with regard to breaches of human rights and severe environmental damage within its forest concessions.

The Council is aware of the more than 20 year old and still ongoing conflict between Samling and indigenous communities in Sarawak over its logging operations in what the indigenous peoples claim as their customary lands. The most famous case relates to the Penan People of the

⁴ The most recent imagery for the area of plantation forest licence LPF/0021 and logging licences T/0411, T/0413 and T/0390 dates from 3 March 2009, while that for the northern part of T/9082, T/0390 and T/0294 dates from 20 May 2009.

⁵ The Council has had access to the following official documents pertaining to the concessions: Environmental Impact Assessments for re-entry logging of : T/0411 (from 2009) including the Timber Licence, coupe maps, harvesting plans and Permit to Enter Coupe (PEC) documents; T/0294 (from 2008),) including the Timber Licence, coupe maps, harvesting plans and Permit to Enter Coupe (PEC) documents, and letter from the Director of Forest to Samling regarding the extension of Pulong Tau National Park; T/0298 (from 1996; now part of T/9115) and T/0299 (from 1996; now part of T/9115) including coupe maps. For T/0390 the Council has obtained the Timber Licence, the Forest Management Plan (though expired) and coupe maps, and for T/0412 the Timber Licence. Moreover, the Council has obtained the EIAs for all of Samling's 6 licences for planted forest (LPF/0004, LPF/0005, LPF/0007, LPF/0008, LPF/0020, LPF/0021), where all forest will be cleared for plantations.

upper Baram area of central Borneo, close to the border with Indonesia.⁶ Concessions in this area are claimed to have been granted to Samling and other logging companies in the early 1980s, without consulting indigenous peoples and local communities. As the logging progressed, the Penan found that the logging had a dramatic detrimental impact on the forest and thus on their livelihoods. Since 1998, indigenous communities situated within the timber concessions have filed three lawsuits against four of Samling's subsidiaries and the State Government over land rights. The legal cases are still pending in Malaysian courts.⁷ In December 2009 five Penan communities filed two new lawsuits against two of Samling's subsidiaries, also these over land rights issues and compensation for damage caused by the company in the course of their past operations.⁸

The Council has not assessed allegations pertaining to indigenous peoples' rights.

With reference to the Ethical Guidelines, point 4.4, second clause, the Council has considered whether the Fund's investment in Samling Global constitutes an unacceptable risk of the Fund contributing to severe environmental damage.⁹

In previous recommendations regarding environmental damage, the Council has placed particular emphasis on whether:

- the damage is significant;
- the damage causes irreversible or long-term effects;
- the damage has considerable negative impact on human life and health;
- the damage is a result of violations of national laws or international norms;
- the company has neglected to act in order to prevent the damage;
- the company has not implemented adequate measures to rectify the damage;
- it is probable that the company's unacceptable practice will continue.

The present recommendation refers to commercial logging in tropical rainforests and is therefore different from other environment-related cases that the Council has assessed, in which pollution has been the primary cause of severe environmental damage. Commercial logging is carried out by timber companies that are given access to forest resources through government-awarded concessions. Such logging, as well as the conversion of natural forests into plantations, is considered to be a major cause of deforestation and degradation of tropical rainforests, owing to factors such as destructive logging methods and a lack of consideration for the environmental value of the forest.¹⁰ Moreover, logging and deforestation release large quantities of greenhouse

⁶ This case has been investigated by the Human Rights Commission of Malaysia, Suhakam; see Suhakam 2007: Penan in Ulu Belaga: Right to Land and Socio-Economic Development.

⁷ Samling Global Limited Annual Report 2008, p. 146; available at www.samling.com.

⁸ <http://www.bmf.ch/en/news/?show=185>

⁹ In previous recommendations, the Council has elaborated on, and specified, the criteria of *severe environmental damage*. See recommendations regarding Freeport McMoRan Inc., Barrick Gold, Vedanta Plc.; available at www.etikkradet.no.

¹⁰ So-called selective logging is normally applied. Selective logging is the harvesting of a few trees from an area based on the species and specified limits of minimum tree size. When a tree is harvested, the surrounding vegetation is damaged in an area the equivalent of the tree's height and the width of the tree crown. The log is then moved by bulldozer to a log pond for further transport. The main damage is related to the close-knit network of roads and skid trails, which may be 5-6 m wide, as well as the detrimental effect on the remaining trees (normally 40 per cent), other vegetation and soil. Logging methods may influence the scope of the damage. The logging

gases. Nevertheless, in the present recommendation the Council has not assessed either logging, logging methods or plantation forestry as such, but focused its assessment on illegal logging and the environmental damage that occurs when laws and regulations are not being observed.

Many countries, including Malaysia, have introduced laws and regulations as a means to limit the environmental damage related to forestry. The legislation lays down a series of rules on how forestry activities are to be carried out, establishing requirements regarding logging methods, logging cycles, road construction, measures to prevent erosion and the pollution of water systems, etc. Logging outside the concession area, in preservation areas and of protected species is not allowed, nor is it permitted to exceed the harvest quota stipulated in the timber licence agreement. The failure to comply with such requirements poses a significant risk that the logging operation may lead to more extensive and severe environmental damage, as well as contributing to deforestation and forest degradation, increasing the loss of biodiversity and the emission of greenhouse gases. In addition to the environmental damage, illegal logging may harm or destroy the land and livelihoods of people who are directly or indirectly dependant on the forest.

In its elaboration of what may constitute severe environmental damage, the preparatory work for the Ethical Guidelines explicitly addresses the issue of illegal logging. *‘Illegal logging means harvesting, transporting, buying and selling timber in violation of national laws. This includes corrupt methods for gaining access to forest areas, logging in protected areas, logging of protected species, or that the timber harvest exceeds permissible quotas. Illegalities also occur when timber is processed or exported illegally, customs declarations are erroneous, and taxes are not paid.’* And further: *‘If it is disclosed that companies in which the Fund is invested are involved in such activities, this may qualify for use of the exclusion mechanism.’*¹¹

Other than logging taking place in contravention of national laws, there is no internationally agreed definition of what illegal logging implies. The Graver Committee’s definition and interpretation are, however, in accordance with those that other international entities, among which, the EU¹², apply in their initiatives. The Council has therefore used the definition above as a point of departure in its assessment of whether Samling’s practices fall under the criterion of ‘severe environmental damage’. Notwithstanding, the Council regards this specification of what illegal logging includes as providing examples and not as being exhaustive.

It is *existing* and *future* violations that are covered by the Guidelines. This implies that the Council must assess whether there is a risk that the company’s unacceptable practice will continue in the future. The company’s previous actions may give an indication as to how it will behave in the future, and thus form a basis for the assessment of whether there is an *unacceptable risk* that unethical actions will occur henceforth.

makes the forest fragmented and open, leaving it more exposed to fire and further degradation of the ecosystems. See i.e. Putz, F.E. et al. 2008: Reduced-impact logging: Challenges and opportunities. *Forest Ecology and Management*. 266, pp. 1427-1433; Asner, G.P. et al. 2005: Selective logging in the Brazilian Amazon, *Science*. 310, pp. 480-482, Shearman, P et al. 2009: Forest Conversion and Degradation in Papua New Guinea 1972–2002, *Biotropica*. 41, pp. 379 – 390.

¹¹ NOU 2003:22: *Management for the Future: proposed ethical guidelines for the Government Petroleum Fund*, p. 167.

¹² http://www.illegal-logging.info/uploads/FLEGT_briefing3_en.pdf.

4 About Samling's operations

4.1 Company background

Samling Global Limited is an integrated forest resource and wood products company with forest resources, processing facilities and distribution networks situated in different regions around the world. The company produces timber, plywood and veneer. It is incorporated in Bermuda, listed on the Hong Kong stock exchange and headquartered in Malaysia. Samling's operations in Malaysia are located in the state of Sarawak, in the Malaysian part of the island of Borneo.¹³

Samling has undergone a number of major restructurings since the first of the group's companies was founded in Sarawak in 1976. The most recent restructuring occurred in 2006 to create an overall group, Samling Global Ltd, which was floated on the Hong Kong stock exchange through an initial public offering (IPO) in 2007.¹⁴ Samling Global's timber harvesting operations appears to be organized through its subsidiaries Barama Company Limited, Syarikat Samling Timber Sdn. Bhd. and Lingui Developments Berhad. The former are wholly owned subsidiaries of Samling, while Samling holds a 67.23 per cent share in Lingui.¹⁵ The forest concessions are owned and managed by wholly owned subsidiaries of Samling Global's subsidiaries.

Samling claims '*a long track record of developing, investing in and operating forest concessions and downstream wood products processing operations of over 30 years.*'¹⁶ As Sarawak's forests have dwindled, in the last 20 years Samling has expanded its operations to other countries while also diversifying into the development of plantations, particularly oil palm.

As of 2009, Samling Global reports that it has forest assets, mainly as forest concessions, plantation licenses, and freehold land in Malaysia, Guyana, New Zealand and China. All the forest concessions are in natural tropical forests and cover an area of 1.4 million hectares (14,000 sq km) in Sarawak, Malaysia, and around 1.6 million hectares (16,000 sq km) in Guyana. The company's plantations are located in Malaysia (430,000 ha), New Zealand (35,000 ha) and China (1,000 ha).¹⁷ Samling's log production amounts to more than 2.3 million m³ annually; over 80 per cent of the logs are cut in Malaysia.

4.2 Samling Global's operations in Sarawak, Malaysia

According to Samling's IPO Prospectus, the company has 15 selective timber logging licences in Sarawak, covering an area of approximately 1.4 million hectares of natural rainforest (see Figure 1).

¹³ Company website: www.samling.com.

¹⁴ Samling Global Ltd. Global Offering February 23, 2007, hereinafter Samling IPO Prospectus; available at <http://202.66.146.82/listco/hk/samling/prospectus/pro070223.pdf>.

¹⁵ <http://www.samling.com/eng/aboutus/group.htm>

¹⁶ See footnote 14, p. 122.

¹⁷ http://www.samling.com/eng/ir/factsheet/factsheet_09.pdf.

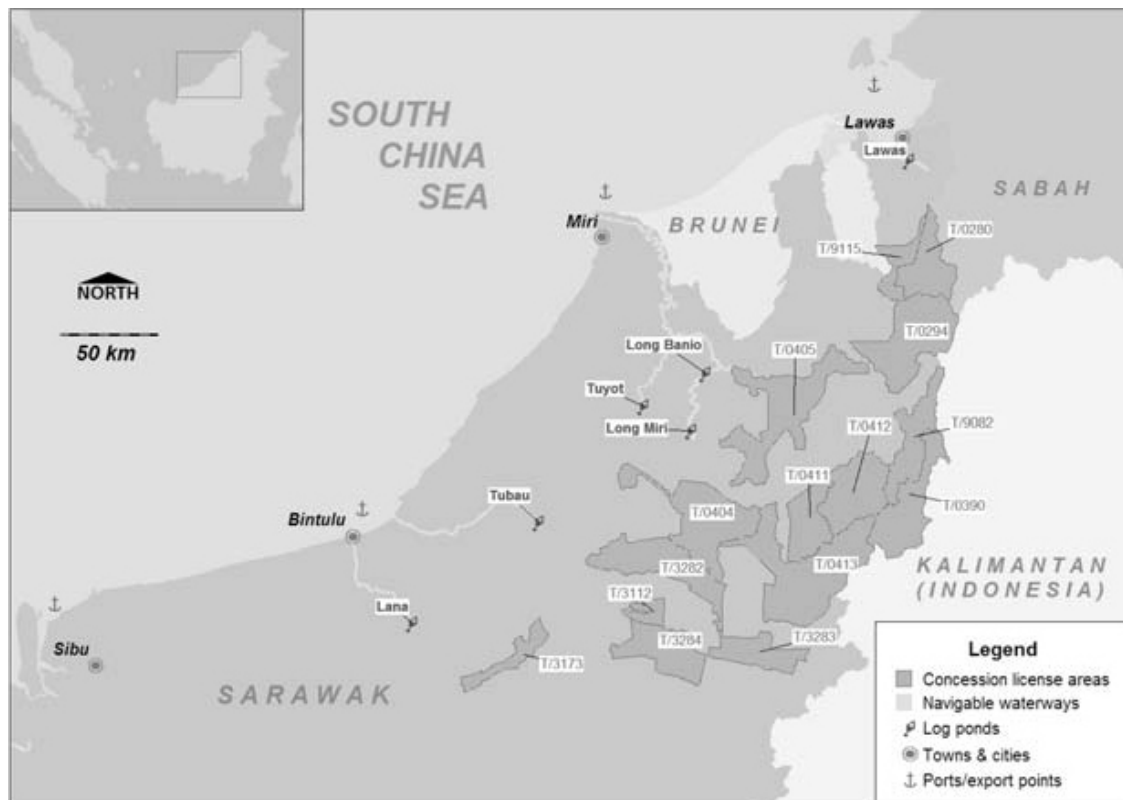


Figure 1: Samling's logging concession areas in Sarawak¹⁸

The independent technical review commissioned by Samling in advance of its IPO in 2007 estimated that of the net operable area of the company's concessions in Sarawak, 82 per cent has already been logged over at least once.¹⁹ Some of the timber logging concessions are now subsumed under overlapping plantation forest licences (LPF) where the forest is being cleared.

Current activity

Indications of areas of current logging activity within Samling's concessions were obtained by an analysis of 2007 and 2009 Landsat satellite imagery, and by comparison with slightly older imagery on Google Earth.²⁰ This showed recent clearance within Samling's plantation forest areas (LPF); it also showed logging going on in specific areas within timber licences T/0411, T/0413, T/0390, T/9082 and T/0294. While the clearance logging in the LPF areas continues apace, Samling has recently halted logging in the most upriver, least accessible concessions (T/9082, T/0390). Re-entry selective logging continues in T/0411 and T/0294, and first-round logging is ongoing in T/0413. A full list of information on current activity in the timber licence areas in the Miri and Limbang Divisions is provided in Table 1.

¹⁸ Samling IPO Prospectus; Appendix VI, Independent Technical Report, p. VI-43.

¹⁹ See footnote 18, p. VI-44.

²⁰ Google Earth does not provide information about the time when the pictures from this area were taken, but they are probably 5-10 years old. This is based on comparisons with satellite imagery from 1990 and 2007, collated with damage visible in the images which was caused by widespread forest fires in 1998.

Table 1: Current status of logging in Samling forest concession licences in the Miri & Limbang divisions, Sarawak, Malaysia (per 2009)

Licence	Current and recent activity	Licence valid until²¹
T/9115	Satellite imagery from 2007 shows that re-entry logging is ongoing.	2015
T/0280	Almost the entire concession is now licensed for clearance as part of plantation licence LPF 0005. Clearance does not appear to have reached this area yet.	T/0280 – 2009 LPF 0005 - 2058
T/0294	Satellite imagery from 2007 and 2009 shows intense re-entry logging in south-east corner of concession around Batu Lawi, in and around an extension of Pulong Tau National Park.	2015
T/0405	The northern half of the concession is licensed for clearance as part of plantation licence LPF 0020. Satellite images from 2007 and 2009 show initial clearance and wide-ranging re-entry logging in this part of the concession still ongoing as of 2009. No evidence of recent selective harvesting activity in southern part of concession.	2013
T/9082	This concession is the farthest upstream of the Baram River basin and is the last to be reached by the loggers. It contains some of the only areas within the entire Samling forest concession estate which have not already been logged once. First-round selective logging was occurring in this concession recently, but is reported to have been largely halted by the company in late 2008. 2009 satellite imagery shows that some more recent clearance and logging have occurred in connection with the construction of a logging road to Bario.	2011
T/0390	The northern arm of this concession near the Indonesian border saw first-round logging activity in 2005-2007, but according to the Council's knowledge, this was brought to a halt in late 2008. The southern half of the concession has already been heavily logged.	2012
T/0412	The southern half of this concession was heavily logged in the 1990s, but has not seen recent activity. The northern sector is certified under the Malaysian forest certification scheme, MTCC, ²² but there appears to be no current activity.	2013
T/0411	This concession was logged for the first time in the early 1990s, and re-entry logging was started in 2002. Currently, re-entry logging is ongoing in the southern coupes.	2013
T/0413	There has been first-round logging in the middle sector of this concession, to the south of T/0411 (see Figure 1), since at least 2007 and it is still ongoing. 2007 and 2009 satellite imagery shows intense logging.	2018
T/0404	Almost the entire concession is now licensed for clearance as part of plantation licence LPF 0021. Clearance of primary and degraded tropical forest is currently ongoing in this area and is clearly visible in 2007 satellite images. This concession is a major source of logs.	2013

4.3 Forest management in Sarawak

The state of Sarawak is autonomous with regard to managing its forest resources. The forest resources of Sarawak are administered by two government agencies, the *Forest Department of Sarawak*, responsible for licensing and administrative functions,²³ and the *Sarawak Forestry*

²¹ Samling IPO Prospectus; Business section, pp. 98-99.

²² Malaysian Timber Certification Council; see <http://www.mtcc.com.my/>

²³ <http://www.forestry.sarawak.gov.my/forweb/homepage.htm>

Corporation, which is in charge of operational functions, including the enforcement of compliance with all requirements governing the operations of licensees, subcontractors and other operators.²⁴

Timber licences are granted by the Forest Department. Each forest timber licence covers a specific *concession* area. The timber licence stipulates the requirements the company has to comply with. The timber licence requires a series of general and annual plans which the licence holder must produce and have approved, including the Forest Management Plan. The Forest Management Plan details how harvesting in a concession should be carried out, i.e. which species are to be cut, minimum diameter cutting limits, annual allowable harvest areas (so-called coupes) maximum volume of harvest, road construction, etc. It is normally valid for 5-10 years.

Generally, concessions are harvested according to a cutting cycle of 25 years. Once the licence is issued, the licensee has to submit a *General Harvesting Plan* to the Forestry Corporation, showing the coupe layout and road network for the entire concession.²⁵ Following approval of the General Harvesting Plan by the Corporation, annual harvesting plans for each coupe have to be developed and approved. This Detailed Harvesting Plan shows harvesting block layout, harvesting method to be used, road network and conservation areas, and critical resources and sites. Then the licensee must obtain a *Permit to Enter Coupe* before any logging activity can start. The Permits to Enter Coupe are approved in five phases, from initial demarcation planning and surveying, through road construction and eventually to actual harvesting.

In Samling's IPO Prospectus this process is described in detail: '*The trees selectively harvested from the coupes must be of a prescribed minimum diameter and must be species that are not protected for harvesting. Logs harvested from individual concessions will be tagged by us with log identification tags for identification and tracking and will then be delivered to locations designated by the Sarawak Forestry Corporation for royalty marking. The log identification tags contain information on species, concession, coupe and block number.*'²⁶

Timber licences in Sarawak are valid for a certain period of time, normally 20 to 25 years. The Sarawak Forest Department decides on the renewal. Normally it will be reissued to the same licensee unless the concession is converted to plantation development or the licence requirements have not been met. Very serious non-compliance can potentially affect the renewal of the licence and provide justification for the licence to be revoked. However, according to information obtained by the Council, it is rare or unheard of for the Sarawak Forest Department to revoke or fail to renew a logging licence as a result of infractions of legislation.²⁷ Samling's IPO Prospectus notes that since the company was issued its first timber logging licence in 1976 it has never lost access to a concession area because of requirements not being fulfilled.²⁸

²⁴ <http://www.sarawakforestry.com/htm/aboutus.html>, Samling IPO prospectus, p. 95.

²⁵ The concession is divided into areas known as coupes. Each coupe is further subdivided into logging blocks. See <http://www.forestry.sarawak.gov.my/forweb/sfm/fplan/engplan.htm>

²⁶ Samling IPO Prospectus; Business section, p. 140.

²⁷ According to interviews with Sarawak Government forestry employees and ex-employees conducted during 2009.

²⁸ Samling IPO Prospectus; Appendix VI Technical report, p VI-43. The IPO prospectus, however, provides no information on whether any infractions have been identified by Sarawak forestry authorities within Samling's concessions since Samling started its logging operations in 1976.

The *Forestry Corporation* is tasked with enforcing requirements.²⁹ According to the Corporation's website, enforcement involves intelligence gathering, detection of illegal activities, investigation of offences, and prosecution of offenders in court.

The Forestry Corporation has been criticised for weak enforcement. According to the Sarawak State Attorney-General, '*the state suffers economic loss through illegal logging, unlawful occupation of State land and false land claims...The State government's enforcement unit does not have the manpower, and logistical and intelligence procurement ability of the police.*'³⁰ In the annual report for 2008 Malaysia's Auditor-General describes Sarawak forestry management as unsatisfactory.³¹ The report notes that poor enforcement and monitoring has led to illegal logging and contributed to environmental degradation, especially river pollution, erosion, landslides, mud deposits and floods. In a sample of three timber licence areas surveyed by the Auditor-General's office during April 2009, logging was found to have been conducted illegally on slopes exceeding 35 degrees and close to riverbanks – two of these areas (T/3112 and T/3284) are licensed to Samling.³² A review of re-entry logging permits for timber licences carried out by the Auditor-General's office also found that many such areas were being re-entry logged without first completing an Environmental Impact Assessment as required under legislation³³ – something confirmed by the Council's own research detailed below to have been the case over many years for at least two Samling licence areas. The Sarawak state authorities have questioned some aspects of the Auditor-General's findings and have claimed that the report does not reflect the overall situation. The Sarawak Forestry Department has requested amendments to the report and the Auditor-General has agreed to review its content.³⁴

4.3.1 Regulations and specific requirements for logging operations

Based on the documents that the Council has had access to,³⁵ relevant legislation and interviews with forest department employees and others who have detailed knowledge of the forestry operations in Sarawak, as well as open sources, the Council has established a basis for assessing Samling's forestry operations. The Council's research has revealed activities that in all probability constitute non-compliance with the requirements. The table below describes the grounds for this assessment.

²⁹ The Forestry Corporation is responsible for enforcing the Forests Ordinance 1958 (Cap. 126), the Forest Rules 1973, the National Parks and Nature Reserves Ordinance 1998, the Wild Life Protection Ordinance 1998 and its subsidiary regulations; www.forestry.sarawak.gov.my

³⁰ The Borneo Post Online Wednesday, 9 May 2007: *NGOs do illegal logging while Penans close roads: Resident* http://www.bmf.ch/files/news/borneo_post.pdf

³¹ The Malaysian Auditor-General's Report 2009: *Laporan Ketua Audit Negara, Aktiviti Kementerian/Jabatan/Agensi Dan Pengurusan Syarikat Kerajaan Negeri Sarawak, Tahun 2008*, pp. 68-91; on file with the Council.

³² See footnote 31, section 5.5.1 (f), pp. 81-82.

³³ See footnote 31, section 5.5.1 (e), pp. 80-81.

³⁴ MySinchew 16.11.09: *Amendment to Auditor-General's Report to give balanced perspective to Sarawak's forestation*, <http://www.mysinchew.com/node/31566>

³⁵ See footnote 5.

Table 2: Relevant requirements for the alleged violations that have been revealed by the Council's research

Logging and road construction outside the licence boundary	The T/0390 logging licence area extends along the border with Indonesia. The concession map accompanying Timber Licence T/0390 shows that the boundary of the licence area runs at least 1 km inside the border; see Figure 1 and Feil! Fant ikke referansekilden. below. An EIA report for another area to the south, which also runs along the border, refers to an official requirement for a 'buffer zone' of 1 km to be left untouched along the international border. ³⁶ Logging outside of the boundary of a licence area is prohibited under the Timber Licence.
Harvesting of protected tree species	The two most common protected tree species, Engkabang ³⁷ and Tapang (<i>Koompassia excelsa</i> ³⁸), are listed in Schedule 2 of the Wildlife Protection Ordinance, which makes it an offence to cut them unless a special permit is issued by the Wildlife Controller. Individual permits are normally required for each tree to be cut and have to be renewed annually if unused. The permits are expected to be displayed at the office of the licensee. To the Council's knowledge, such permits are normally issued in exceptional circumstances only, for instance if a tree blocks a crucial logging road or presents a danger.
Re-entry logging without an Environmental Impact Assessment	According to the <i>Natural Resources and Environment (Prescribed Activities)(Amendment) Order, 1997, First Schedule, Article 2 (i)</i> , since 2005 it has been a requirement in Sarawak that companies must have completed an Environmental Impact Assessment approved by the <i>Natural Resources and Environment Board (NREB)</i> before undertaking re-entry logging in areas larger than 500 ha. The NREB is an independent government agency without ties to the Forest Department. Logging without an Environmental Impact Assessment carries a penalty of up to 10,000 Malaysian ringgit (NOK 17,000) in fines and/or five years in prison.
Clearance of forest for construction of logging roads	Specific limits are contained in the Forest Management Plans (FMP). In the expired FMP for the T/0390 concession, there are limits for the total width of the road clearance: 60 m for 'main' roads, 50 m for 'secondary' roads and 40 m for 'feeder' roads. The Timber Licence for T/0390, which remains valid, further states that the minimum cutting diameter limits defined in the FMP are only exempted for roads to a distance of 30 m on either side of the centre line. Thus, it is highly likely that clearing of forest for more than 20-30 metres from either side of a logging road is illegal. The FMP also states that ' <i>the licensee must ensure that when constructing roads and skid trails and when harvesting, erosion and siltation of streams and rivers are kept to a minimum</i> ' and that ' <i>logging methods causing excessive damage to the forest and its ground cover will not be permitted.</i> ' According to Forest Department officials, FMPs are much standardised and have changed little over the years.

³⁶ Ecosol Consultancy Sdn Bhd: *Plantacia Sdn Bhd, Environmental Impact Assessment Report for Tree Planting under Licence for Planted Forests LPF/0010 in the Sibu and Kapit Divisions*, Sarawak, Sept 1999; on file with the Council.

³⁷ The Wildlife Protection Ordinance lists 7 species of Engkabang (also known as Meranti): *Shorea splendida*, *Shorea helmsleyana*, *Shorea siminis*, *Shorea pinanga*, *Shorea macrophylla*, *Shorea stenoptera* and *Shorea stenoptera*. The last three are listed on the International Union for Conservation of Nature (IUCN) red list of threatened species, classified respectively as vulnerable, endangered and critically endangered.

³⁸ Tapang is a protected species because it is rare and because it is an important nesting tree for honey bees. In accordance with the *Wildlife Protection Ordinance of 1998* felling Tapang trees is prohibited. The ordinance lists the tree as a protected species. Cutting such trees carries a maximum penalty of one year in prison or a fine of 10,000 Malaysian ringgit (NOK 17,000).

Logging and clearance near streams and rivers	The Forest Management Plan mentioned above includes the requirement that <i>‘the licensee must ensure that when constructing roads and skid trails and when harvesting, erosion and siltation of streams and rivers are kept to a minimum’</i> , but no specific details are given. According to the EIA for re-entry logging in T/0411, harvesting and clearance shall be limited to areas more than 20 metres from small streams, and greater for larger rivers. This requirement corresponds with a report on the Evaluation of the Malaysian Timber Legality Assurance System (TLAS) which states that <i>‘The harvesting of trees growing in buffer zones intended to protect permanent water courses (20 m either side) are prohibited.’</i> ³⁹ According to information from Sarawak government officials, a limit of 20 metres is a very likely requirement for Samling’s concessions.
Land-based logging and road construction in steep terrain	The Forest Management Plan referred to above states that <i>‘those forested areas confirmed to be terrain IV by ground survey during the detailed planning stage of each coupe will not be allowed to be harvested’</i> . It also defines Class IV terrain as areas with slopes in excess of 35 degrees. The EIA for the T/0411 licence area repeatedly states that conventional ground-based logging is prohibited in so-called Class IV terrain, however, helicopter logging is permitted in such areas. This is also evident in a presentation by the Forest Corporation, which states that the use of tractors is not allowed in terrain IV areas. Helicopter logging may be permitted, though. ⁴⁰ General concession maps and detailed Permits to Enter Coupe included in the re-entry logging Environmental Impact Assessments for licences T/0411 and T/0298 clearly show the boundaries of Class IV terrain. These boundaries were used in the analysis shown in Figure 7, Figure 14, and Figure 15.
Pollution of streams and rivers caused by road construction	The Forest Management Plan, which the Council has had access to, states that the licensee must <i>‘locate roads to minimise risk of earth material entering the streams and rivers’</i> , requiring that <i>‘debris and excess earth material associated with road construction shall be deposited in stable areas and in such a manner as to prevent entry into streams and rivers’</i> , and also that <i>‘all drainage channels shall be cleared of wood debris generated during road construction’</i> .
Cutting undersize trees	The Timber Licences available to the Council state that no trees with a diameter below the prescribed limits defined by the Forest Management Plan should be cut. The aforementioned FMP gives limits of 60 cm diameter at breast height (dbh) for dipterocarp tree species ⁴¹ and 45 cm for non-dipterocarps. According to the timber licences, smaller trees can be harvested during road construction, provided that they are no more than 30 metres from the centre line. The EIA for T/0411 repeats the same diameter limits defined above. The minimum cutting limits correspond with information given in a presentation by the Forestry Corporation. ⁴² According to government officials, these limits are standard in all forest management plans. Diameter limits do not apply in areas licensed for clearance as plantation forests.

4.4 The Council’s investigations of illegal logging and severe environmental damage within Samling’s timber licence areas in Sarawak

Selection of licence areas

In order to obtain information about Samling’s forestry operations five of the licence areas listed in Table 1 were selected for further field investigations: T/9082, T0390, T/0411, T/0413, and T/0404, which now has been converted into plantation licence LPF/0021. The Council has made

³⁹ EFI FLEGT Facility 2009: *Joint Technical Evaluation of Malaysian Timber Legality Assurance System (TLAS)*; available at http://www.euflegt.efi.int/item_detail.php?item=document&item_id=651.

⁴⁰ Liew Chin Fah, Deputy General Manager, 17 January 2007: *Sustainable Forest Management in Sarawak*, Sarawak Forestry Corporation; presentation available at http://www.sarawaktimber.org.my/timber_issue/1205742000-SEM_to_EU.pdf

⁴¹ *Dipterocarpaceae* is a large family of primarily evergreen broadleaf trees that are dominant in the rainforests of Malaysia. The trees may grow very old and normally reach a height of 40-70 m. Many of the species have considerable economic value as timber, but are also used in the production of ethereal oils, balsam and plywood.

⁴² See footnote 40.

a point of prioritizing logging licences rather than concessions for plantation activities, as there are few requirements for operations involving forest clearance for conversion into plantations. T/0404 was nevertheless included because it had to be passed on the way to the other areas. Analyses of satellite imagery showed that logging had recently occurred in the concessions of the Baram catchment area, in the eastern part of Sarawak. The initial investigation commissioned by the Council in April 2009 also indicated that illegal logging had taken place in several concessions in this area. A field investigation was thus planned for the Baram region, including these areas. Figure 2 shows the five adjacent concessions that were surveyed more closely.

Through the research carried out from April 2009, the Council also received information that Samling had probably been logging in an area reserved for a national park. The concession T/0294 was therefore included in the Council's further investigations. The assessments here are mainly based on analysis of satellite imagery and other information gathering.

The Council's investigations in each individual area are described below.

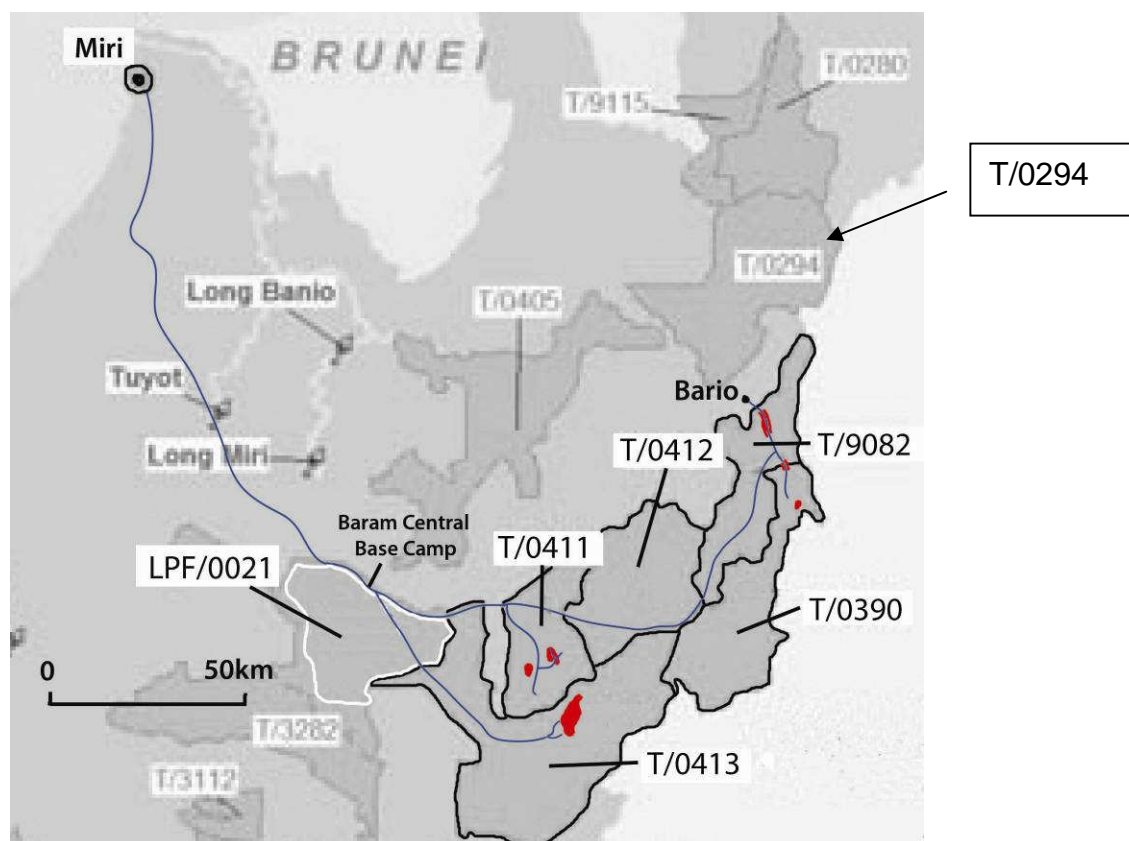


Figure 2: Map showing Samling logging concessions visited during field research (black line), the field investigation route (blue line) and areas within these concessions where there is current or recent logging activity (red).

4.4.1 Concession T/0294 – Ravenscourt Sdn. Bhd.

From as early as the mid-1990s, discussions had been ongoing between the Sarawak government and international donors regarding the establishment of a new National Park in the upper Baram. After more than ten years of negotiations and millions of dollars in funding from the Swiss and US governments funnelled through a large project run by the International Tropical Timber Organisation (ITTO), the Pulong Tau National Park was finally gazetted in 2005. Since then the ITTO has also been involved in the efforts to expand the National Park to include an area around

the Batu Lawi Mountain, north of the existing National Park,⁴³ which is part of concession area T/0294 belonging to Ravenscourt Sdn. Bhd.⁴⁴

Re-entry logging without Environmental Impact Assessment

The re-entry logging EIA for the T/0294 licence, published in November 2008, states that Samling, through its subsidiary Ravenscourt, has been re-entry logging in the area since 2003 without having assessed the environmental impact.⁴⁵ Inasmuch as this is a statutory requirement of the *Natural Resources & Environment Ordinance*, it is reasonable to presume that the logging activity in the concession area has been in contravention of the ordinance since it was introduced in 2005. In its letter to the Council, Samling claims that the forestry authorities did not enforce this requirement until 2008, and that the company had been given permission to log (*Permit to Enter Coupe*); see also section 5.1 for further description.⁴⁶

Logging within an area officially approved as an extension of a National Park

Satellite images from 2007 and 2009 reveal that Samling's subsidiaries have recently been logging intensively around the Batu Lawi Mountain (see Figure 4 and Figure 6). This particular area has been described as the most ecologically important "core area" of any extension of the National Park (Figure 3).

In the two years between May 2007 and May 2009 Samling has expanded the logging in the core area (see Figure 4). Analyses using terrain data from Google Earth indicate that some of the areas currently being logged are very steep (in excess of 35 degrees). One particular area of very intense logging extends about 1,000 feet up the mountain's eastern side.

⁴³ See <http://www.itto-pulongtau.com/contacts.htm> and Inter Cooperation (Swiss Foundation for Development and International Cooperation), ITTO Project Supervisory Mission: 1-6th March 2006 – PD 224/03: *Transboundary Biodiversity Conservation: The Pulong Tau National Park, Sarawak State, Malaysia* - http://www.tropicalforests.ch/files/reports/Report_Mission_Pulong_mar06.pdf.

⁴⁴ Ravenscourt Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Timber Sdn. Bhd., which again is a subsidiary of Samling Global Ltd.

⁴⁵ Ecosol Consultancy Sdn Bhd/Tamex Timber Sdn Bhd: *Environmental Impact Assessment for the Re-entry Hill Logging under Timber License No. T/0294 in the Ulu Batang Trusan-Ulu Sg Limbang-Ulu Sg Kubaan area, Limbang and Miri Divisions, Sarawak* November 2008. The logging is being carried out by Tamex Timber Sdn Bhd, a subsidiary of Samling's Lingui Developments, acting as a contractor to Ravenscourt Sdn. Bhd.

⁴⁶ Samling's letter to the Council, dated 12 February 2010.

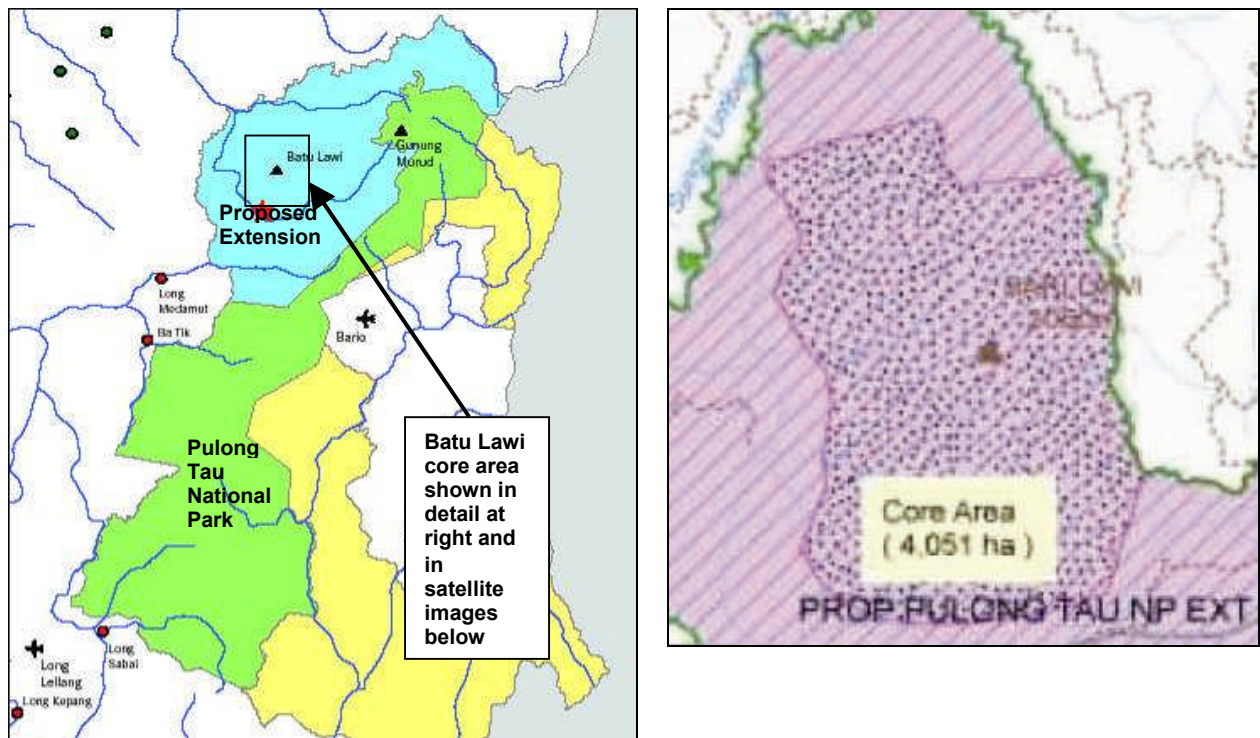


Figure 3: : Left: Map of Pulong Tau National Park (green), showing proposed extension to the north around Batu Lawi (blue)⁴⁷ Right: Map showing the high-priority core area at Batu Lawi, within Samling concession T/0294, proposed for urgent protection in 2006.⁴⁸

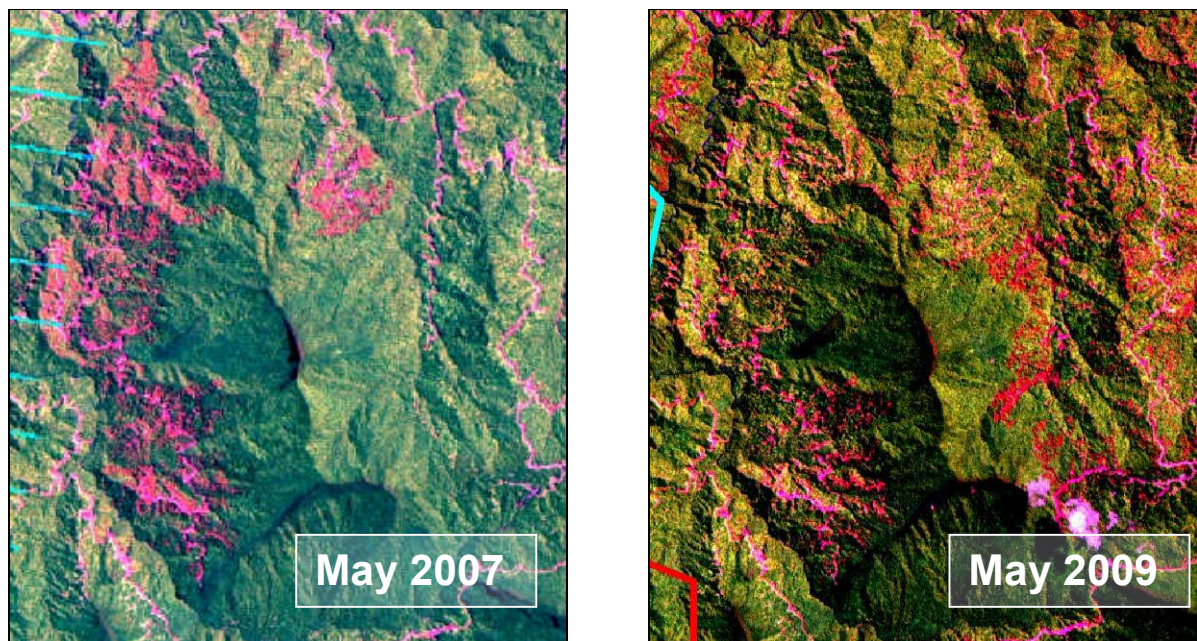


Figure 4: Left: Landsat satellite image of the same core area shown in Figure 15 above (note the matching logging roads on the right) in May 2007, showing intense new logging by Samling subsidiary Ravenscourt within the core area. Right: Landsat image from May 2009, 2 years later, showing how logging has extended further into the area far up the eastern slopes of the massif (logging areas and roads are coloured red).

⁴⁷ Bruno Manser Fonds, Tong Tana Newsletter, July 2006 - http://www.bmf.ch/files/tongtana/TT_juli_2006_e.pdf

⁴⁸ Chai P. 2008: *Transboundary Biodiversity Conservation: The Pulong Tau National Park, Phase I, Presentation of 3 November 2008* - http://www.tropicalforests.ch/files/projects/PD_224_03_presentation08.pdf

According to documents appended to the Environmental Impact Assessment for re-entry logging in T/0294, the Batu Lawi area was officially established as an extension of the National Park on 13 May 2008. A letter from the Sarawak Director of Forests to Ravenscourt, dated 23 May 2008, is worded to this effect, also informing the company that the area in question would be excluded from the concession: “YAB Pehin Sri Ketua Menteri Sarawak has approved the extension area of Pulong Tau National Park on 13 May 2008. The extension area affects part of Coupes 10A, 13A & 14A of Licence T/0294 [] and it will have to be excluded from the Licence.”⁴⁹

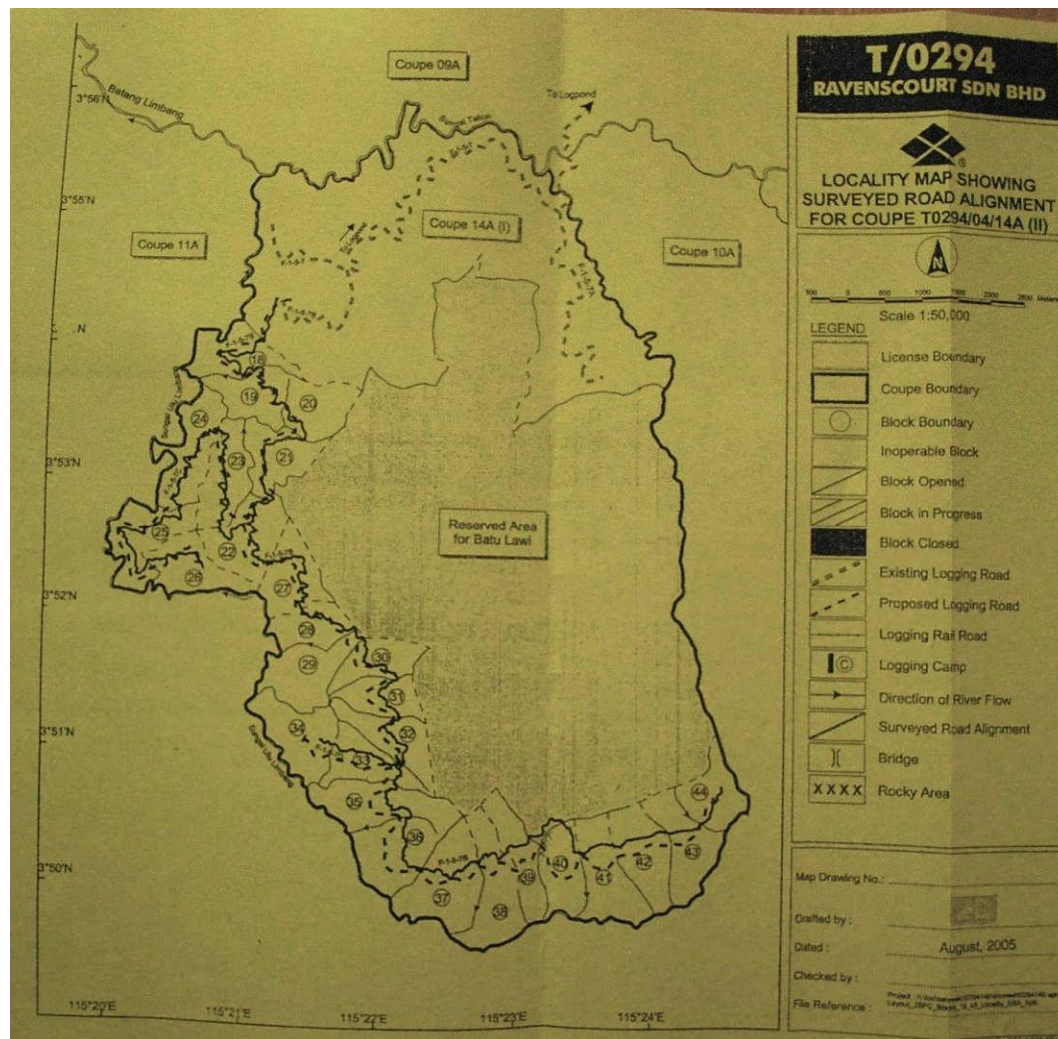


Figure 5: Coupe map appended to the Permit to Enter Coupe for Coupe 14A within Timber Licence T/0294

The Environmental Impact Assessment, published in November 2008, repeatedly confirms that the relevant areas of the licence will not be logged.⁵⁰ Approved concession maps and Permits to Enter Coupe, which the Council has had access to, show the exact boundaries of the area of the licence involved. The map for Coupe 14A, which includes the Batu Lawi massif, clearly shows that the area is to be preserved, and that no logging must be carried out here (see Figure 5). Despite all the above, satellite imagery from May 2009 (see Figure 4) shows recent and intensive logging to still be occurring inside the same area a whole year after the area was officially

⁴⁹ Letter from the Sarawak Director of Forests to Ravenscourt Sdn, Bhd dated 13 May 2008 regarding the extension of Pulong Tau National Park in areas within Licence No T/0294. The letter is appended to the EIA for re-entry logging in T/0294 (see footnote 45).

⁵⁰ See footnote 45, for example pp. ES-2, ES-6 and ES-7 in Executive Summary of the EIA.

declared off- limits. This gives reason to believe that logging has been conducted without official logging permission in the form of a Permit to Enter Coupe. When the boundaries of the ‘reserved area’ shown in the Permit to Enter Coupe map are overlaid on the satellite images, the extent of this illegal logging becomes clear (see Figure 6).

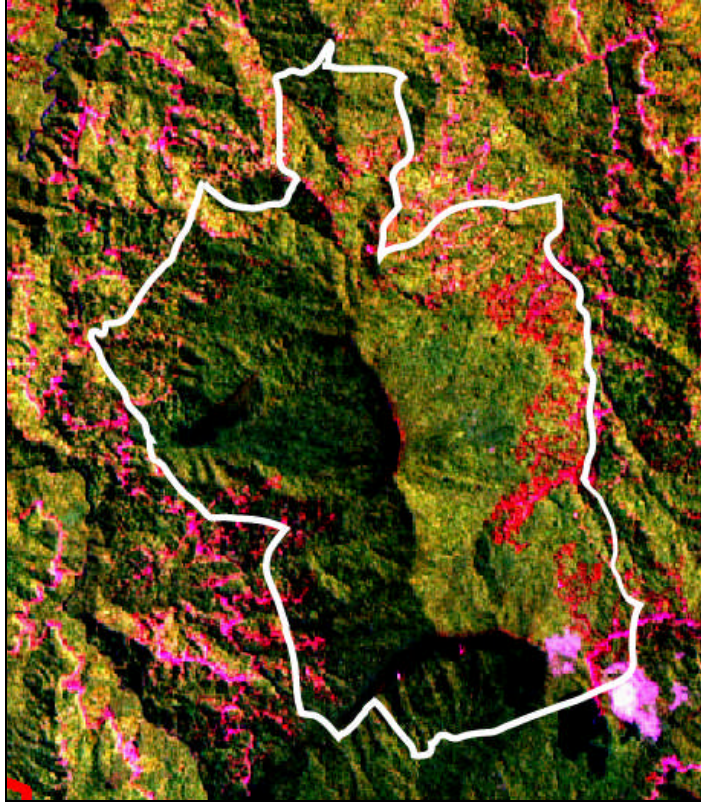


Figure 6: Satellite image from May 2009 showing intensive logging inside the Batu Lawi reserved area. (Reserved area marked with white line). Logging areas are coloured red.

Road construction and logging in steep terrain

The Council has not carried out a full comparison of logging activity as shown on satellite images with boundaries of Class IV terrain. Nevertheless, a few areas within the concession have been examined, including the southern sector of Coupe 05A, where a large swathe of steep terrain adjoins the border with the existing Pulong Tau National Park. An overlay of Class IV terrain boundaries for this area reveals that a logging road has recently been cut for a distance of approximately 3 kilometres into the Class IV terrain zone. Intensive logging activity can also be seen (see Figure 7).

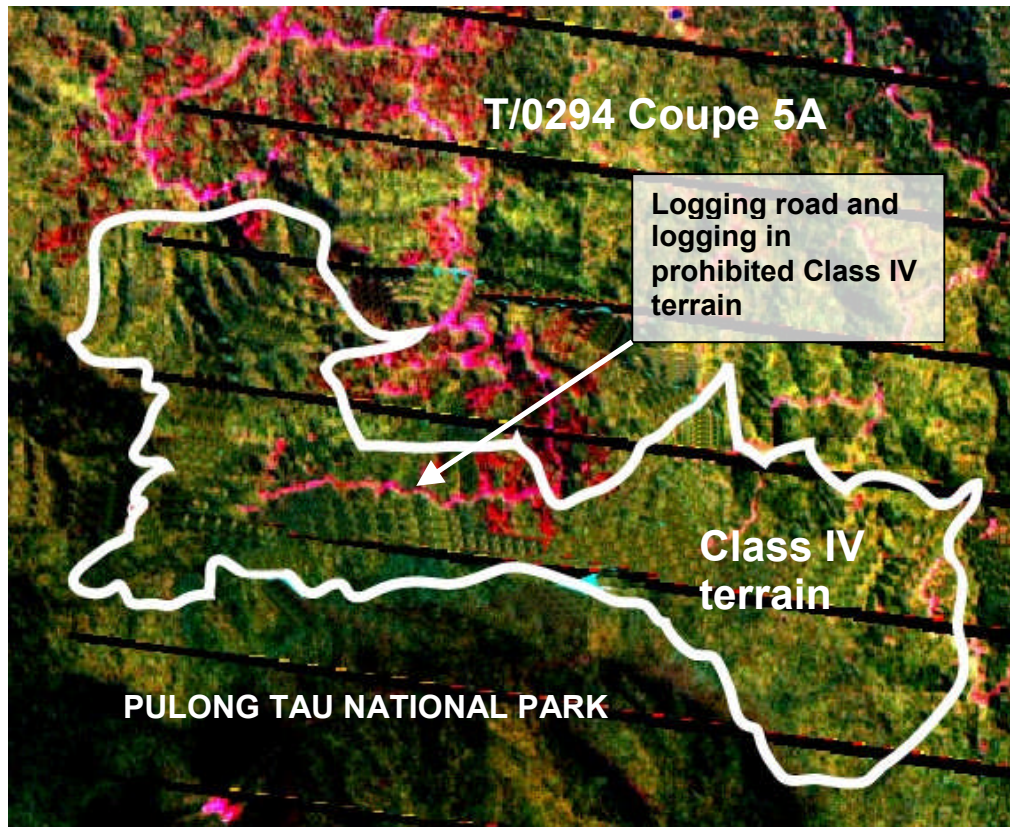


Figure 7: Illegal logging road and logging in prohibited Class IV steep terrain, Coupe 5A, T/0294 (Class IV terrain boundaries are marked with a white line).

In the Council's opinion, there can be little doubt that Samling has acted illegally in several ways in this concession, including carrying out re-entry logging for four years without the required Environmental Impact Assessment, logging in an approved National Park which has been excluded from the official licence area and where logging is prohibited, and illegally constructing roads and conducting land-based logging in areas of steep Class IV terrain where such logging normally is banned. The Council finds it highly probable that the logging activities performed in this concession are devastating to the forest and the local biodiversity, causing extensive soil erosion and reducing the area's value as a national park.

4.4.2 Concession T/0390 – Merawa Sdn. Bhd.

Satellite images show that during 2006-2007, and possibly as late as early 2009, new logging was occurring in the northern sector of Samling's T/0390 logging licence, which runs along the Indonesian border. The timber licence belongs Merawa Sdn. Bhd.⁵¹

Clear-cutting along roads and rivers, cutting inside river buffers and polluting rivers with logging debris

At the northernmost end, the boundary between T/0390 and neighbouring Samling licence area T/9082 is defined by the Kelapang River. Between this river and the nearby village of Pa Dalih, widespread recent destruction along the route of a new road joining Pa Dallih with Pa Mada to the north (see Figure 8 for location) was observed during the field visit. Analysis of satellite

⁵¹ Merawa Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Timber Sdn. Bhd., which again is a subsidiary of Samling Global Ltd.

images shows that the southern section of the new road was complete by March 2009, while the northern section was not started until May 2009. Logging activity in the area had halted by the time of the field visit.

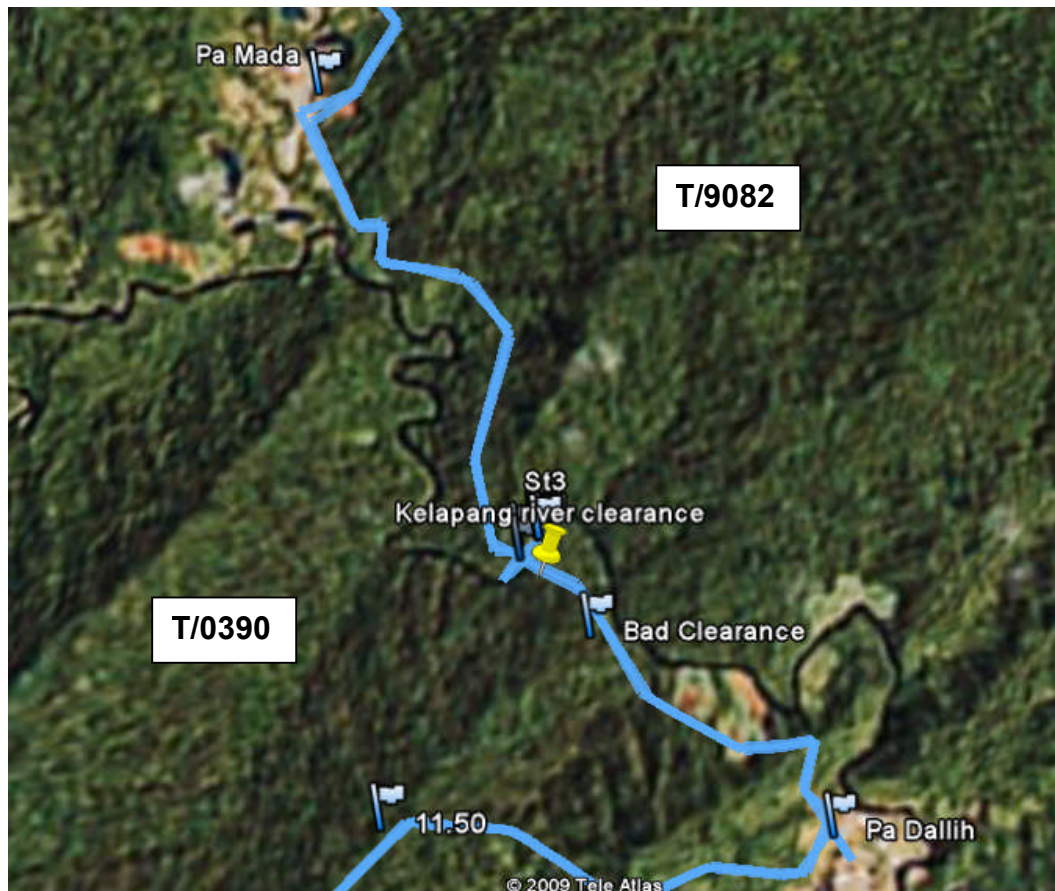


Figure 8: Satellite image showing route, the villages of Pa Mada and Pa Dallih, and the location of the Kelapang River bridge (researcher's route is in blue)

Widespread damage was seen near and around the bridge that had been built by the company across the Kelapang River. Forest had been cleared on both sides of the road, in many places in swathes wider than the 20-30 metres which constitute the probable normal requirement. The buffer area on either side of the river had also been encroached upon. In some areas the vegetation had been completely destroyed, and in other areas with remnant forest, stumps were found within 20 metres of the river, some of which were under the minimum cutting diameter. Though only the immediate area around the bridge was surveyed, stumps were found close to the river more than 100 metres from the road, and could not therefore be justified by the bridge construction. Masses of logging debris, including whole trunks, were seen polluting the river.

According to a villager from Pa Dallih, logging in the river buffers has occurred in a number of places. He said that as a result the river had been polluted with silt, and that it was now difficult to find fish. The villager also claimed that the company had illegally taken trees from an area reserved for the community.⁵²

⁵² Interview with a villager from Pa Dallih conducted during field investigation, September 2009.



Figure 9: Road leading to the Kelapang River bridge (left) and logging debris and cutting along the Kelapang River (right)

In its letter to the Council, Samling commented on both the road and the bridge construction. According to the company, the road (known as the Bario Road) was built at the request of local communities and the government in order to improve transport possibilities and the access to schools, hospitals and markets. In this context it was necessary to build a bridge across the Kelapang River: *‘Samling had to clear the right of way. Stumps were cleared to make way for the bridge crossing. This was not a harvesting operation to cut logs for commercial purposes. The road was built at the request of the indigenous communities and the government to improve accessibility. We are disappointed that your investigators did not make the distinction between social assistance to the communities and commercial harvesting.’*⁵³ The Council does not question the actual construction of the road and the bridge. As described above, the Council’s investigations, however, do indicate that the logging both along roads and in the buffer zone are in contravention of the requirements and have caused considerable damage to the forest, something that can hardly be justified by arguing that the road and the bridge were built for social purposes. The Council notes that Samling does not comment on this damage in its letter to the Council (see also section 5.1).

Logging outside the concession area and in the buffer zone along the Indonesian border

South of Pa Dallih, satellite images from May 2007 and again from March 2009 show a new logging road stretching all the way up to the Indonesian border. According to interviews with Sarawak forest department officials and EIA reports there is a general requirement for a 1 km buffer zone to be left untouched along the international border. The T/0390 timber licence and associated concession map show that the perimeter of the licence area runs at least 1 km from the border along the whole length. Yet the satellite images clearly reveal that the new logging road extends for up to 5 kilometres outside the licence area and into the buffer zone near the border with Indonesia (see Figure 10).

⁵³ Samling’s letter to the Council, dated 12 February 2010.

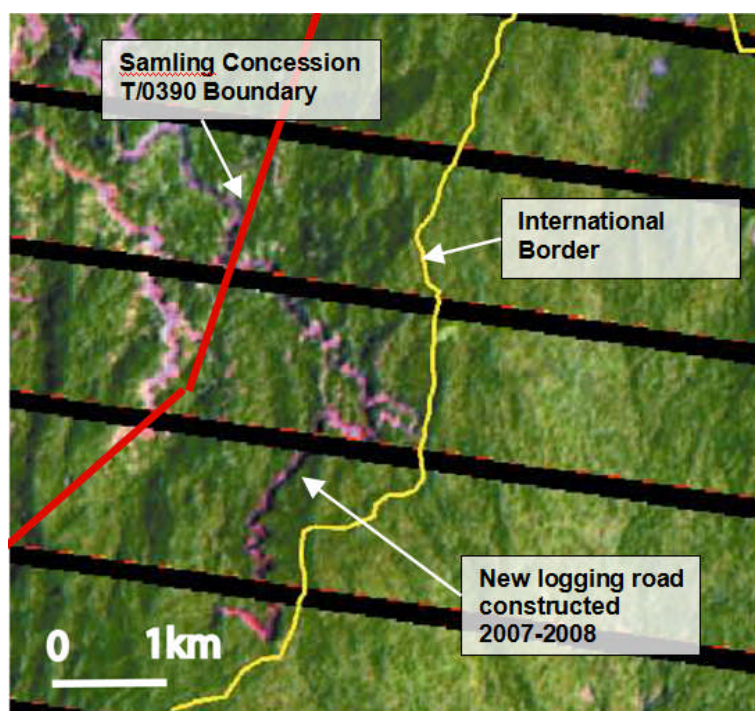


Figure 10: Landsat satellite image from 3 March 2009 showing logging road outside the licence area and within the buffer zone

Satellite imagery from a much earlier date, available from Google Earth, demonstrates that this is not the first time that the company has logged outside of the concession boundaries and into the buffer zone along the border with Indonesia. Google Earth images from a location some 30 kilometres further south, near the community of Long Sekuan, show evidence of past logging in the buffer zone (see Figure 11). It is unclear when this logging occurred, but recent satellite images show the disturbed areas as already being well covered by new vegetation, indicating that it most likely occurred 5-10 years ago.

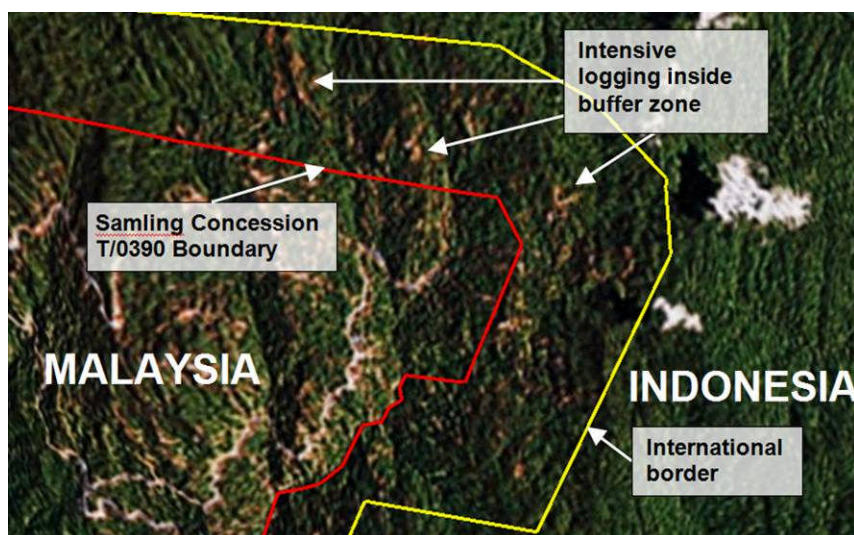


Figure 11 : Google Earth satellite image (date unknown) showing evidence of logging outside T/0390 licence boundary in buffer zone along Indonesian border⁵⁴

⁵⁴ The Google Earth image is undated, but compared with satellite images from 1990, and collated with widespread forest fires in 1998 that are visible in the Google Earth imagery, it is presumed that the picture was taken between 1999 and 2005.

It is clearly illegal for a company to log outside the licence boundary. This is also stated in the Timber Licence.

In its reply to the Council, Samling declares that it is common knowledge that families residing on both sides of the Sarawak/Indonesia border often cross this border. The Council does not find it probable that the logging and the roads in the buffer zone, as they appear in the satellite images, are a result of local inhabitants' movements. Section 5.2 provides further details in this respect.

4.4.3 Concession T/0411 – Samling Plywood (Baramas) Sdn. Bhd.

Satellite imagery from 2007 and 2009 shows that Samling has recently been logging in licence area T/0411, to the north of the Baram River and T/0413. The licensee is Samling Plywood (Baramas) Sdn Bhd, while the logging is being carried out under contract by Syarikat Samling Timber Sdn Bhd.⁵⁵

Re-entry logging without Environmental Impact Assessment

The area was first logged by the company in the 1990s, and Samling has been conducting re-entry logging since 2002 in various coupes within the licence area. The Council's research indicates that Samling started the re-entry logging without the necessary Environmental Impact Assessment required by the Natural Resources and Environment (Amendment) Ordinance since 2005.⁵⁶ An approved EIA does exist for the re-entry logging taking place in the T/0411 concession, but the EIA was only issued in January 2009.⁵⁷ The EIA states that of the ten coupes in the concession, three had already been re-entry logged and a further three were being re-entry logged at the time the report was being prepared. It therefore seems as if the company had been conducting re-entry logging in T/0411 without a required EIA for more than 3 years. Re-entry logging without an approved EIA appears to be a breach of the law,⁵⁸ and was also highlighted in the Malaysian Auditor-General's recent critical assessment of the State's forest management practices.⁵⁹ In its letter to the Council, Samling denies having acted illegally; see more detailed account in section 5.1.

Cutting and road construction in steep terrain

Satellite images show that Samling is currently logging in steep terrain in two areas within the concession (see Figure 12). Through the first field visit to the concession in April 2009, new information came to light about a new logging road, located in an area of Block 78H, Coupe 04A (within the Image 1 area in Figure 12). This particular area is classified as Class IV steep terrain, where the construction of logging roads normally is prohibited.⁶⁰ The construction had caused extensive landslides and erosion, which are very likely to have resulted in serious sediment pollution of the associated streams and rivers.

⁵⁵ Samling Plywood (Baramas) Sdn.Bhd. is a wholly owned subsidiary of Lingui Developments. Lingui and Syarikat Samling Timber are subsidiaries of Samling.

⁵⁶ The Natural Resources and Environment (Prescribed Activities) (Amendment) Order, 1997, First Schedule, Article 2 (i); see also table 2.

⁵⁷ Ecosol Consultancy Sdn Bhd: *Environmental Impact Assessment for Samling's re-entry hill logging under timber licence No. T/0411 at the Pelutan area, Miri division, Sarawak*, January 2009; on file with the Council.

⁵⁸ Despite the fact that no EIA has been approved, the Sarawak Forestry Corporation issued and approved Permits to Enter Coupe (PECs) for the coupes which the company re-logged in T/0411 between 2002 and 2008. Copies of these PECs are appended to the T/0411 EIA; see footnote 57.

⁵⁹ See footnote 31.

⁶⁰ Visit to location in April 2009, analysis of GPS readings, and comparison with satellite imagery and concession maps and Permits to Enter Coupe.

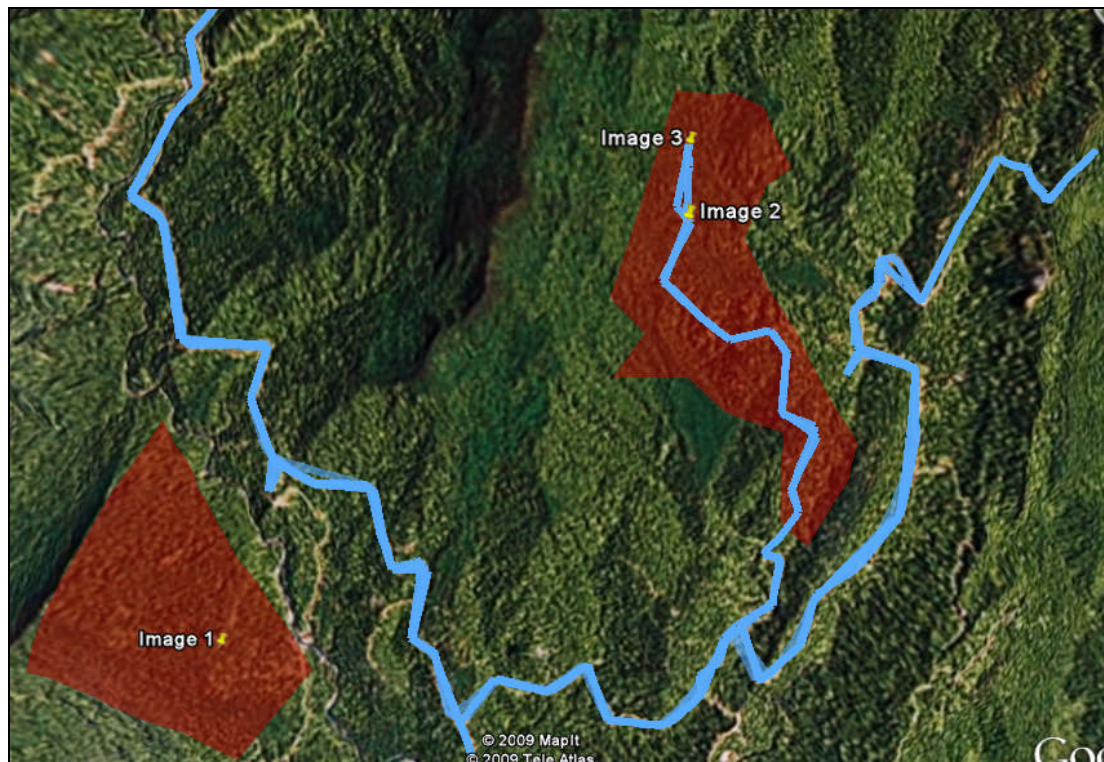
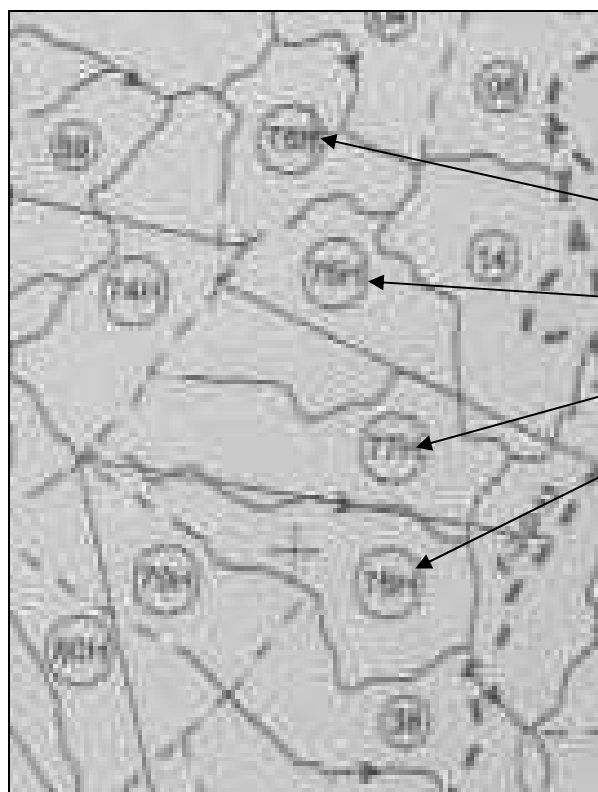


Figure 12: Diagram showing the two areas of recent (2009) and current logging in concession T/0411 (red areas), with route of investigation team (blue line).



Existing or proposed logging roads are marked as dotted lines. Blocks 75H, 76H, 77H, 78H can be seen in the middle of the image. There are no proposed roads crossing the blocks, and they are listed as for helicopter logging only (H).

75H
76H
77H
78H

Figure 13: Extract from official coupe map for Coupe 4A of T/0411, covering the same area shown in the satellite image of Figure 14 below.

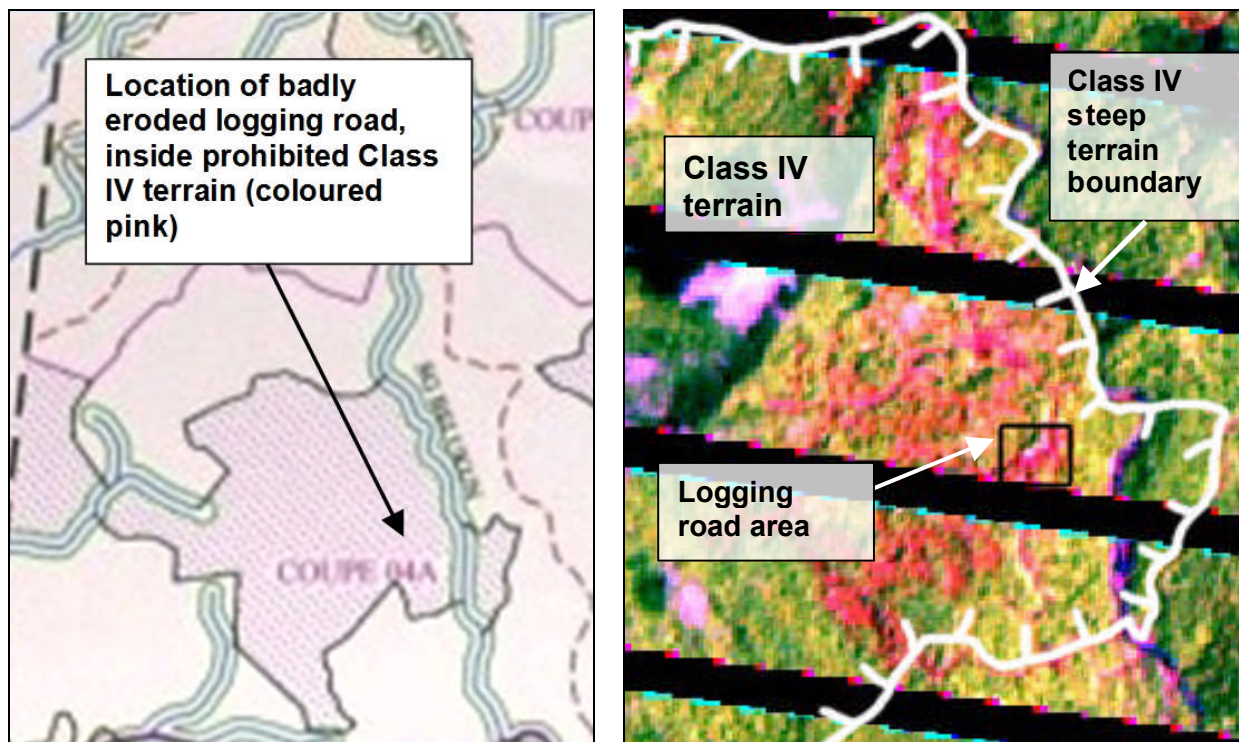


Figure 14: Logging roads in Class IV steep terrain in Block 77H, Coupe 4A, T/0411 (3° 4'58.98"N, 114°55'13.94"E). The white line indicates the boundary for Class IV terrain in the picture to the right. Recent road construction and logging activity show up as red in the satellite image, taken on 3 March 2009. The red areas cover approximately 2 square kilometres, encompassing Blocks 75-78H, all of which were only licensed to be harvested using low-impact helicopter logging. From the satellite image it is apparent that intensive logging and road construction have been conducted within Class IV steep terrain.

Satellite imagery for August 2009 shows that this is not the only road being built in the area. The images reveal extensive logging roads in steep terrain in an area covering approximately 2 square kilometres (see Figure 14), which indicates conventional land-based logging where the logs are pulled out by bulldozer. Nevertheless, the official logging block maps⁶¹ show that only helicopter logging is permitted in this area. According to the map included in the *Permit to Enter Coupe*, no roads are proposed in this area (see Figure 13 above). The block map and road plan were approved in February 2006, and no changes were noted in January 2009 when the EIA was published. As of January 2009 permission had yet to be granted for the company to begin logging operations in blocks 75H-78H. All the available information therefore suggests that the land-based logging and road construction in this area are illegal.

Analyses of recent satellite images show that much of the recent logging in the second area, which appears in red on the right-hand side of Figure 12 (marked as Image 2 and Image 3) above, is also going on within areas classified as steep Class IV terrain where only helicopter logging is supposed to be permitted. This area is shown in Figure 15 below. Though the first part of the road into the area is included in the official plans, sections of the road seen in the satellite images are not, including one branch that extends into Block 65H in Coupe 4A, which is also only licensed for helicopter logging.

⁶¹ Logging block maps are attached to the Permit to Enter Coupe for the re-entry logging, which is appended to the EIA for T/0411; see footnote 57. This area covers the coupes 75H, 76H, 77H and 78H, where only helicopter logging is permitted.

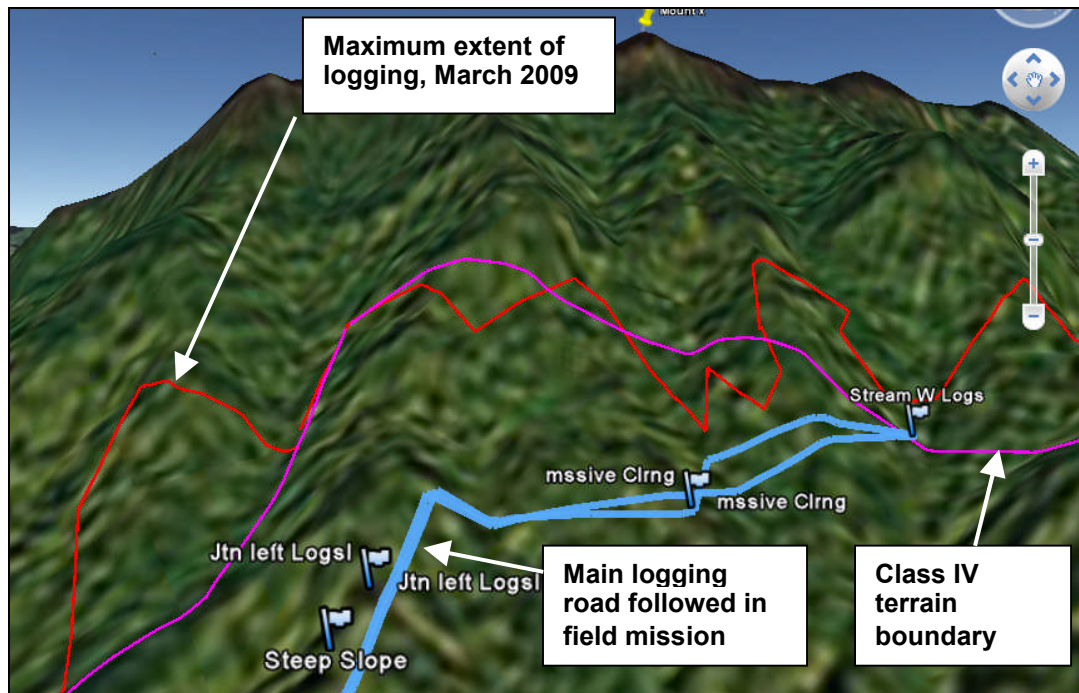
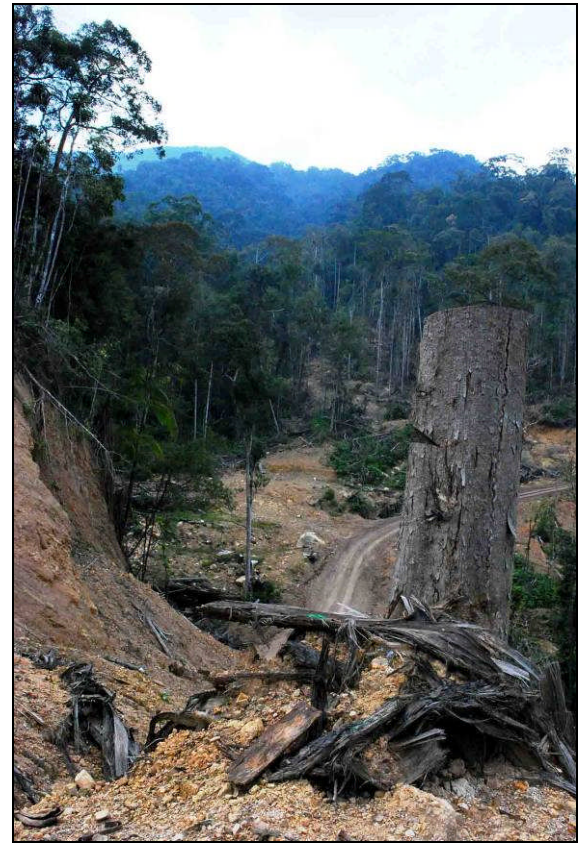
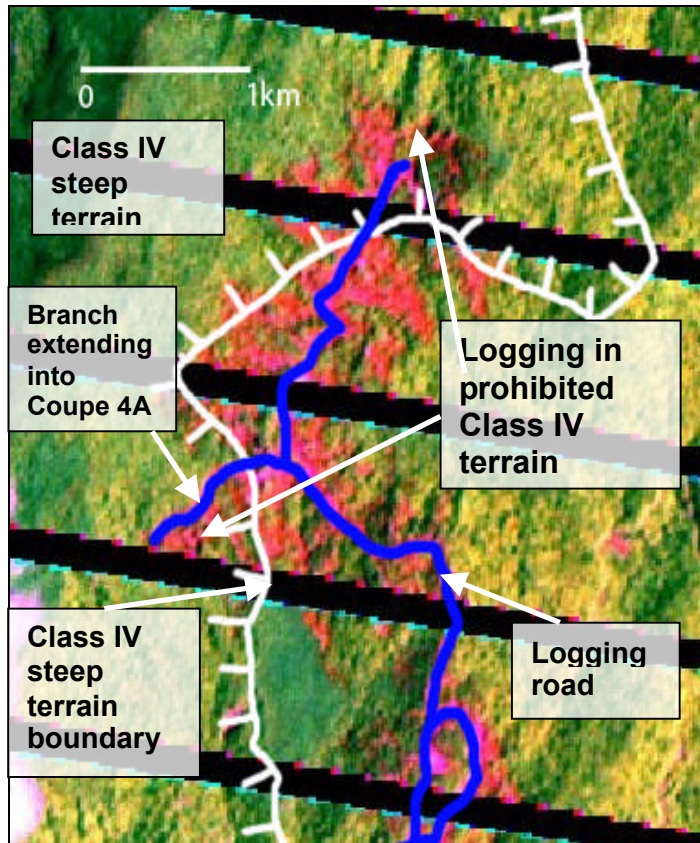


Figure 15 : Satellite image (with route of main logging roads added in blue) and diagram showing the two areas of logging inside Class IV prohibited steep terrain and mountain in T/0411⁶²

⁶² Base image in bottom figure is from Google Earth and precedes logging activity. The red line shows the extent of logging from March 2009 and is based on Landsat satellite images. The pink line shows Class IV terrain boundary and is based on the concession map which is included in the Re-Entry Logging EIA; see footnote 57.

The area, shown in the satellite image in Figure 15, was visited during the field investigation in September 2009. It was observed that new roads were being built, and that the road construction had caused extensive erosion and pollution of streams, as well as the complete removal of all trees within buffer zones along rivers and roads. It was also confirmed that land-based logging with bulldozers was occurring within an area classified in official documents as Class IV terrain.

The EIA points out that erosion and subsequent siltation of rivers is the most serious potential environmental issue associated with the project, repeatedly stating that two key measures will serve to mitigate this risk – the re-use of existing logging roads, and the exclusion of steep Class IV terrain from anything other than helicopter logging: *‘areas that are too steep (>35 degrees) should be preserved [and] should be clearly marked to ensure that the logging activities do not inadvertently encroach into these areas.’*⁶³

Normally, land-based logging and road construction are not permitted in Class IV terrain. The logging activity that has been observed has undoubtedly had a detrimental effect on the environment, and the Council finds it probable that Samling’s operation in this part of the concession is in violation of the official requirements.⁶⁴ In its letter to the Council, Samling indeed admits that an illegal road has been built in an area where only helicopter logging is permitted, but it does not specify in which area: *‘On the matter of road construction in areas earmarked for Heli blocks, Samling admits that there was indeed such a road built. However it was built without the permission of Samling’s planning unit and represents a breach of procedures. The management issued a stern and final warning letter to the camp management for the infraction. They expressed regret and stated it was done to facilitate helicopter logging; otherwise, it would be difficult to evacuate heli-logs. To rehabilitate areas damaged by road construction, we have planted trees from our nursery.’*⁶⁵

Clear-cutting along roads

In the same area one could see completely clear-cut forest on both sides of the road for distances of up to 50 metres, and sometimes significantly more (see Figure 16).

The Council has not had access to the current Forest Management Plan for this licence area, but the Forest Management Plan for T/0390 lays down many established logging requirements which, according to Sarawak forest department officials, are standard in all licences.⁶⁶ This Forest Management Plan states that forest can only be cleared to a total maximum width of 40 metres for a ‘feeder’ road and 50 metres for a ‘secondary’ road. The Timber Licence for T/0390 also prohibits harvesting of undersize trees more than 30 metres from the centre line of any logging road. In its letter to the Council, Samling claims that this is not necessarily correct, arguing that for operational and security reasons the road corridor may be wider; see section 5.1 for a more detailed account.

Cutting inside river buffer zones and polluting rivers with logging debris

Forest within river buffers had been cleared in large areas, and in many places where forest had not been completely cleared, it was so denuded of trees that bare earth could be seen (see Figure 17). Logging debris was observed clogging rivers and streams throughout the area.

⁶³ Ecosol Consultancy Sdn Bhd: *Environmental Impact Assessment for Samling’s re-entry hill logging under timber licence No. T/0411 at the Pelutan area, Miri division, Sarawak*, January 2009; on file with the Council.

⁶⁴ See table 2.

⁶⁵ Samling’s letter to the Council, dated 12 February 2010.

⁶⁶ Interviews conducted during the field investigation in 2009.

Riparian buffers of at least 20 metres should be retained alongside all rivers and streams, and normally it is prohibited to cut trees within the buffer zone.⁶⁷ The Council presumes that this is applicable also here. With regard to polluting rivers and streams, the Environmental Impact Assessment lists a number of measures to prevent this, such as:

- *'Keep waterways clear of blockages.*
- *Do not throw vegetative debris into waterways.*
- *Ensure there is no encroachment into the river bank area. Retain riparian vegetation.*
- *Minimise damage to surrounding vegetation during felling.*
- *Do not litter waterways with vegetative debris. If any debris gets into waterways accidentally, it should be removed.'*⁶⁸

If not illegal, the failure to remove logging debris seems to be contrary to the conditions on which the approval of the Environmental Impact Assessment is based.



Figure 16: Forest completely cleared for up to 50 metres at the side of the road, in breach of normal limits. See Figure 12 for location.

⁶⁷ EFI FLEGT Facility 2009: *Joint Technical Evaluation of Malaysian Timber Legality Assurance System (TLAS)*; available at http://www.euflegt.efi.int/item_detail.php?item=document&item_id=651

⁶⁸ See footnote 63 , pp. ES-8 and ES-9.



Figure 17: Forest cleared in excess of limits, no buffer zone left alongside stream (the stream is just outside the picture, in the slope in the foreground). The stream clogged with logging debris can be seen towards the bottom of the picture. See Figure 12 for location.

4.4.4 Concession T/0413 – Samling Plywood (Miri) Sdn. Bhd.

Satellite images from August 2009 reveal that intensive logging has been conducted in the north-central region of Samling timber licence T/0413, which belongs to Samling Plywood (Miri) Sdn. Bhd.⁶⁹ Due to poor road conditions, time and logistical constraints, a field investigation in these logging areas was not possible. Instead, an area that had been logged in 2003-2004 was selected (see Figure 18 for route and key locations).

Polluting rivers with logging debris, felling protected trees and cutting inside river buffers

Also in this area it was obvious that logging debris had not been removed from the river (the Semariang River), and stumps on the bank of the river indicated cutting within the buffer zone. One of the stumps was a protected Engkabang tree. The logging debris and run-off from exposed ground had polluted the stream. Local villagers confirmed that these findings were not isolated cases, reporting that the company had cut trees all along the river bank for some kilometres, polluted streams and cut numerous Engkabang trees. In the surrounding area, large swathes of completely cleared forest, in many places extending for more than 50 metres from the logging road, were seen.⁷⁰

⁶⁹ Samling Plywood (Miri) SDN. Bhd. is a wholly owned subsidiary of Lingui Developments, Which again is a subsidiary of Samling Global.

⁷⁰ Interviews with villagers from Long Makaba conducted during the field investigation in September 2009.

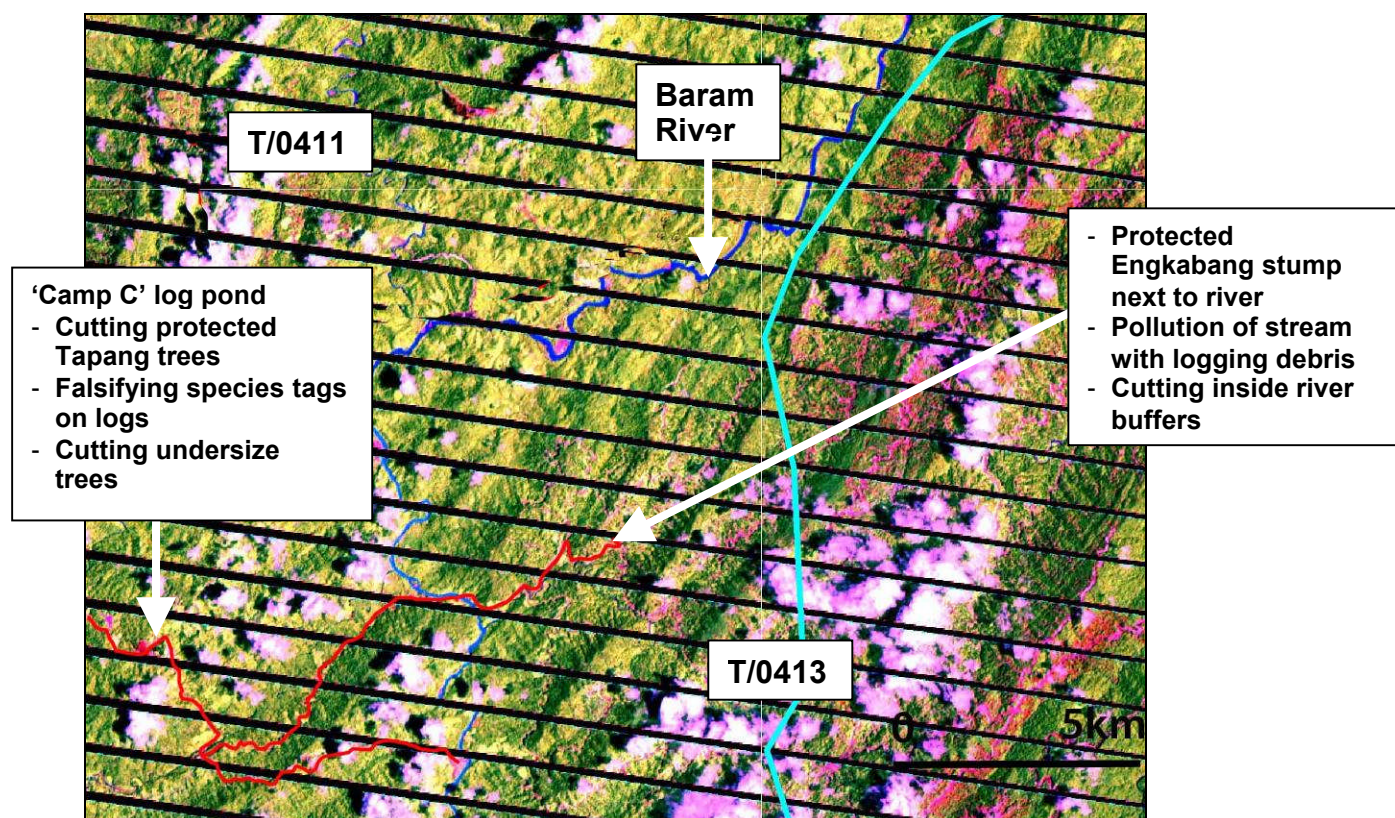


Figure 18: Satellite image showing team's route in Samling logging licence T/0413 (red line). Intensive recent logging as of August 2009 is visible to the right (red areas).

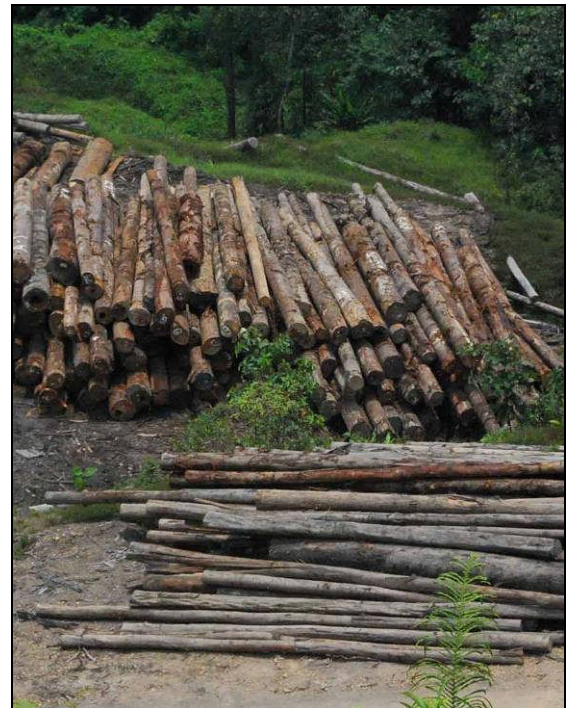
Incorrect log tagging and logging of undersize trees

Adjoining the so-called Camp C⁷¹ (see Figure 18 for location) is the main log collection area (log pond) for the concession. Here logs are measured, recorded and tagged. The authorities may also carry out inspections of the log pond. According to local residents, however, there is another area situated behind Camp C that is hidden from the main road and is used for collecting illegally logged timber. During the field investigation, no timber was stored here, but according to a local resident, there were large quantities of the protected tree species Tapang (*Koompassia excelsa*) here in May 2008.⁷²

A worker at the 'Camp C' log pond told the researchers that protected Tapang and Engkabang logs are regularly brought to the log pond and that log pond managers instruct scalers (whose job it is to measure and tag the logs with labels stating the species, size and origin) to falsify the species code on the tags and in the records. Such falsification is illegal and would not be occurring if the trees had been cut under permit. The worker explained that protected tree logs were being brought to the log pond in particularly large quantities in May 2008, which concurs with the observations mentioned above.

⁷¹ Within the concession Samling has built timber camps comprising works buildings, offices and workmen's sheds.

⁷² Interviews conducted during the field investigation in September 2009.



Undersize logs can be seen at the bottom of the picture on the right and in the picture above.

Figure 19: Samling's log pond at Camp C in T/0413.

At the back of the 'hidden' log pond, small undersize logs had been thrown away down a hill slope. A small pile of very small-diameter logs were also seen in the main log pond at Camp C (see Figure 19). The worker explained that illegal undersize logs are regularly brought to the log pond and hidden there. He stated that about ten trucks a month make special trips at night to transport the illegal logs to the sawmill at Tebanyi, where they are chipped for fuel.

4.4.5 Concession T/9082 – SIF Management Sdn. Bhd.

Clear-cutting along roads and logging debris in streams

The Samling logging licence area in the headwaters of the Baram River (T/9082) is licensed to subsidiary SIF Management Sdn Bhd.⁷³ This has been a relatively inaccessible area, which has only been opened up in recent years. Satellite images from March 2009 show extensive clearance going on in large swathes of forest up to one kilometre on either side of a new road being cut through the area to connect with the hill town of Bario to the north (see Figure 20). At the time of the field investigation, however, no logging was being carried out in the area. On the site visited during the field survey, the forest had been cleared for more than 30-50 metres to either side of the road, in excess of normal limits defined in the Forest Management Plans and Timber Licences. Logging debris was also seen clogging streams in a number of locations.

In its letter to the Council, Samling argues that the logging shown in satellite pictures may have been the doing of others rather than of the company. The Council does not find this very likely. The logging is on such a scale that it requires the use of forest machinery. Furthermore, there are no other roads that lead into the concession, meaning that the logs could hardly have been moved out without Samling's knowledge. This is described in more detail in section 5.2.

⁷³ SIF Management Sdn. Bhd. is a wholly owned subsidiary of Syarikat Samling Sdn. Bhd., which again is a subsidiary of Samling Global.

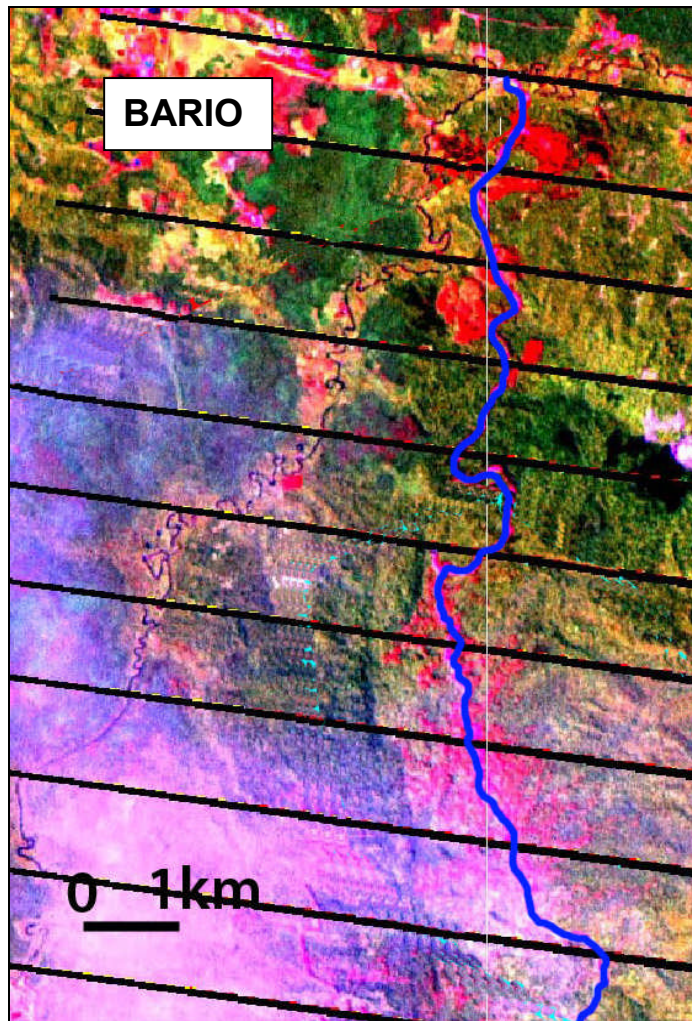


Figure 20: Satellite image from March 2009; route of field investigation (along new logging road) is shown in blue. Intensive logging (visible in red) can be seen occurring up to 1 km on either side of the new road in T/9082.

4.4.6 Licence for planted forest LPF 0021 - Samling Reforestation (Bintulu) Sdn. Bhd.

The majority of the old Samling selective logging licence area T/0404 has now been licensed for total clearance and replacement with planted tree crops.⁷⁴ Planted forests licences allow for the complete clearance of natural forest, meaning that undersize trees and some protected trees could be expected to be cut, and that in some instances forest on steep slopes would be cleared. The government does, however, require the companies to carry out an Environmental Impact Assessment (EIA) in order to identify and predict the potential impacts during the various stages of the plantation development. Slope stability and possible soil erosion is one of the key issues addressed in the Environmental Impact Assessment for this concession.⁷⁵ Nevertheless, cleared and recently planted steep slopes of more than 35 degrees, as well as resultant landslides and associated erosion, were seen during the field visit in this area. Samling's forestry operations do not seem to be in compliance with the standard requirements for road construction and logging in steep terrain that are normally included in the licence agreement.

⁷⁴ Under Samling licence no. LPF0021, issued to Samling Reforestation (Bintulu) Sdn Bhd., subsidiary of Syarikat Samling Sdn. Bhd. T/0404 is licensed to Samling Plywood (Lawas) Sdn. Bhd., subsidiary of Lingui Developments.

⁷⁵ See footnote 68, p. ES-7.



While not being a major priority for the field investigation, a limited investigation of an area within LPF 0021 was conducted. This area had been cleared and planted during 2006-2007, clearly visible on the satellite image (marked with red). The area has later been planted.

Figure 21: Forest clearance in Samling concession LPF0021, Landsat May 2007. Cleared areas are coloured red.

4.5 Barama's logging operations in Guyana

Samling's Guyanese subsidiary, Barama Company Limited, was established in 1991, and was granted a natural forest logging concession the same year.⁷⁶ Located in the North-West of Guyana, the concession covers 1.611 million ha and is the largest in the country. It runs until 2016, being renewable for a further 25 years until 2041.

Forest Management in Guyana

The Guyana Forestry Commission is responsible for the administration and management of all Guyana's state forest land, including developing and enforcing standards for forest sector operations and developing and implementing forest protection and conservation strategies.⁷⁷

As in Sarawak, there is little information available about which requirements the logging companies have to comply with. The Forests Act of 1953, the associated Forest Regulations, and the specific terms of the licence agreement (TSA number 04/91) legally provide the regulations for the timber harvesting in the concession. Barama is subject to an annual allowable harvesting volume determined by the Guyana Forestry Commission, which also imposes restrictions on minimum tree diameter cutting limits. Forests are harvested according to a 40-year cutting cycle, and harvesting plans are approved by the Forestry Commission.⁷⁸ According to the company website, Barama's timber operations are in compliance with the Guyana Code of Practice for Timber Harvesting, but the actual requirements are not further detailed.⁷⁹ The Code of Practice

⁷⁶ Samling Global IPO Prospectus, p. 144 and p. VI-68.

⁷⁷ <http://www.forestry.gov.gy/index.html>.

⁷⁸ Samling IPO Prospectus, section on Business, p. 144.

⁷⁹ <http://www.baramaguyana.com/eng/about/overview.htm>.

sets guidelines and standards for the logging operations, but is apparently not obligatory for the company.⁸⁰

Absence of required forest management and operational plans

Medium-term and long-term logging concessions are required to have approved forest management plans. The Forestry Commission also requires annual operation plans as a precondition for the issuing of timber tags and log removal passes.⁸¹

In early 2006 Barama was awarded certification by the Forest Stewardship Council (FSC)⁸² for two 'forest management units' within its concession in Guyana (Compartments 4 and 5), according to FSC criteria for sustainable forest management. In November the same year an independent audit confirmed numerous serious breaches of FSC's criteria.⁸³ As a result, the FSC certification of the concession was suspended. The audit revealed the following:⁸⁴

- The company had failed to produce a forest management plan for one of the 378,000 hectare large compartments.
- Poor oil and diesel disposal had caused severe pollution.
- No measures were put in place to prevent erosion and protect water sources during the construction of logging roads.
- The company had failed to carry out Environmental Impact Assessments prior to major activities, resulting in significant environmental impacts.
- The company was unable to provide evidence that harvesting rates were not exceeding sustainable supply.
- The company had failed to adequately attend to basic health and safety requirements for workers.
- Logging activities were carried out in indigenous lands without prior informed consent of local communities.⁸⁵

In addition to the obviously environmentally harmful logging practices, the audit confirmed the absence of a forest management plan for one of the two compartments, something that appears to

⁸⁰ The Code of Practice (second edition 2002) could be made obligatory but the President (as Minister of Forests) has not amended the Forest Regulations to do this. Communication with John Palmer, 16 December 2009; on file with the Council. See also Trevin, J. og R. Nasi 2009: *Forest Law Enforcement and Governance and Forest Practices in Guyana*. CIFOR and Iwokrama International Center for Rainforest Conservation. Commissioned by the Norwegian Ministry of Environment's Climate and Forest Initiative.

⁸¹ Bulkan, Janette and John Palmer, 14 February 2008: *Illegal logging by Asian-owned enterprises in Guyana, South America*. Briefing paper for Forest Trends, 2nd Potomac Forum on Illegal Logging & Associated Trade, House Washington D.C.; available at http://www.illegal-logging.info/approach.php?a_id=135.

⁸² According to its website, the Forest Stewardship Council is an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world's forests. FSC is a *certification system* that provides internationally recognized standard-setting, trademark assurance and *accreditation* services to companies, organizations, and communities interested in responsible forestry; see www.fsc.org.

⁸³ Barama was evaluated by SGS Qualifor and awarded a combined forest management / chain of custody certificate under the Forest Stewardship Council (FSC) in February 2006. This award was protested by civil society. Accreditation Services International GmbH (ASI) carried out a field inspection audit of SGS Qualifor's certification of Barama for FSC in November 2006, issuing a critical public summary report in January 2007. SGS Qualifor subsequently suspended the FSC certificate for Barama.

⁸⁴ Accreditation Services International, FSC Annual Surveillance of SGS for 2006, Forest Management Audit to Barama Co Ltd (BCL), Guyana (SGS-FM/COC-2493), Date of audit: 20 to 25 November 2006, http://www.fsc-watch.org/docs/SGS_suspends_Barama_certificate_ASI_report.pdf.

⁸⁵ See footnote 84.

be a clear breach of the law. Barama's FSC certificate was withdrawn in January 2007 and has still not been reinstated.⁸⁶

In its letter to the Council, Samling comments on this, accusing the Council of not attaching importance to the company's efforts in improving the forestry operations, something that is necessary in order to be recertified.⁸⁷ The company informs that in this respect it has sought the assistance of the WWF and the Guyana Forestry Commission.⁸⁸ However, the Council is aware that in January 2009 the WWF made an official statement saying that the organization had cancelled the agreement with Barama, and that this had happened some time ago. According to the WWF, Barama does not have "*the managerial or technical capabilities and the company does not seem to be making a serious attempt to deal with the issues.*"⁸⁹ Reference is made to an excessive number of issues that have not been addressed, and the WWF doubts that Barama will manage to reclaim the certificate. Thus, the Council finds it misleading that Samling refers to a cooperation which was ended more than a year ago, and where it seems evident that it is the company's insufficient capability or determination to improve the forestry operations that has been decisive for its termination.

Moreover, the company argues that the main reasons why the FSC certificate was withdrawn were related to "*staff issues, amenities, buildings and non-timber activities conducted by third parties (mining operations).*" Based on the conclusion in the independent investigation of Barama's concession areas, as described above, the Council does not subscribe to this view.

Fines issued by Guyana Forestry Commission for illegal logging

In October 2007, the Guyana Forestry Commission announced that it had fined Barama 96.4 million Guyanese dollars (USD 474 000) for illegal logging within three of the concessions adjacent to its own, where for some years it has conducted harvesting operations on behalf of third parties.⁹⁰ The official investigation brought to light that the company had:

- failed to declare to the government a portion of the logs that the company harvested and removed from the Barakat concession during July 2007;
- harvested without permission a large quantity of logs in an adjacent concession (the Mazaharally concession) and falsely labelled stumps in this concession with tags provided by the Forestry Commission for use in another area; and
- removed logs from the Sukul concession without the Forestry Commission's permission.

Barama later admitted that there had been a mixing of tree tags between different areas, though it claimed this had been unintentional. It also admitted that it had conducted logging without permits, though it stressed that the relevant permits were being processed by the Forestry

⁸⁶ <http://www.baramaguyana.com/eng/ec/certification.htm>.

⁸⁷ Samling's letter to the Council, dated 12 February 2009.

⁸⁸ The company here refers to Barama Company Ltd's FSC Certification dated 30 April 2007; available at http://www.panda.org/who_we_are/wwf_offices/suriname/?100160/WWF-Statement-on-Barama-Company-Ltds-FSC-Certification.

⁸⁹ <http://www.stabroeknews.com/2009/stories/01/11/wwf-has-%e2%80%98disconnected%e2%80%99-from-barama/>

⁹⁰ Guyana Chronicle, 23 Oct 2007: *Barama fined \$96.4M – forestry staffers dismissed, sanctions imposed on three firms*. The three concessions were issued to A. Mazaharally & Sons, N.Sukul & Sons, and Barakat Timbers Ltd. See also Samling Global Ltd, 26 Oct 2007: *Clarification of matters in respect of sanctions imposed on Barama Company Ltd by the Guyana Forestry Commission*; <http://www.hkexnews.hk/listedco/listconews/sehk/20071026/LTN20071026004.pdf>

Commission at the time.⁹¹ The company claimed that such anomalies were “*part and parcel of the operational realities and practices in any dynamic and geographically challenging industry such as the timber industry where operations take place in deep jungle.*”⁹² Barama believed the fines to be “*severe, undeserved and arbitrary,*”⁹³ but eventually agreed to pay them.⁹⁴

In January 2008 Guyanese news articles reported that Barama had been issued with two more fines. The first fine, of 50 million Guyanese dollars (USD 255,000), was said to be for breaches in third party concessions, but no additional details were provided. The most recent fines were issued to a total of 12 logging companies, including Barama, for logging in concession blocks without approved annual harvesting plans. The fines issued totalled 275 million Guyanese dollars (USD 1.4 million). The share of these fines which was issued to Barama has not been made public, nor have specific details of Barama’s failures.⁹⁵

Logging on behalf of other concession holders

Samling Global’s 2007 IPO Prospectus disclosed that Barama at that time conducted harvesting operations on behalf of other concession holders in an additional 0.445 million hectares.⁹⁶ According to Guyanese legislation, subcontracting forest concessions belonging to other concessionaires is not permitted, unless it is specifically approved by the President and the Forestry Commissioner.⁹⁷ The Commissioner has argued that Barama is acting in the confines of the law when it harvests timber from outside its own concession.⁹⁸ To the Council’s knowledge, however, no such permission from the President and Commissioner for these subcontractual agreements (under which Barama harvests 72 per cent of its logs) has ever been made public. When Barama was fined in 2007, the company was also instructed to immediately stop all forestry operations in concession areas of third parties (Mazaharally, Sukul and Barakat).⁹⁹

⁹¹ Stabroek News, 25 Oct 2007: *Barama: Fines will send workers home*, <http://guyanaforestryblog.blogspot.com/2007/10/barama-fines-will-send-workers-home.html>

⁹² Samling Global Ltd, 26 Oct 2007: *Clarification of matters in respect of sanctions imposed on Barama Company Ltd by the Guyana Forestry Commission*, <http://www.hkexnews.hk/listedco/listconews/sehk/20071026/LTN20071026004.pdf>

⁹³ See footnote 92.

⁹⁴ Stabroek News, 15 Nov 2007: *Barama agrees to pay \$96.4M forestry breaches fine*, <http://guyanaforestryblog.blogspot.com/2007/11/barama-agrees-to-pay-964m-forestry.html>

⁹⁵ Stabroek News, 15 Feb 2008: *Loggers to mount legal challenge to Forestry Commission fines: source*, <http://www.stabroeknews.com/2008/business/02/15/loggers-to-mount-legal-challenge-to-forestry-commission-fines%E2%80%A6source/>

⁹⁶ Samling IPO Prospectus: Business section, p. 145. Annex VI of the prospectus (p. VI 70) shows that logging on rented concessions amounted to 72 per cent of Barama’s total logging volume for the budget year 2005-2006.

⁹⁷ Bulkan, Janette and John Palmer 8 June 2007: *Lazy days at international banks: how Credit Suisse and HSBC support illegal logging and unsustainable timber harvesting by Samling/Barama in Guyana, and possible reforms*; available at http://www.illegal-logging.info/uploads/Samling_Barama.pdf. Logging in subcontracted concessions is illegal under Article 12 of the Forest Regulations of 1953, Condition 13 of Timber Sales Agreements and Condition 2 of State Forest Permissions.

⁹⁸ Stabroek News, 8 July 2007: *Barama harvesting legally outside its concession – Commissioner of Forests*, <http://guyanaforestryblog.blogspot.com/2007/07/barama-did-not-sub-lease-from-other.html>.

⁹⁹ See footnote 92.

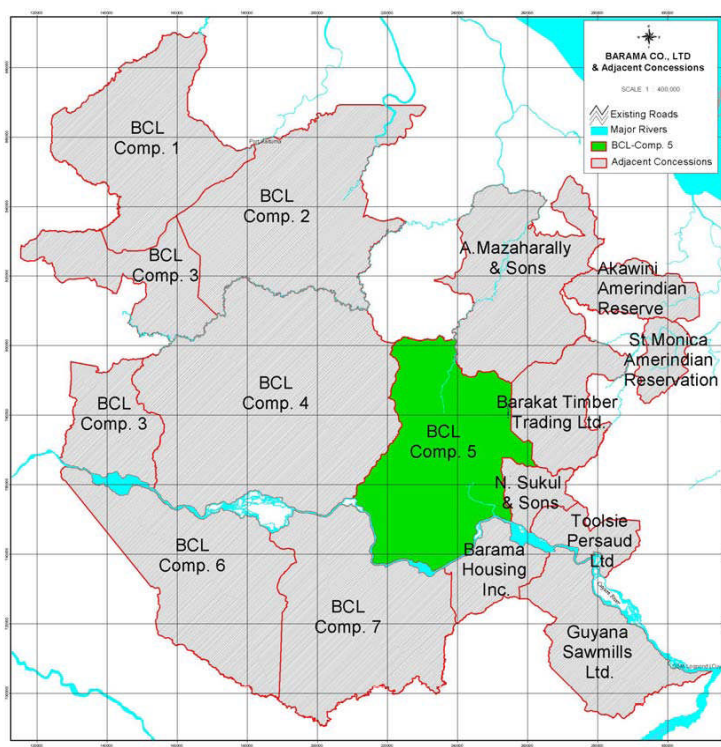


Figure 22: Map of Barama (Samling) concession and adjacent subcontracted harvesting areas in Guyana. As of early 2007, of the adjacent concessions in the map above, harvesting agreements had been signed for all except Barama Housing Inc, which was in process.¹⁰⁰

In its letter to the Council, Samling states that all subcontractual agreements were terminated by the end of 2007, due to a “change in policy of the Government of Guyana. Prior to that, all subcontractual arrangements were undertaken with the full knowledge and support of the Guyana Forestry Commission (GFC) the regulatory authority. BCL [Barama] acted at all times under the guidance and approval of the GFC. The change in policy was that the GoG no longer wished to allow subcontractual arrangements, and forest concession holders are required to make more direct investment into their forest concession operations instead of outsourcing parts of their operations.” The Council notes that Samling attributes the ending of the subcontractual agreements to a change in government policy, which in this case may imply that the authorities have enforced the legal provision. Samling does not provide information as to whether it has had the necessary presidential approval for renting concessions.

It is, however, not clear whether Barama continues to be involved in illegal subcontracting of concessions. The Council has been informed that Barama in 2008 paid the fine imposed on Toolsie Persaud (see map) after this company refused to pay. Since the fine was imposed because of the logging by Barama in that concession, in blocks which had not been approved by the Forestry Commission, it seems likely that Barama was renting this concession.¹⁰¹

Barama is said to also have failed in the past to pay a 2 per cent export tax on logs harvesting in third party concessions. It is thought that the company’s initial 1991 agreement with the Guyanese government exempted it from paying these taxes, but that this exemption does not

¹⁰⁰ Map extracted from from Barama Company Ltd (BCL), Forest Management Plan Public Summary for Compartment 5 (2004-2008), p. 6, <http://www.baramaguyana.com/eng/ec/compartment5.pdf>

¹⁰¹ E-mail from John Palmer, 11 December 2008 and 16 December 2009; on file with the Council; see also <http://www.stabroeknews.com/2008/stories/08/30/tpl-to-pay-80m-forestry-fine-timber-operations-to-resume/>

cover logs harvested outside its own concession. Reports from the Commissioner of Forests to the Board of Directors of the Forestry Commission apparently stated that such taxes were outstanding.¹⁰²

5 Samling's response to the Council

5.1 Samling's letter to the Council

As mentioned above, the Council has made inquiries to the company on two occasions. On 9 January 2009 the Council wrote a letter to Samling requesting copies of the timber licences and forest management plans for the concessions in Malaysia and Guyana, and, if possible, also a map of the concession areas and annual plans for logging and road construction. In its reply to the Council, dated 2 February 2009, Samling denied the Council's request. The company states that the documents requested by the Council are *"highly confidential in nature and it is not in the interest of the Company or of its shareholders that any part thereof is shared with any individual whether shareholder or not or the public particularly its competitors... It is our obligation to ensure that all information which is not publicly announced or disclosed be kept confidential. As there is no question of the information you requested being made public for the reason stated, it follows that we are unable to comply with your request."* Samling further states: *"We also fully understand that it is likely that not being able to obtain the documents and information asked for, you would not be able to comply with those Guidelines and would have to divest yourselves of your holdings in our securities. We would regard such divestment as being inevitable in the circumstances which we understand but regrettably have to regard as inevitable."*¹⁰³

Following further investigations, the Council wrote another letter to the company on 17 December 2009, providing it with the opportunity to comment on the Council's draft recommendation. The Council received the company's reply on 12 February 2010. In this letter the company points out that the Council's recommendation does not provide a correct picture of the circumstances, seeing as it was drafted without input from the company: *"Samling thus questions the integrity of the Draft Recommendation about the company's conduct and practices produced entirely from outside sources, some of which are far from credible or accurate. We are of the view that the Council's approach does not meet the requisite standard of fair play nor satisfy the basic principles of natural justice."*

Moreover, in its reply to the Council, Samling states that the company complies with all requirements and regulations in its forestry operations: *"The company takes the stand that it conducts harvesting operations in accordance with the rules and regulations as set by the relevant forestry authorities. All logs harvested are legal and endorsed as such by the relevant governmental agencies."* Samling also states that it takes the accusations of severe environmental damage caused by the company very seriously, because it goes against the company's corporate practice of sustainable forestry operations.

¹⁰² Stabroek News, 30 Jan 2007: *Letter to the editor* from Janette Bulkan, http://www.illegal-logging.info/item_single.php?it_id=1907&it=news.

¹⁰³ Samling's letter to NBIM and the Council, dated 2 February 2009.

Samling's criticism of the Council's methods

Samling mentions the use of satellite imagery which, in the company's view, is difficult to interpret correctly, arguing that the images are not suitable to prove that the company is guilty of forest degradation. The company also claims that this may be attributed to others who reside in the concession area: *"In your report, evidence of forest degradation is being attributed to Samling when it could be the acts of others living in concessions areas."*

Furthermore, Samling accuses the Council on Ethics of having illegally obtained confidential documents, but does not specify any further which documents it refers to. The company also claims that the Council's consultants have violated security regulations by entering the concession areas, which are private property, and by trespassing on the company's timber camps.¹⁰⁴ Samling does not provide any more details as to how the security regulations are supposed to have been infringed.

Samling's criticism of the Council's findings and assessments

Samling is of the opinion that the Council on Ethics is not up-to-date on which government requirements are in force, arguing that the forestry sector is constantly subject to alterations in policy and requirements from the authorities: *"Samling keeps abreast of all regulatory requirements, which sometimes have different time-frames of implementation between concessions."* In this context the company specifically raises the questions of re-entry logging without Environmental Impact Assessments and illegal concession subcontracting in Guyana (the latter is mentioned in section 4.5 and is not further commented on here).

Regarding Environmental Impact Assessments, Samling states that only in 2008 did the Sarawak Forest Department order the company to prepare these for re-entry logging. According to Samling, this is also the case for the Ravenscourt concession (T/0294), which is mentioned specifically, and incidentally is the company's sole comment on the irregularities that the Council has uncovered in the said concession.

With regard to road construction, Samling informs that it is common for logging companies in Sarawak, with the government's knowledge, to cut down the forest in swathes of up to 60 m on either side of the road to improve visibility *"when the topography results in dangerous blind corners along these roads"*, and for the roads to dry more quickly after rainfall *"to ensure that main logging roads (which are unsealed) are always in a safe and motorable condition."* According to Samling, the roads are inspected by the Forest Department once they are finished.

Samling also stresses that the Council has not considered new measures undertaken by the company to improve the local population's living conditions and the environment, specifically citing efforts to ensure clean water for villages, as well as road and bridge construction to improve accessibility and transport between villages and towns (the latter is discussed in section 4.4.2). The company also mentions that it is implementing measures to protect the fauna, as well as development programmes for local communities, and briefly comments on the conflict with some indigenous peoples in the concession.

¹⁰⁴ In the concession area the company has established so-called timber camps, which include works buildings, offices and workmen's sheds. These areas are normally fenced in and locked.

5.2 The Council's view of Samling's reply

The Council's draft recommendation was sent to Samling on 17 December 2009, precisely to give the company the opportunity to comment and to contribute with information regarding the case at hand. Samling has therefore had the chance to transmit input and documentation which are relevant to the matters discussed in the recommendation. However, the Council has not received any documentation from the company that substantiates its points of view or indicates that the Council's assessments are based on faulty grounds. The recommendation has been adjusted vis-à-vis the draft that Samling received for review, and an element that Samling also comments on in its letter has been removed because the Council discovered that it lacked a sound foundation.

The Council does not share Samling's view regarding the use of satellite imagery. The satellite pictures used in the recommendation have a resolution of 15-30 m and are sufficiently detailed to render both roads and logging distinct in the images. There is no doubt that the close-knit road network which is visible within Samling's concessions consists of logging roads. This was also confirmed through the field survey. There is only one main road leading into the concession areas, and it is hardly likely that it was built by anyone else than the concessionaire, not least because the construction of such roads takes a long time and demands heavy machinery. The Council is aware that Samling's personnel travel on these roads regularly to supervise the logging. There are also living quarters for Samling's workers near larger crossroads in the concession areas. The company's presence in the concession areas makes it unlikely that anyone other than Samling would have been able to build roads without the company's knowledge.

Moreover, the damage on the forest along the roads and in the concession areas is on such a scale that it hardly can be caused by anything else than the use of logging machinery. It is not probable that local inhabitants equipped with machetes or chain saws would be able to cause the kind of damage shown in the satellite images and observed in the field. It is also improbable that the forest degradation could be caused by local inhabitants clearing the forest for agriculture, as Samling claims. In the pictures, areas with small-scale farming can clearly be identified, and these are typically situated near the villages, not along the logging road or in the heart of Samling's concessions. Erosion and landslides cannot be ascribed to slash-and-burn cultivation either, which is another of Samling's allegations. Such areas are identifiable in the satellite images, at the same time as the field investigation confirmed that the damage revealed in the concession areas are a result of logging, as described in section 4.4. Even if other operators should be logging in Samling's concession areas, it is still the company's responsibility to make sure that illegal logging does not take place within its own concessions.

Furthermore, the Council would like to stress that the documents at the basis of the recommendation stem from public sources and have been obtained legally. As previously mentioned the *Permit to Enter Coupes*, the correspondence with the authorities, maps and other documents related to the concessions and appended to the Environmental Impact Assessment for re-entry logging have all been made public and are available in the library of the Natural Resource and Environment Board in Kuching. In addition to this, we have received documents regarding certain concessions from the Bruno Manser Fund, an NGO in Switzerland.

The Council is puzzled by Samling's allegation that the Council's consultants have violated security regulations in concession areas, finding it hard to comment on this as the company does not specify what it is alluding to. The Council will, however, point out that there are thousands of people who live and move within the concession areas, using the roads on a daily basis. The

indigenous peoples also have a right to exploit the forest resources for their own subsistence. During the field survey the Council's consultants visited several local villages and were also guided by locals during the field investigation, which occurred along the roads in the concession areas. To the Council's knowledge, these roads are also used by tourists, and no special permit is required for this. At the entrance to the concession areas, though, one is informed that any transit takes place at one's own risk. During the field investigation the Council's consultants have not been inside any of the company's timber camps. The consultants did, however, investigate the log pond T/0413, which is situated close to what is referred to as Camp C in section 4.4.4. The log pond is adjacent to the road, was not fenced in or marked, and there was no clear demarcation vis-à-vis the road (which led to the village that was visited), as is also shown in the picture in Figure 19.

Samling's criticism of the Council's findings and assessments is partly referred to under the relevant paragraphs in the recommendation and are not further discussed here. The Council takes as its point of departure that the requirement regarding the preparation and approval of Environmental Impact Assessments for re-entry logging entered into force in 2005.¹⁰⁵ Samling claims that the forest department only started requiring this in 2008 and that the company then complied with the demand. The lack of Environmental Impact Assessments was, however, an issue pointed out in the Malaysian Auditor-General's evaluation of the forest management in Sarawak, and the Council therefore presumes that it is a violation of existing regulations.¹⁰⁶

When it comes to Samling's information that the maximum requirement regarding the width of road corridors may be deviated from for security reasons, the Council presumes that this is an exemption from the regular requirements which is applicable only in special cases. Road corridors more than 120 m wide would mean that a large portion of the concession area allocated to selective logging in practice will be clear-felled.¹⁰⁷ The Council also takes it that the requirements normally made (60 m width) are formulated precisely to guarantee traffic security, both when it comes to visibility and drying. Samling does not provide any further details as to where these exemptions have been applied and where the Council possibly has erred in its assessment. The Council accepts as a fact that the field investigation detected several locations of straight stretches of road and good visibility (e.g. in T/0411; see Figure 16) where the logging corridor exceeds 60 m, but where there do not seem to be safety reasons that justify this.

The Council is criticized for not attaching importance to the positive measures that Samling implements for the local communities. The reason why the Council does not mention this specifically is not that such measures fail to be positive, but primarily because they are not considered relevant to the issues that the Council has investigated. In the Council's view, improved water supply and communication cannot counterbalance violations of the law and environmental damage.

The Council notes that Samling in its reply barely discusses the specific irregularities that the Council has detected. This is the case with the illegal logging in the area which should be integrated into the Pulong Tau National Park, as well as logging and road construction outside the concession area and into the buffer zone towards the Indonesian border. The company also fails to mention the logging of protected species, in buffer zones and of undersize trees. Moreover, the Council finds that Samling at certain points in its reply falls short of being

¹⁰⁵ See table 2 for requirements regarding EIAs.

¹⁰⁶ See footnote 31.

¹⁰⁷ See table 2 for requirements regarding logging along roads.

reliable, for instance by referring to a partnership with the WWF in Guyana, which, according to the WWF, was terminated more than a year ago.

6 The Council's assessment

Based on the information presented above, the Council has assessed whether Samling's operations are in breach of point 4.4 of the Ethical Guidelines under the criterion for environmental damage.

Illegal logging refers to the harvesting, transporting, selling or buying of timber in contravention of national law. According to the preparatory work for the Ethical Guidelines, illegal logging may be in breach of the Ethical Guidelines. The Council will also stress that illegal logging, particularly in natural forests, often results in far-reaching and lasting damage to the forest and the environment, in addition to the degradation and loss of livelihood for people living in and off the forest. Internationally, comprehensive efforts have been made to combat illegal logging in Asia and elsewhere, under the auspices of the EU, the World Bank and individual States, including Norway.¹⁰⁸ In this context it is also relevant to stress the Norwegian and international initiatives aimed at preventing deforestation and forest degradation in tropical rainforests as part of reducing greenhouse gas emissions and loss of biodiversity.¹⁰⁹

In its assessment of the company, the Council has emphasised the extent of illegal logging in Samling's concessions in Sarawak, whether the violations appear to be systematic, and the risk that the company's behaviour will continue in the future.

The Council's own investigations of Samling's forestry operations in Sarawak have documented what seems to be extensive and repeated breaches of licence terms, regulations and other requirements in all the six concession areas that were surveyed. Some of the violations are very serious, such as logging outside the concession area, logging in a protected area that had been officially excluded from the concession in order to be integrated into an existing national park, and re-entry logging without Environmental Impact Assessments. Other practices which, seen in isolation, may appear less serious are aggravated because they seem to be a systematic part of the company's forestry operations. In the investigated concessions clear-cutting had been carried out along the roads across wider sections than what is permitted, clear-cutting had occurred in riparian buffer zones, and rivers and streams were polluted by logging debris; roads had also been built and conventional logging taken place in areas of steep terrain where only helicopter logging is allowed. Furthermore, instances of logging of protected species and of undersized-diameter trees were detected. Local residents reported on additional irregularities, such as erroneous tagging of timber, but this could not be verified in the field investigation. Moreover, the Council attaches importance to the fact that Barama, a Samling Global subsidiary, has been fined repeatedly because of irregularities in the forestry operations in Guyana, where officials have uncovered lacking logging licences, erroneous timber tagging and insufficient reporting of felled timber to the authorities.

¹⁰⁸ Such initiatives include the EU Forest Law Enforcement, Governance and Trade (FLEGT), and regional FLEG processes supported by the World Bank and the Asia Forests Partnership (AFP), as well as numerous national initiatives aimed at halting the trade of illegal timber and wood products. Malaysia is partner to both EU Flegt and AFP. See for example <http://ec.europa.eu/environment/forests/flegt.htm> and <http://www.asiaforests.org/>.

¹⁰⁹ See for example the Norwegian Government's Climate and Forests project, <http://www.regjeringen.no/nb/dep/md/tema/klima/klimaogskogprosjektet.html?id=548491>.

The Council's own investigations are very limited in scope, covering only a small area of the concessions that were visited. Nevertheless, the field investigations have revealed several practices in all five concession areas that the Council presumes are illegal, as well as in a sixth concession examined by means of satellite imagery. These six licences are among a total of 15 that the company has in Sarawak, and it has been logging in all of these areas for 16 years. Given the large scale of presumed irregularities and that many of the same violations occur in nearly all of the investigated concessions, the Council finds it reasonable to believe that similar violations also would have been revealed in other Samling concessions. In this respect, the Council attaches importance to the fact that the Malaysian General-Auditor has documented illegal logging in another two of Samling's concessions, located in the Rejang River basin, an area that has not been surveyed by the Council. Here illegal logging was detected on steep slopes and in buffer zones along rivers, in addition to erosion, landslides and pollution of rivers at the company's Baram Base Camp¹¹⁰ In the Council's view this indicates systematic conduct on the part of the company, where regulatory breaches appear to be a normal part of daily operations.

In the Council's opinion, the company's assurances that it is committed to sustainable and environmentally sound forestry do not seem credible. On the contrary, the Council's investigations show that Samling's logging practices have caused extensive damage to forests and the environment, something that does not corroborate Samling's assertions.

In its reply to the Council, Samling raises doubts about the Council's methods and sources, but fails to provide specific information that contributes to shed light on or rectify the matters discussed in the Council's recommendation. The Council would like to point out that the company does not comment either on the logging in the protected area, the logging outside the concession boundaries, the logging of protected species or the logging of undersize trees. The company acknowledges one instance of illegal logging and road construction in steep terrain without specifying where this has occurred, whereas with regard to the other irregularities that have come to light, it denies any wrongdoing without substantiating this with documentation. Thus, the Council finds that Samling's reply does not provide grounds for altering the Council's conclusion that the company is involved in illegal logging.

Finally, the Council has assessed whether *the company's unacceptable practice may be expected to continue in the future*. Samling's 15 timber licences in Sarawak are all in operation. Two of them have recently been renewed, while the others are due for renewal in 2-8 years. The concession in Guyana will probably run until 2041. This means that Samling will be logging for many years to come in both Sarawak and Guyana.

The company provides little information about its concessions and forest operations. Forest management plans and legal requirements that the company has to comply with are regarded as confidential information in Sarawak and in Guyana. In the Council's view, this lack of transparency regarding Samling's operations, in addition to weak law enforcement generally, provides little incentive for the company to change its practices. The consequences of non-compliance are minor and appear to be of little significance to the company. Samling's belief that its forestry operations are sustainable and carried out in a lawful manner indicates that from the point of view of the company there is no need for change. The Council therefore deems it probable that the company's unacceptable practice will continue.

¹¹⁰ See footnote 31. The Auditor-General's report shows that proof has been found for such practices in three concession areas of which two (T/3112 and T/3284) belong to Samling subsidiaries. With regard to the requirements that have been made and that the Auditor-General has examined, such practices are illegal.

7 Recommendation

The Council recommends the exclusion of Samling Global Ltd from the investment universe of the *Government Pension Fund Global* due to an unacceptable risk of contributing to current and future severe environmental damage.

Gro Nystuen	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Ylva Lindberg
Chair				
(sign.)	(sign.)	(sign.)	(sign.)	(sign.)