

Table 1: Forest Peoples Programme’s reactions to GAR’s response to Complaints Panel findings

FPP Complaint & Complaints Panel interim finding	GAR response to Complaints Panel ¹	Comments by FPP
<p>1. GAR non compliant with FPIC</p> <p>Finding of Complaints Panel² The Panel believes that there are reasonable grounds that GAR has breached the RSPO Principles and Criteria namely: ...</p> <p>Principle 7.5. No new plantings are established on local peoples’ land where it can be demonstrated that there are legal customary or users rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.</p> <p>GAR/PT KPC have not got the full consent of the communities on the concession to utilize their lands</p>	<p>GAR notes in its letter at para 15: ‘We have acknowledged that we have not met RSPO expectations in various respects’.</p>	<p>Our original complaint showed that FPIC was not complied with in multiple respects:</p> <ul style="list-style-type: none"> • No community mapping, • No recognition of collective rights • No self-representation of communities • Individualised land sales • Land acquired prior to HCV assessment, • Inadequate information provided about ‘set-asides’ (HCV and then HCS which came later) • Misunderstandings on smallholdings • Legal consequences of land cessions not made clear to those accepting compensation payments. <p>We update the degree of progress to carry out these various elements of an FPIC process below.</p> <p>We expect the Complaints Panel to note there has been a violation of 2.2 and 2.3 not just 7.5. (Our complaint does not just relate to proposed New Plantings but to past land acquisition).</p>
<p>2. GAR has not carried out participatory mapping</p> <p>Findings of Complaints Panel Not mentioned specifically</p>	<p>‘PM for remaining six villages to be undertaken in March 2015.’</p>	<p>Initially no participatory mapping was undertaken at all. It was not initiated in 2013, despite FPP complaint to GAR in mid 2013. The local Government delayed efforts to initiate community mapping during the first part of 2014. However, a local government (<i>kecamatan</i>) programme to map <i>desa</i> boundaries, in compliance with new law on Desa, started in late 2014. TFT supplied</p>

¹ This analysis takes account of both the letter from GAR to RSPO dated 25 March 2015 and the press release titled ‘Golden Agri-Resources Issues Comprehensive Response to RSPO Complaints Panel’ issued by GAR on 25th March 2015.

² The findings of the complaints panel are taken from the letter from RSPO to GAR dated 4th March 2015.

		<p>technical assistance to this mapping process. The resultant maps only show the administrative boundaries of the various <i>desa</i> and, in the case of one <i>dusun</i> (Kenabak), show the boundary of that <i>dusun</i>. As at February 2015, none of the maps show the extent of community land rights or land use. However, fortunately, most of the villages are so long-standing that <i>adat</i> boundaries are substantially the same as the <i>desa</i> boundaries. Some village members participated in the mapping, so there is some local knowledge on the maps, but the headmen of two of the four villages mapped explicitly stated that this was ‘not participatory mapping’. So far these <i>desa</i> boundary maps have been done of Mensusai, Mantan (with Kenabak), Menapar and Kerangas (with Caram). No maps have yet been done (or shared) for Selimbau, Suhaid, Semitau Hulu (including Marsedan), Kenerak and Semitau Hilir. The communities remain suspicious of the purposes of mapping & of the role of TFT. TFT has now begun mapping the land use system within Kerangas.</p> <p>We expect the Complaints Panel to note there has been a violation of the requirement to carry out participatory mapping.</p>
3. GAR has not carried out tenure studies	No specific action mentioned.	The lack of land tenure studies has not been remedied. We note that the absence of these studies and the lack of prior community mapping explains why a land conflict arose when land clearance extended from Mantan across the boundary into the collective lands of Kerangas (see below).
<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>We expect the Complaints Panel to note there has been a violation of this required procedure.</p>
4. GAR has not told communities they have the right to choose their own representatives for FPIC	No specific action mentioned.	Our studies show that GAR undertook no measures to ensure communities chose their own village representatives for negotiations about land cessions. Nor were communities informed of their right to choose

<p>Findings of Complaints Panel The requirement for representative institutions is mentioned in reference to 7.5 (see above)</p>		<p>their own representatives. Although, since our initial complaint to GAR, later land cessions have been more inclusive, there is still no process in place to encourage self-representation.</p> <p>We expect the Complaints Panel to note there has been a violation of this required procedure.</p>
<p>5. GAR provides inadequate information to communities prior to land surrenders</p>	<p>‘Copies of AMDAL and HCV assessments distributed to village heads. SOPs are available in plantation offices.’</p>	<p>Specific information that has not been shared include the following:</p> <ul style="list-style-type: none"> • HCV studies were done late and not shared (see below) • Legal implications of land cessions were not made clear (see below) • Financial implications of smallholder schemes were not made clear (see below). • No copies of any land surrender agreements were shared with those accepting compensation.
<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>Subsequent to our complaint to GAR, land release agreements have now been shared with nearly all prior land owners (98%). Summaries of AMDAL and HCV assessment have now been provided to each village headman (KADES). Our field finding show, however, that the implications of HCVs for community livelihoods and management are still unclear. There are still concerns about HCVs, the legal consequences of land surrenders and smallholdings which remain to be addressed (and see below).</p> <p>We expect the Complaints Panel to note there has been a violation of this required procedure.</p>
<p>6. GAR senior staff deny communities have collective rights to their customary lands</p>	<p>No specific action mentioned.</p>	<p>Communities express continuing concerns that their collective rights and communal authorities have been undermined by GAR pursuing direct negotiations with</p>

<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>individual farmers without community involvement. Our studies also showed that company staff did not understand Dayak systems of land tenure, a problem that persists owing to the lack of land tenure studies, participatory mapping & the lack of procedures to encourage community self-representation (see above). In recent discussions we have ascertained that, contrary to the views expressed by GAR senior staff, PT KPC field staff do recognise that under custom communities do have collective rights to their lands.</p> <p>We have yet to see land acquisitions being redone, however. See next section.</p>
<p>7. GAR has taken lands based on misunderstandings, insufficient information and without following FPIC.</p> <p>FPP’s initial studies and complaint detailed how lands had been acquired from community members without following RSPO’s required procedures as set out in 2.2 and 2.3 and 7.5 (as detailed above).</p> <p>Community members had not understood the legal implications of accepting compensation payments for their lands. The term <i>simpak beliung</i> (‘ax chippings’) was used to refer to the payments being made, which they understood as meaning they were being compensated for the effort of clearing the land and not as payments for the land itself. People further had understood that their lands could be returned to them after 30 years if they chose.</p> <p>The company has however asserted that the land acquisitions were permanent surrenders of rights in line with the law. FPP contests that the land acquisition needs to go beyond the law and be in</p>	<p>‘We have always maintained that the law in this respect is clear.’³</p> <p>‘This is an area where there is a need for continuing discussion with FPP on the best way forwards.’</p> <p>‘Our land transfers are based on prevailing laws and regulations and are final.’</p> <p>‘Renegotiating land transfers opens up great potential risks of confusion and conflict.’</p>	<p>GAR has admitted that <i>simpak beliung</i> was the term used for payments for land acquisition. The communities insist that <i>simpak beliung</i> is understood to mean payment for land clearance and not for ceding land rights. GAR (PT KPC) field staff agree there may be ‘misperception’. GAR insists that whatever term was used people did sell their lands. Many community members insist company has only acquired a use right of the lands ceded. People feel cheated.</p> <p>Furthermore, community leaders assert that they released lands expecting that their lands could be returned after 30 years if they wanted. GAR insists that they have rights to the land in line with Plantation Act (120 years if they choose to renew permits). [Actually, GAR only has an expired interim land permit and does not yet have a HGU (and see below)]. GAR has agreed there may have been misunderstandings.</p> <p>Communities are still not informed that their land cessions & the application of a HGU will mean that their rights will be permanently extinguished as HGU lands revert to the State on expiry of a company lease.</p>

³ In its response GAR makes an extended reference to the views of TFT. It is unclear if GAR holds similar views.

<p>compliance with the RSPO P&C.</p> <p>FPP has therefore recommended that GAR should renegotiate land surrenders as there has been lack of FPIC.</p>		<p>GAR has refused to renegotiate these land acquisitions with the community members as this could open a ‘can of worms’.</p> <p>The land surrender agreements, initially not shared with community members, also include the terms of the smallholder schemes (see 10. below), which should therefore also be renegotiated at the same time.</p>
<p>Findings of Complaints Panel The need for renegotiation not mentioned specifically</p>		<p>We expect the RSPO Complaints Panel to require GAR to renegotiate its land acquisitions so they do follow the requirements under 2.2, 2.3 and 7.5 (ie that no lands should be acquired without communities’ free, prior and <u>informed</u> consent).</p> <p>If RSPO Complaints Panel does not uphold these requirements, it is establishing the precedent that RSPO member companies can avoid compliance with FPIC, thereby undermining one of the key provisions of RSPO P&C. This opens RSPO to the charge that it condones ‘land grabs’.</p>
<p>8. Independently verify and mediate conflicts and resolve in line with P&Cs</p>	<p>‘Encourage affected parties to submit their grievances to SMART.’</p>	<p>Because GAR was acquiring lands without first doing land tenure studies, without participatory mapping and without negotiating with people’s self-chosen representative institutions, it acquired lands from villagers in <i>desa</i> Mantan, which actually fall within <i>desa</i> Kerangas. The community of <i>desa</i> Kerangas has consistently refused oil palm developments. This caused a conflict between the two <i>desa</i> and with the company, which was exacerbated when parts of these areas began to be cleared and planted.</p>
<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>In 2013, after FPP drew attention to the conflict, the company and <i>camat</i> sought a solution. An agreement was reached but the villagers in Kerangas were mistrustful of the measurement of the extent of the</p>

		<p>disputed area, done by PT KPC. In September 2013, FPP mapped the disputed area in collaboration with members of Kerangas and found the hectarage similar to that stated by PT KPC.</p> <p>The 2014 mapping of <i>desa</i> boundaries has now reassured community that their lands are now more secure.</p> <p>This conflict was a direct result of SMART not following RSPO P&C requirements on land acquisition and FPIC.</p>
<p>9. GAR submitted incomplete HCV assessments to NPP assessors</p>	<p>In its response GAR now asserts that it ‘believed that the HCV assessment in PT KPC was conducted in accordance with the RSPO process then’.</p>	<p>GAR’s recent statement that the initial HCV assessment was conducted in accordance with RSO process is misleading.</p>
<p>Findings of Complaints Panel ‘Violation of 7.3.2 A comprehensive HCV assessment, including stakeholder consultation, shall be conducted prior to any conversion or new planting</p>	<p>GAR has now contracted PT Ekologica consultants to ‘reassess HCVs’ and ‘produce updated management and monitoring plans for <u>future</u> implementation.’</p> <p>‘Any initiative to explore alternative tenures must be led by the industry’.</p>	<p>The initial HCV assessment done by FFI was never completed having been rejected in a public meeting. It was not taken into account by company staff in the early years of land acquisition and land clearance. Once TFT became involved, it was recognised that the HCV assessment was deficient and it was redone by IPB in 2013-4. This assessment was completed in September 2014 (long after the HCV assessment was checked and the NPP was submitted claiming the HCV assessment was compliant).</p> <p>Our recent field assessment shows that some extra HCV 4 and HCV6 areas have now been included and a short ‘socialisation’ was undertaken. However, little HCV 5 (areas for basic needs) were identified as IPB used the old HCVF tool kit. The field assessment also showed that community under-standing of HCV is still very limited and no clear roles have yet been defined or discussed for communities in the management and monitoring of HCVMA. There is, thus, growing resentment of the imposition of HCVs.</p>

		<p>The community of Suhaid has requested co-management of the watershed of Suhaid creek. In initial meetings with GAR they said they would consider this option. Our findings from the field show that there have been no discussions with the community of Suhaid of this option.</p> <p>We welcome the efforts being made to further refine the HCV assessment and apply the findings to management and monitoring. These need to be integrated with participatory mapping and livelihood assessments. We note that these are promises of future action which are yet to be applied on the ground.</p> <p>We expect the Complaints Panel to uphold the finding that there has been a violation of both the P&C with respect to HCVs and NPP .</p>
<p>10. Smallholder allocations reduced by late application of HCV set asides after land surrenders</p>	<p>‘KPC to share map with clear boundaries of the kemitraan (plasma) area.’</p>	<p>The communities released c. 5,000 ha lands on the promise they would get 20% (1,000ha) back as smallholdings (‘plasma’). After lands were set aside belatedly for HCV, only 3,000 ha. were planted, and only 540 ha. have been allocated for ‘plasma’ (kemitraan).</p>
<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>There has been acute disappointment among those community members who surrendered lands at the reduction in the extent of the smallholdings, the small returns they get from FFB sales and the lack of transparency about profit sharing. Some also asserted that the extent of debt that would be incurred for the smallholdings was not adequately explained.</p> <p>Since 2013, PT KPC has improved transparency and explained delays in yield, which is now improving.</p> <p>GAR has also promised to develop full the 1,000 ha of smallholdings <u>if</u> lands are available. However it has also stated that there is no further land available within</p>

		<p>the current <i>kemitraan</i> area and they will not allocate any <i>inti</i> (estate) lands to the <i>kemitraan</i>, so this seems to be only a rhetorical commitment. GAR also says that the debt repayments on the development of any new smallholdings would have to be at the 13% commercial loan rate.</p> <p>The terms of the smallholding scheme need to be renegotiated simultaneous to the negotiation of the land agreements (see 7 above) to which they are integral.</p>
<p>11. There is continued pressure to release lands. FPP therefore recommends that GAR excise or enclave the territories of those communities refusing to surrender lands, from the HGU.</p>	<p>‘SMART have excised ‘kontra’ communities land from the HGU application.’</p>	<p>During our field survey of 2013 community members complained of continued pressure from company to release land even after they had rejected oil palm.</p> <p>During 2013, 2014 and 2015, GAR has repeatedly promised to stop pressing those communities refusing land sales to release lands. GAR has claimed that communities don’t feel intimidated but our field visits suggest that the communities do still feel pressured.</p> <p>Our recommendation is that, to allay concerns, clearer guarantees of land security are needed. GAR has agreed to exclude the lands of those communities refusing oil palm – namely Mensusai, Kerangas & Kenabak – from its HGU.</p>
<p>Findings of Complaints Panel Not mentioned specifically</p>		<p>GAR has acknowledged that it applied for a HGU in 2013 and that the HGU map is now being considered by BPN (Committee B). They also claim that they carried out a ‘socialisation’ of their plan to acquire a HGU with village heads, local government, with the local forestry unit (DINAS) & BPN officials, during 2014. However, as at February 2015, the local people had not been shown a map of the HGU area.</p> <p>Questioned by FPP, PT KPC staff could not explain how they knew which areas to exclude from the HGU given that the community mapping was done in 2014-</p>

		<p>2015, after the HGU was applied for.</p> <p>GAR has now released the HGU map. FPP has plotted this and the new maps of <i>desa</i> boundaries into our GIS. This shows that while most lands of <i>desa</i> Mensusai, <i>desa</i> Kerangas and <i>dusun</i> Kenabak have been excluded from the HGU, there do seem to be some overlaps, which will need to be rectified. Again this problem comes from the lack of FPIC, lack of participatory mapping and lack of engagement with communities' self-chosen representatives.</p>
<p>12. Problems of fisheries</p> <p>The initial documentation from FPP highlighted community complaints about the serious water pollution of whole river system owing to the wider expansion of commercial activities. Specific concerns about PT KPC included concerns that the plantation was causing drying out and the pollution and siltation of creek waters used for breeding exotic fish in ponds (<i>kolam arwana</i>).</p>	<p>'Initial investigation by TFT show that water pollution arises from a wide range of sources both in SMART plantations and outside. SMART is probably a relatively minor contributor.'</p> <p>'TFT to update its water quality report.'</p>	<p>In response to the complaints, a canal dug by the company to divert polluted waters, which had silted up, has been dredged again. With the help of TFT, the company is now monitoring water quality.</p> <p>Our recent field visit suggests that the fisherfolk still feel the waters are too turbid, polluted and seasonal. Community proposals of co-management of Suhaud watershed (HCV4) have not been discussed.</p> <p>Community checks on river banks and lakes, verified by FPP, shows planting by the company on banks of lake Marsedan. The company is now investigating this.</p>
<p>13. Only 2 out of 18 of the GAR subsidiaries submitting NPP have <i>Hak Guna Usaha</i> (HGU) permits</p>	<p>The company asserts that it does not need a HGU according to the Plantation law No 18 of 2004 to begin planting and they cite a report by FPP et alii 2009 as evidence.</p>	<p>In October 2014, subsequent to our complaint, the Indonesian Plantations Act was revised and now requires companies to have HGU prior to planting. Before resubmitting its NPPs, GAR must first secure HGU for all its operations.</p> <p>The current <i>ijin lokasi</i> held by PT KPC has expired. It was originally acquired in 2006 and is normally held for only 3 years. PT KPC secured a 1-year extension of the <i>ijin lokasi</i> in 2012. This has also now expired.</p> <p>We expect the Complaints Panel to require GAR to bring all its operations into compliance with the law.</p>
<p>Findings of Complaints Panel</p> <p>'Principle 2: Compliance with National laws and regulations by not possessing Hak Guna Usaha for 16 of the 18 subsidiaries for which an NPP notification has been submitted.'</p>		

14. GAR has submitted NPPs knowing they contained false information	GAR has withdrawn the NPPs and agreed to halt further land clearance.	We note that GAR claims that land clearance was halted as from 3 rd November 2014. The Complaints Panel needs to ask GAR to clarify in detail what land clearance occurred in GAR's entire land bank without NPPs between <u>1st January 2010 and 3rd Nov 2014.</u> We expect the Complaints Panel to require that fully compliant NPPs be (re-)submitted by GAR for all GAR operations where there has been, or there is planned to be, any land clearance <u>since 1st January 2010.</u>
Findings of the Complaints Panel 'The HCV assessments submitted for PT Kartika Prima Cipta has also been found to be inadequate and potentially misleading'		
15. NPP assessors overlook major non-compliances	Not addressed by GAR	We expect Complaints Panel to recommend actions to: 1. prevent NPP assessors from providing such sub-standard assessments, 2. sanction the company involved.
Complaints Panel has passed this issue to Accreditation Services International (ASI)		
16. NPP assessments claimed to be submitted in 2013 yet only posted in 2014	Not addressed by GAR	We expect the Complaints Panel to investigate the reasons for the late posting of the NPPs on RSPO website.
Complaints Panel has not made any comment on this issue.		

Marcus Colchester, 31st March 2015