



## **Formal Complaint to RSPO Complaints Panel on the operations of Genting Plantations subsidiary Tanjung Bahagia Sdn Bhd**

### **1. Introduction**

Tanjung Bahagia Sdn Bhd is a subsidiary of Genting Plantations, a prominent member of the RSPO. The company is operating on the customary lands of the Sungai and Dusun peoples of Tongod district without our free, prior and informed consent. The issue has been subject to a dispute in the courts since 2002. Faced with repeated refusals from the company to recognise our rights and settle the dispute, we, as affirmed through community meetings, have decided to file a complaint to the RSPO under the procedures of the Complaints Panel.

### **2. The Complainants**

We, the principal complainants in this case are members of the Dusun and Sungai peoples in Tongod on whose lands the operation of Tanjung Bahagia Sdn Bhd has been imposed. We are supported by the Jaringan Orang Asal SeMalaysia (the Indigenous Peoples' Network in Malaysia – JOAS), Partners of Community Associations (PACOS and the international human rights organisation, Forest Peoples Programme.

### **3. Concerns about Genting Plantations overall commitment to RSPO Code of Conduct for Members**

Genting Plantations has been a member of the RSPO since 2006. It is also a member of the Malaysian Palm Oil Association, itself a member of the RSPO since 2004. The RSPO first adopted its Principles and Criteria in 2005, and these were adopted, following a National Interpretation process, by Malaysian members of the RSPO in 2008 and revised to include smallholders in 2010. The RSPO standard itself was revised in 2007 and it was revised again in 2013. Genting Plantations has been and still is an active member of the RSPO committees that have set and revised these standards.

Under the RSPO's Code of Conduct for Members, companies that are members of the RSPO are expected to propose a 'time-bound plan' to bring their mills and plantations into conformity with the RSPO standard and then subject their operations to independent third-party verification so their operations can be certified as compliant with the RSPO. In 2012, Genting Plantations announced its intention to only bring its operations into full compliance with the RSPO standard by 2025 (see RSPO website). A 'time bound plan' that suggests tactics of delay rather than real commitment to implementing the RSPO standard.

#### 4. Violations of the RSPO Standard

As complainants we contend that Genting Plantations' subsidiary, Tanjung Bahagia Sdn Bhd, is in multiple violation of the RSPO's Principles and Criteria. These violations are set out in some detail below, while much further details and testimony about the case are also summarised in the attached case study carried out by Forest Peoples Programme and JOAS in 2012.

The following sections set out the relevant Criteria and Indicators and our complaints are submitted thereafter.

##### Transparency

**Criteria 1.1:** Growers and millers provide adequate information to relevant stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages and forms to allow for effective participation in decision making.

**Criteria 1.2:** Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.

**Complaint:** The Grower has refused to share information about social and environmental issues and has refused to share the HCV Assessment and Environmental Impact Assessment. Management documents have not been shared with the community.

##### Just Land Acquisition

**Criteria 2.2:** The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.

**Complaint:** The right to use the land is being legitimately contested by us: we have been protesting the operation since 1997 and it has been subject to a court process since 2002. We have demonstrated our customary rights to the area and detailed maps supporting our claims have been shared with the company. Detailed evidence of these rights is presented in the attached case study.

**Criteria 2.3:** Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their free, prior and informed consent.

##### Indicators

2.3.1 Maps of an appropriate scale showing the extent of recognised legal, customary or user rights (Criteria 2.2, 7.5 and 7.6) shall be developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).

2.3.2 Copies of negotiated agreements detailing the process of free, prior and informed consent

(FPIC) (Criteria 2.2, 7.5 and 7.6) shall be available and shall include:

- a) Evidence that a plan has been developed through consultation and discussion with all affected groups in the communities, and that information has been provided to all affected groups, including information on the steps that shall be taken to involve them in decision making;
- b) Evidence that the company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken;
- c) Evidence that the legal, economic, environmental and social implications for permitting operations on their land have been understood and accepted by affected communities, including the implications for the legal status of their land at the expiry of the company's title, concession or lease on the land.

2.3.3 All relevant information shall be available in appropriate forms and languages, including assessments of impacts, proposed benefit sharing, and legal arrangements.

2.3.4 Evidence shall be available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel.

**Complaint:** The use of the land is diminishing our customary rights. We have not given our free, prior and informed consent.

- The company has not carried out participatory mapping to ascertain the extent of our rights. There are no copies of negotiated agreements, as the majority of us are refusing the operation
- There is no agreed plan.
- Adequate information has not been provided.
- The company is denying our right to withhold consent
- We are contesting the legal right of the company to operate on their lands
- Most of the community have refused benefit sharing and are concerned about the impacts, which include reduced hunting, fishing, collection of forest products and access to farmland
- The community has not been able to examine the information about the social, environmental and legal implications of the operations
- For a decade the company even contested our right to take our case to court.

### Pollution

**Criteria 5.3:** Waste is reduced, recycled, re-used and disposed of in an environmentally and socially responsible manner.

**Indicators:**

5.3.1 All waste products and sources of pollution shall be identified and documented.

5.3.2 All chemicals and their containers shall be disposed of responsibly.

5.3.3 A waste management and disposal plan to avoid or reduce pollution shall be documented and implemented.

**Criteria 5.6:** Plans to reduce pollution and emissions, including greenhouse gases, are developed, implemented and monitored.

**Specific Guidance:**

For 5.6.2: Plans will include objectives, targets and timelines. These should be responsive to context

and any changes should be justified.

For 5.6.2 and 5.6.3: The treatment methodology for POME will be recorded.

**Complaint:** Effluent from the mills and other contamination from the estates is causing pollution of the rivers and streams on which our health and livelihoods depend. Company road-building activities have used gravels and sands dug from the beds of rivers and streams causing further pollution and damaging the breeding grounds of fish. As a result of this pollution and other impacts, the number of fish in the rivers has been seriously depleted. We have also noted that company staff have disposed of engine oil into the rivers, discarded palm fronds into rivers and streams and even disposed of fertilizer sacks and pesticide containers in the rivers.

#### Communications

**Criteria 6.2:** There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties.

**Complaint:** There are no open and transparent methods of consultation. The company is not entertaining complaints and community concerns. In particular, the youth representatives of the communities note that they are not taken into consideration by the company.

#### Dispute Resolution

**Criteria 6.3:** There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties.

**Indicators:**

6.3.1 The system, open to all affected parties, shall resolve disputes in an effective, timely and appropriate manner, ensuring anonymity of complainants and whistleblowers, where requested.

6.3.2 Documentation of both the process by which a dispute was resolved and the outcome shall be available.

**Complaint:** The company is denying the legitimacy of our complaints. It has refused to negotiate with us. It is contesting the legitimacy of our case. Consequently, there is no mutually agreed system for dealing with the dispute. As a result this dispute has dragged on for over a decade. The lack of transparency (see 1.1, 1.2 and 6.2 above) means that there is no way of knowing if the company has documented the way it has handled our complaints.

**Criteria 6.4** Any negotiations concerning compensation for loss of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.

**Indicators:**

6.4.1 A procedure for identifying legal, customary or user rights, and a procedure for identifying people entitled to compensation, shall be in place.

6.4.2 A procedure for calculating and distributing fair compensation (monetary or otherwise) shall

be established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. This procedure shall take into account: gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; and differences in ethnic groups' proof of legal versus communal ownership of land.

6.4.3 The process and outcome of any negotiated agreements and compensation claims shall be documented, with evidence of the participation of affected parties, and made publicly available.

**Complaint:** An adequate procedure for negotiating compensation has not been pursued. Instead compensation has been paid only for land improvement to some individuals without proper participation of chosen community leaders and without taking into account gender, customary ownership and without respecting our ways of demonstrating our rights in land including communally areas such as the forests and rivers our livelihoods depend on. There is no transparency about the arrangements made by the company. A list of those whom the company claimed had received compensation appears to have been falsified. We complained about this matter to the police in 2012.

### High Conservation Values

**Criteria 5.2** The status of rare, threatened or endangered species and other High Conservation Value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced.

**Indicator:**

5.2.1 Information shall be collated in a High Conservation Value (HCV) assessment that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors).

5.2.2 Where rare, threatened or endangered (RTE) species, or HCVs, are present or are affected by plantation or mill operations, appropriate measures that are expected to maintain and/or enhance them shall be implemented through a management plan.

5.2.3 There shall be a programme to regularly educate the workforce about the status of these RTE species, and appropriate disciplinary measures shall be instigated in accordance with company rules and national law if any individual working for the company is found to capture, harm, collect or kill these species.

5.2.4 Where a management plan has been created there shall be ongoing monitoring:

- The status of HCV and RTE species that are affected by plantation or mill operations shall be documented and reported;
- Outcomes of monitoring shall be fed back into the management plan.

5.2.5 Where HCV set-asides with existing rights of local communities have been identified, there shall be evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights.

New plantings since November 2005 have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.

**Indicators:**

7.3.1 There shall be evidence that no new plantings have replaced primary forest, or any area required to maintain or enhance one or more High Conservation Values (HCVs), since November 2005. New plantings shall be planned and managed to best ensure the HCVs identified

are maintained and/or enhanced (see Criterion 5.2).

7.3.2 A comprehensive HCV assessment, including stakeholder consultation, shall be conducted prior to any conversion or new planting. This shall include a land use change analysis to determine changes to the vegetation since November 2005. This analysis shall be used, with proxies, to indicate changes to HCV status.

7.3.3 Dates of land preparation and commencement shall be recorded.

7.3.4 An action plan shall be developed that describes operational actions consequent to the findings of the HCV assessment, and that references the grower's relevant operational procedures (see Criterion 5.2).

7.3.5 Areas required by affected communities to meet their basic needs, taking into account potential positive and negative changes in livelihood resulting from proposed operations, shall be identified in consultation with the communities and incorporated into HCV assessments and management plans (see Criterion 5.2).

**Complaint:** Despite our specific appeals to the company, the company has bulldozed our graveyards in all our villages. We have never seen a copy of the HCV assessment and HCV management plan. We note that company plantings have been made right up the banks of important streams and small rivers. The company continued clearing our lands right up until 2011 without our agreement and without submitting information to the RSPO in line with the New Plantings Procedure which became effective in January 2010.

## 5. Actions taken to seek to resolve the dispute

As summarised in the attached document, we have undertaken the following actions to seek a settlement of this dispute:

- We have sought government recognition of our village lands
- We appealed to local government against the issuance of a lease covering our lands
- We have appealed to our State Assemblyman to have the lease revoked
- We appealed repeatedly to the company not to take-over our lands. This has included meetings, complaints, demonstrations and press actions
- These appeals having failed to have effect, we filed a suit in the courts in 2002

## 6. List of persons approached to resolve the dispute

Over the years we have interacted with many different members of the company not all of whom were made known to us by name and / or not all whose names we can remember. Senior staff we have approached include

|                    |                                       |
|--------------------|---------------------------------------|
| Tang Hong Tiau     | Vice President of Genting Plantations |
| Michael de Stewart | Senior Manager                        |
| Nazar              | (deceased)                            |

These issues were also raised with personnel from Genting Plantations by staff from Forest Peoples Programme and JOAS at the 10<sup>th</sup> Roundtable on Sustainable Palm Oil in October 2012, without good result.

## 7. Action Requested

We ask that the Complaints Panel assesses this dire situation and comes to an independent conclusion about the violations noted above and makes clear to the company that it should urgently address these problems to bring it into compliance with the RSPO Principles and Criteria. The RSPO must establish a body to monitor the company's compliance.

We continue to insist that the company must recognise our rights to our lands and negotiate with us as the rightful landowners of the area. We insist on our right to give or withhold our free, prior and informed consent over the use of our customary lands, as expressed through our freely chosen representatives.

In the event the company agrees to respect these rights, in line with the RSPO Principles and Criteria and international human rights law, we affirm our willingness to negotiate with the company through a mutually agreed process with the aim of settling the dispute amicably.

In the event the company refuses to recognise our rights, we ask that Genting Plantations be barred from membership of the RSPO and that other RSPO members and concerned buyers cease all purchase of Genting Plantations' palm oil and palm kernel oil and other derivatives.

Signed by the complainants: see Malay version for all signatures

**Bahawasanya, kami yang menurunkan tandatangan di bawah ini membuat aduan kepada pihak RSPO Secretariat Sdn. Bhd. berkenaan operasi pihak Syarikat Tanjung Bahagia Sdn. Bhd. yang sedang beroperasi di atas kawasan Tanah Adat (NCR) kami.**

| No. | Nama Penuh | No. Kad Pengenalan | Kampung | Tandatangan |
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