



Forest Peoples Programme

1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

RSPO Secretariat Sdn Bhd
No. A-33A-2, Tower A, Level 33A, Menara UOA Bangsar
No 5, Jalan Bangsar Utama 1
59000 Kuala Lumpur, Malaysia
Tel: +603 23021500 Fax: +603 22014053

14th October 2014

Dear Sir,

SUBMISSION OF COMPLAINT

Forest Peoples Programme is hereby lodging a complaint concerning PT Kartika Prima Cipta and the recent New Plantings Procedure submissions of Golden Agri Resources, located in Indonesia.

This complaint is made on our own account and not in the name of any specific communities and concerns non-compliances by PT Kartika Prima Cipta and Golden Agri Resources and the credibility of the New Plantings Procedure itself.

My full details are as follows:

Name: Marcus Colchester
Position: Senior Policy Advisor, Forest Peoples Programme
Address: 1c Fosseway Business Centre
Stratford Road
Moreton-in-Marsh, GL 56 9NQ, UK
Telephone + 44 1608 652893
Fax + 44 16087 652878
Email marcus@forestpeoples.org

Please find below more detailed information regarding the complaint. We fully understand and agree that RSPO Secretariat will be looking into this complaint based on its standard Grievance & Dispute Settlement Handling Protocol. Thank you for attention to this matter.

Yours sincerely,

Dr Marcus Colchester
Senior Policy Advisor
Forest Peoples Programme

A: Description of the name, address and location, and nature of the Company being complained about:

Golden Agri Resources (GAR), Sinar Mas Land Plaza, Tower II, 30th Floor, Jl. MH Thamrin No. 51, Jakarta 10350, Indonesia. Golden Agri Resources is a palm oil producer, refiner and trader and part of one of Indonesia's largest conglomerates.

B: Description of the action taken by me/ us to try to settle the issues (please provide details based on chronological event)

Forest Peoples Programme and local collaborators first identified serious problems with the operations of Golden Agri Resources' (GAR) subsidiary PT Kartika Prima Cipta in Kapuas Hulu during a detailed field assessment carried out in July 2013. Since then, and in conformity with RSPO Code of Conduct for Members, FPP has been in sustained discussions with GAR about the non-compliances we identified in order to seek solutions. Although GAR initially made commitments to under-take remedial actions to address identified problems, no effective actions were taken over the following 60 days. A second field study by FPP with local collaborators in September 2013 confirmed the problems and the absence of any actions to correct them, including no attempt to verify our findings directly with affected communities. In the following weeks, despite further meetings with GAR (and its advisors - see below) corrective actions were still not undertaken. FPP and TUK-Indonesia thus drafted a report for publication about the case, copies of which were shared with GAR and its advisors, which led to certain details of the report being amended based on the comments they submitted. The very detailed report (attached) was then published, in January 2014, and received widespread press coverage. Further meetings, this time with GAR CEO and senior advisors led to GAR again agreeing to take corrective actions.

The studies showed that GAR was taking community lands without the Free, Prior and Informed Consent of the local Dayak and Malay peoples (in multiple respects). GAR had been taking over community lands without first doing land tenure studies, without participatory mapping and without providing adequate information to the communities about the implications of land surrenders. No efforts had been made to inform communities of their right to be represented through their own self-chosen representatives and in meetings with FPP senior GAR staff vocally denied that communities had any collective customary rights to their lands and forests. GAR was indeed not recognising customary rights at all and was only providing nugatory compensation to individual farmers, to pay them for the loss of the use of farmlands, without explaining that in the process of making land surrenders their rights were being permanently extinguished.

The initial study, (as confirmed by discussions with GAR in the subsequent months and by the second and third field studies), also showed that GAR/ PT KPC had not done a complete HCV assessment (the initial study by Fauna and Flora International not having been accepted). Indeed the replacement team from IPB doing the HCV assessment anew in 2013-2014 was still holding final consultations on the new version in May 2014. We also found considerable dissatisfaction among smallholders and resentment about the way their holdings were being reduced *post facto* by set asides for HCV after they had released lands in the expectation of getting 20% back as smallholdings. We also found serious problems with the way the company was designating lands to be set aside as High Carbon Stocks (HCS). The definitions of forest types being used to stratify forests and set aside HCS areas made no

provision for customary land uses and tenures and was generating considerable unease among the communities afraid that even more of their lands would be taken off them as HCS set-asides without provision for their livelihoods.

In March 2014, FPP and local collaborators undertook a further field visit to assess progress. This found that field staff were now informed of the need for some changes but that only a few actions had begun. Most of the agreed remedial actions had still not been undertaken or were only in the first stages of implementation. In further meetings with GAR, FPP again insisted that GAR urgently remedy the serious problems that had been identified.

Belatedly recognising that some of the problems identified inhered in the company's land acquisition procedures and the way it dealt with customary rights in land, the company with the assistance of its advisors, began to retrain staff in how to comply with RSPO requirements concerning FPIC and revise (or adopt new) Standard Operating Procedures (SOPs). During April-May 2014, FPP provided (for free) comments on newly drafted SOPs as GAR sought to revise some of its SOPs in conformity with RSPO P&C&I. To our knowledge this SOP revision process is still underway.

The field studies and discussions showed that PT KPC was in serious violation of RSPO requirements with respect to HCV assessments and the basic requirements for the recognition of customary lands and procedures for FPIC. The discussions with GAR and their advisors, and the much needed SOP revisions, showed that the problems identified in PT KPC were actually systemic to GAR's operations in Kalimantan (and possibly more widely). Indeed PT KPC was in most respects further advanced in terms of compliance with RSPO requirements than other operations which had not been prioritised by GAR for piloting its new Forest Conservation Policy.

In this complaint we wish to recognise that GAR has made a commitment to revise its approach and we still seek to build on this commitment, however subsequent developments now oblige us to make our concerns known to the RSPO Complaints Panel and more widely.

Notwithstanding, the recognition by GAR that it needs to undertake fundamental procedural reforms to bring itself into compliance with the RSPO standard, since the end of April 2014 GAR has submitted no fewer than 18 New Planting Procedure (NPP) announcements to the RSPO.

Having examined the documents for PT KPC - posted on the RSPO website as required under the NPP procedure- we find that they contain misleading, even false claims, about the HCV studies (it cites the FFI 2009 HCV assessment as the completed study). Also the information provided disguises the fact that PT KPC does not yet have a proper FPIC process in place and it obscures the fact that it is only now that PT KPC is (or should be) retrospectively beginning to redo its mapping, land tenure studies and working with the communities to develop a mutually agreed FPIC process, in which the communities are represented by their self-chosen representatives. Yet, all these elements have to be in place **before** submitting to the New Planting Procedure.

We also note that the assessment reports posted on the RSPO website show that while GAR claims that these subsidiaries have rights to approximately 274,333 hectares of land, the same documents show that they only have business land use permits (HGU) to 23,206 hectares

(8.5%). According to the information provided, 16 of the 18 GAR subsidiaries which have submitted NPPs lack such permits (HGU). A number of the companies have out of date or incomplete interim permits.

Companies which submit summaries of their planned new plantings under the RSPO's New Plantings Procedure must show that the legality of their operations and the adequacy of their participatory HCV Assessments, participatory ESIA's and the initial stages of social engagements with communities have been independently assessed by competent assessors and found to be in conformity with RSPO requirements. Given the extensive documentation in the public domain and readily available to the assessors about the inadequate performance of PT KPC, it seems that these assessors have colluded with GAR in disguising the real situation.¹

Table 1: Golden Agri Resources New Planting Procedure Submissions in 2014²

No.	Subsidiary	Date of NPP	Assessors
1	PT Bangun Nusa Mandiri	25 th April 2014	Mutuagung Lestari
2	PT Agrolestari Sentosa	25 th April 2014	Mutuagung Lestari
3	PT Mitrakarya Agroindo	25 th April 2014	Mutuagung Lestari
4	PT Agrolestari Mandiri	25 th April 2014	Mutuagung Lestari
5	PT Agrokarya Primalestari	25 th April 2014	Mutuagung Lestari
6	PT Aditunggal Mahajaya	25 th April 2014	Mutuagung Lestari
7	PT Buana Adhitama	3 rd June 2014	Mutuagung Lestari
8	PT Paramitra Internusa	3 rd June 2014	Mutuagung Lestari
9	PT Tapan Nadenggan	6 th June 2014	Mutuagung Lestari
10	PT Persada Graha Mandiri	6 th June 2014	Mutuagung Lestari
11	PT Cahaya Nusa Gemilang	7 th July 2014	Mutuagung Lestari
12	PT Satya Kisma Usaha	7 th July 2014	Mutuagung Lestari
13	PT Kresna Duta Agroindo	7 th July 2014	Mutuagung Lestari
14	PT Buana Artha Sejahtera	7 th July 2014	Mutuagung Lestari
15	PT Bina Sawit Abadipratama	7 th July 2014	Mutuagung Lestari
16	PT Kencana Graha Permai	8 th July 2014	Mutuagung Lestari
17	PT Kartika Prima Cipta	8 th July 2014	Mutuagung Lestari
18	PT Bumi Sawit Permai	8 th July 2014	Mutuagung Lestari

The NPP notifications submitted by GAR and the assessors have ignored the reports generated by Forest Peoples Programme and collaborators. They have overlooked the fact that the HCV assessments had been found to be deficient by GAR itself and were being redone. They have ignored the fact that GAR had recognised that its land acquisition procedures were not in conformity with those required by the RSPO and that the SOPs were in the process of being revised. They have overlooked the fact that participatory mapping had not been done and was only just commencing in PT KPC but had not even started in the majority of the other concessions. They have overlooked the numerous land disputes that the studies had uncovered and which need remedy.

¹ A confounding fact about these 18 assessment reports is that they are all dated as having been submitted to the RSPO between 19th and 26th August 2013. The Technical Panel should investigate the reason for the apparent delays in the submission of these documents to RSPO or notification by RSPO Secretariat.

² http://www.rspo.org/blog/category/100001/npp_notification/50

These omissions and misrepresentations throw into serious doubt the validity of the whole New Plantings Procedure. Indeed, if we cannot trust the assertions of third party assessors, the credibility of RSPO's whole voluntary standard and certification process is in doubt.

To summarise, therefore, this complaint contends that:

- PT KPC is in persistent violation of the RSPO P&C pertaining to HCV Assessments, the recognition of customary land rights and free, prior and informed consent.
- GAR as the parent company of all 18 subsidiaries listed is acting in violation of the New Planting Procedure by submitting information which it knows is false.
- The assessors which have endorsed GAR's HCV assessments, ESIA's and social engagement actions, are in violation of their responsibility to provide impartial assessments of company compliance with RSPO P&C.

We accept that this complaint has been made after the expiry of the 30 day period under which new plantings developments can be frozen while disputes have been resolved, so we expect the Complaints Panel to take this up as a normal complaint.

C: Other persons contacted by us in attempt to settle the issues

All of these matters were also raised by FPP with both the field and senior staff of The Forest Trust (TFT). TFT, working alongside Greenpeace, has been contracted by GAR since 2011 to advise GAR on its new *Forest Conservation Policy* and on how to reform its operations to bring it into compliance with RSPO standards. TFT staff have also attended most of the meetings between FPP and GAR, while FPP has also met, skyped and emailed separately with TFT several times to seek remedial actions.

In August 2014, FPP wrote to TFT senior staff expressing concerns about GAR's New Planting Procedure submissions which we consider to have been submitted in bad faith and hold to have been done contrary to RSPO requirements (see above). We enquired why TFT as an advisor to GAR had not contested these submissions. TFT undertook to consult with local TFT staff and GAR and then got back to us by skype to answer our concerns. A skype discussion then ensued in September. In this most recent discussion, TFT did not dispute our assertion that many GAR operations were not ready for the NPP, given that basic building blocks with regard to participatory HCVs, recognition of communities' self-chosen representatives, participatory mapping and agreed procedures for FPIC and land acquisition were still not in place. Indeed it was confirmed that GAR is still in the process of finalising SOPs for its staff to carry out such requirements. Even in PT KPC, participatory mapping has only been (partially) carried out in 4 of the 8 affected communities.

In joint communication with GAR and TFT, Forest Peoples Programme agreed to meet with them in London on 27th October 2014 to further explore solutions to these problems.

Some of the early meetings with GAR were also attended by LINKS which is also contracted by GAR to implement the social aspects of its policy commitments. Some of the meetings

with GAR were also attended by local and international staff of Greenpeace, which has an agreement with GAR to help it develop and implement its *Forest Conservation Policy*.

D: Any other relevant facts and/or other materials to support this complaint.

The attached documents substantiate our complaint. These include:

- FPP letter to TFT 14th August 2014
- Letter from SMART to FPP and TUK-Indonesia 27th March 2014
- Table summarising progress in PT KPC as assessed by FPP and TUK-I 5th March 2014
- Open Letter from FPP and TUK-Indonesia to GAR 6th March 2014
- Report by FPP and TUK-Indonesia on PT KPC (Bahasa Indonesia translation)
- Press Release by SMART on FPP and TUK-Indonesia report 17th January 2014
- Report by FPP and TUK-Indonesia on PT KPC January 2014
- Powerpoint summarising concerns raised by FPP and TUK-Indonesia with GAR 22nd November 2013