

# **INDEPENDENT REVIEW OF THE SOCIAL IMPACTS OF GOLDEN AGRI RESOURCES' FOREST CONSERVATION POLICY IN KAPUAS HULU DISTRICT, WEST KALIMANTAN**



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**By Marcus Colchester<sup>1</sup>, Norman Jiwan<sup>2</sup> and Emilola Kleden<sup>3</sup>**  
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Cover photo: View west along the boundary between the lands of Kerangas and Mantan villages

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## 1. Executive Summary

Our message to you. You are coming from near to Jakarta, so please, *please*, tell them of our concerns and our expectations.

Community meeting, Mantan, 16<sup>th</sup> July 2013

Palm oil companies have long been criticised for their damaging clearance, of both forests and peatlands, which contributes significantly to global warming. Getting companies to set aside forest and peatland areas within their concessions seems like a sensible way to limit the problem. But, given that most concessions are handed out by governments without first recognising and securing the lands of local communities,<sup>4</sup> what are the implications of these set-asides for the rights and livelihoods of forest peoples?

This report explores how one of Indonesia's largest palm oil companies, Golden Agri Resources (GAR), is addressing this challenge. In 2010, in response to a targeted campaign by Greenpeace, GAR adopted a Forest Conservation Policy which it is piloting in its subsidiary PT Kartika Prima Cipta (PT KPC) in Kapuas Hulu District, West Kalimantan, an upland area famous for its large lakes, extensive peat swamps and productive inland fisheries.

This independent report is based on two detailed field surveys and interviews with the affected communities in the PT KPC concession and with GAR and PT KPC staff, as well as on extensive interaction with the company and the various NGOs and consultancies which are advising GAR. The company's performance has been assessed, as scrupulously as possible, against the standards of the Roundtable on Sustainable Palm Oil (RSPO), of which GAR is a member, and against GAR's own social and environmental policy.

The findings from the field are startling. Although the company began operations in 2007, as of October 2013, it had yet to complete its RSPO-required High Conservation Value Assessment. The company omitted land tenure studies or participatory mapping of customary lands. Communities were not free to choose their own representative institutions. Nugatory compensation was paid to community members while getting them to permanently surrender their lands, through an unclear process which gave them the false impression that they could get their lands back after 30 years. Not a single one of the hundreds of farmers who unwittingly sold their lands to PT KPC has a copy of the contract.

Some communities refused to surrender their lands but, ignoring the RSPO requirement that communities have the right to say 'no', they have come under sustained pressure from the company to relinquish their lands anyway. No discussions were held with the communities to help them decide how much of their lands should be set aside for their own livelihoods, instead they were assured that oil palm smallholdings and new jobs would bring them major benefits. In fact, most of the jobs are very low paid and the smallholdings, which are run by the company, have come late, are about half as extensive as expected and come encumbered with debts and overheads that had not been adequately explained. Inland, affected Dayaks are now experiencing a land shortage, while along the rivers affected Malay fisherfolk complain of river pollution, causing declining fishstocks and problems for fish-breeding ventures.

Although not all community members are against oil palm and some do see real benefits, the imposition of the scheme has caused major rifts in almost all the communities. Ever since 2007 when the concession was first announced, there have been protests and demonstrations

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<sup>4</sup> Colchester and Chao 2013.



against these perceived injustices and these have continued right up to 2013. The company has paid the police to disperse protesters. In short, the findings point to major failures of compliance by PT KPC and GAR with the RSPO's 'Principles and Criteria'.

As for the proposed set asides of High Carbon Stocks in line with GAR's new Forest Conservation Policy, these are deeply unpopular both with those communities refusing the company's presence and with those that have pinned their hopes on oil palm. The imposed categorisation of forested lands according to their carbon stocks ignores the peoples' own systems of land use, land ownership and land classification and thus limits their livelihoods and options for income generation.

These shortcomings were reported to GAR in July 2013 but both the company and the consultancies supporting it have been very slow to take remedial action on the ground. However, while this report was being completed, the company and consultancies have initiated a programme aimed at resolving the land conflicts and dealing with the other grievances. Other circumstances also provide hope that things can be improved. The company has openly committed itself to making improvements and has shown goodwill at international, national and local levels. It has shown it is open to dialogue and taking advice, even from its critics. The HCV Assessment has now been completed (but has yet to be shared and explored with the communities). Where the communities have strongly resisted the take-over of their lands, the company has not taken lands by force and it has now made a verbal commitment to stop seeking to get these communities to surrender their lands. The company has also stopped clearing forests and peatlands and HCV areas.

This report thus concludes with a detailed set of recommendations of what needs to be done to bring the operation back into compliance with the RSPO standard. It also suggests some first steps on how the Forest Conservation Policy can be reconciled with community rights, needs and livelihoods, which need to be explored with the communities. All these remedies should only be pursued with the active engagement and subject to the free, prior and informed consent of the local communities.



Malay settlement in Kapuas Hulu

Photo: Marcus Colchester

## 2. Palm Oil Development in Kapuas Hulu

The district of Kapuas Hulu lies at the headwaters of the Kapuas river, the largest river in West Kalimantan Province in Indonesian Borneo. The district is famous for the complex of huge lakes, the largest being Danau Sentarum, which since long ago became a focus for a regional trading system by which dried (and later fresh) fish are traded down to the coast, providing a prized food item in coastal market towns and, in exchange for which, regional products, notably trade goods from China and later industrial goods from Europe, are brought into the headwaters.

The trade long ago drew into this upriver area coastal traders and leaders, who founded kingdoms, possibly as early as Majapahit times. Along with the other coastal trading States in the region, since the 15<sup>th</sup> century these Hindu-inspired kingdoms have gradually adopted Islam, and this in turn encouraged local fisherfolk and Dayak farmers in Kapuas Hulu to adopt Islam and what have lately come to be known as 'Malay' cultural norms (*masuk melayu*). By the early 18<sup>th</sup> Century, the local Malay elite were established as a number of inland principalities (*kerajaan*) in Kapuas Hulu, the nearest to the study area being in Selimbau and in Semitau.<sup>5</sup> These inland Malay principalities emerged according to a process similar to that which led to the creation of the *kerajaan* in Kutai in East Kalimantan.



Malay fisherfolk villages occupy the river banks

Photo: Marcus Colchester

Inland of the main rivers along minor tributaries and streams, the majority of the area is occupied by various Dayak ethnic groups, who have long been engaged in regional trading networks and had complex political relations among themselves and with the local Malay polities.<sup>6</sup> Most of the Dayak in the area converted from their traditional belief systems to Christianity between the 1920s and 1970s. Under Dutch influence they forged peace pacts

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<sup>5</sup> Harwell 2000.

<sup>6</sup> cf. Metcalf 2012.

between their communities in the 1920s-1940s<sup>7</sup>, at the same time as the Dutch abolished the Malay *kerajaan* in Kapuas Hulu and took direct control of the area.<sup>8</sup> However, in many places, the 'customary' (*adat*) boundaries between village territories still today follow those negotiated between the Malay elite and village leaders prior to direct rule by the Dutch.

Although the Dayak have long been engaged in regional trade networks for forest products, it is only since the 1920s that communities have diversified their farming economies from a subsistence base. While wet (*sawah*) and dryland (*ladang*) rice-farming remain important parts of the economy, cash incomes now mainly come from extensive rubber cultivation. Although substantial blocks of forest remain and there are numerous *tembawang* (agro-forestry sites on historical village locations – testimony to their long occupation of the area), much of the area has been converted into rotational farmland, as *ladang* [rotational or shifting cultivation plots] and *temuda* [areas of successional vegetation reverting to forest and/or to be again used for *ladang*], which are the property of the families that have cleared them. As populations have increased and as more lands have been set aside semi-permanently for rubber, the cycle of rotation from forest fallow to farm has begun to shorten.

Despite this very long human presence and commercial use of natural resources, and a period of quite destructive logging in the 1970s and 1980s, Kapuas Hulu remains a resource-rich district with extensive areas of natural forest, and lake and swamp-forest complexes, which provide an important refuge for orang utan. Kapuas Hulu declared itself to be a 'conservation district' in 2003 in the expectation that it would be able to garner considerable revenues through carbon sequestration.<sup>9</sup> The district contains an estimated 322,000 hectares of deep peat, almost a fifth of the total area of peat swamps in West Kalimantan.<sup>10</sup>

Compared to other districts, Kapuas Hulu already has large areas allocated as protected areas and as protection forests. This includes the Danau Sentarum National Park which is renowned as a unique ecosystem comprising large lakes and swamp forests which are inundated for large parts of the year. At first established as a 800 km<sup>2</sup> Wildlife Reserve in 1985, the area was progressively enlarged and established as a Ramsar site and then as a national park in 1994 and 1999. The area now covers some 1,320 km<sup>2</sup>. In addition, large areas of the district to the north and east of the capital Putussibau were classed as protection forests (*hutan lindung*) and limited production forests (*hutan produksi terbatas*), meaning that areas with some kind of protective status encompass almost one half of the district.<sup>11</sup>

Notwithstanding this local emphasis on conservation, since 2000 new national laws promoting decentralization have given much greater authority to districts to administer and generate their own revenues, and allocate lands to development. The same laws also give much greater powers to district legislatures and provide for party political elections of district regents (*bupati*). The result, all over Indonesia, has been a flourishing of local party political processes and this has resulted in the need for local political leaders and their parties to build up sizeable election campaign funds. With mining and forestry permits still substantially controlled by Ministries in Jakarta and provincial Governors, the issuance of agricultural land

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<sup>7</sup> Interview with Pastor Paskalis, Sejiram, 10<sup>th</sup> July 2013.

<sup>8</sup> Harwell 2000:33.

<sup>9</sup> Wadley et al 2010.

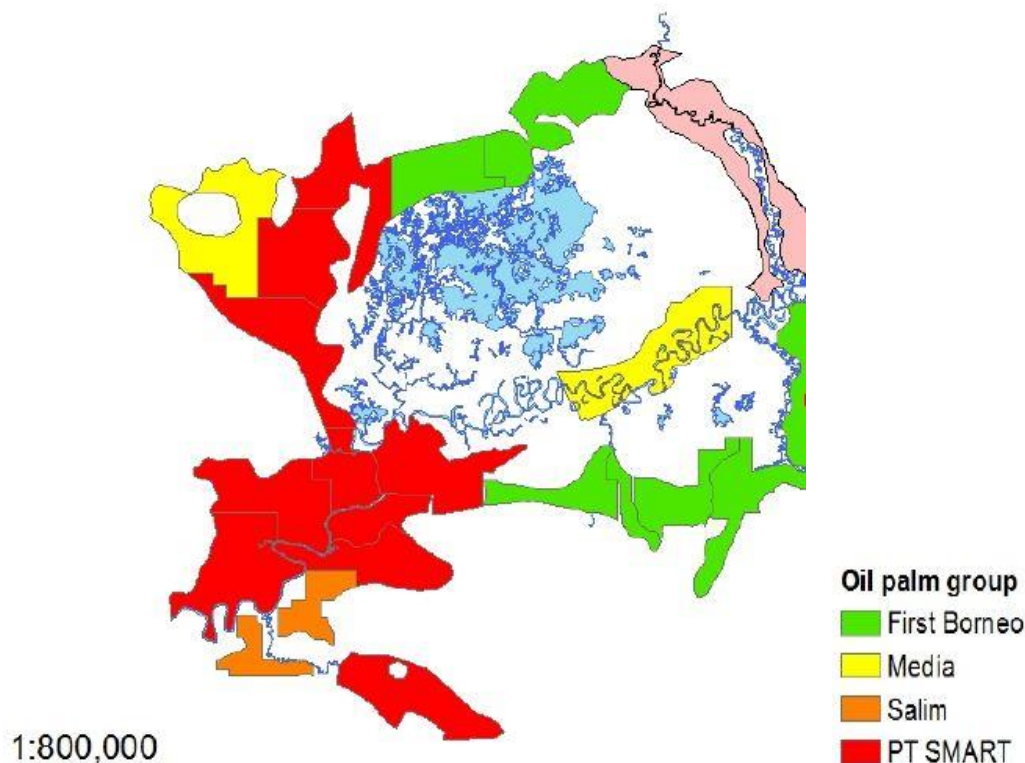
<sup>10</sup> Anshari nd.

<sup>11</sup> Ibid.

concessions provides the main means by which local politicians seeking control of rural districts can generate the cash they need to win elections.<sup>12</sup>

In Kapuas Hulu, this process got off to a slower start than in many downriver districts, where land schemes were already well developed and so the option of accelerating the hand out of land concessions was more easily implemented. In Kapuas Hulu, only one small oil palm concession was approved in 2001, to the Salim Group, but it was not until 2006 that substantial land concessions began to be handed out. Most of these concessions have been handed out to four large consortia. The first to benefit in a big way was the First Borneo Group which acquired a large number of oil palm concessions in 2006 and 2007, with two smaller additional areas in 2009-2010. The second to benefit was PT SMART (part of the Sinar Mas Group) which was offered nine substantial oil palm concessions between 2007 and 2009.<sup>13</sup> Meanwhile, the Media Group also acquired two smaller oil palm concessions in 2007 and 2008 and the Salim Group was able to get one further concession in 2009-2010. The result is that the Danau Sentarum National Park is now enveloped in a ring of monocultures (see Map 1 below).

PT SMART (PT Sinar Mas Agro Resources and Technology Tbk), the main vehicle for Golden Agri Resources' palm oil development schemes in Indonesia, also has oil palm plantations in neighbouring Sintang district to the west. Currently, the company owns a single large crushing mill, to extract crude palm oil from oil palm fruits, located at its Belian mill near its PT PIP operation.



Map 1: Palm Oil concessions in the western part of Kapuas Hulu District, showing the ring of concessions around lake Danau Sentarum

<sup>12</sup> Hadiz 2011.

<sup>13</sup> GAR notes that it only has three concessions in Kapuas Hulu District being PT KPC, PT PIP and PT PGM (GAR comments on draft report 2<sup>nd</sup> January 2014).



## 2.2 Golden Agri Resources

Golden Agri-Resources (GAR)<sup>14</sup> is the second largest integrated palm oil company in the world, which cultivates approximately 463,400 hectares of oil palm plantations in Indonesia, including scheme smallholders.<sup>15</sup> GAR was established in 1996 and has been listed on the Singapore Stock Exchange since 1999 with total revenues of more than US\$6 billion and net profits of US\$410 million in 2012.<sup>16</sup> Flambo International Ltd is the largest shareholder in GAR with 49.5% of total shares. GAR has a number of active subsidiary companies, including PT SMART Tbk which has been listed on the Indonesian stock exchange since 1992.<sup>17</sup>

In Indonesia, GAR's operations focus on the cultivation of oil palm, and the processing and refining of Fresh Fruit Bunches into Crude Palm Oil (CPO) and Palm Kernel Oil (PKO) and value-added derivatives such as cooking oil, margarine and shortening. GAR and its subsidiaries currently run 40 mills extracting CPO and PKO from fresh fruit bunches of oil palm (FFB), with a total capacity of 10.67 million tonnes per annum. Part of its CPO is processed further into value-added bulk, industrial and branded products through GAR's own refineries, with a total capacity of 1.98 million tonnes per annum. Their kernel crushing plants have an annual capacity of 855 thousand tonnes, producing higher-value palm kernel oil and palm kernel meal.

GAR became an RSPO ordinary member in 2010 after strong campaign pressures from Greenpeace internationally, accusing the company of systematic and persistent violations of RSPO standards and illegality in SMART/GAR subsidiary oil palm plantation companies in West and Central Kalimantan.<sup>18</sup>

A substantial part of GAR's oil palm operations in Indonesia are undertaken by its daughter company Sinar Mas Agro Resources and Technology Tbk (PT SMART Tbk). PT SMART reported having a total landholding of around 138,100 ha (including scheme smallholders) as of 30<sup>th</sup> September 2011.<sup>19</sup> The company was established in 1962 and has been listed on the Indonesian Jakarta Stock Exchange since 1992. Like GAR, SMART claims to focus on the sustainable production of CPO, PKO and value-added derivatives. Besides cooking and industrial oil, refined palm oil derivatives are also marketed under trademarks such as Filma and Kunci Mas. SMART also manages most of the other oil palm plantations of the GAR group. This business relation is particularly profitable for SMART in terms of plantation management, information technology, research and development, purchasing raw materials and access to wider market networks, both domestic and international.<sup>20</sup>

## 3. GAR policy development

### 3.1 Roundtable on Sustainable Palm Oil

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<sup>14</sup> SMART Tbk 2011:2.

<sup>15</sup> GAR 2012.

<sup>16</sup> GAR 2012.

<sup>17</sup> Indonesia Stock Exchange 2010 *Profil Perusahaan Tercatat*. <http://www.idx.co.id/id-id/beranda/perusahaantercatat/profilperusahaantercatat.aspx>

<sup>18</sup> Greenpeace 2008; 2009.

<sup>19</sup> This represents an expansion of 9,283 ha since 2008, when the company's total landholding was of 128,817 ha. (SMART Tbk. nd)

<sup>20</sup> [SMART TBK 2011.](#)



In 2005, PT SMART became a member of the Roundtable on Sustainable Palm Oil (RSPO), the same year that the RSPO adopted a clear standard which sets out the 'principles and criteria' (P&C) that RSPO member companies seeking certification should follow. The RSPO standard was revised in 2007 and again in 2013. A National Interpretation of the RSPO standard was adopted for Indonesia in May 2008. Among the main requirements of the RSPO standard adopted for Indonesia and relevant to this report are the following (see Box 1).

Box 1:

**Key Criteria, Indicators and Guidance from the RSPO Indonesian National Interpretation<sup>21</sup>**

**Criterion 2.2**

The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.

*Indicators:*

1. Documents showing ownership or lease of the land in accordance with relevant laws.
2. Evidence that legal boundaries are clearly demarcated and visibly maintained.
3. Where there are, or have been, disputes, proof of resolution or progress towards resolution by conflict resolution processes acceptable to all parties are implemented.
4. Evidence of land acquisition resolution with free prior and informed consent.
5. A mechanism to resolve conflict which is accepted by all parties.

*Guidance:*

Where there is a conflict on the condition of land use as per land title, growers should show evidence that necessary action has been taken to resolve the conflict with relevant parties. For any conflict or dispute over the land, the extent of the disputed area should be mapped out in a participatory way. Ensure a mechanism to solve the conflict (Criteria 6.3 and 6.4). All operations should cease on land planted beyond the legal boundary. Any customary land use rights or disputes which are likely to be relevant should be identified.

**Criterion 2.3**

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

*Indicators:*

1. Records of any negotiated agreements between traditional owners of land and plantation companies (if any), supplemented with maps in appropriate scale.
2. Maps of an appropriate scale showing extent of recognised customary rights.
3. Copies of negotiated agreements detailing process of consent.

*Guidance:*

Where lands are encumbered by legal or customary rights, the grower must demonstrate that these rights are understood and are not being threatened or reduced. This criterion should be considered in conjunction with criteria 6.4, 7.5 and 7.6. Where customary rights areas are unclear these are best established through participatory mapping exercises involving affected and neighbouring communities. This criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/or relinquished rights.

Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations and based on an open sharing of all relevant information in appropriate forms and languages, including assessments of impacts, proposed benefit sharing and legal arrangements.

<sup>21</sup> RSPO 2008.

Communities must be permitted to seek legal counsel if they so choose. Communities must be represented through institutions or representatives of their own choosing, operating transparently and in open communication with other community members.

Adequate time must be given for customary decision-making and iterative negotiations allowed for, where requested. Negotiated agreements should be binding on all parties and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties.

### **Criterion 6.4**

Any negotiations concerning compensation for loss of legal or customary 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:*

1. Procedures for the identification, calculation and compensation for the loss of legal or customary rights of the land, with the involvement of local community representatives and relevant agencies.
1. Records of identification of people entitled to receive compensation.
2. Records of negotiations processes and/or the details of compensation settlements.
3. Records of the implementation of compensation payment.

#### *Guidance:*

This criterion should be considered in conjunction with Criterion 2.3 and the associated guidance. Local communities have right to appoint their own representatives and this processes and results must be documented.

### **Criterion 7.1**

A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.

#### *Indicators:*

1. Social and environmental impact assessments (AMDAL), which include details of both positive and negative social and environmental impacts, made with the participation of affected parties (local communities).
2. Appropriate management plan and operational procedures (RKL/RPL).
3. Where there are schemed smallholders, records of development program for smallholders are kept, in accordance with the scheme and relevant laws.

#### *Guidance:*

The independent environmental and social impact assessment can use AMDAL as a part of the process but it is the responsibility of the companies to provide sufficient objective evidence to the audit team that the full requirements of an SEIA are met for all aspects of plantation and mill operations, and captures all changes over time.

If there are weaknesses in the process of assessment, be it in an AMDAL (Indonesia), EIA (Malaysia) and DEC (PNG), and that it is the responsibility of the companies to provide sufficient objective evidence to the audit team that the full requirements of an SEIA are met. See also criteria 5.1 and 6.1.

The impact assessment should be carried out by accredited independent experts, in order to ensure an objective process. A participatory methodology including external stakeholder groups is essential to the identification of impacts, particularly social impacts.

Stakeholders such as local communities, government departments and NGOs should be involved, through the use of interviews and meetings, and by reviewing findings and plans for mitigation.

The potential impacts of all major proposed activities should be assessed prior to development. The

assessment should include, in no order of preference, as a minimum:

- Assessment of the impacts of all major planned activities, including planting, mill operations, roads and other infrastructure.
- Assessment, including stakeholder consultation, of High Conservation Values (see criterion 7.3) that could be negatively affected.
- Assessment of potential effects on adjacent natural ecosystems of planned developments, including whether development or expansion will increase pressure on nearby natural ecosystems.
- Identification of watercourses and assessment of potential effects on hydrology by planned developments. Measures should be planned and implemented to maintain the quantity and quality of water resources.
- Baseline soil surveys and topographic information, including the identification of marginal and fragile soils, areas prone to erosion and slopes unsuitable for planting.
- Analysis of type of land to be used (forest, degraded forest, cleared land).
- Analysis of land ownership and user rights.
- Analysis of current land use patterns.
- Assessment of potential social impact on surrounding communities of a plantation, including an analysis of differential effect on women versus men, ethnic communities, migrant versus long-term residents.

Plans and field operations should be developed and implemented to incorporate the results of the assessment. One potential outcome of the assessment process is that the development should not proceed, because of the magnitude of potential impacts.

### **Criterion 7.5**

No new plantings are established on local peoples' land without their free, prior and informed consent, 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:*

1. Social and environmental impact assessment document which include analysis of both positive and negative environmental and social impacts, and made with the participation of affected parties.
2. Documented socialization programs prior to new plantings.
3. Proof of payment to land owners and proper handing-over of the land for new plantings.

#### *Guidance:*

Local communities have rights to appoint their own representatives and this process is documented.

Where new plantings are considered to be acceptable, management plans and operations should maintain sacred sites. Agreements with indigenous peoples, local communities and other stakeholders should be made without coercion or other undue influence (see guidance for 2.3). Relevant stakeholders include those affected by or concerned with the new plantings. Refer to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for indicators and guidance on compliance. This activity should be integrated with the SEIA required by 7.1.

### **Criterion 7.6**

Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreement

#### *Indicators:*

1. Documented identification and assessment of customary and legal rights with the involvement of relevant government agencies and local communities.
2. Procedures to identify people entitled to receive compensation.
3. Records of negotiation process and/or compensation settlements are available.
4. Documentation of calculation and payment for compensation.
5. Communities that have lost access and rights to land for plantation expansion are given opportunities



- to benefit from plantation development.
6. The process and outcome of any compensation claims should be documented and made publicly
  7. available.

*Guidance:*

Local communities have rights to appoint their own representatives and this process is documented. Refer also to 2.2, 2.3 and 6.4 and associated guidance. This requirement includes indigenous peoples.

In 2009 a 'New Plantings Procedure' was adopted by RSPO, effective from 1<sup>st</sup> January 2010, by which RSPO member companies undertook to post a note on the RSPO website clarifying their intentions to open any new lands for oil palm and to provide basic documentation about their impact assessments, their High Conservation Value Assessment and how they are going about ensuring that no lands are taken from rightsholders without their free, prior and informed consent. The New Plantings Procedure allows 30 days for concerned parties to voice objections to these plans. If these objections are deemed not to be trivial, the companies are obliged to freeze their expansion plans while any deficiencies are addressed.

### *3.2 GAR's own social and environmental policy*

In 2011, as a response to criticism of its performance, GAR publicly issued its own policy statement on its commitment to a responsible social and environmental engagement.

Box 2:

**GAR Social and Community Engagement Policy (SCEP)<sup>22</sup>**

1. GAR wants to ensure that its palm oil operations improve the lives of those it impacts. Core to this is a commitment to:

- a. Free, Prior and Informed Consent of indigenous people and local communities
- b. Responsible handling of complaints
- c. Responsible resolution of conflicts
- d. Open and constructive engagement with local, national and international stakeholders
- e. Empowering community development programmes
- f. Respecting human rights
- g. Recognising, respecting and strengthening the rights of its workers
- h. Compliance with all relevant laws and internationally accepted certification principles and criteria

2. We adopt this Social and Community Engagement Policy for all the plantations that we own, manage or invest in regardless of the stake.

3. To promote this Social and Community Engagement Policy across the palm oil industry, we will leverage our leadership position and advocate this policy in partnership with the Indonesian and global community.

***4. Free, Prior and Informed Consent of Indigenous and Local Communities***

In line with GAR's Forest Conservation Policy, GAR respects and recognises the long term customary and individual rights of the indigenous and local communities to their land, and commits to ensuring free, prior and informed consent from these communities prior to commencing any new operations. Implementation of this policy will include:

- Participatory mapping of all indigenous and local community lands prior to negotiation

<sup>22</sup> Full SCEP available at SMART Tbk. 2011

- Social Impact Assessments carried out in a participatory manner, the results of which will be publicly available and actively shared with relevant stakeholders
- Open negotiation processes
- Documented agreements signed by all relevant parties

***5. Responsible Handling of Complaints***

We will develop and maintain processes for the responsible handling of all complaints at the local, national, and international levels. These processes will be developed in consultation with stakeholders, and will be made publicly available.

***6. Responsible Resolution of Conflicts***

We commit to actively promoting and supporting the responsible resolution of any conflicts involving GAR operations. This will include working with relevant stakeholders to ensure that conflicts are resolved through a process that is agreed upon by all relevant parties involved, respects customary and individual rights, and ensures the free prior and informed consent of relevant stakeholders to any resolution agreements. We also commit to doing our best to prevent any use of force which could unnecessarily lead to violence.

***7. Open and Constructive Engagement with Local, National, and International Stakeholders***

We commit to actively and constructively engaging with all GAR's stakeholders, including communities, government, customers, and civil society at the local, national and international levels. This includes a commitment to make information regarding the impacts of our operations publicly available. We will seek to ensure that information is provided in formats and languages relevant to affected stakeholders. We also commit to open and transparent negotiation for all joint management activities.

***8. Empowering Community Development Programmes***

We will continue to develop and implement empowering community development programmes for the local communities in which we operate. These programmes will be developed through an open, consultative and collaborative manner with local stakeholders. Our community development programmes will seek to empower communities in their development of sustainable livelihoods.

***9. Respecting Human Rights***

We commit to upholding and promoting the Universal Declaration of Human Rights for all workers, contractors, indigenous people, and local communities in all company operations.

***10. Recognising, Respecting and Strengthening the Rights of All Workers***

We commit to ensuring that the rights of all people working in our operations are respected according to local, national, and ratified international laws. We provide equal opportunities for all workers, and embrace diversity regardless of ethnicity, religion, disability, gender, political affiliation, sexual orientation or union membership. This is in line with GAR's internal Human Resource Policy.

***11. Compliance with All Relevant Laws and Internationally Accepted Certification Principles and Criteria***

We will continue to comply with all relevant laws and regulations as well as internationally accepted certification principles and criteria.

Developed by GAR in consultation with The Forest Trust (TFT)  
10<sup>th</sup> November 2011

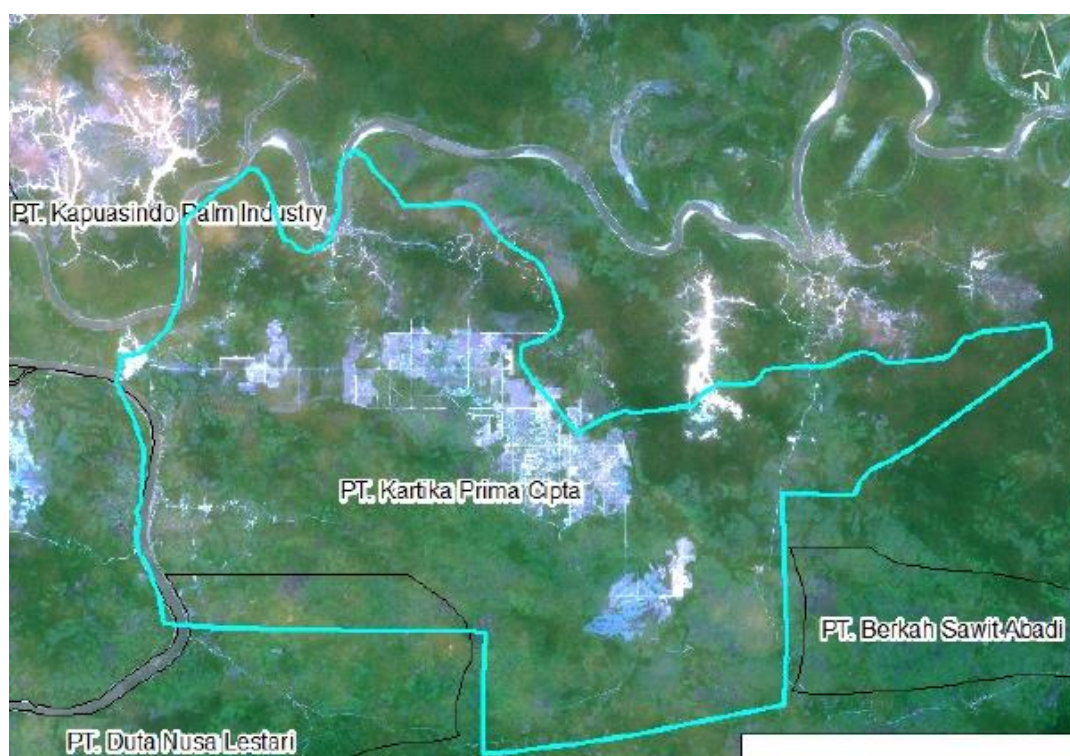
***3.3 GAR Certifications***

On 19<sup>th</sup> January 2012, PT Ivo Mas Tunggal (IMT), a daughter plantation of GAR announced that the company had been awarded RSPO certification for two of its subsidiary oil palm

plantations, PT Rama Jaya Pramukti (RJP) and PT Buana Wiralestari Mas (BWL).<sup>23</sup> According to the GAR Time Bound Plan (TBP), all subsidiary oil palm plantations and mills under GAR holding and under the management of Sinar Mas are to receive RSPO certification by 2015. Pursuant to RSPO Certification Systems, the legitimacy and consistency of the TBP's implementation will have to be reviewed and assessed by Certification Bodies (CB) to verify, *inter alia*, whether there are unresolved land conflicts, labour issues, irregularities and/or non-compliance with applicable laws. The terms of assessment require the company management to ensure that any identified non-compliance and outstanding problems are properly resolved or that pre-certification operations are suspended where major non-compliance in any of the partial certifications requirements are identified by the CB.<sup>24</sup>

### 3.4 Concerns about GAR's performance

In December 2009, PT SMART was heavily and very publicly criticised by Greenpeace for its violation of the RSPO standard. In a startling report citing specific violations, Greenpeace alleged that named, wholly-owned subsidiaries of PT SMART were: carrying out forest clearance prior to receiving the correct permits; burning; clearing and draining areas of deep peat; causing massive green-house gas emissions; destroying orang utan habitat and; illegally clearing lands without environmental impact assessments and without other permits.<sup>25</sup>



Map 2: Land clearance in PT KPC prior to full permits being issued Source: RapidEye assessment 2009

In the case of the concession that is the subject of this report, PT Kartika Prima Cipta (PT KPC), Greenpeace found that the company was: clearing trees without a cutting permit (IPK),

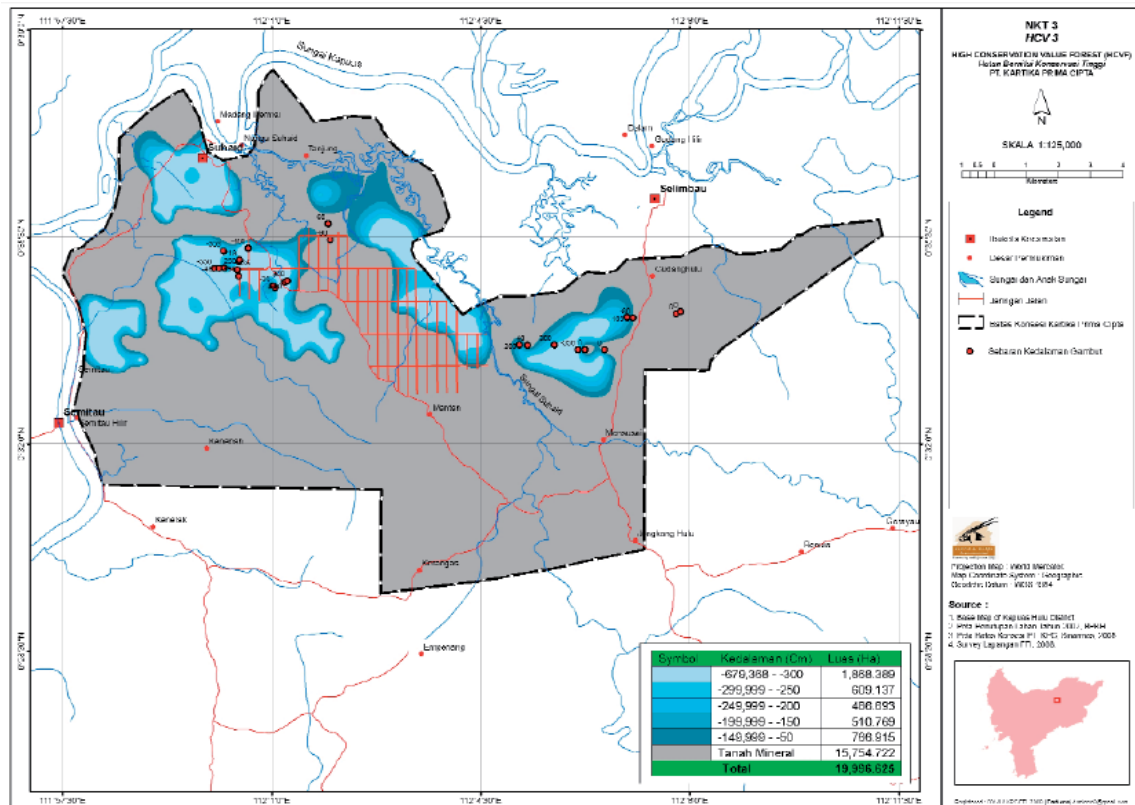
<sup>23</sup> GAR 2012a.

<sup>24</sup> RSPO 2011.

<sup>25</sup> Greenpeace 2009. See also <http://www.greenpeace.org.uk/files/slideshows/blogs/sinar-mas/slideshow430.swf>



clearing and draining areas of deep peat; and operating contrary to the findings of a High Conservation Value Assessment carried out for PT SMART by Fauna and Flora International.<sup>26</sup> Some of these findings were confirmed by a separate study by CIFOR a year later.<sup>27</sup> Also in 2009, Greenpeace activists staged a sit in, in the PT KPC concession, and made a public call to RSPO member companies such as Nestle and Unilever that they should stop buying all palm oil products from Golden Agri Resources.<sup>28</sup>



Map 3: Planting areas in PT Kartika Prima Cipta overlap areas of deep peat

Source: Greenpeace<sup>29</sup>

### 3.5 Forest Conservation Policy

The Greenpeace report and ensuing media storm initially targeted Unilever, Kraft, Shell and later led Nestle to announce that they were to cease purchasing CPO from GAR.<sup>30</sup> This, in turn, led to many meetings between RSPO member companies, including GAR, and Greenpeace to try to chart a way forwards. The result was the adoption of a new commitment by GAR by which they agreed not to clear any more forests or areas of peat. They also committed themselves to develop a new policy by which they could zone their concessions for areas of High Carbon Stocks and then exclude them from future clearance. Greenpeace conditionally lifted its call for a moratorium on purchases from GAR.

<sup>26</sup> Greenpeace 2009.

<sup>27</sup> Yuliani et al 2010.

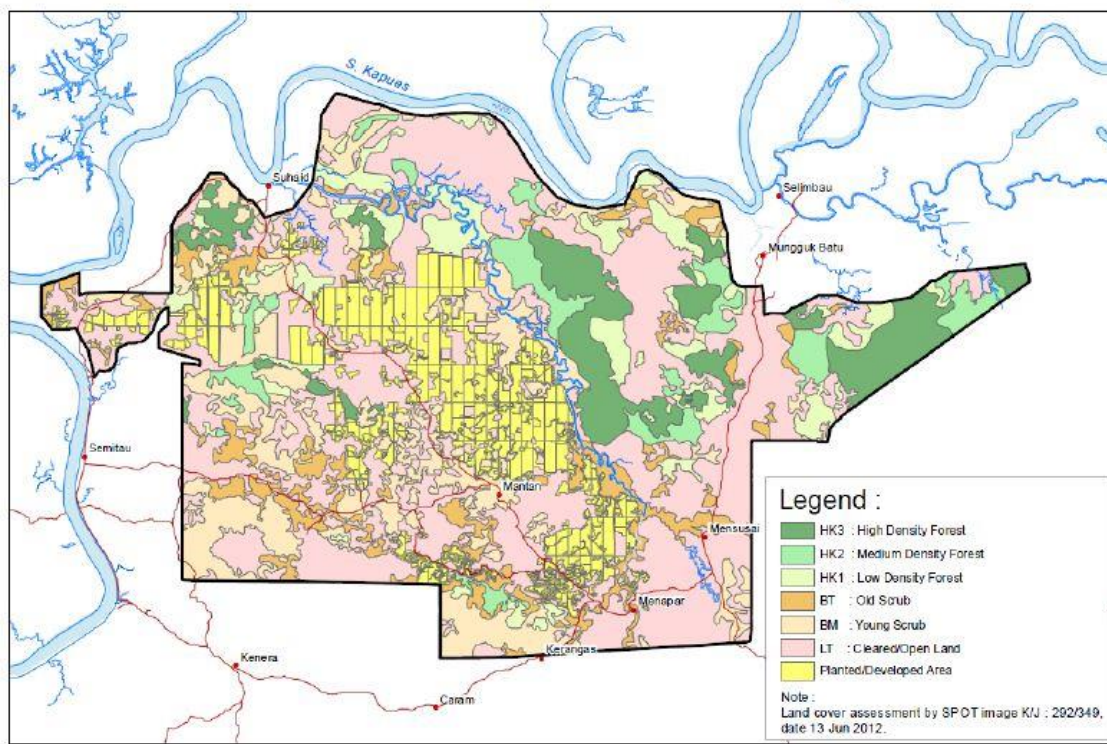
<sup>28</sup> Greenpeace 2010. <http://www.greenpeace.org/international/Global/international/planet-2/report/2010/3/caught-red-handed-how-nestle.pdf>

<sup>29</sup> This map published by Greenpeace (2009) actually comes from the FFI HCV Assessment which has never been released by GAR.

<sup>30</sup> Greenpeace 2010.

Between 2010 and 2011, GAR staff worked with The Forests Trust and Greenpeace to develop a 'Forest Conservation Policy'. The outlines of the policy were announced in 2011 and then, after extensive field surveys, a more detailed methodology was published in June 2012.<sup>31</sup> Under sustained pressure to deliver results, GAR proposed that it would pilot this policy in three sites, one in Papua, one in Liberia and one in Kalimantan. In March 2013, it announced to the public that the pilot site chosen in Kalimantan was to be PT KPC.<sup>32</sup> The policy applies however to 'all the plantations that GAR owns, manages or invests in regardless of the stake'.<sup>33</sup>

### PT KPC stratification map



28

Map 4: Zoning of lands in PT KPC based on estimated carbon stocks in above ground vegetation.  
Source: GAR 2013b.

The Forest Conservation Policy (FCP) adopted by GAR is quite sophisticated, even though the methodology adopted has been simplified as far as possible to make it easier to apply over large areas. Areas of deep peat are identified through soil sampling and then mapped and excluded from clearance and planting. The FCP itself is designed to zone the vegetation in proposed plantation development areas into a number of types – 'high density forest', 'medium density forest', 'low density forest', 'old scrub', 'young scrub' and 'cleared or open land' and estimates are then made by ground truthing to work out the above ground carbon stocks in these vegetation types.<sup>34</sup>

The surveys showed that only the latter two categories, 'cleared lands' and 'young scrub', have mean above ground carbon stock levels of less than 35 tonnes of carbon dioxide

<sup>31</sup> GAR 2012b.

<sup>32</sup> GAR 2013. See also <http://news.mongabay.com/2013/0319-dparker-gar-conservation-project.html>

<sup>33</sup> GAR 2012b:9.

<sup>34</sup> For further details see: [http://www.smart-tbk.com/sustainable\\_hcs.php](http://www.smart-tbk.com/sustainable_hcs.php)

equivalent per hectare (tC/ha), which is the agreed provisional ceiling for GAR. Only those areas with above ground carbon stocks of less than 35 tC/ha are suited for clearance. Those other areas, 'old scrub' and the three types of forest, are to be excluded from clearance.<sup>35</sup> Map 4, above, shows how this zoning approach is being applied to the PT KPC concession area.

### 3.6 Social Implications of high carbon stock 'no go areas'

The field surveys, however, encountered significant resistance from communities to the designation of lands as High Carbon Stock (HCS) 'no-go' areas. As the GAR report noted:

There were also some challenges and lessons learnt in the socialisation process with the local communities in the study concessions. More time could have been spent to explain the objectives of the HCS forest study to the local communities. While conducting fieldwork in the second and third concessions, it was observed that the communities were concerned about compensation for areas that would be marked for HCS forest conservation. The communities were also concerned about the impact of conserving HCS forests on their potential *plasma* holdings.<sup>36</sup> In the interest of maintaining good community relations, the fieldwork was suspended in these two concessions, reducing the number of plots that could be surveyed.<sup>37</sup>

In January 2013, at a policy workshop organised by the Climate and Land Use Alliance held in Bali, staff from Forest Peoples Programme (FPP) raised questions about the social implications of the FCP for communities in areas slated for plantation development. Greenpeace staff also at the meeting encouraged FPP to look into these issues, noting that the GAR/TFT/GP team that had developed the FCP lacked social science expertise.

FPP's concerns were informed by its prior field research in other companies' concessions, which had already documented how many communities in oil palm development areas in Indonesia are losing lands to oil palm plantations without their consent,<sup>38</sup> were not being adequately informed about land use plans and of the legal and livelihood implications of company plans,<sup>39</sup> while company procedures to set aside areas of High Conservation Value were likewise not taking adequate account of peoples' livelihoods.<sup>40</sup>

FPP was concerned that communities in areas where the FCP was being applied now faced a further 'double whammy'. On the one hand, imposing High Carbon Stock zoning on these same areas might restrict local communities from making use of all areas over the 35 tC/ha, including older fallow lands in their shifting cultivation cycle ('old scrub', 'low density forest' and 'medium density forest'). On the other hand, the HCS zoning would direct companies to expand their operations into areas considered to contain less than 35 tC/ha. These are just the areas where communities already have most recently established farms ('cleared and open land') or where lands are beginning to regain fertility as early forest fallows ('young scrub') and where farmers have very clear rights. Their livelihoods might thus come under double pressure.

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<sup>35</sup> GAR 2012b.

<sup>36</sup> '*Plasma*' is the term commonly used in Indonesia to refer to smallholdings in contrast to companies' core estates referred to as '*inti*'.

<sup>37</sup> GAR 2012b:26.

<sup>38</sup> Colchester et al. 2006.

<sup>39</sup> Colchester et al, 2011.

<sup>40</sup> Colchester et al, 2009.



It was agreed that FPP should inform GAR of its plans to carry out an independent field survey in PT KPC to assess such risks and propose measures to secure community rights and livelihoods in line with the RSPO standard. Accordingly, in April 2013, FPP staff approached GAR and mentioned their interest in contributing their expertise to ensure that the pilot aligned with the RSPO standard and that communities' livelihoods were secured in HCV and HCS zoning.

Receiving a favourable verbal response, on 22<sup>nd</sup> May 2013, Forest Peoples Programme therefore wrote to GAR with an offer to carry out a self-funded independent assessment of the social aspects of this pilot and to share the findings with GAR and its other collaborators, with the following objectives:

- ensure that communities' customary rights and livelihoods are accommodated in company land use plans to secure HCV and HCS and establish plantations and smallholdings etc
- review and improve the current tools and methods used to define, identify, manage and monitor HCVs 5&6 (securing basic needs and cultural identity)
- build up everyone's capacity to adhere to the principle of FPIC (and - if necessary - develop pre-conflict dispute settlement methods)

The outcomes sought by FPP would be:

- GAR oil palm plantations compliant with RSPO P&C relevant to customary rights and HCVs
- GAR oil palm plantations compliant with new HCS requirements agreed between Greenpeace and GAR
- Field tested inputs to enhanced HCV tools that secure basic needs and cultural values (reconciling FPIC-based processes with HCV and HCS land designations)
- Field tested inputs to enhanced RSPO procedures to defuse conflicts before they happen (see Annex 1).

A meeting was held in GAR's office on 4<sup>th</sup> July in which the plans of the various parties were shared. TORs were discussed and later elaborated by email to propose how the FPP study could be fitted into a plan being developed by GAR, TFT and LINKS to promote community livelihoods in standing forests by securing their use and access to Non-Timber Forest Products.

## **4. Research methods and further engagement with GAR**

### *4.1 Field investigation methods*

Accordingly, a team comprising Marcus Colchester and Emil Kleden of Forest Peoples Programme and Norman Jiwan of *Transformasi untuk Keadilan - Indonesia* visited the PT KPC concession area in July 2013. The team was accompanied by Ade Ahmad, of the West Kalimantan NGO Kaban (*Kami Anak Bangsa*), who acted as the team's local guide, and we hired a driver and vehicle in Putussibau to access village sites.

An intensive field survey was then carried out between 9<sup>th</sup> and 18<sup>th</sup> July 2013 using Terms of Reference developed by Forest Peoples Programme for previous surveys to assess the application of the RSPO's standards on land acquisition and free, prior and informed consent (as set out in Annex 2). These were conceived as being complementary to the TORs of the proposed GAR, TFT, LINKS engagement with the communities. Except where telephone networks do not yet reach communities, the team conveyed their intentions to visit in advance and held small group meetings and in some cases individual interviews.



Informal interviews in Mantan, July 2013

Photo: Marcus Colchester

The initial field surveys did not encounter any significant barriers. No one refused to be interviewed (although people may have chosen not to turn up at village meetings). Only one individual asked that s/he not be cited by name in the report – ‘in order not to inflame community divisions’ - but s/he agreed to the information being reported.

The team carried out interviews with community members, and community leaders where possible, in every village (*desa*) within the concession and in some nearby communities. The team was thus able to visit all but one of the hamlets (*dusun*) but did not visit a gold mining site on the eastern edge of the oil palm concession. The team were also able to interview two of the company's managers and some company workers

The most severe problem faced by the team was that it was provided very limited documentation by GAR before the field visit, despite written and verbal requests for copies of the AMDAL, HCV Assessment and specified standard operating procedures (SOPs).

### 4.2 Further engagement with GAR

As recounted in much more detail below, the field survey threw up some startling findings. Not only was there very little comprehension of HCS and HCV zoning in the communities, but it became clear that many communities are actively rejecting the extension of the concession over their lands. Some have been under concerted pressure to relinquish their

lands against their expressed opposition. In one area, a community alleged, lands had been cleared and planted in the face of community resistance. Even in areas where lands had been relinquished by communities hoping to benefit from the plantation, due process in accordance with RSPO norms had not been followed. Indeed the field interviews showed that local people felt that their lands had been taken by deception and based on false promises. Many community members expressed numerous grievances about the current situation. It also transpired that the HCV Assessment carried out for PT SMART by Fauna and Flora International and finalised in August 2011 (although it did not address HCVs 5&6) was not accepted by the company, let alone shared with the communities.

Alarmed by what they had uncovered, the field team quickly wrote up their findings in a preliminary report which was shared with GAR, first in the form of the written report<sup>41</sup> and then in the form of a power point presentation, which was presented to staff of GAR, TFT, Greenpeace and LINKS in Sinar Mas offices on 23<sup>rd</sup> July 2013. The team also made some detailed recommendations on what needed to be done to rectify the problems and bring the company back into compliance with the RSPO standard. These points were restated to a senior GAR official in a meeting in Bangkok on 6<sup>th</sup> August 2013, where FPP was assured that GAR would look into these issues as a matter of priority and act quickly on the most serious matters. FPP sent a follow up note summarising the main points to GAR on 12<sup>th</sup> August (Annex 3), in which it was repeated that it was the team's intention to return to the field in the week of 23<sup>rd</sup> September to ascertain what progress GAR had been made to resolve these problems over the intervening two months.

In early September, GAR made proposals that FPP link up with its consultants, The Forests Trust (TFT) 'to verify feedback',<sup>42</sup> but it became clear in the middle of September that GAR had made little or no progress on the ground in addressing the problems outlined in the report. No field visit had been carried out to ascertain the validity of the issues raised in the team's report. No actions had been taken to address the communities' concerns. The company had however convened a two-day training of staff in FPIC, carried out by The Forests Trust, which was attended by the head of operations for West Kalimantan. The company had also examined the FPP/TUK-I team's report and issued a 12 page response.<sup>43</sup> This was discussed at a third meeting in Jakarta on 19<sup>th</sup> September. GAR asked the team to postpone its return evaluation.

Disappointed by the lack of progress, FPP and TUK-I declined the suggestion of postponing their review and returned to the field on 23<sup>rd</sup> September spending five days revisiting all the same hamlets and villages, to cross-check any disputed data. The team was able to interview once again company staff and also collected geomatic data to georeference the sites of alleged problems. While in the field, the team explored with the communities the option of using smart phones and new phone-friendly software to make boundary maps of community lands for use in negotiations. Using these new techniques a survey was also conducted of the area of the disputed land clearance between Kerangas and Mantan.

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<sup>41</sup> FPP and TUK-I 2013a.

<sup>42</sup> Email from GAR to FPP 4<sup>th</sup> September 2013.

<sup>43</sup> GAR 2013.

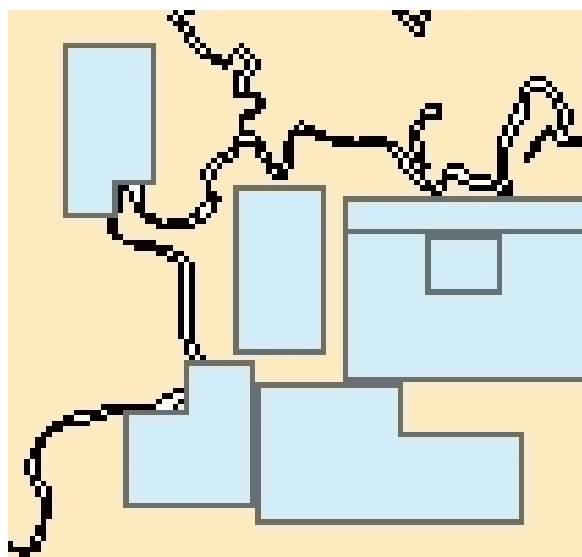


## 5. Findings

### 5.1 Legality and chronology

Our review did not examine the legality of the PT KPC concession in any detail. An AMDAL was apparently finalised in 2006. We were informed that the company had then acquired its *ijin lokasi* in late 2007 and that it had acquired an IUP in 2009. This was also when land clearance and planting began, in 2009, and it continued into 2010. Further planting occurred as late as 2011 in the area between Mantan and Kerangas. The first planted oil palms began producing harvestable quantities of fruits in 2012 but production levels are still low as many of the palms are immature.

While the *ijin lokasi* extends over about 19,000 ha., so far only 2,800 ha have been planted. According to company personnel, from a business point of view the development is disappointing. Gray literature seen by the team also suggests that the PT KPC *ijin lokasi* is overlapped by three or four mining concessions. The social and environmental implications of which are not apparent in a quick scan of the AMDAL.<sup>44</sup>



Map 5: Known mining concessions near PT KPC  
(from screen shot)

Legally, the slow pace of planting and land acquisition does pose a challenge for the company. Formally speaking, an *ijin lokasi* may be forfeit if a company has not acquired half the land area within three years. The very large areas set aside for HCV and HCS also put the company in violation of laws prohibiting companies from holding onto idle land. One result may be that the company is obliged to file for a much smaller HGU, with an additional land allocation sought for the areas set aside for the smallholder *kemitraan* scheme.

It is unclear if and how the company and local government will legally secure the wider areas of unceded community lands, HCV and HCS. Given the absence of relevant national laws and regulations, this will probably require the issuance of a Decree by the regent or a local legislative act by the local parliament (*Perda*). It is known that the company is seeking a

<sup>44</sup> Despite repeated requests FPP has been denied a photocopy or electronic version of the AMDAL. We were allowed to view the document for a few minutes during our visit to the PT KPC field office in September 2013.

compensatory area to develop as oil palm elsewhere. It is in dialogue with the Government of Indonesia about this option.<sup>45</sup>

## 5.2 Environmental Impact and High Conservation Value Assessments

In 2006, a mandatory Environmental Impact Assessment and Mitigation Plan (AMDAL) was apparently completed for PT KPC by a consultancy and filed with the government as required for securing an *ijin lokasi*. At least since 2012 and 2013 there have been implementation and monitoring reviews of the implementation of the mitigation plan.<sup>46</sup>

An HCV assessment was carried out by Fauna and Flora International for PT KPC. It commenced in November 2008 and was submitted to GAR in 2009. Owing to company dissatisfaction with the findings, the assessment was redone and resubmitted to the company in 2010.<sup>47</sup> The HCV Assessment did not however adequately address social considerations. A short viewing of the document in the PT KPC field office in September showed that areas labelled in the report as HCV 5 ('areas fundamental to meeting basic needs') should actually have been classed as HCV 4 (riparian strips) and no areas were identified as HCV 6 (areas crucial to cultural identity).

Knowing of the deficiencies of the HCV Assessment, PT KPC declined to share the FFI HCV assessment with FPP when we requested a copy. Instead GAR contracted a team from the Agricultural Institute in Bogor (IPB) to carry out a revised assessment in 2013. The field surveys for this assessment were reportedly undertaken in July 2013 and discussed at a small public meeting held in Semitau in October 2013. According to GAR staff, the document was still in a draft form when we again requested a copy in November 2013.<sup>48</sup>

Our interviews showed that no one apart from PT KPC staff had actually been provided with a copy of the HCV Assessment or even a summary of the findings and the only village which could recall there having been a public meeting about HCV was Mantan. Numerous parties confirmed the tale that when a public consultation on FFI's HCV Assessment was carried out, in October 2009, the report was openly rejected by the community members present in the meeting, as so much land was set aside for biodiversity conservation, ecosystems services and as deep peat.

Among the concerns about the High Conservation Value approach mentioned by the community members in interviews are the following:

- Community members are being prevented from expanding their cropping areas and prevented from burning cleared lands.<sup>49</sup>
- HCV set asides are restricting the areas that can be planted for oil palm by the company thus limiting the areas made available as smallholdings (and see below)
- HCV set asides have restricted community members from being able to use their traditional areas for hunting and fishing.<sup>50</sup>

<sup>45</sup> Comment (2<sup>nd</sup> January 2014) by GAR on draft report.

<sup>46</sup> Documents viewed in PT KPC field office. PT Kartika Prima Cipta, 2006, *Rencana Pemantauan Lingkungan Hidup (RPL) Rencana Pembangunan Perkebunan Kelapa Sawit PT Kartika Prima Cipta*, Desember 2006.

<sup>47</sup> FFI 2009; FFI 2010.

<sup>48</sup> We were finally given soft copies of the draft HCV assessment to review in November 2013.

<sup>49</sup> Interview with Pak Suhaimi 11<sup>th</sup> July 2013.

<sup>50</sup> Interviews, Mantan 16<sup>th</sup> July 2013.

We were told that some of the signboards which restrict livelihoods have been smashed by resentful community members. As one villager told us, the company should explain the purpose of the HCV system to the villagers more carefully:

Otherwise there will be misunderstandings. We want them to explain it to us but they never do.<sup>51</sup>



HCV signboard: 'Forbidden!!! Opening land, burning land, collecting plants, illegal logging, hunting wildlife and destroying conservation area'. Photo: Marcus Colchester

According to local NGOs in KalBar, as a result of the limited scope of the original HCV Assessment, some HCV 6 areas were bulldozed by the company during initial clearance, an allegation that we have not [yet] been able to confirm or refute from the field work.<sup>52</sup>

The team carried out detailed questioning to try to understand what community members thought about the HCV approach and whether enough lands had been set aside for their basic needs (HCV 5).

We found that a concern to hang on to enough land for their own needs was a key reason why some communities have resisted surrendering their lands. In Kenabak Hulu, for example, it was explained to us:

The company has tried to approach us and said that these areas are suitable for oil palm and that they can help us. But we said no, these fallow areas may not be being used now but they will be used in the future. We think that if we give this land to the company then

<sup>51</sup> Interviews, Mantan 16<sup>th</sup> July 2013.

<sup>52</sup> NGO workshop held in WALHI 8<sup>th</sup> July 2013.

they will come through our rivers, our rubber stands, our gardens and our forest and take it all over, as these degraded areas are in the middle of our territory.<sup>53</sup>

In Menapar, we were informed that, now that substantial areas of land have been planted with rubber and fruit trees and quite large areas have been surrendered for oil palm, the land available for farming as wet rice paddy fields (*sawah*) and for shifting cultivation (*ladang*) is now quite limited with forest-farm rotations down to less than 5 years, resulting in some areas now being covered in ferns instead of forests successions. As one interviewee in Menapar noted:

There is not much unused land left now, as we have used it all for rubber and oil palm... The truth is there is really not enough land. In fact, now we are not wanting to surrender more land as there is not enough land left.<sup>54</sup>

Summing up on behalf of the community of Menapar, one village spokesperson affirmed:

The main message for you from this community is: it's enough, we don't want to release any more land.<sup>55</sup>

In Mantan we were likewise informed that whereas, in the past, rotations between *ladang* cycles had been about 10 years they were now down to 4 to 5 years.<sup>56</sup> It is exactly this concern which also explains why the people of Kerangas do not want to release lands for oil palm. As the head of the village explained to us:

We make our living from *ladang* and rubber, that is the mainstay of our livelihoods here. [As it is], there is not enough lands here for our grandchildren. We want to work our own lands ourselves. We don't want to work as coolies on our own lands. We want to work our land under our own control. If land is opened up for oil palm, if we agree to allow expansion for oil palms, then there will be nowhere to get good timber for our houses. When we need it, it will be gone.<sup>57</sup>

Summing up the views of smallholder members Pak Suhaimi, the head of the smallholder cooperative, told us:

Not all people even understand HCV yet. In Kapuas Hulu already 50% of the district is in conservation areas, so please don't disturb us with more. Go to the National Park and don't disturb us with HCV and HCS!<sup>58</sup>

Yet others in the district note the importance of forest areas being set aside to ensure water quality for downstream residents. As one resident of Suhaid noted:

We think the remaining forests should be left as a buffer zone to stop the waters being polluted by plantations. Another demand is that PT KPC should not set up a mill here... The forest is critical to our livelihoods, it is like our rice paddies.<sup>59</sup>

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<sup>53</sup> Interviews, Kenabak Hulu, 16<sup>th</sup> July 2013.

<sup>54</sup> Interviews, Menapar, 12<sup>th</sup> July 2013.

<sup>55</sup> Interviews, Menapar, 12<sup>th</sup> July 2013.

<sup>56</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>57</sup> Interviews, Kerangas, 12<sup>th</sup> July 2013.

<sup>58</sup> Interview with Pak Suhaimi, 11<sup>th</sup> July 2013. In its comments on a draft of this report GAR notes that in other meetings local people have requested that a mill be set up locally to promote local employment.

<sup>59</sup> Interviews, Suhaid, 11<sup>th</sup> July 2013.



According to PT KPC local staff, the imposition of the HCV approach has caused quite a lot of resentment:

Towards Suhaid there is a lot of HCV and the people got angry and so opened up that land themselves for rubber, motivated by their protest against the restrictions. The *camat* of Suhaid always expressed the aspirations of the people that the HCV areas be developed either as smallholdings or as *padi*, corn or another food crop but we always answer 'no'. This has become a source of conflict with the community. This is indeed a dilemma for us and for the government and for the community as well. The communities here are still below the welfare standard. That is why we are always concerned if external parties come here about HCV and HCS. They often have a misunderstanding with the local communities.... [I]t is interesting for us to discuss how we implement our commitment as this is already impacting the local economies here. That is from the point of view of us, the field staff. It is like we are in collision with the rights of the community to develop their lands and local economies.<sup>60</sup>

Despite these concerns among staff, as far as we could determine from our extensive questioning of the villagers in July and September 2013, there had never yet been a discussion between the company and the communities about how to ensure that communities' basic needs were assured, although this is a major concern of the community.

### 5.3 Systems of land ownership

Our brief field surveys identified three different systems of land ownership in operation in the area. Among the riverine Malay people, whose primary economic orientation is towards fishing, fish-breeding and commerce, lands are acquired by the clearance and use of previously forested lands. Such lands are inherited largely in accordance with *sharia* law. A few persons that claim descent as heirs of the Malay elite (*ahli waris*) also claim more extensive inherited lands based on the customs of the old Malay sultanates. However, we did not encounter such claims within the areas of land acquisition for the PT KPC concession.

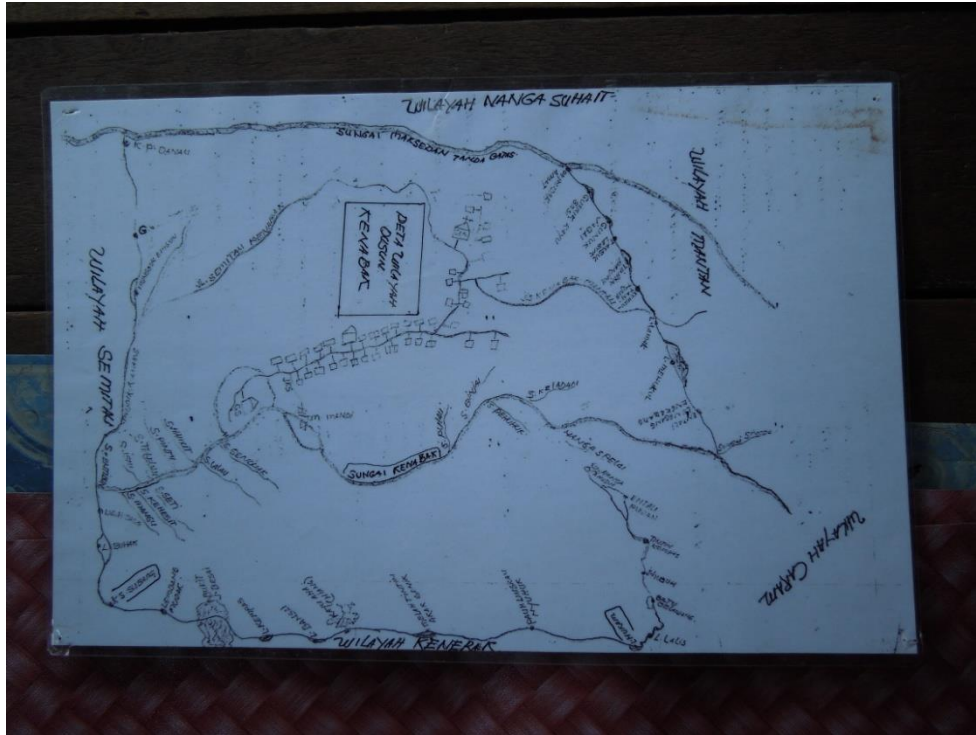
By contrast, most of the Dayak Mayan, who form the majority of the population in the concession inland from the Kapuas River, claim a more complex system of land ownership in which community territories are considered as the collective property of the community as a whole. Within these customary village or hamlet territories (*wilayah adat*), there are areas set aside as sacred forests, forest reserves and old villages sites that are now stands of fruit trees (*tembawang*). Also, within the village territories extensive areas now belong to the farmers and families of those who first opened such areas for farming, whether or not they are currently farms, fallows, orchards or rubber plantings. Thus, as is typical of many Dayak systems of land tenure, family rights to farmlands and fallows are 'nested' within the collective territories held by communities.

The Dayak Mayan explained that although their own history recounts how they came into their current area from elsewhere, that was several generations ago. They asserted their rights to the area during the era of headhunting and defended their lands by force of arms. Under customary law, the boundaries of village territories are known both to themselves and to their neighbours.

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<sup>60</sup> Interviews with PT KPC staff, 14<sup>th</sup> July 2013.

We have natural markers like stones, trees, mountains and rivers: these are known to us but not to outsiders. The markers are from our ancestors. For example our boundary with Kerangas – you can check with them – they agree with us exactly where the boundary is. That's how we prove our boundaries. There is no problem with this boundary and they are respected by neighbouring villages.<sup>61</sup>



Hand-drawn map of the traditional territory of the hamlet of Kenabak Hulu

As the head of custom of the hamlet of Kenabak Hulu explained to us:

We need to explain where our customary lands and forests are, which are ours because of certain conditions and events of the past. For example sacred sites and untouchable areas are guarded by us and we make the decision to look after such areas collectively and make them a sacred site. When we do this we also invite the neighbouring villages to witness the agreement and make the area a customary forest. This is because it is not just our own beliefs [that matter] but these need to be transferred with our traditional knowledge and culture to the coming generations. This is how we come up with an agreement about which areas should not be used commercially or cultivated.

So, the customary forests here are governed by our own customs and by our own system of governing ourselves, based on our own culture. We have agreed boundaries with other neighbouring villages and hamlets and they have agreed these same boundaries also by customary rules.

As for the company saying we have no customary land. Yes, well, I understand why they say that because they want something from here. But for us, we have our own self-governing territory, which we have managed by custom for a long time. They only say this because they want something; they want to impose something on us for their own benefit. The company never thinks of our future generations, but we do and that is the difference between us and the company. They only see things from their own point of

<sup>61</sup> Interviews, Kenabak Hulu, 16<sup>th</sup> July 2013.

view. We have customary rituals to affirm our boundaries, so our customary system is different from the company's way.<sup>62</sup>

Leaders of Dayak villages whom we interviewed were thus very clear that given the way they hold land, they wanted to negotiate collective agreements with any incoming businesses planning commercial operations on their lands, as the implications would affect the community as a whole and not just certain individuals.

The third system of land tenure operating in the area is, of course, that introduced since independence, according to which most lands are considered to be State lands, albeit encumbered with customary rights. These customary rights are commonly conceived by the administration as weak usufructuary rights that must give way to development.<sup>63</sup> Under the Basic Agrarian Law (BAL) of 1960, provisions are made for the recognition of private ownership rights in land (*hak milik*), as well as a variety of other tenures including the 'land use permits' (*hak guna usaha* – HGU) commonly obtained by companies seeking to develop oil palm estates.

In the area in question, very few individuals have acquired formal land titles, and most of those that do exist are for personal dwellings. A somewhat larger but still small number of landholders have acquired letters from village level governments, which recognise their land rights. For the most part, however, lands are held by the informal and customary systems of tenure noted above.

#### 5.4 Land Acquisition

We found very wide variations of the extent to which community people were informed of the implications of oil palm for their lands and livelihoods. As noted, none had been shown copies of the HCV assessment or AMDAL. Some claimed that very little had been done to explain the likely impacts and benefits to them but others did recount quite extensive discussions and were able to list impressive lists of all the benefits that had been promised such as jobs, smallholdings, schools, scholarships, religious buildings, roads, piped water and improved health care and generally raised standards of living.

A select number of community leaders were also taken on a field visit to Riau to look at a GAR plantation there. As one recalls:

We went sightseeing, looked at fertilizers, seedlings, the mill and the planted areas and how they compost empty fruit bunches. There is progress and development there but I also saw, when I visited the people, that they are [living] in small huts. I asked them if they had got *kaplings* (smallholdings). They [said they] are the victims of oil palm development.... We got a lot of impressions from the trip. The plantations were very good, huge, massive and produced a lot of FFB. But we also saw rubber being cut down to open areas for oil palm. We asked why they cut them down. They said it was not compatible with [maximising] income from oil palm. Almost the whole area was oil palm. We learned that the local people there had also protested at what was going on. The

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<sup>62</sup> Interviews, Kenabak Hulu, 24<sup>th</sup> September 2013.

<sup>63</sup> See Colchester et al. 2006 for a much more detailed exploration of how customary and statutory laws in Indonesia relate. Recent decisions by the Constitutional Court challenge the administration's view that *adat* rights are only weak usufructuary rights on State land.

company said that areas were also set aside for river catchments and wild animals but no community testified to that.<sup>64</sup>

Recalled another member of the same trip:

After coming back from Riau, we had visits from the company to persuade us to surrender our land. But here the people were very clear that we do not want to surrender our land. We have had previous experiences with companies, so we refused. They used to come here two or three times a week and even stay here to persuade us.<sup>65</sup>

GAR notes that, between March and August 2007, it did carry out a 'socialisation' process at district, sub-district, village and hamlet levels which set out:

the objectives and benefits of oil palm plantation development. These benefits focused on the social and economic aspects and the significance of the plantations to local economic development.<sup>66</sup>

The interviews suggest that PT KPC did not make any effort to explain the RSPO Principles and Criteria to the communities prior to land acquisition. The company did not carry out any survey of community land tenure systems either. No effort was made to ask the communities to nominate their own freely chosen representatives prior to entering into discussions about land. Despite the fact that participatory mapping is required by the RSPO P&C and is an agreed part of GAR policy (see section 3.2 above), the company made no effort to carry out such mapping in any of the areas in the PT KPC concession.

#### *Land surrenders:*

According to interviewees, the main evidence that the company routinely uses to ascertain land ownership was through village letters of land ownership issued by the village administration.<sup>67</sup> However, as noted, in the PT KPC area relatively few village members have such documents. Instead, therefore, the company surveyed personal lots directly on the ground using GPS, preferably with the neighbours also present, the extent of area is thus ascertained and payment then offered to the individual for the company to acquire the land, it being explained that in addition to the payment, the individual will become part of the smallholder scheme on an 80:20 basis (see section 5.5 below).<sup>68</sup>

A land surrender agreement is then drawn up signed by the individual landowner, officially endorsed by the *camat* (sub-district head) and village head and the agreed sum is also recorded. The company then takes a photo of the landowner holding a sign showing the area of the land ceded and the amount to be paid, which is then paid to the landholder within a couple of weeks.<sup>69</sup> We were told that land acquisitions have been done in several phases and the company apparently holds 71 dockets of negotiated transfers of which the first 57 were negotiated by staff who have now left the company.<sup>70</sup> To date, according to company staff,

<sup>64</sup> Interviews, Kenabak Hulu, 16<sup>th</sup> July 2013.

<sup>65</sup> Interview, Mensusai, 25<sup>th</sup> September 2013.

<sup>66</sup> GAR response to draft report, 2<sup>nd</sup> January 2014.

<sup>67</sup> Interview with Pak Paulus Asun, Semitau, 10<sup>th</sup> July 2013.

<sup>68</sup> GAR notes in its comments on the draft report (2<sup>nd</sup> January 2014) that during field verification of land surrenders 'the company seeks verification with owners of the neighbouring land, community leaders and village heads. The key local stakeholders are involved in the ground process of ascertaining the land boundary for land measurement using GPS.'

<sup>69</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>70</sup> Interview with PT KPC staff, 26<sup>th</sup> September 2013.



some 5,000 hectares of land have been surrendered of which 2,800 hectares have been planted.<sup>71</sup>

*Terms of agreement:*

The interviews revealed important differences of understanding about the basis for the land negotiations. It is conceded by all concerned that the majority of discussions with the local community members for them to surrender their lands have been couched in terms of the concept of '*simpak beliung*', a term of uncertain provenance, literally meaning 'axe chippings'.

The community members we interviewed are clear that the term was introduced, while senior company officials in Jakarta claim the term is local. While it is true that the word *beliung* is a local term for a native axe made by hafting an axe-head onto a locally fashioned handle, the phrase does not appear to have had local currency before the company arrived. As one elder explained:

*Simpak beliung* means to compensate for your labour in opening up the land. This word came up in the socialisation by the plantation people. They introduced the term in the first socialisation. Maybe it has been used before in other places but not here. Community people were very sure they only wanted the company to borrow the land and not buy it as they knew if the company bought the land it would not come back to them.<sup>72</sup>

One Malay interviewee noted that the amounts paid for *simpak beliung* were token sums, as low as US\$30 per hectare,<sup>73</sup> reinforcing the view that the payments were similar to *uang adat*, customary payments commonly paid in Dayak areas by one community member to lease land from another villager.<sup>74</sup> Claiming that the term was introduced by the *camat*, he noted:

Traditionally land cannot be sold and these payments were considered a token of thanks. The company is not buying land from the people, they only get a concession to plant oil palm, so they give appreciation money to the people who previously looked after the land.<sup>75</sup>

In Menapar we were informed in response to questions:

Yes, we did all sign a 'land release letter'. Our understanding is that all the land will come back after 30 years: in other words then the community can choose how the land will be managed... No, we don't have a letter saying this... One problem is that we only have an oral promise of this, so we can't be sure the land will come back to us: we are uncertain about it... If you ask are we certain, we are certain. If you ask are we uncertain, we are uncertain, as we are not sure. But I think it is impossible for the company to break this promise.<sup>76</sup>

But another village member in the same meeting was not so sure:

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<sup>71</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013. In the interview the planted area was given as 3,000 hectare but in its comment on the draft report (2<sup>nd</sup> January 2014) the company has clarified that the planted area is 2,800 hectares.

<sup>72</sup> Interview, Mantan, 27<sup>th</sup> September 2013.

<sup>73</sup> Interview, Suhaid, 11<sup>th</sup> July 2013.

<sup>74</sup> Cf Colchester et al 2006.

<sup>75</sup> Interview, Suhaid, 11<sup>th</sup> July 2013.

<sup>76</sup> Interviews, Menapar, 12<sup>th</sup> July 2013.

I think the company is more clever than us.

Other interviewees, informed us that prices offered as *simpak beliung* were initially set at US\$20 per hectare. This sum was later raised to as much as US\$50 per hectare. The head of the smallholder cooperative in Semitau asserted that compensation has been of about US\$75 per hectare.<sup>77</sup> In Menapar, the Dayak Mayan were likewise offered *simpak beliung*. At first they were offered IDR 200,000 (US\$20) per hectare but later sales were for about IDR 500,000 (US\$50) per hectare.

We surrendered our lands gradually: it took a few years for the lands to be released. As the company needed more land, so they were prepared to pay more to encourage us to surrender our lands. Some of us did and some didn't. I didn't as I wanted to grow rubber. I did not want oil palm to come in. I preferred to keep rubber which we had already planted. We were offered [even] higher prices later but did not accept.<sup>78</sup>

From the company point of view, *simpak beliung* is understood as meaning the same as compensation (*ganti rugi*) but that is not the view of the people who have surrendered their lands.

As one villager explained:

We don't want *ganti rugi*, we don't want *simpak beliung*, we just want our land. The company treats *simpak beliung* as the same as *ganti rugi*. But *simpak beliung* is not selling the land. The money for *simpak beliung* is not the price of the land. It is like a payment for the labour of opening the land. We are not selling our land. Anyway we have not accepted it. From the company's point of view, *simpak beliung* is a surrender of land but from our point of view it is not, so to avoid the problem we cannot agree to *simpak beliung*.<sup>79</sup>

Now that the communities have realised that prices are negotiable and that the company considers land cessions to be permanent, they have begun to ask for larger amounts in compensation. As one villager noted:

They keep on asking for more [land] but it is more difficult now. I as an individual now negotiate for a higher price. Community members are now asking 1 or 2 million per hectare (US\$ 100 - 200) and there is deadlock. They [the company] cannot pay the amount that the community wants.<sup>80</sup>

Interviewees were consistent in their explanations of the land transfer process that the lands they were ceding were only being given up for a term of 30 years, after which, if they did not appreciate the benefits the land could be returned to them. As we were told in Mantan in July:

After 30 years, on the expiry of the HGU, the land will come back to the community.<sup>81</sup>

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<sup>77</sup> Interview, Pak Paulus Asun, 11<sup>th</sup> July 2013.

<sup>78</sup> Interviews, Menapar 12<sup>th</sup> July 2013.

<sup>79</sup> Interviews, Kerangas, 26<sup>th</sup> September 2013.

<sup>80</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>81</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

The trouble is, they agreed, this is 'not in black and white' but was only in the form of a verbal agreement. When we re-interviewed the village head of Mantan about this in September he was equally clear.

Our understanding is that it is as if we are renting our land – it is like a contractual agreement. The agreement is that if we don't like the arrangement we can pull out after 25 years...<sup>82</sup> Yes, this is for both the *inti* and the *plasma*. This is what all the community members agreed. If the plantation is profitable for us we will continue but if it provides no benefits we will say it stops here (*cukup sampai disini*). All this was negotiated with the partnership person Pak Karo Karo. We negotiated the partnership scheme and the land transfer at the same time.<sup>83</sup>

Although the community members have surrendered their rights to some 5,000 hectares of their lands as part of complex commercial transactions involving compensation for land transfers and stakes in a shared smallholder programme, **not one of the interviewees had a copy of the agreements that they had signed:**

We don't have [copies of the] agreements for the lands surrendered. The records are held in the PT KPC office in the plantation.<sup>84</sup>

The headman in Mantan informed us that the one document records both the lands transferred and the benefit sharing through the *kemitraan* scheme. Unfortunately we were not able to view any of these land sales and smallholder agreements as no copies at all are held by any of those who have relinquished lands. Company staff explained that they did not provide copies of the agreements to the community members 'as that will just create jealousy', as people will see they got different rates of compensation for the lands they have ceded.<sup>85</sup>

A further worrying aspect of the land acquisition process carried out in PT KPC is that the company has a quite different understanding of the land surrenders from the community members interviewed. First, as noted, they consider *simpak beliung* ('axe chippings') to be the full equivalent of *ganti rugi* (compensation) and that the agreements reached are full land surrenders. Secondly, the PT KPC field staff are absolutely clear that while the terms of the *kemitraan* scheme are for a single rotation of 30 years, after which cooperative members can choose whether or not to renew their agreements at replanting,<sup>86</sup> lands ceded for the core estate are subject to the terms of the Plantation Act which allows the company to renew their holdings after 35 years for two further terms of 25 years and a final fourth term of 35 years – a total of 120 years.<sup>87</sup>

#### *Collective rights to land:*

Moreover, we got distinctive replies from different interviewees about whether the company had acquired any lands that are held collectively. One interviewee asserted that the company did acquire collective lands from communities and that payments were made for such

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<sup>82</sup> He mentions 25 years probably because five years have already passed since the land was surrendered.

<sup>83</sup> Interviews, Mantan, 27<sup>th</sup> September 2013.

<sup>84</sup> Interviews, Mantan, 27<sup>th</sup> September 2013.

<sup>85</sup> Interview with PT KPC staff, 26<sup>th</sup> September 2013.

<sup>86</sup> It is unclear how a promise that lands should revert to the community could be legally secured in Kapuas Hulu. With the exception of West Sumatra where there has been a provincial decree to allow lands to revert to *Nagari* and *Kaum*, under the Basic Agrarian Law HGU lands revert to the State not the community, on expiry of a lease.

<sup>87</sup> Interview with PT KPC staff, 26<sup>th</sup> September 2013.

surrenders to the head of the hamlet on behalf of the communities.<sup>88</sup> In the villages however, we could find no one who admitted to receiving payments for surrenders of collective lands. For their part, company staff claimed that:

In PT KPC all land is private – when they surrender lands it is all individual lands but although in Suhaid in a previous time there was communal land, the people decided to individualise the land before they released it to us.<sup>89</sup>

Notwithstanding, despite the way the company has ignored customary land ownership systems and has acquired lands only from individuals on a one-to-one basis, some of the communities in the concession have been effective at collectively blocking all lands sales within their village areas. The community of Kenabak Hulu recounted their reaction to the proposal to cede lands for oil palm in the following terms.

Here the community is not keen to grow oil palm. We think all our territory is already planted with fruits, durians, *tengkawang* and so on, while the oil palm will need a huge area. The second reason is that the only water in our area is from the Kenabak (river). If we give up our lands where will we bathe and get our daily needs? And we think if we are going to grow [in numbers] and lands are surrendered to the company, then what about our grandchildren? Where are they going to get land?' The company says we will have clean water facilities but we don't believe them.

Secondly, if we joined with the company then a lot of rules will be imposed on us. As for the promises of jobs, they really only want people who have been to senior high school. They will never fulfil their promises.

The senior people [of the village] are under a lot of pressure from the company. Our solution is just to keep on defending it. First by means of our own *adat*. If they really continue to force us we may have to react more forcefully. If they force us, we will take strong measures. We may have to take criminal action if they keep on forcing us and not respecting our rules and our customary norms. They are in breach of them and we will be forced to act.

The *camat* has already threatened us and has said it is useless [to resist]. 'You are the head of the hamlet. The company wants to bring development and make the village wealthy. You are unable to help your village [by yourself]'. The *camat* came with the company and said they will provide important development. 'If you are expecting the local government to help you, this will never happen'. He is a *camat*! Why does he have to say something like this? I said: 'Even if you are a *camat* and I am [just] a hamlet head, I am responsible and listen to the people. I am taking my role more seriously than you. We who live in this village, we who live and die here with the people, we know what the people want.

It seems hopeless. We talk to the *camat* but he is on the side of the company. If we talk to the police they also take the company's side. We feel very alone in our struggle.... If we are no longer able to defend our areas and these practices still continue where will we raise our concerns?<sup>90</sup>

According to the villagers in Kenabak Hulu, the company has come 'at least 50 times' trying to persuade the people to surrender their lands. The community interviewees

<sup>88</sup> Interview with Paulus Asun, Semitau, 10<sup>th</sup> July 2013.

<sup>89</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013

<sup>90</sup> Interviews, Kenabak Hulu, 16<sup>th</sup> July 2013.



noted that the company has tried various tactics including seeking to get the community to take a vote and then divide up the land proportionally between those who voted for and against. This sustained pressure on the community to surrender its lands has led to anger being expressed towards company personnel in the form of abuse from village women and even stone throwing by youngsters. One village spokesperson also alleges that company personnel offered him personal favours if he persuaded the other villagers to relinquish land but the leader says he rejected the offer and responded saying 'you can do it for me but then what about the others? What will they think?'

In Mensusai, we were informed that the community considered their options carefully.

We are not interested in working in oil palm, as it only pays IDR 50,000/day (US\$5) which is not enough. Even those people [in other villages] who have accepted oil palm have to have alternative income generating activities to make a living. They tap rubber and go to their gardens and farms as the oil palm is not enough.

I think rubber is enough for us. We can send our children to school with money from the rubber. Many of those successful at school have become doctors, policemen and a teacher. There are many who have graduated from here and these educated people have informed us about the negative impacts of oil palm, that oil palm is like a form of colonisation of the people who accept the oil palm. It is like once again living under colonial rule. Those educated people urged us not to accept.

Initially, there was some enthusiasm to accept oil palm but when we heard the bad stories from Sanggau and Silat and saw that areas were being sold on by one company to another – the Salim group – without any consultation, we did not like that. So this helped us make up our minds that we do not want oil palm. Also our *adat* leaders persuaded the people not to surrender their independence. If we are controlled by the company we will see no benefit. The deal we were offered is the *kemitraan* system which remains fully under the company's control. The key issue is to what extent the farmers own and control the land and the palms. The problem is not the plantation of oil palm but who controls it.

Our common sense here is that if it is controlled by the company then we can't know what is fair, as everything is controlled by the company. If we don't have control of what is fair it will be determined by others. So unless they offer people control of both their lands and the plantations, we will not agree. Take for example the inti-plasma deal, why is this a given? There is no option of getting control of the partnership scheme. That means when you get a share as your income it is all out of your control. Anyway, the 8:2 proportion is unacceptable.<sup>91</sup>

One of the factors that persuaded the community to reject the offer was when they realised that not only were they being asked to surrender their lands and get only 20% back as smallholdings with oil palm planted on them but they would also incur a debt for this. As one interviewee told us:

Then we learned that we would have to pay credit for the land planted with oil palm even after releasing them our land. This was beyond reason for us. So we did not agree with that. The company wanted to find 3,000 hectares [in our village area], but it is not empty land as we have our traditional system for allocating land, which has come down to us from our ancestors to our current generation and then to our children. So, all the land is allocated to the people here. There are some remaining forests but these are reserved for

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<sup>91</sup> Interviews, Mensusai, 12<sup>th</sup> July 2013.

future generations, so there is no land here for oil palm. It is already needed for community uses and needs... Here, we highly respect our customary systems and customary law and that's why we will protect our forest and our areas here until our last breath: whatever it needs to protect and get our territory respected. .... Since the time of the Sultanate [in Selimbau] we have a customary agreement about our boundaries, which we have maintained until now...<sup>92</sup>

The village of Kerangas has likewise been clear that they are reluctant to surrender lands to the company. As we were told:

We don't want Sinar Mas coming here. On the other side of Gunung Dudul there are so many problems there in Mantan... There are huge risks if the company takes our land. People will get very emotional. We will enforce our rights, our customary law, the 'law of the jungle'. People may go and uproot the oil palms.<sup>93</sup>

*Mantan-Kerangas land dispute:*

The team recorded anecdotal accounts of land disputes in a number of locations for example where individual plots had been acquired from one person without the agreements of neighbours with overlapping claims. The company admitted that there had been some anomalies in the first phase of land acquisition but claimed that these had now been resolved.

However, one more serious land dispute remains unresolved, which concerns the company's expansion into the territory of Kerangas village through the purchase of lands from villagers in Mantan. The dispute is complex and remains contested and the numerous interviews we made do not yield a consistent account.

The dispute goes back a long way, however. In 2009, the company acquired lands, from individual villagers in Mantan, which overlap the community lands of Kerangas. The incursion resulted from the omission of community mapping by PT KPC staff, who were thus apparently unaware that the lands they were being sold by villagers in Mantan were actually within the boundaries of Kerangas. While in itself this may only reflect the fact that individual lands in the two villages do overlap, as individuals may have moved and intermarried between the two villages, both being Dayak Mayan, the matter was serious for Kerangas as the village has relatively little land and it had decided it could not afford to surrender lands for oil palm (as noted above).

The incursion thus triggered protests by the villagers in Kerangas and the matter was immediately taken up with the local government. Although land clearance by the company then ceased, sometime later the company proceeded to continue to develop the area and planted oil palms. There were further protests and some seedlings were uprooted.<sup>94</sup>

When we visited in July 2013, the dispute was still unresolved. However, shortly after we had raised questions about the dispute with the company, on the 23<sup>rd</sup> July a meeting was convened by the local government between the villagers, the local government and the company to resolve the dispute. An agreement was signed agreeing a process for resolving the matter. Subsequently, also in July, the community of Kerangas met to discuss the agreement reached and expressed doubts about the accuracy of the surveys of the extent of

<sup>92</sup> Interviews, Mensusai, 25<sup>th</sup> September 2013.

<sup>93</sup> Interviews, Kerangas, 12<sup>th</sup> July 2013.

<sup>94</sup> Compilation from various interviews: Kerangas, 12<sup>th</sup> July 2013 and 26<sup>th</sup> September 2013, Mantan, 16<sup>th</sup> July 2013 and 27<sup>th</sup> September 2013, PT KPC staff 14<sup>th</sup> July 2013.

the disputed lands. Since then, the community of Kerangas has repeatedly asked that a proper survey be done to verify that the disputed area really is 54 hectares.



Pilot land dispute mapping exercise in Kerangas, Sept 2014. Photo: Marcus Colchester

When we visited in September, the dispute was still the subject of considerable anxiety in Kerangas.

We twice asked the company to come over and do a land survey to verify the extent of the cleared area. The person who deals with the land issues is Pak Ijan Iskander who works for Pak Djailani. Whatever the size of the area and the compensation agreed, what we insist is that the company should take no more land in Kerangas. No further encroachment and trespassing!<sup>95</sup>

### 5.5 Smallholder Scheme

In conformity with Indonesian law and as an integral part of the land surrender procedures, PT KPC offered smallholdings to all communities and individuals surrendering lands which would be provided to them on an 80:20 basis. That is, for every 100 hectares of lands surrendered, 80 would be taken by the company for its core estate and 20 would be provided as smallholdings.

The smallholder scheme adopted was to follow the one-roof (*satu atap*) partnership (*kemitraan*) model, whereby the smallholdings would be held by a cooperative but managed directly by, and accounted for separately by, the company which would return profits through the cooperative to all the members. The members are all those who have surrendered lands, their shares in the cooperative being proportional to the amounts of lands they have

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<sup>95</sup> Interviews, Kerangas, 26<sup>th</sup> September 2013.

surrendered. The interests of the scheme members are represented on the Board of the cooperative by eight persons.<sup>96</sup>

A major concern for the communities interviewed is that they had surrendered their lands on this understanding but had not been informed that their shares would be allocated in proportion to the amount of land planted. With so much of the surrendered lands being allocated to HCV and HCS set asides, the actual amount of planting has been massively less than expected, diminishing the extent of the smallholdings accordingly.<sup>97</sup>

As one cooperative leader explained, the cooperative members:

are aware that they have surrendered their lands and know how much but they only get compensated for what gets planted – so not including peatlands, forests and HCV areas. So now they know..... Initially the people thought that all the land they surrendered would be converted but now they see it is not so.<sup>98</sup>

The company is fully aware of the problem. As we were informed by the smallholder manager:

As large areas are set aside for HCV and now HCS, so the 20% proportion is much less than the communities expected. We get a lot of protests about this.... I personally am very worried about this as it creates a potential for sustained conflicts. If we open the land we are in breach of HCV but if not we are in breach of our commitment to meet the communities' aspirations.<sup>99</sup>

The other matter which the community members had not fully comprehended when they signed up for the scheme was the extent to which the smallholding scheme would be encumbered with a debt taken out by the cooperative with the help of the company from Bank Mandiri. This debt, which we were informed amounts to some US\$ 5,200 per hectare, is to be repaid between 2016 and 2026 once production from the smallholdings becomes substantial.<sup>100</sup>

The legal arrangements for the smallholding scheme are yet to be worked out. As noted above, the whole operation is currently being run on a provisional *ijin lokasi*. Although the details are yet to be finalised, the expectation of those interviewed including company staff is that the cooperative is to be provided a separate land title from the core estates.<sup>101</sup> However titles have not yet been provided to cooperative members, as the scheme manager is concerned that people may sell their shares, something which is apparently not permitted under the 30 year contract. We were informed by the head of the cooperative that these lands will come back to the scheme members after 30 years according to the *kemitraan* contract.<sup>102</sup> The cooperative manager confirmed this.<sup>103</sup>

<sup>96</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>97</sup> Interview with Pak Paulus Asun, 10<sup>th</sup> July 2013.

<sup>98</sup> Interview with Pak Paulus Asun, 10<sup>th</sup> July 2013.

<sup>99</sup> Interviews with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>100</sup> Interviews with Pak Paulus Asun, 10<sup>th</sup> July 2013, and Pak Suhaimi, 11<sup>th</sup> July 2013. The date on which the debt will be paid off will depend on the yields from the smallholdings. According to the various interviewees, it could be as early as 2023 but it may take longer.

<sup>101</sup> If the lands are privately owned then less tax is payable. The company is in discussions with the tax office about this point. Interviews with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>102</sup> Interview with Pak Suhaimi, 11<sup>th</sup> July 2013.

<sup>103</sup> Interviews with PT KPC staff, 14<sup>th</sup> July 2013.



Members of the *kemitraan* scheme express a number of other disappointments with the smallholding arrangement. The first is that the smallholdings were developed much later than the core estate meaning that the communities are still waiting for the smallholdings to become productive, while the core estate is already beginning to yield large quantities of fruit. They are also concerned that smallholdings have been located in a hilly area quite remote from the mill. This means that the smallholdings are less profitable than the core estates as they incur greater overheads in terms of land maintenance, harvesting from the terraces and transport. The smallholdings began producing in 2013 with the cooperative being paid IDR 930 (US\$ 0.093c) per kilogram of fresh fruit bunches.<sup>104</sup>

In Mantan, we were told that of the IDR 700 that they get allocated per kilo (US\$ 0.07c), no less than IDR 180/kg is taken as an overhead for transport alone.

So it is unfair, as we released our lands in a fertile area and we get our *plasma* 3-4 kilometres away in a hilly area: 80% is hilly. We have already negotiated for our *plasma* to be near our village but they have said it is already allocated and subject to other rules. But they said during *sosialisasi* that the site of the *plasma* would be near to the community as we chose. I am a coop member and have tried to negotiate but they said it is already decided, that your rights are already allocated.<sup>105</sup>

The community nearest the PT KPC field office, Mantan, is also the one that has surrendered most lands to the company. Our interviews triggered an outburst of ironic comments and complaints from the villagers, who while admitting that their cash incomes and material circumstances have improved in the past years were nevertheless finding their situation hard to bear.

Honestly, the presence of the company does affect our life, we have improved. We now work for the company but will we be workers forever? They said we would see changes in 2 years but it's now the fifth year already. Why is the core estate planted first and not all together? The company said the smallholdings would be at the same time but they did not do that.

While we agreed to the 80:20, it is true, we did not agree to all these deductions for fertilizers, pesticides, land preparation and so on. Now we see it is different [from what we expected]. We pay for land clearing, seedlings, planting, maintenance, fertilizers, pesticides, harvesting and transport.

The problem is that there is no written agreement.

The company is earning so much money it makes you vomit!

You lose your consciousness, you are so famished you are almost dying.

I'll have passed away by the time the land comes back!<sup>106</sup>

The smallholder scheme is very far from here ... but it does not belong to us.<sup>107</sup>

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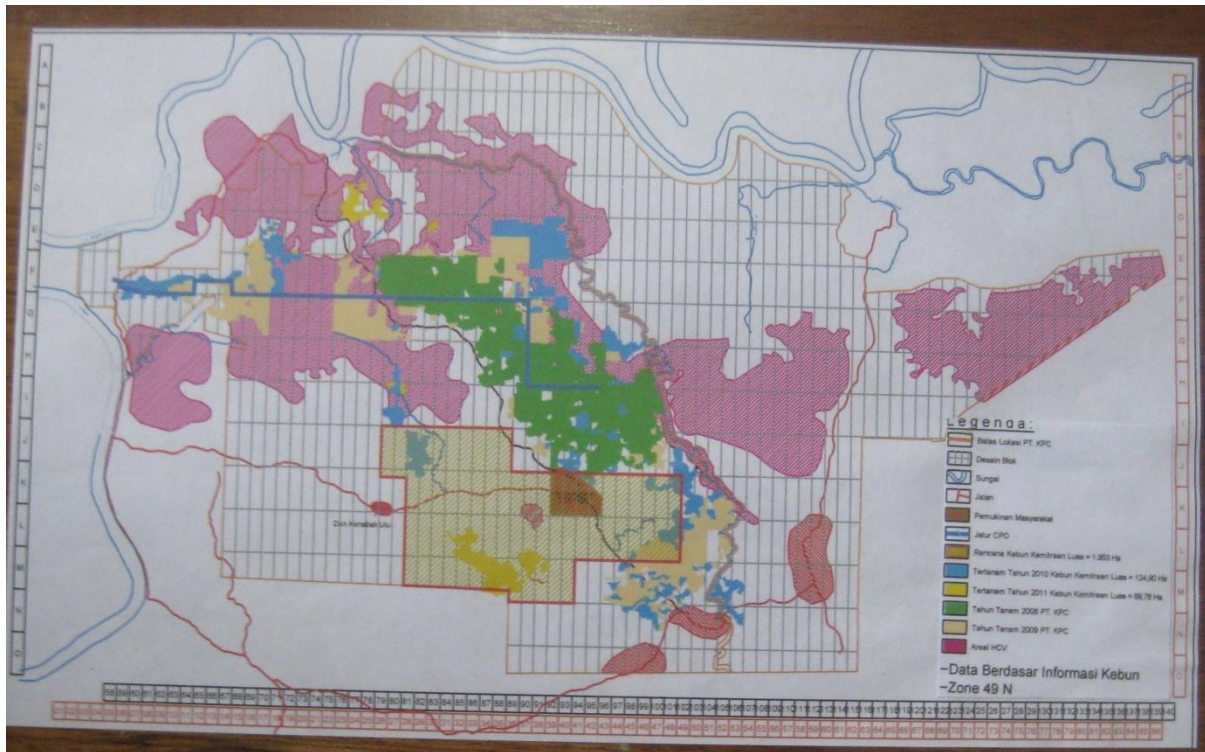
<sup>104</sup> Interview with Pak Suhaimi, 11<sup>th</sup> July 2013.

<sup>105</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>106</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>107</sup> Interviews, Mantan, 27<sup>th</sup> September 2013.

In March 2013, there were further demonstrations by disaffected villagers in both Suhaid and Mantan against the smallholder scheme<sup>108</sup> which led the company to call in the local police force to disperse the protesters.<sup>109</sup>



Map 6: Sequence of planting in PT KPC concession (2012) Source: PT KPC office display/John Nelson

### 5.7 Fisherfolk

As noted the great majority of the Malay people in the area, most of whom live along the Kapuas, make their livelihoods as fisherfolk. Many of them are also involved in the fisheries in the Danau Sentarum complex.<sup>110</sup> Concerned about the wider impact of the spread of oil palm plantations on their riverine economy, a large number of residents of Suhaid have long been openly opposed to the PT KPC concession and other Sinar Mas operations in the area.

Since the 1980s, some Malay residents in Suhaid aware that fish stocks were declining (possibly related to the intensive logging then going on) began to diversify their economic base. They experimented with growing pepper which they marketed by carrying the produce all the way to the markets in Lubok Antu in Sarawak. Later they cleared extensive areas of land for rubber and fruit crops. In the 1990s, they began experimenting with fish farming, focusing on raising the highly prized aquarium fish known locally as *arwana* (*Scleropages formosus*). Although this is a protected species in the wild and initially they had a lot of problems getting permits to raise these fish, they have now established these fisheries as legal

<sup>108</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>109</sup> Interview with Pastor Paskalis, Sejiram, 9<sup>th</sup> July 2013. GAR notes that the protestors 'threw away FFBs and threatened our employees and FFB transporters. The police were involved to enforce law and order. The company has subsequently invited the group together with the informal leader (*Tumenggung*) to discuss and resolve the issues.' (Comments on draft report, 2<sup>nd</sup> January 2014).

<sup>110</sup> Harwell 2000.

ventures.<sup>111</sup> Since then numerous other local people have begun to develop *arwana* fish breeding, first other residents near Suhaid, then others in Semitau and later even in the Dayak areas inland. Indeed, *arwana*-breeding has become something of a craze throughout the district, as the fish are prestige items and favoured as good luck charms in many countries in South East Asia and China.

In September 2007, there were demonstrations in Suhaid, a mainly Malay village, against PT KPC's proposed operations. The residents in Suhaid raised their concerns again in 2008 and they then began to feel the impact of the oil palm operations directly in 2009 and 2010. Their concerns are not only directed at PT KPC but at the wider palm oil development programme in the region, much of which is also being developed by the Sinar Mas group (see Map 1). They are also concerned about the location of the Sinar Mas palm oil mill which, they think, is likely to affect the whole ecosystem that their fishing-based livelihoods depend on. As one local resident noted:

The water coming out of the plantations looks like milk. They are planting right up to the banks of the rivers. They are even planting all around the lake, which is protection forest.<sup>112</sup>

The fishermen also dispute with the company the impacts of the river pollution on the ecology of the lakes. Whereas the company claims that any pollution in the Kapuas does not affect the lakes, as they flow into the Kapuas, the fishermen say that actually the ecosystems are intimately related. Not only do the fish migrate between the river and the lakes but, often, towards the end of the dry season, when the lake waters are low, the Kapuas itself tends to rise more quickly and waters then flow from the Kapuas into the lakes, until these also refill and the flow reverses out again.

The visible water pollution due to higher levels of suspended sediments in waters coming from the PT KPC concession area itself is also affecting quality of water in the Suhaid creek, which is where many local residents raise caged *toman* fish for sale as fresh fish on the coast.<sup>113</sup>

According to the fish-breeders we interviewed, there was no prior consultation with them prior to the concession being handed out.

They just came in and said this is now a Sinar Mas area... I asked the government officials if we could stop the company but they said 'no' and 'anyway you are the only one opposing them'.<sup>114</sup>

Specifically with respect to the breeding of *arwana*, the local fish-breeders living along the north west corner of the PT KPC concession have complained about the pollution of the waters of the Salat and Marsedan creeks, which they rely on to provide clear waters to their fish ponds. These impacts, it is alleged, were not addressed by the AMDAL. The fish-

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<sup>111</sup> Interview with Haji Salam, 11<sup>th</sup> July 2013.

<sup>112</sup> Interview with Haji Salam, 11<sup>th</sup> July 2013.

<sup>113</sup> Interviews, Suhaid, 11<sup>th</sup> July 2013. For its part GAR disputes that there is water pollution noting that it conducts sampling surveys every six months and the samples are lab tested. 'Results have confirmed that the water quality in our concession is within the acceptable range set by the authorities.' (GAR response 2<sup>nd</sup> January 2014).

<sup>114</sup> Interview with Haji Salam, 11<sup>th</sup> July 2013.

breeders have indeed been complaining about these impacts for four to five years. There are three main concerns:

- The local streams have become dirty and now carry a much higher load of sediment, making the water ill-suited to be used for raising fish.
- Local streams have also begun to dry out seasonally, meaning that fresh water is hard to obtain for the fish-ponds in the dry season.
- Waters are also being polluted with fertilizers and pesticides which is weakening the fingerlings and making them more susceptible to diseases.<sup>115</sup>



Waters flowing out of the PT KPC concession in Suhaid, which are used for raising caged fish (*toman*), are visibly contaminated. Photo: Marcus Colchester

To try to avoid these problems breeders have resorted to laying pipelines and pumps to bring in waters from other streams or even the Kapuas itself. This affects the profitability of their enterprises. The fish breeders note that although the company temporarily responded to requests to use canals to divert waters from the plantations so they do not pollute the streams the fish breeders rely on, it is alleged that the company has not maintained these canals and polluted waters again flow back into the streams.<sup>116</sup>

## 6. High Carbon Stocks, Community Rights and Livelihoods

As noted in section 3 of this report, GAR only adopted a Forest Conservation Policy with its procedure for setting aside areas of 'High Carbon Stocks' in 2010-2011 and only began to trial this new policy in PT KPC in 2012. It has thus had to graft the policy onto an existing

<sup>115</sup> Interview with Pak Herman, 11<sup>th</sup> July 2013.

<sup>116</sup> Interviews with Pak Herman, 11<sup>th</sup> July 2013 and 26<sup>th</sup> September 2013.



reality, where, as noted, there are already serious problems in terms of land acquisition, smallholder development and HCV set asides, which themselves have been imposed late.

Our field surveys show that only a few of the villagers whom we interviewed were aware of the proposed HCS zoning and the purpose of the proposed set aside of these areas for carbon sequestration. For its part, GAR notes that it began explaining the HCS concept in September 2012 in meetings with local government, and then with some community leaders in Semitau.<sup>117</sup> However, none of those we interviewed in the communities during 2013 had seen GAR's maps of proposed HCS set asides, although these are available on the internet (See Map 4). We found that both among those communities that have accepted oil palm and among those who have opposed it, the HCS policy is seen as harming the peoples' interests.

For example, the head of the cooperative told us:

The HCS scheme is not good for the people. The HCS scheme can cause further conflicts. Some [who have surrendered lands] have been informed what HCS is but those who have not do not see why their land should be taken away. Even if they try to explain HCS to the *kontra* people,<sup>118</sup> I think it will create conflict in the future or at least it will be difficult to avoid... We have tried to explain it to the company. We have said, 'Hold on! Don't impose this until the community understands it'. They really have to do this from the people's perspective. Not all people even understand HCV yet. In Kapuas Hulu already 50% of the district is in conservation areas, so please don't disturb us with more. Go to the National Park and don't disturb us with HCV and HCS.<sup>119</sup>

In Menapar, when we asked community members what they thought of the High Carbon Stocks scheme, we were politely asked to explain what 'carbon' is exactly. After a lengthy discussion and some community reflections on the implications while reviewing the HCS zoning maps, an older woman from the back of the meeting spoke up loudly:

It's already enough! We don't want more land taken for oil palm let alone for this 'carbon'!<sup>120</sup>

The communities had first been alerted to this new policy requirement in mid 2009, when Greenpeace activists had set up a demonstration in front of one of the forested areas, where they had raised huge banners calling on Sinar Mas to halt forest clearance and accusing the company of being a 'climate criminal'.<sup>121</sup> Many local people were alarmed by this event and unhappy that there had been no prior consultation with them about the demonstration. Greenpeace activists were taken to the local government centre in Suhaid and heavily fined for violations of customary law.<sup>122</sup>

Reflecting on this event one elder told us:

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<sup>117</sup> GAR comments on draft report 2<sup>nd</sup> January 2014.

<sup>118</sup> Locally those who favour oil palm projects are referred to as '*pro*' and those opposed as '*kontra*'.

<sup>119</sup> Interview with Pak Suhaimi, 11<sup>th</sup> July 2013.

<sup>120</sup> Interviews, Menapar, 12<sup>th</sup> July 2013.

<sup>121</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>122</sup> Interviews, Mantan and Mensusai,

We don't really blame Greenpeace but they did come without permission and without explanation.... but they were concerned about all our future generations... so we agree with them but it is the way they did it. We were shocked by it....<sup>123</sup>

To their credit, local PT KPC staff have thus been quite cautious in applying the HCS approach. As one staff person informed us:

The initial HCS survey was done in April 2010 and we agreed to pilot the FCP in this area at the end of 2012. The pilot programme management plan got going in 2013 and we are now being supervised by TFT and GP, especially on how to manage NTFP with the communities. A study is needed first but so far we have just put up signboards and again only in compensated areas. We have also tried planting *tengkawang* seedlings for local livelihoods, but the 800 seedlings are not doing very well as they have been planted on peat which is not very suitable.<sup>124</sup>



'Forbidden!! Opening burning land, collecting plants'

Photo: Marcus Colchester

Not all locals are happy about even this cautious piloting of the approach. As one resident in Mantan explained:

The rules about HCV and peat they also make us suffer. Much of that land has been surrendered and already compensated for but now Greenpeace says it cannot be planted or opened up because of the carbon. For example even in the peat areas which had been planted, the oil palms have now been uprooted and replanted with *tengkawang*.<sup>125</sup>

Another explained:

[We are concerned about] the areas of HCS and protection forest (*hutan lindung*) which cannot now be opened up by us because of the world. We did discuss this with the company: it is not allowed because of Greenpeace. So, what is the reason behind the

<sup>123</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>124</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>125</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

prohibition? ... If we can't use the land either for rubber or for farming then it is better it is used for oil palm.<sup>126</sup>

Explained a community elder:

The company has said that if we don't leave aside these forests and peat we will lose our market. They don't want to be named among the companies that destroy forests. These issues were explained to us by Pak Djailani and others. We could understand these explanations. We understand that the world market will not buy our fruits or that if they are bought they will get a lower price.<sup>127</sup>

One community which has been targeted for applying the HCS approach is Kenabak Hulu, but the community has not been receptive to the idea of ceding lands to company control just so they can be conserved. Asked if they understood the HCS approach, the village headman said:

They have mentioned HCS but they did not [really] explain. I asked: 'what is HCS'? They came here and talked about it and said they wanted to help us guard our forest. They also promised smallholdings to us if we would surrender our forests. We replied that these areas will be preserved by us but we don't want to release our lands, we want to protect the forest ourselves. It is strange from our point of view. We have conserved these areas ourselves and now they want to take them.... The company said that we could still take timber and other woods from the areas but we don't believe them... This has happened at least two times. First time it was four people and we had a meeting in the hall. They said they were Greenpeace... and they came with Bambang and Pak Wilson. Pak Wilson is very often here. He is the one who keeps trying to persuade us to accept oil palm.<sup>128</sup>



Outsiders perceive forest farms as deforestation Photo: Marcus Colchester

<sup>126</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>127</sup> Interviews, Mantan, 16<sup>th</sup> July 2013.

<sup>128</sup> Interviews, Kenabak Hulu, 16<sup>th</sup> July 2013.



As widely documented, Dayak systems of land use are mobile and make use of forest areas for relatively short periods after which the lands are rested and forests are allowed to regrow and regenerate soil fertility before the forests are cleared again and reused. This cycle of farming and forest fallows, while long criticised by colonial and lowland paddy farmers alike as a wasteful form of land use,<sup>129</sup> is relatively stable over long periods.<sup>130</sup> Moreover, as explained in section 5.3, lands that have been cleared and that are in fallow remain the property of the farmer or family that first cleared the land so long as they continue to press their claims. Unclaimed areas and tall forests within the community territory are considered to be collectively owned by the village or hamlet as a whole.

The imposition of categories of land based on their current carbon content, thus breaks up a dynamic system of land use and regrowth.



Patches of fallowed land show the phases of forest regrowth Photo: Marcus Colchester

As far as we could determine there have not yet been any discussions between the company and the community to explore alternative options for securing both carbon and community livelihoods. Such dialogues might start with an expectation that the continuance of shifting cultivation and forest fallows, and many other uses of forests within forest and peat swamps are carbon neutral. All land use planning should be undertaken with the involvement and consent of the local communities.

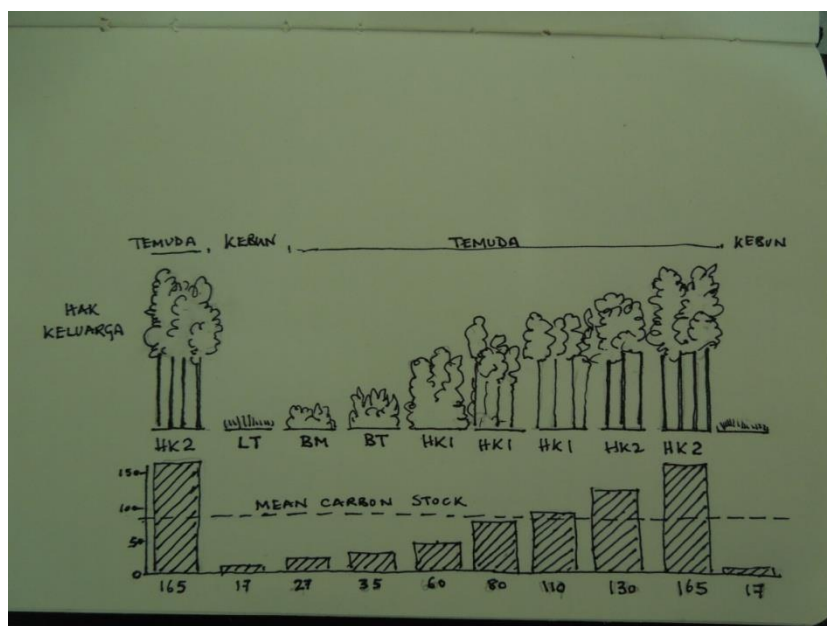
In discussions with the PT KPC staff in the field and with GAR in Jakarta, FPP and TUK-I have proposed that lands that are subject to rights and part of rotational farming should be treated as areas fundamental to meeting basic needs (ie HCV 5) and should be classed separately from HCS set-asides.

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<sup>129</sup> Dove1985b.

<sup>130</sup> See for examples Dove 1985a and Cramb 2007.





Every area of farmland-forest rotation has a known owner: the entire area should be assessed for its mean carbon stock not classed into separate bits.

In Menapar, where we discussed the HCS zoning approach again with the Village Head and other community members, we found community members were clear that areas that had been designated as tall forest and so not for clearance as they are HCS to be contrary to their own understanding of how their lands and forests are managed.

We feel that old scrub is really our land and belongs to our ancestors: it is not HCS. All these areas categorised as HCS1, HCS2, HCS3, why are they categorised as this? They are just old regrowth and are also for our future. ... (Looking at map) That land they put on the map as HCS1, it is our land reserved by us for future generations. There is no HCS here. The company cannot prevent us from cultivating these areas because this is our land. These reserved areas – every house has rights there. The company has checked this area and we have informed them that all the land here belongs to the community. The territory has boundaries which are known by the *temonnggong* and the head of *adat* but the company does not know these boundaries... I think all the lands here belong to the people and we will reject the HCS that has been determined by the company. For us it is for future use and reserved for the future of our community.<sup>131</sup>

Local staff of the company are well aware of these differences of perspective.

There is a challenge as the areas, which for us are HK 2 and HK 3 and to be protected, for the communities are reserve farm lands that can be redeveloped when needed. The positive thing is that they own and control these areas subject to custom and this requires permission of the *adat* leader, so new household seeking access to land have to get approval from the community.<sup>132</sup>

Reflecting on these realities, another local PT KPC staff told us:

We field staff and the management in Jakarta have a high commitment to HCV and HCS and respect for rights. So we see that here in PT KPC it is not economic as so much is set

<sup>131</sup> Interviews, Menapar, 25<sup>th</sup> September 2013.

<sup>132</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

aside for HCV and HCS. If this was a single company this operation would be closed, but as it is the GAR group, it is like a display box... As field staff we are proud to protect HCV and HCS but in the future we need to think [more] about the proportion of areas for smallholdings. We think that sustainable palm oil will be able to support HCV and HCS only if the local economy is viable, but if not HCV and HCS will not be protected.<sup>133</sup>

## 7. Conclusions

If people chop down a few trees just to build a house and bring the timber to Selimbau the police are waiting. But the oil palm companies can cut down the jungle... It shows we have no rights here... The Government is cruel to the people, they don't care about the people... There are big, big problems ahead. When all this land has been taken by oil palm, the people will be landless and they will look north to find new lands. There are going to be conflicts over land along those boundaries [referring to the Iban and Kantu' peoples' lands to the north].<sup>134</sup>

Don't blame the communities if, in the future, they encroach on the national park because their subsistence has been taken from them. They need timber and farmland to make their houses and plant their crops and there is not timber or land left nearby their villages.<sup>135</sup>

This field study was initially undertaken with the aim of developing improved tools to ensure that land zoning and management methods being adopted by companies to secure lands for conservation and emissions reductions accommodate the rights and livelihoods of forest peoples. The aim had been to seek improved means of reconciling HCV and HCS tools with community priorities by ensuring adequate lands are identified and set aside for their own livelihoods and that all land use plans respect community rights, including their right to give or withhold their free, prior and informed consent to measures that may affect their rights.

In the event, the field surveys carried out by FPP and TUK-I in the PT KPC concession area in July and September 2013 have revealed some more serious underlying problems. Delays with the HCV Assessment and the initial lack of attention to livelihoods and cultural identities through omission of surveys to identify HCV5 & 6, have meant that communities were asked to surrender lands without adequate information about the implications for their livelihoods.

These problems were compounded by the fact that the company failed to carry out studies of the communities' land tenure systems and did not encourage the communities to select their own representative institutions and negotiate with the company about land cessions. Moreover the company ignored both its own and the RSPO policies which require participatory mapping of customary lands. The lack of mapping has been the principal cause of the 4 year-long land conflict with Kerangas, where the company has cleared and planted community lands in the teeth of community objections.

By-passing community-level negotiations, the company then sought to acquire lands from individuals and provide compensation in the form of smallholdings without adequate explanations. Whether by intent or by omission, the community members have surrendered their lands to the company under the impression (or misconception), first, that they were only

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<sup>133</sup> Interview with PT KPC staff, 14<sup>th</sup> July 2013.

<sup>134</sup> Interview with Haji Salam, 11<sup>th</sup> July 2013.

<sup>135</sup> Interviews, Suhaid, 11<sup>th</sup> July 2013.

renting or leasing their lands to the company, which lands would eventually come back to them, and, secondly, that after 30 years they would have the choice either of getting their lands back or of renewing the arrangement.

Communities that have refused to surrender lands have not been left alone but have been repeatedly revisited to press them to accept oil palm, with the company making efforts to secure lands from individuals even when community leaders disagree.

Now that the HCV and HCS land set aside procedures are being imposed, belatedly in the case of HCVs, the communities that have already surrendered lands are becoming aware of further problems. The company now says it is only going to compensate them with smallholdings that are 20% of the lands planted and not 20% of the lands surrendered. This in itself is reducing the area of smallholdings from about 1000 hectares to only 600 hectares.

It also seems that those who surrendered lands were not fully informed of the terms on which they get their smallholdings. They did not realise that they would come encumbered with a substantial debt which they have to repay to cover the costs of land development. In addition they now find that they have to pay quite onerous overheads to cover continuing land maintenance, crop protection, harvesting, transport and the administrative fees of the cooperative and the company. The fact that the smallholdings were developed late and are located in sub-optimal areas generates a further sense of being cheated.

All these problems are compounded by the fact that community members have received almost no documentation from the company about its plans, policies and assessments. No social and environmental impact assessments have been shared. The HCV assessment is still not shared and even the agreements with the communities, with those who surrendered lands and with the smallholders, have never been shared back with the community members.

There have been protests and demonstrations against these perceived injustices since 2007 when the concession was first announced right up to 2013. The company has paid the police to disperse protesters.

In short, the findings point to major failures of compliance by GAR/SMART/KPC with the RSPO Principles and Criteria.

On the other hand, there are some encouraging aspects, which equally deserve mention. The company is obviously open to making improvements and has shown goodwill at international, national and local levels. Some of the community members interviewed do recognise the benefits of oil palm which has provided them with cash incomes, jobs (albeit menial ones), roads, and access to some services. The community members are divided in their views about the relative costs and benefits of oil palm. Moreover, where the communities have strongly resisted the take-over of their lands, the company has not taken lands by force. The company has stopped clearing forests and peatlands and HCV areas and it is now seeking to identify and avoid clearance of HCS.

It is our view that this situation provides a very insecure even dangerous basis on which to pilot a further set-aside of community land for HCS.

In line with the RSPO's P&C and GAR's own social and environmental policy, remedial actions need to be taken **urgently**.

What we observe since July has thus been disappointing. Even though we made the serious situation plain to the company in July through submitting a written report, explaining our findings in a meeting with the company in its head office in Jakarta on 23<sup>rd</sup> July and then a further meeting in Bangkok on 6<sup>th</sup> August (see Annexes 2-3), and despite verbal assurances from senior GAR staff that action would be taken, the company has still, at the time of writing (November 2013),<sup>136</sup> not yet begun to address the concerns raised **in the field**.

It is our view, as the opening quotes to this section also emphasise, that if effective actions are not taken to resolve these problems, they are likely to escalate and would be material for formal complaints and other actions to secure remedy.

Another finding from our studies raises concern. Our team were able to identify these serious problems in just a short visit of 10 days in July 2013. In our second visit in September we were again able to verify these problems in an even shorter period of 5 days. Yet, it seems, other NGOs, academics and GAR staff who have repeatedly visited the communities in the concession have not made similar findings. We conclude that the communities are normally being interviewed in circumstances which have made them reluctant to express their real concerns.<sup>137</sup>

This may imply that further independent verification and external mediation may be needed to ensure problem-solving and open communications.

## 8. Recommendations

The intent of this review and report is to help secure community rights and find remedies for any violations. Both FPP and TUK-I continue to engage with GAR and their consultants, TFT, which has been contracted by GAR to address these challenges.

### 8.1 Management options:

The company presently holds an *ijin lokasi*. This allows room for the company and communities to negotiate varied tenures, including with local government. We noted the following recommendations / demands from community members relevant to this aspect

#### *Fisherfolk and fish breeders:*

- Protect all the forests in the watersheds and cease land clearance there.
- Allocate these areas to community control and management.

#### *Dayak villages:*

- Leave enough land for future generations.
- Excise from plantation plans the lands of those villages rejecting oil palm.

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<sup>136</sup> This report was mainly written in November and does not seek to recount all actions taken since that time but does include some corrections suggested by GAR in its response of 2<sup>nd</sup> January.

<sup>137</sup> In October 2013, a joint team from GAR, TFT, LINKS and Greenpeace, accompanied by officials from the local government, did indeed visit four community locations to discuss some of the issues raised by FPP and TUK-I but owing to the formal nature of the meetings was not able to engage deeply with the communities in a way that allowed them to voice their concerns (TFT/LINKS 2013).



*Smallholders:*

- Freeze the HCV/HCS land use set asides.
- Make land allocations based on community needs and views.

*8.2 Interim Recommendations*

The following preliminary recommendations flow from the above findings. All these options should be openly discussed with the communities and only implemented subject to their free, prior and informed consent.

**Principles**

- At the least, the aim should be to resolve these issues in full compliance with the RSPO P&C.
- No HCS areas should be set aside without the communities rights to their lands and to Free, Prior and Informed Consent being respected in line with the RSPO standard and guidance.
- Current disputes and complaints must be resolved through mutually agreed dispute resolution processes.
- Where the company disagrees materially with the basis for complaints then these situations should be independently investigated by mutually acceptable third parties.

**Recommended Actions**

- Participatory mapping should be carried out of all the villages' lands (boundaries) within and neighbouring/ overlapping the concession. This should start with those communities which have already accepted oil palm.
- The maps should identify the boundaries of village territories, all the common lands and family/private land holdings within them.
- Studies should be carried out to identify community systems of land tenure.
- Copies of the AMDAL, HCV Assessment and company SOPs for FPIC, land acquisition and dispute resolution should be made available to all the communities.
- Extensive explanations and discussions should be made with the communities to ensure full comprehension of the implications for their lands and livelihoods, including implications for water quantity and quality.
- Every community member who has surrendered lands should be provided with copies of all the relevant documents setting out the terms under which they agreed to be part of the smallholder scheme and surrendered of lands.

- If there are disputes about these terms and the terms depart from what the communities think was verbally agreed when they surrendered their lands and agreed to be part of the smallholder scheme, then these agreements will need to be renegotiated.
- In particular, the terms of the smallholder scheme need to be made fully transparent, reviewed and may need to be renegotiated.
- Where communities have rejected oil palm then the full extent of village lands should be mapped and boundaries agreed with neighbouring communities (both *desa* and *dusun*) and then excised from the concession (Mensusai, Kerangas and Kenabak Hulu).
- Staff should be immediately instructed to cease pressuring communities to surrender lands in both *pro* and *kontra* villages.
- Cease all further land acquisition until current land disputes are resolved.
- Mutually agreed dispute resolution protocols must be agreed in line with the RSPO P&C.
- Disputes should be resolved, with the involvement of third parties acceptable to both the communities and the company, where company personnel dispute the validity of community complaints.
- Only once all land disputes have been resolved, should any further community consultations about HCV and HCS zoning and land management be carried out.
- Where communities reject oil palm altogether, HCV and HCS zoning should not be imposed (and all village lands should be excised from, or 'enclaved' within, the concession).
- Where communities have already agreed to oil palm and relinquished some lands, then HCS and HCV zoning should be extensively discussed and participatory processes developed to:
  - clarify what this will mean to villagers in terms of their continued access to lands and resources
  - clarify who will manage such areas (eg areas might be proposed as community managed, co-managed or company managed areas depending on the main purpose of the areas and depending on agreements negotiated with each community based on FPIC)
  - Ensuring full community participation in a collective process of free, prior and informed consent.
- Develop or revise SOPs in line with RSPO P&C requirements to respect customary rights, acquire lands subject to FPIC and resolve disputes.
- Fully inform the local communities of the company's plans and procedures and the RSPO standard.
- Allow communities unimpeded access to advisers and legal counsel of their own choosing.

- (Re-)train and/or replace staff to ensure they know how to apply all these procedures and agree with them.

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## Annex 1:

Date: Wed, 22 May 2013 12:08:37 +0100  
To: peter heng, patrick, sophie, emil kleden  
From: Marcus Colchester <marcus@forestpeoples.org>  
Subject: Kapuas Hulu support work  
Cc: norman

Dear Peter,

Patrick and Sophie will have mentioned to you our plans to help ensure RSPO-compliant engagement of affected communities in the pilot areas in Kapuas Hulu where GAR is rolling out its RSPO ++ procedures on HCS, HCV and FPIC. The feedback I got from Patrick and Sophie was that you are supportive of this initiative and I much appreciate that.

With our own modest funds, we are now proposing to set this work going in July 2013. Our (ambitious) goal is to then continue engagement, capacity-building and monitoring until we all feel we have learned the right lessons and helped the company and communities achieve a good outcome.

There are three main objectives to this work:

- ensure that communities' customary rights and livelihoods are accommodated in company land use plans to secure HCV and HCS and establish plantations and smallholdings etc
- review and improve the current tools and methods used to define, identify, manage and monitor HCVs 5&6 (securing basic needs and cultural identity)
- build up everyone's capacity to adhere to the principle of FPIC (and - if necessary - develop pre-conflict dispute settlement methods)

Assuming you are still agreeable to this, as part of this work we plan initial scoping, workshops and engagement with all parties in Kapuas Hulu in the two weeks commencing 8 July 2013. While we would anticipate that for the large part we will work with the communities directly, we would also want to make sure we are communicating closely with the local GAR field managers and, as our own capacity and understanding build up, that we gradually build up mutual comprehension. So we would need to have joint workshops with local staff to set this in train soon after we arrive, eg during our first week and we would expect to provide feedback briefings to staff at the completion of each phase of work.

In September, we would anticipate bringing in FPP staff who have been working with forest peoples in Africa to share their experiences with new tablet-based apps that can collect geo-referenced and time-stamped digital data from the field that input direct to cloud-based maps (sorry for the technical terms - I too have still to learn exactly what this all means!). Our staff find these tools hugely enhance mapping and monitoring and help build local knowledge into information systems and we expect them to be powerful means of speeding up mapping and for monitoring adherence to agreed land use plans.

It is anticipated that the outcomes from this work will be:

- GAR oil palm plantations compliant with RSPO P&C relevant to customary rights and HCVs
- GAR oil palm plantations compliant with new HCS requirements agreed between Greenpeace and GAR
- Field tested inputs to enhanced HCV tools that secure basic needs and cultural values (reconciling FPIC based processes with HCV and HCS land designations)
- Field tested inputs to enhanced RSPO procedures to defuse conflicts before they happen

We would develop a more detailed work plan closer to the time. As this is pioneering work for all of us, we also recognise that plans and expectations may have to be adjusted as we work through the issues.

At this stage I just want to ensure that we are 'on the same page'.

Best wishes

Marcus

Dr Marcus Colchester  
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## Annex 2:

### **Terms of Reference for Independent Assessment of FPIC Compliance of pilot project for High Carbon Stocks conservation by PT Kartika Prima Cipta in Kapuas Hulu with some initial findings**

17<sup>th</sup> July 2013

#### **Introduction:**

Golden Agri Resources is a large natural resource development conglomerate based in Singapore. In Indonesia it operates under the brand name, Sinar Mas. The Group, which is owned by the wealthy, Indonesian, Widjaya family includes Sinar Mas Banking, Sinar Mas Forestry, and Asia Pulp and Paper. The majority of the conglomerate's extensive palm oil holdings in Indonesia are grouped together as PT SMART.

In 2009, the group came under scrutiny from the NGO, Greenpeace, which had found from detailed field assessments and satellite images that PT SMART subsidiaries were clearing forests and draining deep peat in violation of the RSPO standard and thereby making a significant contribution to greenhouse gas emissions. Itself under heavy pressure from Greenpeace for buying PT SMART's palm oil, Unilever announced it was to suspend purchase of PT SMART's oil pending a halt to forest and peatland conversion by the company.

In 2010, PT SMART / Sinar Mas announced its adoption of a Forest Conservation Policy, by which it undertook to develop a method for avoiding all forest and peatland clearance in its operation. Unilever recommenced its purchases of CPO produced by PT SMART.

During 2011, PT SMART working with The Forests Trust and Greenpeace developed a methodology for assessing High Carbon Stocks in its concessions. The methodology combines satellite surveying with ground truthing to classify above ground vegetation cover into 6 classes depending on the average carbon stocks contained in each hectare – ranging from high forest, medium forest, low forest, old scrub, young scrub and cleared lands. Using a suggested cut off carbon stock of below 35 tonnes of carbon equivalent per hectare, the surveys suggests that only areas bearing young scrub and cleared lands should be planted.

In 2012, PT SMART announced it was to pilot its new approach in one of its concession areas, PT Kartika Prima Cipta, in Kapuas Hulu in West Kalimantan. The announcement was made that Greenpeace would also be openly collaborating and TFT was also engaged to help apply the new approach. The initial findings from this surveying work were announced to the press in March 2013.

In January 2013, Greenpeace noted to Forest Peoples Programme the need to ensure that the GAR pilot adheres to the principle of FPIC and respect community rights, in line with the RSPO standard. Accordingly in April, FPP staff approached GAR and mentioned their interest in contributing their expertise to ensure the pilot aligned with the RSPO standard and ensured that communities' livelihoods were secured in HCV and HCS zoning.

On 22<sup>nd</sup> May 2013, Forest Peoples Programme therefore wrote to GAR with an offer to support this pilot by carrying out a self-funded independent assessment of the social aspects of this pilot and to share the findings with GAR and its other collaborators, with the following objectives:

- ensure that communities' customary rights and livelihoods are accommodated in company land use plans to secure HCV and HCS and establish plantations and smallholdings etc

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- review and improve the current tools and methods used to define, identify, manage and monitor HCVs 5&6 (securing basic needs and cultural identity)
- build up everyone's capacity to adhere to the principle of FPIC (and - if necessary - develop pre-conflict dispute settlement methods)

The outcomes sought by FPP would be:

- GAR oil palm plantations compliant with RSPO P&C relevant to customary rights and HCVs
- GAR oil palm plantations compliant with new HCS requirements agreed between Greenpeace and GAR
- Field tested inputs to enhanced HCV tools that secure basic needs and cultural values (reconciling FPIC based processes with HCV and HCS land designations)
- Field tested inputs to enhanced RSPO procedures to defuse conflicts before they happen.

A meeting was held in GAR's office on 4<sup>th</sup> July in which the plans of the various parties were shared. TORs were discussed and later elaborated by email to propose how the FPP study could be fitted into a plan being developed by GAR, TFT and LINKs to promote community livelihoods in standing forests by securing their use and access to Non-Timber Forest Products (see annex 3).

The remainder of this note sets out the survey methods used in this independent review of the degree of PT KPC's compliance with FPIC in the application of the RSPO P&C (and the new HCS approach). The method is essentially identical to that developed by FPP and used by TFT in its surveys of GAR's majority owned subsidiary, Golden Veroleum Limited in Liberia.

### RSPO Principles and Criteria

The RSPO standard accords with international law and makes requirements of companies that go beyond the minimum standards required by national statutory law and ratified international treaties.

The principle of Free, Prior and Informed Consent is central to the RSPO's Principles and Criteria and guides the way companies deal with local communities (including indigenous peoples), provide information, carry out impact assessments, acquire land, agree payments and benefits, settle differences and resolve conflicts and pay compensation.

The Key RSPO Principles & Criteria (as revised in 2007)<sup>138</sup> state:

Criterion 2.2	<p>The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.</p> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• Documents showing legal ownership or lease, history of land tenure and the actual legal use of the land.</li> <li>• Evidence that legal boundaries are clearly demarcated and visibly maintained.</li> <li>• Where there are, or have been, disputes, additional proof of legal acquisition of title and that fair compensation has been made to previous owners and occupants; and that these have been accepted with free prior and informed consent.</li> <li>• Absence of significant land conflict, unless requirements for acceptable conflict resolution processes (criteria 6.3 and 6.4) are implemented and accepted by the parties involved.</li> </ul>
Criterion 2.3	<p>Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.</p> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• Maps of an appropriate scale showing extent of recognised customary rights (criteria 2.3, 7.5 and 7.6)</li> <li>• Copies of negotiated agreements detailing process of consent (criteria 2.3, 7.5 and 7.6)</li> </ul>

<sup>138</sup> In 2013 the RSPO adopted revised P&C but these have yet to be adopted by the Indonesian national interpretation. Therefore this study only examined PT KPC against the 2007 P&C. By the time PT KPC comes to be certified, however, the new P&C may be applicable.

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Criterion 7.5	<p>No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p> <p><i>Indicators:</i> Refer to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for indicators and guidance on compliance.</p>
Criterion 7.6	<p>Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p> <p><i>Indicators:</i></p> <ul style="list-style-type: none"> <li>• Documented identification and assessment of legal and customary rights.</li> <li>• Establishment of a system for identifying people entitled to compensation.</li> <li>• Establishment of a system for calculating and distributing fair compensation (monetary or otherwise).</li> <li>• Communities that have lost access and rights to land for plantation expansion are given opportunities to benefit from plantation development.</li> <li>• The process and outcome of any compensation claims should be documented and made publicly available.</li> <li>• This activity should be integrated with the SEIA required by 7.1.</li> </ul>

### RSPO Guidance:

The RSPO standard of 2007 also sets out clear guidance on how land should be acquired, how land conflicts should be avoided and how land disputes should be resolved.

<b>2.2:</b> <i>Guidance:</i>	<ul style="list-style-type: none"> <li>• For any conflict or dispute over the land, the extent of the disputed area should be mapped out in a participatory way.</li> <li>• Where there is a conflict on the condition of land use as per land title, growers should show evidence that necessary action has been taken to resolve the conflict with relevant parties.</li> <li>• Ensure a mechanism to solve the conflict (Criteria 6.3 and 6.4)</li> <li>• All operations should cease on land planted beyond the legal boundary.</li> </ul>
<b>2.3:</b> <i>Guidance:</i>	<p>Where lands are encumbered by legal or customary rights, the grower must demonstrate that these rights are understood and are not being threatened or reduced. This criterion should be considered in conjunction with criteria 6.4, 7.5 and 7.6 . Where customary rights areas are unclear these are best established through participatory mapping exercises involving affected and neighbouring communities.</p> <p>This criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/or relinquished rights. Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations and based on and open sharing of all relevant information in appropriate forms and languages, including assessments of impacts, proposed benefit sharing and legal arrangements. Communities must be permitted to seek legal counsel if they so choose. Communities must be represented through institutions or representatives of their own choosing, operating transparently and in open communication with other community members. Adequate time must be given for customary decision-making and iterative negotiations allowed for, where requested. Negotiated agreements should be binding on all parties and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties.</p>
<b>7.5:</b> <i>Guidance:</i>	<p>This activity should be integrated with the SEIA required by 7.1.</p> <p>Where new plantings are considered to be acceptable, management plans and operations</p>



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	should maintain sacred sites. Agreements with indigenous peoples, local communities and other stakeholders should be made without coercion or other undue influence (see guidance for 2.3). Relevant stakeholders include those affected by or concerned with the new plantings.
<b>7.6:</b> <i>Guidance:</i>	Refer also to 2.2, 2.3 and 6.4 and associated guidance.  This requirement includes indigenous peoples (see Annex 1 [of RSPO P&C document] ).

### RSPO Handbook:

In 2008 and 2009, the RSPO, assisted by Forest Peoples Programme and SawitWatch and with the collaboration of several other NGOs in Indonesia and Malaysia, carried out a series of training and discussion meetings with companies and communities to explain FPIC, explore community and company perspectives and to develop a handbook on how companies should comply with the RSPO P&C with respect to FPIC.

The resulting booklet '*The RSPO and FPIC: a guide for companies*' was issued in early 2009 and is available on the RSPO website.<sup>139</sup>

This booklet should be referred to if assessors require clarification about procedures and terms related to FPIC.

### Verifiers

Based on the above documents the following verifiers were used to ascertain if an adequate process has been followed. The initial findings of the field survey in July 2013 are listed in the left hand column in blue.

Interim Finding	Verifier
Not available	Evidence of a social survey to identify local communities that live in or near areas of proposed concession / plantings
Not done as far as communities know	Land tenure study or survey showing the company has sought to understand local systems of land ownership (especially where lands are mainly held by custom or under informal tenures and not through statutory land titling)
Not available in the communities	Minutes or reports of meetings with local communities to identify which institutions they are choosing to represent themselves
Not known to communities interviewed	Evidence or letter of agreement showing company has accepted the self-chosen representatives as representing the communities
Not done	Participatory maps showing the extent of customary lands
Surveys only done of surrendered private or family- owned lands	Survey lists of land owners, based on both customary rights mapping and land cadastres
Not done according to interviewees	Participatory SEIAs
Not done according to interviewees	Participatory High Conservation Value Assessment
Not available in the communities	Evidence (letters etc.) showing that communities were provided participatory maps, SEIAs and HCV assessments in a timely fashion prior to negotiations
There is evidence that this was not done between Mantan and	Evidence that neighbouring communities (not those directly involved) have endorsed boundaries of land claims of affected groups. <sup>140</sup>

<sup>139</sup> <http://www.rspo.org/sites/default/files/FPIC%20and%20Oil%20Palm%20Plantations%20-%20A%20Guide%20for%20Companies%20%28Oct%2008%29.pdf>

<sup>140</sup> This is critical to avoid community mapping itself being a source of conflict.

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Kerangas. It is not clear if this was done elsewhere.	
Not done	Evidence that the affected communities have endorsed the maps and the findings of the SEIA and HCV assessments
There has not yet been much <i>sosialisasi</i> : a few individuals are aware that this land use zoning is planned	Evidence that the affected communities have been informed of the HCS assessment
Not yet but some are worried about the implications	Evidence that the affected communities have understood the implications of the HCS set asides for their livelihoods
Not available	Evidence (eg signed agreement, letter of intent or Memorandum of Understanding) that the self-chosen representatives have agreed a process for FPIC-based negotiation with respect to palm oil plantings, smallholdings, HCV set asides and HCS set asides
There are one-off individual agreements for surrendered lands only. The records are kept by the company but no copies are held by the land-owners	Drafts of negotiated texts showing there has been iterative engagement with the communities involved
Agreements are individual not with village as a whole	Signed agreement of acceptance by self-chosen representatives of negotiated outcome.
Yes for land acquisition but lists of smallholders seemingly not held in community.	Documents showing lists of rights-holders who are entitled to compensation or other agreed benefits and payments
There is verbal evidence that compensation was paid, but as <i>simpak beliung</i> not for acquiring land	Evidence that agreed compensation, payments and benefits have been made to these rights-holders
Money is being paid to the cooperative but it is unclear if shares are reaching all smallholders.	Evidence that benefit sharing payments are being made and/ or other elements in signed agreement
The company affirms it has Ijin Lokasi and IUP	Documents showing company has legal rights to operate in the area
We have asked for a copy	Standard Operating Procedures and/ or other documents which show that the company has a mechanism to address and resolve disputes
Communities have not signed a mutually agreed conflict resolution mechanism	Signed agreement or other proof that communities accept the conflict resolution mechanism

### Independent testimony:

In addition, the Assessors must carry out randomised interviews with community representatives to get independent testimony that the situation as represented in the documentary evidence and reported by company staff is not only accepted by community leaders but also by other community members. Assessors must also take care to seek the views of women, the elderly and young people.

The survey should also ascertain the extent to which the concerns being raised by complainants are verifiable, widely shared and the extent to which other members of the communities have similar problems or are content with the procedures that are being used to acquire their lands.

Assessors should also seek independent views from any NGOs or other civil society institutions (eg religious bodies) which are active in the area.

All these interviews should take place in circumstances in which the interviewees are comfortable to give frank replies without feeling they may be subject to repercussions afterwards. Interviewees should be offered anonymity to ensure the protection of informants or 'whistle-blowers'.

The following questions may be used in the interviews. These questions provide lines of enquiry but will often need to be supplemented by further questions and discussions to ensure interviewees understand the questions and the assessors understand the answers.

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- Has the company been in communication with you about its proposed developments?
- With which community institutions is the company in communication?
- Did the communities have the freedom to choose for themselves their representative organisations or were these nominated by the government, or chosen by intermediaries or by the company?
- Has the company made an assessment of the extent of your land rights as defined by law or by custom?
- Does the company understand and respect your land rights or land claims?
- Has participatory mapping been carried out with the engagement of the local communities to identify the extent of your rights?
- Have agreements been reached with the local communities about the extent and boundaries of customary rights areas?
- Do these customary rights areas overlap with the areas being held by the company?
- Have you seen the Social and Environmental Impact Assessments?
- Did people participate in the Social and Environmental Impact Assessments?
- Do you agree with the findings? If not what are your concerns with the findings?
- Does the impact assessment make clear what changes may result in the legal status of lands during the lease/ concession, the possible length of the lease/ operation and the legal status after the expiry of the lease/ concession?
- Have you seen the High Conservation Value Assessments? Do you have a copy?
- Did people participate in the High Conservation Value Assessments?
- Do you agree with the findings? Do you feel that sufficient areas are being set aside (ie not planted or cleared) to ensure environmental services like fresh water, for areas important to you like religious sites, graveyards and sacred areas and for your basic needs for food and other critical parts of your livelihoods?
- Has the process of assessing the area for High Carbon Stocks been explained to you? Do you have a copy?
- Did you participate in the High Carbon Stock Assessments?
- What implications will the setting aside of lands for conserving High Carbon Stocks have on your livelihoods? If there are implications for your livelihoods how will you manage to live without access to those resources? Have you agreed to these HCS set asides? Have you been compensated for limitations on your livelihoods?
- What information has been made available to the community members ? Is it in a language and form appropriate for you to understand?
- Were there discussions with the local communities about mitigation, monitoring, benefit sharing and compensation arrangements?
- What measures are in place to ensure that communities can consider proposed developments on their lands without coercion or duress?
- Were meetings held in places chosen by the communities? Did people feel free to speak their own minds in these meetings?
- Were communities asked whether or not they agreed with a development prior to the company making a decision to invest and acquiring permits from the government?
- In negotiations with the company for the establishment of the plantation, was time and scope given for the community representatives to make decisions in accordance with their own preferred or customary systems of decision-making?
- Were you free to consult among yourselves about the details with the community members to ensure consensus could be achieved? Did a legally binding negotiated agreement result?
- Was the community free to get legal advice or involve local NGOs of their choosing?
- Was there an agreement by the community to the use of their lands for the plantation?
- Do you have a copy of that agreement? If not does someone you trust have a copy?
- If agreements have been reached, are they seen as fair by everyone and do these agreements enjoy the full support of all the affected families, households and the community?
- Have people been fairly compensated, paid or provided benefits in line with any agreements?
- Is there any dissent among community members? If there are members of the community that do not support the agreements, why is this? (**NOTE:** special care should be taken here to secure the anonymity of respondents if they request this?)
- Are there unresolved land conflicts?
- Are there mechanisms in place to resolve such conflicts?

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- Are these mechanisms acceptable and have they been effective?
- Are you aware of or have you observed any actions of harassments, intimidation and coercion carried out by GVL staff or local Government officials on behalf of GVL?
- Are you aware of or have you observed any actions of threats and arrests of local community members facilitated by GVL staff or using GVL vehicles or local Government official on behalf of GVL?
- Are you aware of or do you have evidence of the desecration of burial grounds, the pollution of water sources, the destruction of crops, the clearing of farm lands?
- Can you explain how GVL carried out its land and crop compensation scheme?
- Do you have evidence of whether local community members were forced to accept the compensation being offered by GVL for their crops and land ?

### Annex 3.

Date: Mon, 12 Aug 2013 15:32:25 +0100

To: peter heng

From: Marcus Colchester <marcus@forestpeoples.org>

Subject: notes following meeting

Cc: sophie, patrick, emil kleden, joji, tom griffiths, norman, john nelson, tom lomax, justin kenrick

Dear Peter,

It was good to meet in Bangkok and many thanks for the very delicious lunch. I much appreciated your candour, too.

This is to follow up and clarify a number of matters.

#### **FPP's further engagement in PT KPC pilot**

As I made clear in the meeting, since we have now identified very serious problems with the way PT KPC is dealing with the communities, it would not be appropriate for FPP to be involved in the further collaborative efforts to refine the HCS approach until the current underlying problems are first resolved. Any TORs for our further engagement should thus accept that we will continue to play an independent monitoring and advisory role. As noted we next expect to be in the field in Kapuas Hulu in the week of 23rd September

#### **Action needed to resolve problems in PT KPC**

We noted that the findings from FPP/TUK's review of PT KPC point to some very serious problems. I indicated that really these are of the severity that would normally merit a complaint to the RSPO but, since our priority is to get justice for the communities, we have held back based on your assurances that GAR would act speedily on our findings. In the interests of getting these problems resolved, therefore, we are prepared to hold off from going public about the problems while GAR takes remedial actions but if we don't feel progress is being made by September we will have to reconsider this.

We went through some of the proposed actions in our preliminary report and you highlighted 6 for immediate action. Based on my rough notes and memory those I think we prioritised are:

1. GAR and PT KPC staff and their land brokers should immediately cease pressing communities for the release of land (both in 'pro' and 'kontra' villages).
2. GAR should make clear to the communities that it is now seeking to address their concerns about land acquisition, agreed land surrenders and smallholder schemes before it plans or decides any further land allocations for palm, HCV and HCS.
3. PT KPC should immediately share copies of the land surrender agreements with the affected parties, so they can see the details of the agreements they are signatories to (this is a vital first step given the very different understandings that company and community interviewees have of the terms of these agreements).
4. GAR should make available the AMDAL, HCV assessment and SOPs asap. You replied that these might be made available for reference in the office in Jakarta but I still think they should be shared electronically or in



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photocopy.

5. Where the company disputes our findings, then independent reviewers should be asked to validate them

6. The terms of the smallholder agreements should, be reviewed and clarified with all the community members who have surrendered land.

Please check against your own notes.

I should make clear that we stand by the full set of recommendations in the Preliminary Findings report. In our discussion I highlighted the need to retrain or replace field staff so they really understand the RSPO standard (and HCS approach).

### GVL

I have talked with John about the issues raised about the continuing problems in GVL and the sub-optimal relations between GVL and FPP staff. We note first of all that our team too would welcome more proactive communications and engagement to resolve the issues being identified: there is scope for both parties to improve coordination. Secondly, John would likewise welcome meeting up with you. He is just back from Africa. He will next be in the UK in the week of 2nd September and could meet you that week in the UK but, as I mentioned, he will be in Jakarta on assignment with TFT the week of 7th September, which is probably a better option. Thirdly, I have passed on your remark that GVL denies it is still clearing land and your request that FPP clarify exactly where clearance is alleged to be happening.

### On other matters:

I attach the cartoon I mentioned. I also attach my review of the book that I mentioned. In an accompanying email I am sending a summary of smallholder models prepared by IIED for the 2nd Meeting of the RSPO Task Force on Smallholders which provides a useful if dated summary of smallholder systems and a recent report that summarises latest models in Sabah.

Best wishes

Marcus

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# **INDEPENDENT REVIEW OF THE SOCIAL IMPACTS OF GOLDEN AGRI RESOURCES' FOREST CONSERVATION POLICY IN KAPUAS HULU DISTRICT, WEST KALIMANTAN**

**By Marcus Colchester, Norman Jiwan and Emilola Kleden  
January 2014**

Plantation companies seeking to avoid destroying forests and causing climate change have been advised to set aside forests and peatlands within their concessions. But what are the implications for forest peoples? Do they benefit or does this further curtail their rights?

This field study looks at how Golden Agri Resources (GAR) is piloting this approach in the centre of Indonesian Borneo, in Kapuas Hulu, an upland area famous for its large lakes, extensive forests and peat swamps, and productive inland fisheries.

The findings are startling. Not only are 'high carbon stock' set-asides very unpopular but the whole operation is contested. Community lands have been taken without due process, in violation of the RSPO standard. Forest-living Dayaks, losing lands to plantations and set-asides, complain of land scarcity, while Malay fisherfolk accuse the company of river pollution, declining fishstocks and problems breeding fish.

The main way for companies to avoid such problems is to recognise community rights and livelihoods first and negotiate for land for plantations and set asides, only once areas of high conservation value and 'carbon stocks' are identified. Otherwise, from the community point of view, set-aside schemes just intensify land grabs and lessen their food security.

In this case GAR has now promised to put things right. This will mean starting again, by mapping land rights and renegotiating access to community lands – and accepting that when communities say 'no', then the company should back off.

