

COMPLAINTS FORM

The Roundtable on Sustainable Palm Oil (RSPO) is a not-for profit Association that has been established with the Vision of “***Transforming the market to make sustainable palm oil the norm.***” The RSPO Secretariat is responsible for administration and management of the activities of the RSPO in pursuit of this Vision.

While addressing sustainability challenges, not all situations follow standardized approaches and reach undisputed outcomes. This may lead to conflicting perceptions by different stakeholders, resulting in complaints which are addressed to the RSPO for resolution. **RSPO focuses on bilateral dialogue as the means to address and resolve complaints and grievances.**

In respect of any complaint, the form below must be filled up and submitted to the RSPO Secretariat.

PART A - COMPLAINANT DETAILS

1. Name of individual or organization	First complainant: Marcus Colchester, Forest Peoples Programme Co-Complainant: Brennan Bilberry, Elk Hills Research
2. Name of contact persons	Marcus Colchester, Forest Peoples Programme Brennan Bilberry, Elk Hills Research
3. Occupations / Positions	Senior Policy Advisor, Forest Peoples Programme Principal , Elk Hills Research
4. CONTACT DETAILS Postal address	Forest Peoples Programme, 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh, GL56 9NQ, UK. Elk Hills Research, 1509 16th St NW, Washington, DC 20036, USA
5. Email address & skype ID (if any)	marcus@forestpeoples.org Skypename: marcuscolchesterfpp brennan@elkhillsresearch.com Skypename: Brennan Bilberry
6. Phone number	FPP BUSINESS: + 44 1608 652893

	<input type="checkbox"/> Others, please specify
<p>13. If you are submitting the complaint on behalf of or jointly with other individuals, village, community or organizations, please provide the necessary documentary evidence. This should include proof of adequate process, consultation and agreement.</p>	<p>This Complaint is supported by investigatory materials compiled by Elk Hills Research, an investor-supported research company based in the United States that investigates international corruption and environmental crime and shared with FPP on a pro bono basis. Elk Hills Research’s investigation into GAR included a review of relevant permitting records in Central Kalimantan, satellite imagery (overlain on official maps) that demonstrates for 2 of the 8 concessions the extent of GAR’s unlawful deforestation, and criminal records detailing a bribery scheme by GAR officials that was designed to cover up known land-use violations in Central Kalimantan. Elk Hills Research also obtained a legal opinion from an Indonesian expert detailing the extent to which GAR’s activities appear to be in unambiguous violation of Indonesian law. These materials are included in the attached Appendix.</p> <p>While Elk Hills Research performed this investigation with funds provided by US investors, neither Elk Hills nor any of its clients have any direct or indirect financial interest in the outcome of this complaint.</p>
<p>14. Are you being assisted by someone else who is not a party to the complaint; i.e. a legal representative, a non-governmental organization, a community development organization? (please tick ✓ on your option)</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes, please specify:</p> <p>We have consulted extensively with Indonesian lawyers.</p>
<p>PART B – DETAILS OF THE RSPO MEMBER AGAINST WHOM THE COMPLAINT IS SUBMITTED</p>	
<p>15. Name of RSPO Member / Parent company (mandatory) / Name of operating unit</p>	<p>Golden Agri Resources</p>
<p>16. Name of contact person (optional)</p>	<p>Agus Purnomo</p>
<p>17. Occupation/ Position</p>	<p>Head of Sustainability</p>

18. Contact Details Postal address	Sinarmas Land Plaza Tower 2, Jl. M.H. Thamrin No.Kav 51, RT.9/RW.4, Gondangdia, Menteng, Kota Jakarta Pusat, Daerah Khusus Ibukota Jakarta 10350 Tel: +62 21 50338899
19. Email address & Skype ID (if any)	apurnomo@goldenagri.com.sg ;
20. Phone number	Tel: +62 21 50338899
21. Fax Number	
22. Date of certification (if any)	
23. Other details that may identify the RSPO member	See RSPO membership website and ACOP

PART C – COMPLAINT DETAILS

24. Date of submission (DD/MM/YYYY)	25/02/2020 (resubmitted with adjusted complaints form 2 March 2020).
25. Address and Location of complaint (<i>please provide the district name, map and/or GPS coordinates, if possible</i>)	This complaint concerns 8 GAR concessions in Central Kalimantan as detailed in the attached Appendix.
26. Provide a summary of the complaint with key facts/issues in a chronological order.	The 8 concessions cover a total land area of 140,858 ha. of which no less than 75,863 ha. overlap lands classed as ‘forest zone.’ Operating oil palm plantations in the forest zone is illegal under Indonesian law, and it was illegal at the time that GAR began to operate oil palm plantations at these concessions. As detailed in the attached Appendix, the licenses issued by the Central Kalimantan government that purported to permit the planting of oil palm plantations in the protected Forest Zone never had the force of law. Moreover, recognizing that there was ambiguity in the legality of these concessions, the national Ministry of Forestry permitted companies like GAR who obtained invalid licenses to legitimize their concessions by performing a land swap, but we have not identified evidence that GAR took advantage of this program for the vast majority of its unlawful holdings. The Ministry’s two-year grace period expired at the latest in 2017, meaning

	<p>that there is no justification for the continued operation of these oil palm plantations in the forest zone.¹</p> <p>Moreover, in October 2018, Indonesia’s anti-corruption commission (“KPK”) arrested several GAR executives for paying bribes to provincial officials in Central Kalimantan. These GAR officials were convicted in 2019. The primary purpose of these bribes was to prevent the Central Kalimantan government from publicizing the results of an on-site inspection of GAR’s plantation located at PT Binasawit Abadi Pratama (“BAP”), one of the concessions discussed at length in the Appendix. The Central Kalimantan government’s inspection revealed that PT BAP was operating without the legally mandated HGU permit and was conducting waste disposal operations in an unlawful manner. After this inspection, GAR executives bribed Central Kalimantan officials in order to prevent public hearings and to allow GAR to continue operating its plantation illegally.</p> <p>GAR’s unlawful operations—and its attempt to cover up that misconduct through bribery—in Central Kalimantan are in violation of RSPO P&C 2.1 (same number in 2013 and 2018 versions), which requires legal compliance. GAR’s bribery and knowing violation of Indonesian permitting laws also violates RSPO P&C 1.2, which requires members to commit to ethical conduct in all business operations and transactions.</p> <p>Finally, a 2019 decision from the Indonesian Supreme Court confirmed that oil palm plantations operating without the required IUP and HGU permits (such as GAR) are currently in violation of Indonesian law, striking down a presidential regulation that purported to grant companies a grace period to continue operating without such permits.</p> <p>These allegations and the relevant legal rules and proceedings are described in more detail in the attached Appendix.</p>
<p>27. Specify which part of RSPO Principles and Criteria, RSPO Code of Conduct, or any other Certification and Supply Chain rules has been violated.</p>	<p>RSPO P&C 2.1:</p> <p>GAR is in violation of very explicit national and regional laws in Indonesia, which require companies to obtain a series of permits before deforesting land located in Indonesia’s Forest Zone. GAR never obtained all of the necessary permits for the 8 concessions at issue in this complaint. Moreover, while there was some past ambiguity about the legal effect of permits that were purportedly granted by the provincial government, the national Ministry of Forestry made clear in 2012 that all such permits were</p>

¹ The Complaints Panel and IMU must not confuse this legally required landswap with any offsets that GAR may or may not be undertaking as part of its compliance with the RSPO’s RaCP to compensate for any lands cleared without a prior HCV assessment in violation of the RSPO standard.

	<p>invalid. The Ministry offered companies like GAR that had purportedly relied on such invalid permits the opportunity to remediate their unlawful activity by offsetting the deforested land with forested areas of equal size outside the Forest Zone, which would then be added to the Forest Zone as an offset. Yet for the vast majority of the area of the concessions at issue, there is no evidence that GAR undertook an effort to remedy its violations under this programme. Thus, since at least 2017 (the last year in which a company could have conceivably performed such an offset), GAR has been operating unlawfully any concessions for which it has failed to perform the required land swap, and it has carried out any such operations with unambiguous knowledge that this conduct violated Indonesian law.</p> <p>Moreover, any land clearing in these concessions since 2010 would be a violation of the RSPO’s New Plantings Procedure (“NPP”) which became effective on 1st January 2010. No valid NPP has ever been filed for these concessions. (The 18 NPPs filed by GAR in 2014 were challenged by FPP, withdrawn by GAR and found to be in violation by the Complaints Panel.)</p> <p>Any land clearing since 2015 would also be a violation of the ruling of the Complaints Panel which froze GAR from acquiring further land and land clearing in all 18 concessions named in the original complaint.</p> <p>RSPO P&C 1.2:</p> <p>GAR has also violated the RSPO’s requirement that members behave in an ethical manner. The bribery scheme for which multiple GAR executives were convicted in 2019—which was orchestrated to cover up the unlawful operations at a GAR concession in Central Kalimantan—is undeniably unethical. Moreover, because this conduct resulted in criminal convictions, there is no dispute that GAR engaged in this unethical conduct.</p> <p>(These citations are to the generic version of the P&C currently in effect, as the current Indonesia National Interpretation has now lapsed and a new version is still awaited.²)</p>
<p>28. Please describe the actions taken by you/your organization to resolve the issues with the RSPO member, if any.</p>	<p>Following a year and a half unsuccessfully trying to get GAR to reform its activities in Kapuas Hulu, in 2014 Forest Peoples Programme filed a complaint against GAR for multiple violations of the RSPO P&C and for false and misleading New Planting Procedure submissions. This complaint was</p>

² As stated on Page 2 of the P&C: ‘This document (RSPO P&C 2018) is effective after adoption by the RSPO 15th General Assembly (GA15) on 15 November 2018. As stated in section nine of the RSPO Standard Operating Procedures (SOP) for Standard Setting, National Interpretations (NIs) must be revised to be fully consistent with the RSPO P&C 2018 within 12 months of the date of adoption (i.e. by 15 November 2019). Certificate holders must be fully compliant with the new version of an NI within one year of it being endorsed by the Board of Governors (BoG). In countries where NIs are not updated by 15 November 2019, P&C 2018 will be effective until the NI has been updated.

	<p>upheld and GAR was told by the Complaints Panel to cease all land acquisition and land clearing in the 18 concessions that were named in the complaint until the case was resolved. The Complaints Panel (CP) gave detailed instructions on what GAR should do to bring all these operations into compliance including re-doing its flawed land acquisition/ FPIC procedures (still incomplete), redoing its HCV assessments (still incomplete) and providing promised smallholdings to those whose lands had been taken (still incomplete). These actions are still outstanding and FPP has been repeatedly asking the CP since then to make a determination that progress is insufficient and to impose sanctions on GAR accordingly.</p> <p>The 2014 complaint also raised questions about the legality of GAR’s operations. A legal study was carried out on behalf of the CP, which is subject to NDA, but did show numerous anomalies.</p> <p>This new complaint provides additional information showing that GAR’s operations in Central Kalimantan are not legal. Specifically, Elk Hills Research’s investigation confirms—through an extensive review of permitting records, satellite imagery, and court records relating to GAR’s bribery—that GAR continues to operate concessions unlawfully in Central Kalimantan to the extent that they haven’t been offset by forested land.</p>
<p>29. List of other person(s)/organization(s) contacted by you/your organization in an attempt to settle the issues. Please provide any relevant documents.</p>	<p>The new staff in the Complaints Panel Secretariat have recently been resent all the background documents to FPP’s complaints against GAR since 2016.</p>
<p>30. List of evidence attached with this form (e.g. maps, videos, audio recordings, reports, photographs, documents).</p>	<p>Please see the attached Appendix for details supporting this complaint, which includes a more detailed overview of GAR’s permitting violations, satellite imagery evidence demonstrating that vast portions of Indonesia’s Forest Zone have been unlawfully deforested by PT BAP and PT BAS, and a review of the criminal conviction of GAR executives for bribing provincial officials in an attempt to cover up its permitting violations.</p>
<p>31. Please state the desired outcome of the complaint(s).</p>	<p>The CP or IMU should immediately investigate the validity of the complaint. The CP or IMU should first verify our data, which we believe shows that parts (more than half) of all 8 GAR concessions in Central Kalimantan overlap the Forest Zone. The CP or IMU should also check if any forest clearance has been undertaken in these concessions since 2010. The companies did not file required notifications under the New Planting Procedures until 2014. These NPPs were quickly challenged by FPP in our original complaint, in response to which GAR immediately sought to withdraw the 18 NPPs (8 for Central Kalimantan). GAR was then told by the</p>

	<p>Complaints Panel that it should freeze any land clearing and land acquisition, a ruling which is still in force. Therefore any land clearing in these 18 concessions (including the 8 in Central Kalimantan) would be in violation of both the law, the New Planting Procedure and, if after March 2015, of the ruling of the Complaints Panel. If our findings of overlap of the Forest Zone are correct and/ or if the company has carried out land clearance in these areas after 2010, then the company should be sanctioned.</p> <p>Particularly in light of the egregious nature of GAR's bribery scheme—which was designed with the express purpose of covering up the kind of permitting violations underlying this complaint—all of GAR's certificates should be suspended. We also urge that the Complaints Panel take into account all the other violations by GAR that have been substantiated in our previous submissions.</p>
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PART D - STATEMENT OF GOOD FAITH

In submitting this complaint, I/we:

1. Fully understand and agree that the RSPO Secretariat will handle this complaint in accordance with the Complaints Systems components and the Complaints Procedure Flowchart.
2. Agree to have the RSPO Secretariat share the complaint with the RSPO member(s) concerned, subject to the request for protection of identity.
3. Agree to engage in the complaints process in good faith and to abide by the Code of Conduct for Complaints.
4. Confirm that the information provided above is to the best of my/our knowledge true.

Thank you.

Yours sincerely,



Marcus Colchester, Forest Peoples Programme



Brennan Bilberry, Elk Hills Research

Please email your complaints to: complaints@rspo.org

COMPLAINTS SUBMISSION CHECKLIST

Please complete this checklist prior to submitting your complaint. (Please tick ✓ on your option)

<p>1. Details of Complainant</p>	<p><input checked="" type="checkbox"/> Name</p> <p><input checked="" type="checkbox"/> Postal address</p> <p><input checked="" type="checkbox"/> Email address</p> <p><input checked="" type="checkbox"/> Name of legal representative, NGO, community development organization</p>
<p>2. Details of RSPO member</p>	<p><input checked="" type="checkbox"/> Name</p> <p><input checked="" type="checkbox"/> Postal address</p> <p><input checked="" type="checkbox"/> Phone number</p> <p><input checked="" type="checkbox"/> Email address</p>
<p>3. Evidence <i>(please tick ✓ where applicable)</i></p>	<p><input checked="" type="checkbox"/> Complaints Form</p> <p><input checked="" type="checkbox"/> Summary and chronology of events</p> <p><input checked="" type="checkbox"/> Maps, location coordinates</p> <p><input checked="" type="checkbox"/> Photographs, video, oral recordings</p> <p><input type="checkbox"/> Permits, land titles</p> <p><input type="checkbox"/> Concession agreement</p> <p><input checked="" type="checkbox"/> Police report, Complaint letters to government departments and company</p> <p><input type="checkbox"/> HCV reports, other relevant studies</p> <p><input checked="" type="checkbox"/> Any other supporting documents</p>
<p>4. Assistance, Confidentiality and Undertaking <i>(please tick ✓ where applicable)</i></p>	<p><input type="checkbox"/> Assistance needed</p> <p><input type="checkbox"/> Confidentiality and protection of identity needed</p> <p><input checked="" type="checkbox"/> Code of Conduct for Complaints signed</p>

CODE OF CONDUCT FOR COMPLAINTS

Introduction

The Roundtable on Sustainable Palm Oil (hereafter RSPO) is committed to ensure that all complaints are treated, fairly and in a transparent manner to ensure that the solutions reached are acceptable to all stakeholders. In order to facilitate the RSPO to reach such a solution, it requires that both parties to a complaint observe ethical behavior that accelerates the resolution process. Therefore, it is of the utmost importance that parties to a complaint adhere to this Code of Conduct.

All members and complainants are expected to read, understand and subsequently apply the standards of conduct outlined herein.

Good faith and timeliness

All complainants and members of the RSPO who are the parties to a complaint shall at all times behave in good faith and refrain from making statements prejudicial to the settlement of the complaint pending the investigation and resolution by the RSPO and the Complaints Panel. All parties to a complaint are required to attend to all information request in a timely manner and inform the RSPO and the Complaints Panel where they foresee a delay in submitting such requested information.

Monetary Gain

No parties to a complaint shall solicit any sort of business or economic opportunities from a member of the RSPO, who is the subject matter of a complaint. If a member is approached by any parties to a complaint which such a proposal, then the member shall inform the RSPO of the same immediately. All such details as reported by any party shall held in confidence by the RSPO. Sanctions can be considered by the Complaints Panel if the party is found to be in breach of this Code of Conduct.

Public Statements

If any party to a complaint intends to make a public statement in relations to a pending complaint, that statement must be shared with the RSPO and the Complaints Panel prior to its publication. This is intended to prevent any prejudicial statements that could possibly harm the on-going investigation and resolution of a complaint. All parties to a complaint are encouraged to refrain from making such statement until the complaint has been deliberated by the RSPO Complaints Panel. (See Note below).

Cooperation

All parties to a complaint shall upon official notification by the RSPO on the legitimacy of a complaint, must cooperate and abide by the decision of the RSPO at all times. If a party i.e. complainant, intentionally refuses to cooperate with the decision of the Complaints Panel to resolve the complaint, then the RSPO and the Complaints Panel has a right to bring the whole complaint to an end. However, the member shall continue to implement the

decision of the Complaints Panel to the satisfaction on the Complaints Panel until it decides to close the complaint.

Intimidation

All parties to a complaint must refrain from intimidating any other parties, witness or communities with a view of preventing them from giving evidence or statements to the RSPO and the Complaints Panel. No party shall use the threat of violence or economic loss as a means to compel a party to withdraw a complaint.

Code of Conduct Declaration for Complaints

I, Marcus Colchester, acknowledge that I have received and read a copy of this Code of Conduct Statement, have understood all of its terms, and agree to abide by the provisions contained therein.

A handwritten signature in black ink that reads "Marcus Colchester".

Marcus Colchester

25 February 2020

A handwritten signature in black ink that reads "Brennan Bilberry".

Brennan Bilberry

2 March 2020

Note: FPP and Elk Hills Research reserve the right to make public statements about the complaints they file if these are not displayed by the Complaints Panel on the Complaints Tracker site within a reasonable period of time. Since 2016, the Complaints Panel Secretariat has failed to post FPP's submissions to the CP about GAR on the website, even though statements by the company have been so displayed.