



Environmental Investigation Agency
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17th October 2012

To:
Darrel Webber, Secretary General, RSPO
Ravin Krishnan, Complaint Coordinator, RSPO
Norashikin Rasikon, P&C Certification Manager, RSPO

Regarding: Formal Grievance against First Resources Ltd.

Dear Mr. Webber, Mr. Krishnan and Ms. Rasikon,

I am writing to submit formal comments on the Summary Report of the New Planting Assessment carried out by PT Borneo Surya Mining Jaya (PT Borneo), a subsidiary of RSPO member First Resources Ltd. These comments should also be adopted as a formal grievance against First Resources Ltd.

The RSPO New Plantings Procedure, activated in 2009, requires RSPO members planning to develop new plantations to announce their plans before commencing land preparation. Members must demonstrate that they are taking steps to ensure they are in compliance with RSPO Principle 7, which requires that no new plantings:

- Clear primary forest;
- Affect areas needed to maintain or enhance high conservation values;
- Take place on local people's land without their free, prior and informed consent.

On September 18^h, 2012, RSPO member First Resources Ltd. gave notice on the RSPO website that it had begun the 30 day consultation period regarding new plantings by PT Borneo. On and around the same date documents were posted on the website outlining the results of the social and environmental impact assessment and HCV assessment carried out by RSPO auditor TUV Nord, ostensibly demonstrating PT Borneo's compliance with RSPO Principle 7.

These documents, the testimony of members of the Muara Tae community and analysis by NGOs provide clear evidence that First Resources Ltd. is operating in violation of the New Plantings Procedure and RSPO Principles and Criteria. In sum, First Resources Ltd. has:

- Begun clearing land before carrying out the New Planting Procedure;
- Acquired and cleared local people's land without their Free, Prior and Informed Consent (P&C 2.2, 2.3, 7.5 and 7.6);

- Failed to negotiate with and compensate local people for the expropriation of their land (P&C 7.6).

It is, further, EIA's contention that the reports presented by TUV Nord/First Resources Ltd. as evidence of compliance with the New Planting Procedure are fundamentally flawed and unjustifiably brush aside what are clear, consistent and credible complaints of the ongoing expropriation of Muara Tae community rights. The evidence to support our conclusions is contained in Annexes 1, 2 and 3 to this letter.

In accordance with the RSPO Grievance Process and the Detailed Process Flow for the New Plantings Procedure, we hereby request that the RSPO immediately:

- Conveys these matters to First Resources Ltd. and calls for the company to cease land clearing immediately;
- Undertakes an impartial investigation into the expropriation of community land in violation of the RSPO Principles and Criteria;
- Institutes a transparent and participatory process to resolve the land rights conflict in full compliance with the RSPO Principles and Criteria and in a manner agreeable to the affected parties;
- Facilitates the restitution of annexed lands and a compensation process agreeable to the affected parties;
- Conducts an investigation into TUV Nord/First Resources Ltd.'s complete exclusion of the views of Muara Tae villagers and land owners from the formal reports submitted to the RSPO.

I look forward to receiving confirmation that this grievance has been acknowledged and information on actions the RSPO proposes to take to resolve these issues.

Yours sincerely,



Faith Doherty
Head of Forests Campaign
EIA

CC:

Julia Majail, Taskforce on Smallholders and Dispute Facility Manager, RSPO
Salahudin Yaacob, Technical Director, RSPO
Desi Kusumadewi, Indonesia Director, RSPO
Bambang Dwi Laksono, Corporate Head of Sustainability, First Resources Ltd.
Bayu Wicaksana Jr, Marketing Manager, TUV Nord

Annex 1: Violations of RSPO New Planting Procedures and RSPO Principles and Criteria by PT Borneo Surya Mining Jaya

Preparing land before SEIA and HCVA

The Summary Report of SEIA and HCV Assessment¹ (hereafter referred to as “the TUV report”) states that “the activities of development in this palm oil plantations have not been started yet [sic]”.

This statement is formally contested by EIA.

According to testimony from members of the Muara Tae community, PT Borneo has been preparing land since November 2010, one and a half years before a Social and Environmental Impact Assessment (SEIA) and High Conservation Value Assessment (HCVA) were carried out in May 2012. Land preparation by PT Borneo has occurred in the period immediately following the SEIA and HCV field studies and during the 30-day comment period.

This has been documented on the following occasions:

20 June 2012: During a monitoring survey, Muara Tae representatives found PT Borneo was actively clearing Muara Tae lands. PT Borneo’s employee – “Yanik” reportedly claimed representatives of Ponaq village had sold the lands to PT Borneo.

24 June 2012: Muara Tae villagers reported land clearance by PT Borneo on their land to Rizaldi, manager of PT Borneo, demanding he stop the activity. Rizaldi reportedly agreed, and requested a meeting in Muara Tae village. At the meeting, on the 25th June, Mr Rizaldi offered the villagers packages of Rp. 400,000 in cash by way of an “apology”, and asked villagers to meet PT Borneo board members from Singapore in Balikpapan. Muara Tae villagers declined to meet PT Borneo board members in Balikpapan.

28 June 2012: Muara Tae village representatives went to areas occupied by PT Borneo workers and demarcated Muara Tae land boundaries. The company stopped work while the land demarcation was taking place.

11 July 2012: Muara Tae villagers find PT Borneo clearing land.

19 July 2012: Muara Tae villagers find PT Borneo clearing land.

11 October 2012: Consultant in the employ of EIA witnesses PT Borneo bulldozer clearing land.

Flawed Social and Environmental Impact/HCV Assessments

The TUV report states that the assessments cover “the local social entities within the Izin Usaha Perkebunan (Plantation Permit) area”. It adds, however, that the

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http://www.rspo.org/file/RSPO%20NPP_Summary%20Report%20of%20SEIA%20&%20HCV%20Assessment_%20PT_%20BSMJ-14%20September%202012.pdf

assessments utilized “purportive sampling” and did not involve the consultation of all communities.

The suggestion that this method was a deliberate choice is misleading. In fact, consultants carrying out the HCV survey did approach the Village Head (Kepala Desa) of Muara Tae on 28th April 2012 in an attempt to consult the community over HCV in Muara Tae territory. The Village Head rejected this consultation on the grounds that: (a) by this date the community had repeatedly, formally and legitimately rejected PT Borneo’s overtures and PT Borneo was fully aware that the community did not want to give consent to the plantation; and (b) that the community considered the consultants to be representatives of the company and mistrusted their interpretation of HCV.

As a result the assessments exclude input from the community of Muara Tae and cannot be considered credible. This is reflected in the failure of the TUV report to correctly identify legitimate land rights claims and misleading statements over the FPIC process.

Failure to identify land rights

The report claims that the HCV assessment concluded that “all local people’s land has been identified and the land acquisition with free prior and informed consent [sic]”.

EIA formally contests this claim.

By the date the report was produced the community had repeatedly rejected the presence of the company in its territory. The community had also supplied PT Borneo with a map of its customary territory. Annex 2a details specific occasions on which the community formally rejected the presence of PT Borneo.

Through participatory mapping exercises, the community and Indonesian NGO Telapak have produced maps of the customary boundaries of Muara Tae. Overlaying these maps with the concession map within the report shows that the concession occupies an estimated 4,304 hectares of Muara Tae territory (see Annex 3).

The assessment therefore does not identify “all local people’s land” as it does not recognise the land rights claims of Muara Tae. Neither has the land been acquired from the community, as the report claims.

Further, the TUV report states that the PT Borneo concession is located in the following villages: “Muara Nayan Village, Pentat Village, Lembonah Village, Ponak Village, and Kenyanyan Village”. The report does not mention Muara Tae village - despite the fact that Muara Tae village is clearly marked as being located inside the PT Borneo concession area in the maps in the TUV report.

Lack of Free, Prior and Informed Consent

Community leaders in Muara Tae, including the Kepala Desa (village leader) and Kepala Adat (customary leader), have not given their consent to PT Borneo. They consider the presence of the company in their land to be illegal and have filed police reports to that effect.

The community has repeatedly made clear to PT Borneo, in a formal capacity, that it does not want the plantation in its territory. PT Borneo has ignored this and villagers state that they have been evicted from their land. Annex 2 lists, albeit not exhaustively, specific occasions on which the community have rejected PT Borneo. It also includes transcriptions of filmed testimony from the community, including the Kepala Desa and Kepala Adat, making clear that there has been no FPIC.

Over the past year and a half EIA and Indonesian partners, Telapak, have worked closely with the community of Muara Tae village. Everything learned from the community during this period evidences a clear and irrefutable rejection of the PT Borneo concession on their land, and, correspondingly, refutes claims that FPIC principles have been followed by PT Borneo, as stated in the TUV report

Destruction of HCV areas

The TUV report identifies a small area (100 hectares) of HCV land that is ascribed to Muara Tae. This matter is immaterial due to the absence of consent.

Nonetheless, community members consider the access to their entire territory to be integral to their livelihood strategies and culture, and have expressed considerable concern over the maintenance of both due to PT Borneo's ongoing occupation and clearance of their land.

In addition to the loss of farmland, the community has expressed concern over the loss of traditional medicines that are cultivated and gathered within its territorial boundaries. Further, the community believes that PT Borneo's land preparation has caused damage to the Utak Melinau and Nayan rivers, which are the principal source of potable water for Muara Tae. This is despite the fact that the Nayan river has been identified as an HCV area. The destruction of watersheds as a result of the plantation has given rise to legitimate concerns over both flooding and drought.

Annex 2a: Rejection of PT Borneo Surya Mining Jaya by Muara Tae villagers

8 January 2011: Muara Tae villagers attended a meeting with villagers from Ponaq village, facilitated by PT Borneo. Muara Tae village representatives rejected the plantation and clarified the boundaries of their lands, which are based on natural geographical features.

17 June 2011: Muara Tae village representatives signed a letter rejecting the PT Borneo plantation and sent it to PT Borneo and the Bupati of West Kutai regency.

18 August 2011: Representatives of PT Borneo met with approximately 40 Muara Tae villagers in the home of the Kepala Adat of Muara Tae. The community unanimously rejected the proposed plantation in its territory.

21 Agustus 2011: Muara Tae village representatives sent a letter to PT Borneo rejecting the proposed plantation and enclosed a map indicating the boundaries of the Muara Tae community lands.

28 April 2012: Muara Tae village representatives rejected requests from consultants seeking to conduct HCVF Assessments in Muara Tae lands on the basis that the consultants were working for PT Borneo and were therefore not neutral, and because the community had already rejected the company's presence.

8 May 2012: Muara Tae village representatives sent a letter to PT Borneo demanding the company stop buying Muara Tae land, illegitimately, from the neighbouring village of Ponaq.

Annex 2b: Testimony transcribed from filmed interviews with Muara Tae villagers between 10th and 12th October 2012¹

Pak Masrani, Kepala Desa/Village Leader of Muara Tae

“Any company that enters an area should adhere to the principles of FPIC. That is, they should only enter with the consent of the community and without coercion, and the community should be given sufficient information by the company.

“But PT Borneo Surya Mining Jaya's entry into the village of Muara Tae does not comply with the principles of FPIC. Because they did not enter with the consent of the community. They forced entry, demolishing the community territory forcibly. Even though the people resisted them, they remain displaced. They have ignored the rejection by the villagers of Muara Tae.

“PT Borneo sent a team from IPB [Bogor Agricultural Institute] to conduct HCV [High Conservation Value] assessments. At that time I and the people of Muara

¹ These passages are translated sections of filmed interviews. These interviews can be made available to the RSPO on request.

Tae rejected their presence in our territory. The reason is because we have not yet accepted the palm oil company.

“Secondly, because this HCV assessment is only to survey certain areas and only protects certain areas based on their own desires. As for us here, all of the territory of Muara Tae has a high value. The forests in Muara Tae’s territory all have great potential.

“Besides that, it’s really for the community. The territory of Muara Tae is a daily source of livelihood. For farming, for gardening. So if you want to find high value, all of Muara Tae has value.

“Utak Melianu and Utak Melipeh rivers are the main source of water in the village of Muara Tae. Utak Melinau is a tributary of Nayan river, which flows through the village.

“So the availability of water in the village of Muara Tae depends on this river upstream. Under these conditions, with the destruction of the river in this way there is no source of water for public consumption in the village.

“When the rainy season comes we will see muddy water come up to the village and we will not be able to consume it any more. In the future we expect to see droughts because the water source is not there any more.”

Ignasuis Igoq, Kepala Adat/Customary Leader of Muara Tae

“On August 18, 2011, PT Borneo came to my house and around 40 people attended that night. But the community including me and the village head refused the presence of PT Borneo, who wanted to partner with us.

“Then on September 11, 2012, they returned to ask the community again and promised “we will not be detrimental to the community”. Promising that it would be very profitable for the community. And we refused. We do not want to accept the presence of palm oil, because the only resource Muara Tae villagers want are forests and land. Since most of our territory is converted into a coal mine, we only have the left side of Nayan River to make a living.

“However, the company did not want to know and still evicted us. Although many of us tried to stop the conversion, they stop when they see us, but when we get back to the village they continue. Even during the night.”

Pak Doh, Muara Tae customary landowner

“My land was seized by the company. I have never sold or handed over the land. I really love my land. This is a traditional society that does not know the kind of work offered by the company. I’m just living out of making fields, no other job. That’s what supports my children and my grandchildren.”

Pak Sedan, Muara Tae customary landowner

“PT Borneo took my land by force and then planted palm oil. [Now] I’m planting rubber to defend and maintain my land. If my land was taken, I could die. Since I

do not know any other job, I can only farm. I am dead. So, I ask that my land is returned to me. Companies must not forcibly evict us again.”

Andreas Singko, Muara Tae elder and customary landowner

“When Borneo Mining Jaya came to the village we all, in the name of the community, refused. Because the land was for us for farming, no more than that. And the forest that remainins we will maintain, replanting forests so that they grow. So we are not ready to accept the presence of PT Borneo Mining Jaya.”

Petrus Asuy, Muara Tae elder and cusomtary landowner

“PT Borneo Jaya Surya Mining is destroying forests, depriving the rights of the indigenous peoples Muara Tae, bringing BRIMOB [riot police] to intimidate people so they don’t defend their land. And they have violated our human rights, particularly by damaging the environment. Damaging the sources of spring water for the rivers that flow to Muara Tae and destroying the forest wood and traditional medicines that have been maintained by the community of Muara Tae.”

Annex 3: Boundaries of Muara Tae customary territory overlaid on PT Borneo concession boundaries in Summary Report of SEIA and HCV Assessment

