



## **Update: Wilmar's appeal on land conflict in West Sumatra granted by the RSPO Complaints Panel**

Singapore, 26 April 2017 - The Roundtable on Sustainable Palm Oil (RSPO) Complaints Panel has agreed to review its decision on the case of PT Permata Hijau Pasaman I (PHP I), following an appeal from Wilmar International Limited (Wilmar) submitted on 18 April 2017. According to RSPO's communication to Wilmar, an Appeals Panel independent of the Complaints Panel presiding over this case will be convened to deliberate on Wilmar's appeal, including our request for Stay of Execution of the participatory mapping exercise.

Wilmar was compelled to file an appeal after our review found possible breaches in the complaint handling process within the RSPO. Along with the appeal, Wilmar requested to postpone the participatory mapping activities set out in RSPO's decision letter. The participatory mapping exercise requires the direct involvement of Indonesian government regulatory bodies and as such, proceeding with the exercise would not be appropriate until the appeal process is completed.

Following the decision of the RSPO regarding the case of PT PHP I on 1 February 2017, Wilmar immediately initiated the process of identifying an independent expert to conduct the prescribed activities of participatory mapping. Agreement on the choice of the independent expert was also obtained from the complainant, Alman Gampo Alam of the Nagari Kapa community. We then initiated the development of the Terms of Reference (ToR) with the NGO Forest Peoples Programme (FPP) through the independent expert as well as with the RSPO. FPP supported the complainant to file the original complaint to the RSPO in October 2014.

However, in the process of carrying out the required actions as contained in the 1 February letter, we found the following oversights in the handling of the case:

### **i. The RSPO Complaints Panel's decision was based on preliminary information**

RSPO Complaints Panel's decision letter was issued *prior to* the final report from the independent investigation being made available to the panel. Upon receiving RSPO's decision letter, Wilmar immediately requested for a copy of the said report which should have been the key basis for RSPO's decision and is a crucial document in the development of the ToR. It emerged that the RSPO Complaints Panel decision was based on the Desk Review and the Executive Summary of the Final Report. The final report was not submitted to the RSPO Complaints Panel at the time the decision was made.

The said final report in Bahasa Indonesia was only made available to Wilmar on 5 April 2017.

### **ii. Change of the independent consultant's role without due notification to and consensus of all parties concerned**

The role of the consultant, according to the original ToR which was collectively agreed by Wilmar, FPP (on behalf of the complainant) and the RSPO, was to act as a *verifier*, to "undertake independent verification on the field" and to "identify root cause of the complaints and options to resolve the complaint case". However, the consultant was brought in to act as a *mediator* to try and achieve a mutual resolution during stakeholder meetings in October and December 2016. These took place while the consultant was still in the process of compiling

his report to the RSPO. Wilmar objected to this change in the consultant's role and raised this as a concern to the RSPO Secretariat representative prior to the start of the meeting in December 2016, but there was no follow-up action.

In view of the above circumstances, Wilmar strongly believes that the change of the consultant's role from a verifier to a mediator had affected the development of the final report, as the objective of the independent consultant was compromised.

It is worth noting that during the "mediated meetings" carried out in October and December 2016, the complainant wanted specifically for Wilmar to rescind the existing land permit (HGU or "*Hak Guna Usaha*") of PT PHP I, but continue to operate in the area and pay land rent. The complainant would not accept anything less to achieve resolution on the case. This is not a possible option as without a land permit, Wilmar would be operating illegally within Indonesia. Regrettably, the outcomes of the "mediated meetings", which we consider to be important points, were neither included in the final report nor reported back to the RSPO Complaints Panel. This further raises the question on the validity of the independent consultant's role being changed from 'verifier' to 'mediator', as these findings were not recorded.

### **iii. Wilmar's evidence and informants not included in development of the final report**

In Wilmar's review of the final report as received on 5 April 2017, it was found that evidence and comments provided by Wilmar to the consultant were not taken into consideration in the preparation of the final report. No one from Wilmar's list of informants was interviewed despite this list being provided to the RSPO Complaints Coordinator, as per their request.

Unrelated to the reasons for which Wilmar is appealing, there have also been recent actions by the complainant that could further undermine the RSPO complaints process. On 20 March 2017, the complainant unilaterally met with the Bupati of Pasaman Barat (District Regent for Pasaman Barat), which resulted in Wilmar being summoned to see the Bupati the next day. The RSPO secretariat has officially issued a letter to the complainant on 5 April 2017 to firmly request that the complainant act in a transparent manner in order not to jeopardize the process of resolution. Wilmar was contacted by the West Sumatera Regional Police Chief (*Kapolda Sumbar*) on 15 April 2017 on the same case.

Ms Perpetua George, General Manager for Wilmar Group Sustainability said, "Wilmar remains fully committed to working with the RSPO and all parties concerned to resolve this case in a transparent and equitable manner. All RSPO members need to have the benefit of due process provided by the RSPO complaints system. We believe that a decision made through the proper channels and processes would further strengthen the overall RSPO Complaints Procedure and validate the decision which is made."

## **Background of the case in chronological order**

### October 2014

Alman Gampo Alam, with the support from the Forest Peoples Programme (FPP) and HUMA filed a complaint to the RSPO on PT PHP I's failure to obtain Free, Prior and Informed Consent (FPIC) from the communities to release their land rights.

The RSPO Complaints Panel carried out an investigation which included meetings between RSPO, the communities, the Regional Land office and Wilmar. Wilmar was fully cooperative throughout the investigation process. The timeline of the investigation is tracked on the RSPO website at <http://www.rspo.org/members/complaints/status-of-complaints/view/76>.

### 10 March 2015

The RSPO Complaints Panel issued a preliminary decision stating that Wilmar was in compliance with RSPO principles, and had acted in accordance with the law. The decision clearly stated that:

i. The Cultivation Right on Land (Hak Guna Usaha - HGU) Certificate was issued to PT PHP I in accordance with the law; and hence the company is also in compliance with the RSPO requirements.

ii. Land acquisition was done by the local government with the two local communities. As such, any discrepancies found should be raised with the local government. This issue of land boundary dispute between the two communities - Kapar and Sasak - is therefore a matter that should be discussed and resolved between the communities and the local government. Such disputes should be directed to the local administrative court rather than to Wilmar.

### 4 May 2015

In response to Gampo Alam's letter, the RSPO informed Wilmar and all parties involved in the complaint that it had sought the support of the assistant of the Governor of West Sumatra in arranging a meeting between the RSPO and the related stakeholders in the Government of Pasaman Barat. An appointment with the related government personnel to meet after the Muslim festival of Lebaran or Eid (in August 2015) was secured. The purpose of the meeting was to address the following matters:

- i. To settle the land boundary dispute between the communities of Sasak and Kappa;
- ii. To explore alternatives for PT PHP I to operate legally without having a HGU (land use permit);
- iii. To confirm whether the area in question, under the PT PHP I HGU, will be returned to the local community upon expiry of the HGU.

### 20 March 2015

Gampo Alam wrote to the RSPO Complaints Panel to reject the Panel's decision. The letter can be found at <http://www.rspo.org/files/download/5020840527d5997>.

### 20 May 2015

FPP complained to the RSPO, alleging that Wilmar was behind the police's detention of Gampo Alam.

The RSPO confirmed in an email to Wilmar that the police detention was not related to PT PHP I or Wilmar.

### 29 July 2015

All parties agreed to conduct ground-checking in order to have a clear understanding of the case. RSPO Secretariat sought for an independent consultant.

28 October 2016

The independent consultant conducted a stakeholders meeting at Pasaman Barat.

8 December 2016

The independent consultant conducted a follow-up stakeholders meeting at Pasaman Barat.

1 February 2017

RSPO issued decision letter on the case.

3 February 2017

Wilmar requested for a copy of the final report as it is a crucial document in the development of the ToR.

24 – 27 February 2017

Draft ToR was shared with RSPO and the independent expert for comments

8 March 2017

The complainant agreed on the choice of the independent expert that was proposed by Wilmar.

15 March 2017

Wilmar met with RSPO secretariat on the case and requested for an extension for the finalisation of the ToR until the final report is shared with PT PHP/Wilmar.

20 March 2017

The complainant unilaterally met with the Bupati of Pasaman Barat.

21 March 2017

Wilmar was summoned to face the Bupati of Pasaman Barat to provide clarifications on the case.

5 April 2017

The RSPO secretariat officially issued a letter to the complainant to firmly request that the complainant act in a transparent manner in order not to jeopardize the process of resolution.

5 April 2017

Given the delay with the final report, the RSPO complaint panel granted an extension of thirty (30) days to finalize the ToR and initiated the participatory mapping exercise. The final report in Bahasa Indonesia was also made available to Wilmar on the same day.

13 April 2017

Wilmar met with the RSPO secretariat to raise its concerns about possible breaches in the complaint handling process within the RSPO, including the fact that the evidence and comments provided by Wilmar to the consultant were not taken into consideration in the preparation of the final report.

15 April 2017

Wilmar was contacted by the Regional Police Chief of Sumatra Barat in regards to the same case.

18 April 2017

Wilmar submitted an appeal to the RSPO Complaints Panel regarding their decision on the case of PT PHP I.

25 April 2017

RSPO Complaints Panel agreed to review its decision on the case of PT PHP I.