

Additional Social Analysis

Korindo Group

FSC International

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Disclaimer: This document presents the results of the additional social analysis of the Korindo Group which was conducted by an independent expert in early 2019 and commissioned by Forest Stewardship Council (FSC) International, following the PfA complaint filed by Mighty Earth against Korindo Group in May 2017. The investigation was commissioned by FSC International with the objective of being used as information and basis by FSC International Board for the decision making on the case.

Due to a disagreement with Korindo, FSC is not in a position to publish the full document. FSC has made redactions in this document which have been clearly marked. Personal information about the independent experts, information outside the scope of the investigations and information protected by data security laws are subject to redaction.

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1. Introduction

1.1 Background and context

A formal complaint was made in May 2017 against Korindo by US-based NGO Mighty, alleging that its associated companies have contravened the FSC Policy for Association (PFA). Companies within the Korindo group, a group that also holds FSC Chain of Custody (COC) certificates, are alleged to be responsible for 'violations of traditional and human rights in forestry operations', as well as illegal conversion of forest to plantation.¹ Mighty have called for the FSC to respond by disassociating the Korindo group, and setting stringent conditions for any re-association. REDACTED

The FSC PFA, certification terms and Principles and Criteria all explicitly require the certified company (or organization) to uphold what are designated as 'traditional and human rights' or THR. As set out in more detail below, THR are defined in the FSC system to include the traditional or customary rights afforded explicitly to indigenous peoples in the UN Declaration on the Rights of Indigenous Peoples (IPs) (UNDRIP, along with ILO 169), as well as the universal human rights set out in the UN Declaration of Human Rights (UNDHR), that encompass these.

The allegations set out in the complaint and associated reports concern the rights and the livelihoods of communities located in and around five palm oil concessions that are part of the Korindo group. These are PT Tunas Sawa Erma (TSE) and PT Berkas Cipta Abadi (BCA) in Boven Digoel district, PT Papua Agro Lestari (PAL) and PT Donghin Prabhawa (DP) in Merauke district, all in Papua province, and PT Gelora Mandiri Membangun (GMM) in South Halmahera district of North Maluku province.

The complaint and the reports allege that forests have been cleared within these concessions without the free, prior and informed consent (FPIC) of affected communities, in the face of their express opposition, and with inadequate compensation. The complaint alleges that at least 30,000 ha of forest has been cleared illegally across the 4 Papuan concessions, one third of which was classified as primary forest.² An additional 5,100 ha is alleged to have been illegally cleared in PT GMM. REDACTED

As well as the violations of land and FPIC rights set out in the complaint and reports. REDACTED

These five concessions are all now more or less fully planted to palm oil. The majority of the timber harvested in large quantities during the conversion process

¹ PT Aspex Kumbong (AK) (SGS-COC-005807) (subject to FSC-STD-40-004 V2) issued Feb 2009, expiry 4 Feb 2024; PT Korindo Ariabima Sari (TT-COC-002650), issued 2008, last issue 2018, expiring 2023 (FSC-STD-40-004-V3 2016); and PT Korindo Abadi Asike (TT-COC-002742, TT-COC-002650), issued 2008, reissued 2018, expiring 2023

² Mighty complaint to the FSC (May 2017), p.6.

is believed to have been processed by mills owned by Korindo companies. PT KAS and PT BFI, located in East and Central Kalimantan, have both received shipments from PT GMM in North Maluku (Perilous, p. 13). PT KAA in Papua, located in the same sub-district as PT TSE and PT BCA, is assumed to have processed the timber harvested from these concessions, as well as that from PT DP and PT PAL.³

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In response to these findings, the FSC Board requested further analysis of the evidence, and of the likely social impacts of the company's activities, which is provided in this report. Its key objectives are to clarify further the nature of any THR violations that have taken place, and to assess the social impacts of company's operations.

1.2 Structure and approach of this report

The additional analysis starts by setting out the normative framework within which the alleged THR can be further evaluated. The intention is to clarify exactly what the requirements are for FSC certification in relation to traditional and human rights and their basis in international human rights mechanisms, and what this means in practice for FSC certificate holders. Based on this summary, and drawing on the work of FSC International (2018) and internal analysis of the FSC Secretariat,⁴ a typology of rights is then developed, which categorizes violations and sets out some parameters for further analysis and assessment of them.⁵

The next section contains a detailed case study of one of the five concessions, PT TSE in Boven Digoel district, Papua, in order to provide more in-depth insight into the experience of the communities that have directly affected by the Korindo companies. A detailed timeline is developed for two of PT TSE's three concessions, POP A and POP B, which includes all the relevant legal and licensing events; the actual land-use change that has taken place amounts of clearing; and all community interactions with the company, including meetings, agreements, letters.⁶

Setting out the relevant events and interactions clearly and chronologically in this way allows an assessment to be made of the nature of the land acquisition and FPIC processes that have taken place, including how these were viewed by those involved. An assessment can then be made of the extent to which they meet or fail to meet expectations under the FSC system, and of whether and to what extent any violations have taken place. REDACTED

³ Additional information on timber shipments is required to confirm this.

⁴ FSC Secretariat matrix (X3) and analysis (X2)

⁵ As a form of Human Rights Impact Assessment or HRIA.

⁶ Another plantation, POP E, of approximately 19,000 ha has been awarded a location permit (2012), land release from govt (2014), and business permit (2015), but no clearing or planting has taken place yet

A simple assessment is then made of the social impacts of the company's presence and operations. This draws extensively on a well-designed and in-depth case study of this concession and its impacts on local communities (Cifor 2010), as well as the CP report. This exercise uses a welfare impact assessment (WIA) framework - a social monitoring tool being developed for the High Carbon Stock Approach (HCSA) as part of the operationalization of its Social Requirements.⁷ This approach measures the various positive and negative impacts of commodity production operations on communities' incomes and assets, their food security, their provision of eco-system services, social and economic infrastructure, and overall.

Although the assessment is based on secondary sources, much of the information contained in the key sources on which it draws is itself primary.⁸ This includes testimonies and documentation, most of which are available and verifiable (although not all). This desk-based WIA cannot hope to approach the level of detail or robustness of a field-based assessment, but it does generate some useful insights on the socio-economic outcomes of the case study concession over a relatively long timeframe. This supplements the information on the history of its operations that is collated in the timelines.

The information generated in the timelines and the WIA is then assessed in relation to the normative framework and typology, and a typology of rights and harms for PT TSE is developed. This allows clear conclusions to be drawn about whether violations have occurred, and about their nature and extent. Only one case study is presented here in detail, although timelines and a typology have also been developed for PT GMM in North Maluku (Annexes 5.3 and 5.4). This same information should also be collated and assessed for the other concessions, using the relevant documentation that is available to some extent. Such an exercise could be conducted as part of a dedicated human rights impact assessment, which in turn would be the necessary starting point of any remedy process. Recommendations follow, building on those made in the CP report, with further actions suggested in accordance with new findings.

2. Normative framework

2.1 FSC HR and regulatory framework

Along with environmental protection, respect for THR is a core element of the FSC standard and system. As set out in the Policy for Association (PfA), 'Human Rights, 'or rights as established by the UN Declaration of Human Rights,' are a fundamental requirement of association, along with customary rights (FSC-POL-

⁷ www.hcsa-org/toolkit/chapter2

⁸ These key sources include the Cifor research (2010), (Center for International Forestry Research Working Paper, 'The Impacts of oil palm plantations on forests and people in Papua : a case study from Boven Digoel district' (A2_1_); information in Burning Paradise (2016); the Mighty complaint (2017); the Complaints Panel report (CP) (2018); and Perilous (2018).

01-004, p.5).⁹ Customary rights are defined as ‘having resulted from customary actions ...which have acquired the force of a law’, with direct reference made to the ILO 169 (The Indigenous and Tribal People’s Convention).¹⁰ Elsewhere, the UN DRIP is referenced directly as the basis for the rights of IPs that are required to be protected.

This requirement to protect human rights is further reinforced in the certification standard itself, which states that the organization must respect the PfA, and reiterates the specific requirement to respect THR (FSC-STD-40-004-V3).¹¹ Certificate holders are also required to complete, ‘a self-declaration that they are NOT involved directly or indirectly in any violation of THR’.

Human rights are defined in the FSC system with direct reference to the UNDHR of 1948.¹² This international legal instrument, which forms the basis of customary international human rights law, sets out fundamental human rights ranging from the right to life, to security of person, to adequate sustenance and health, as well as to various freedoms – of movement, association and political and religious choices, along with equality under the law. This foundational statement of universal human rights is reinforced, complemented, and in some cases extended, through various other international instruments. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on Racial Discrimination (CERD). Although these instruments are not referred to explicitly in the FSC system, together with those that *are* clearly referenced as the basis of its definition of traditional and human rights (UNDHR, UNDRIP and ILO 169) all of these constitute international customary human rights law (FSC International 2018).¹³ The UN Commission for Human Rights (UNCHR) has oversight of this system.

Traditional rights, also known as customary rights, are defined with direct reference to the UNDRIP (2007), as well as ILO Convention 169 (1989). These set out additional protections specifically related to IPs, concerning their traditional rights to land, resources, culture, equality under the law. While there much overlap with the stipulations of the broader DHR, CESC, CERD and others, key areas receive additional and more specific recognition and protection in UNDRIP. These include the right to self-determination (Article 3), the right to participate in and to give or withhold free, prior and informed consent (FPIC) to, any decisions about their lands and development (Articles 18,19, 23, 32). Rights to subsistence, social and economic well-being, and health are all protected, (Articles 20, 21, 24), along with the core right to ‘own, use, develop and control traditional land and

⁹ In the PfA and certification the language is that of ‘should’, defined by FSC to mean strictly compulsory, in contrast with shall, may or can

¹⁰ Customary rights are similarly defined in the FSC Glossary of Terms (2016) (FSC-STD-01-002)

¹¹ As applies to the 3 certificates held by the Korindo group companies

¹² As set out in the FSC glossary of terms (FSC-STD-01-002), p.9

¹³ As well as numerous other ILO conventions on the protection of labour rights, and various other more specific conventions

resources (Article 26), as well as conservation of them (Article 29). Additional protections relate to the application of the law (Articles 27 and 37), and access to grievance mechanisms (Article 28)

In the FSC system, IPs are accorded specific rights in Principle 3, and these two instruments are widely referenced. However, local communities are also fully recognized as rights-holders in the FSC system, and enjoy the same or similar protections as IPs, as set out in Principle 4 on Community Relations. Their customary rights are equally recognized, for example, as set out in Principle 4.2, which states that the organization should ‘identify, document and map the legal and customary rights of tenure’ of local communities. FPIC rights are also similar, as set out in 3.3 and 4.2. Local communities are defined as ‘those in or adjacent or close enough to management units to have an impact on them or to have their economies, rights or environment significantly affected by its activities’.¹⁴ The FSC system also gives equal weight to customary rights as it does to legal rights, which are generally referred to together as ‘customary and legal rights’, including throughout Principle 1 on Legal Compliance.

Other principles relevant to the fulfillment of THR are Principle 1 on Legal Compliance, Principle 6 on Environmental protection, including provision of ecosystem services, 8 on Monitoring, and Principle 9 on HCVs (FSC-STD-01-001 V5-0 D5-0 EN). Protection of HCVs, being ecosystem services, community needs (including food security), and culture in various senses, is a crucial aspect of the fulfillment of those rights which relate to basic human needs (set out in UNDHR Article 21, 25 and 26, and UNDRIP 20, 21, 24 and 29).

Further guidance relevant to the fulfillment of THR is given in the FPIC guide (FSC-GUI-30-003 V1-0 EN FPIC) (2012) as well as the International Generic Indicators (IGIs) of 2015, including the relevant annexes.¹⁵ Some of this guidance is of relatively recent provenance, particularly the IGIs, and the original certificates of the Korindo companies in the complaint predate its adoption.¹⁶ Respect for THR has of course been an integral part of the FSC since its inception in 1994, however, including the protection of HCVs and the requirement to obtain the FPIC of affected communities, and so has always applied to certificate-holders and organizations.

2.2 Typology of rights and harms

The various rights that form part of the FSC’s regulatory framework can be organized into a typology, that sets out the categories of rights and their components that apply in this context, along with information on various aspects of any violations of them. The typology is based on FSC International (2018), as well as FSC guidance on assessing risks and harms, including intensity and scale of impacts, and ease of remedy. Rights are categorized into land rights, FPIC rights, rights to the protection of ecosystems services, to food security, and to

¹⁴ International Generic Indicators 2015 (p. 77)

¹⁵ FSC-STD-60-004-V2-0

¹⁶ Although they have all been renewed since 2015.

participation in culture, and the right to remedy and access to adequate grievance mechanisms.

These same categories of rights are also protected in many other standards, including the FAO Voluntary Guidelines on the Right to Food and on Land Tenure, the Principles and Criteria of the RSPO (Roundtable for Sustainable Palm Oil), the Social Requirements of the HCSA, the Rainforest Alliance's SAN (Sustainable Agriculture Network), and the Accountability Framework Initiative, as well as more broadly in the UN Guiding Principles on Business and Human Rights (UNGPs) and Global Compact.

Land Rights

Land rights include the underlying right to own land, and to use and access it; the right to dispose of it and take part in decisions relating to its management; and the right to be adequately compensated for it. These fundamental rights derive from Article 17 of UNDHA, which states that "everyone has the right to own property, and no-one shall be arbitrarily deprived of this property". The land rights of IPs specifically are also protected in UNDRIP, with Article 26 stating that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."

As mentioned, land rights are defined in the FSC system to include legal and customary rights, with both aspects explicitly and repeatedly referred to in Principle 1 on Compliance with Laws and elsewhere. As also noted above, although IPs do enjoy additional protections of their land rights under UNDRIP and ILO 169 (as in other areas), in the FSC system, local communities are treated similarly if not exactly the same and are recognized as rights holders with parallel protections,

Land rights include usage and access rights, as well as ownership. As stated in Principle 3.2, organizations, 'shall identify and uphold IPs' legal and customary rights of ownership, use and management', echoed in Principle 4.2, as set out above. They also include the rights of landowners and users to be fully involved in all decisions that concern their land. Principle 4.2 requires organizations to 'recognize and uphold the legal and customary rights of local communities to maintain control over management activities ... to the extent necessary to protect their rights, resources, lands and territories.'¹⁷

Land rights also include the right to adequate compensation. This right draws on the same fundamental principle of fairness that underpins the right to compensation as part of remedy in case of harms. Compensation should be proportionate to the value and to the loss of value that is experienced. In relation to land, this covers fair compensation for its actual value, or price, compensation for the value of any resources it contains, such as timber and perennial crops, as

¹⁷ Note that this clause is explicitly referred to in the Mighty complaint as having been violated (p. 7).

well as compensation for the opportunity cost of the access to all the associated resources that is lost through its conversion, including crops and forest resources.

The fulfillment of these three aspects of land rights – of ownership, access and usage rights, to have a say in land use change and management, and to adequate compensation if any aspect of these are relinquished - forms the foundation for the achievement of other rights related to the fulfillment of basic needs. In areas in which conversion may take place, land and forests are often the predominant source of livelihood, of ecosystem services provision, while also being of great cultural significance (Articles, 22, 25 and 26 of UNDHR and 11, 20, 21, 24, 29 of UNDRIP on the rights to an adequate standard of living, health and environment, and to participate in cultural life). The protection of land rights is thus the basis of the protection of the social HCVs, meaning that the process of land acquisition is crucially important.

FPIC rights

This process is mediated through the attainment of the free, prior and informed consent of rights-holders, meaning in turn that FPIC is a key aspect of the fulfillment of land rights in practice. FPIC rights are thus also an intrinsic part of human rights protection and fulfillment. Their legal basis was set out in UNCHR 2004¹⁸ as well as in the relevant articles of UNDRIP (Articles 3, 20, 21). FPIC rights are referred to throughout the FSC Principles, and the means to achieve them is set out in the detailed FSC FPIC guidance (FSC-STD-01-001 V5-2).

Although this guidance was produced in 2012, the right to give, withhold and withdraw consent has been part of the FSC values and system from the founding of the organization in 1994. Again, just as with customary land rights, the rights of FPIC have been recognized explicitly for IPs (in UNDRIP Article 3 and ILO 169), and specific references are made to these additional protections in Principle 3. But the rights of local communities are equally recognized, and as mentioned, the FPIC requirements in Principles 3 and 4, as others, are similar.

Key aspects of FPIC in the FSC system include the following:

‘FPIC is a pre-condition for certification *To recognize and uphold the rights of indigenous peoples and local communities to their resources, lands and territories is a requirement for FSC certification, both in the current and the revised P&C. FPIC is now a requirement in 5 criteria and, as such, non-compliance with these criteria could result in the issue of preconditions that preclude the issue of an FSC Certificate.*

FPIC ≠ engagement *The right to FPIC includes the right of indigenous peoples and local communities to give, withhold or withdraw consent to those activities that would affect their rights. That is different from an engagement process which gives the Organization the right to take the final decision. Engagement by itself does not include the right to say ‘No’, whereas*

¹⁸ As set out in the glossary definition of terms (FSC-STD-01-002), p.13

a process based on the right to FPIC does.

The right to FPIC does not depend on legal rights A common misperception is that FPIC only applies when indigenous or local communities have legal rights. In fact, the FSC recognizes customary rights as well. The FSC definition of customary rights is presented in Part 1, section 2.4 and in the Glossary of Terms.

No distinction between state-owned and private land Regarding the right to FPIC, it makes no difference whether the FMU is situated on state-owned land or on private land.¹⁹

The FPIC process must fulfill all the individual elements of free, prior, informed, and consent. Communities must have the genuine right and option to withhold their consent, and must not be coerced or intimidated in any way. They must be fully informed of the implications of the development, and the various possible or likely outcomes. They must also be fairly represented in the process, so consent from traditional village chiefs or heads, or local government officials or appointees, is not sufficient. All sub-groups of the affected communities must be represented in the process, including by gender, age, origin, language etc..²⁰

An effective FPIC process is thus necessary to ensure that land rights are fulfilled, with an agreement on the planned land-use change reached transparently, and with the full involvement in the decision of the communities, and different groups within them, who will be affected by it.

Rights to the fulfillment of human needs including ecosystem services, food security and culture

An effective FPIC process is also necessary to ensure that other core rights are protected, being those related to the impacts and outcomes of the forestry operation and land-use change associated with it. These rights concern the livelihoods and food security, the environment and health, and the culture of affected communities. All of these rights are protected under the UNDHR and the ICESCR, which set out the right to an adequate standard of living and to a healthy environment (UNDHR Articles 25 and 26), the right to food and to health (ICESCR) and the right to a healthy environment. Cultural rights are also protected in Article 27 of UNDHR and in ICESCR, while for IPs, the right to participate in culture, along with these others (clean environment and food), are once again further reaffirmed as part of their traditional and customary rights by UNDRIP and ILO 169 (Articles 20,21,24,29).

All of these are related directly to the fulfillment of basic and fundamental human needs. They create a corresponding duty to ensure that the sources of provision of these basic needs are not violated and are rather maintained and actively

¹⁹ FSC- STD-01-001 V5-2 – FPIC guidance

²⁰ Fair representation and non-discrimination are such important aspects of FPIC and broader engagement, that they are protected in specific SRs as part of HCSA – SR 2 Fair representation, and SR 12 non-discrimination. www.hcsa-org/toolkit/chapter2

protected, in the context of land-use change and its impacts on them. In the FSC system, these rights are protected in Principle 9, which requires the ‘maintenance and enhancement of values’, while Principle 6 also addresses the maintenance of environmental values, with direct ramifications for social aspects. Along with respect for land rights and FPIC rights, the protection of food security, environment and ecosystem services and culture is thus another core aspect of the fulfillment of the THR of communities affected by forestry operations. Unlike the land acquisition and FPIC processes, which take place during the establishment phase of an operation, however, the fulfillment of these rights requires management actions and monitoring during the lifetime of the company’s operations. Within the FSC system, Principle 8 on Monitoring covers some of these aspects.

These rights form the basis of the system of protection of high conservation values or HCVs, as developed by the FSC as a core foundational value. As well as the key environmental/ecological values (HCVs 1,2,3), the HCV framework requires the identification and protection of the areas in the landscape related to the fulfillment of the social, economic and cultural rights and needs of the affected communities. Designated as HCVs 4, 5 and 6, or ecosystem services, community needs and cultural sites and values, these relate directly to the fundamental rights set out. In fulfillment of the right of self-determination²¹ these values have to be identified and protected in conjunction with affected communities.

In the FSC system, HCV protection is included in Principle 3 on IPR and 4 on Community Relations, in Principle 6 on the ‘maintenance, conservation and restoration of ecosystem services’, and in Principle 9 itself, which specifically commits the organization to ‘maintain and enhance the HCVs through applying the precautionary approach’. This latter concept entails the identification of any risk, including to human welfare, as well as taking ‘explicit and effective measures to prevent the damage and risks’. It also requires that a value should be assumed to be present if there are reasonable indications that this is the case (HCV Common Guidance 2.6.2). Detailed implementation guidance on how to achieve the protection of HCVs in practice is given in the HCVRN Common Guidance (2015), while the core definitions are as follows :

HCV 4 Ecosystem services – Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes

HCV 5 Community Needs - Sites and resources fundamental for satisfying basic necessities of local communities or indigenous people (health, nutrition, water etc.) identified through engagement with these communities and indigenous people’

HCV 6 Cultural Values – Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and or of critical cultural, ecological, economic or religious/sacred importance for the traditional

²¹ Protected especially for IPs in Article 3 of UNDRIP

importance of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.’²²

As with FPIC, the HCV system has evolved over time and much more detailed guidance on best practice has been developed. It has become more rigorous, with assessments now conducted by licensed assessors only, and subject to peer review and quality assurance by the HCVRN. The basic principles of HCV have long been in place however, forming part of the FSC certification standard and requirements from the start.

Achieving HCV protection in practice is based on effective information gathering and engagement with communities, usually as part of the FPIC process. Relevant information is collated in conjunction with affected communities on the three social HCVs of ecosystem service provision; resources that contribute to fulfilling communities’ basic needs; and sites and areas with cultural significance. These values are jointly identified and mapped, the potential risks to them from the operations are assessed, and plans are developed for their protection and monitoring.

A similar process should also occur as part of the social impact assessment or AMDAL that companies are required to conduct under Indonesian law.²³ These have a similar objective as HCV assessments, of understanding local socio-economic realities, identifying issues of concern in relation to the proposed land use change, and developing mitigating strategies. They also similarly form an important part of the broader process of community engagement, consultation and participation. Both HCV and SIA assessments concern the actual outcomes of the planned land use change, and both require management and monitoring mechanisms to be put into place in order to protect HCVs and fulfill these community rights related to their fundamental basic human needs.

Right to remedy and grievance mechanisms

The right to remedy is strongly established throughout the international human rights framework, including specifically in the UNDHR and the UNDRIP. UNDHR’s Article 8 states that ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted them by the constitution or by law’. Article 10 further guarantees the right to a fair and public hearing whether in the determination of rights or in criminal matters. UNDRIP Article 28 states that ‘IPs have the right to get back or be compensated when their lands, territories or resources have been wrongly taken away, occupied, used or damaged, without their free, prior and informed consent.’

²² Also in the glossary (FSC-STD-01-002), p.16

²³ Social and environmental impact assessment (AMDAL/ANDAL) and community engagement and agreement are also required by Indonesian law to qualify for Plantation Business Licenses (Izin usaha perkebunan) (Cifor p.6)

The right to remedy for harms that have resulted from violations of rights is also a core pillar of the UN Guiding Principles For Business and Human Rights (UNGPs) framework, which consists of the three pillars, 'protect, respect and remedy' human right. The right to remedy and to an adequate dispute settlement mechanism is guaranteed specifically in various places in the FSC system. Fair compensation is defined as 're-numeration proportionate to the magnitude and type of services, .. or of the harms' (Glossary, p.12).

Three key rights can be set out in a typology, which also assesses various aspects of the harms that might result from any violations, with an example given in Table 1 for land rights (drawing on FSC International 2018). This kind of rights and harms typology is a useful human rights impact assessment tool. It sets out in relation to each rights violation, who has been affected, the extent and severity of the impacts of the violation, the difficulty of remedying it, and the key sources of evidence. This analysis contributes to greater understanding of the impacts of the violations, and cover aspects relevant to remediation and compensation processes. Estimates of scale, intensity and risk, or magnitude, and of the difficulty of restoration, already form part of the FSC conceptual framework. Other categories could also be added, including ease of identification of harm, source and reliability of evidence, further evidence required.

Table 1 sets out a sample typology with a few examples of possible violations and the implications, for the first category of land rights. Typologies of rights and harms are developed for the case study concession of TSE and for PT GMM, in Annexes 5.2 and 5.4.

Table 1 Sample typology of rights and harms

	Relevant HR	What happened and when	Who (most) affected	Severity and extent	Difficulty of remedy	Key sources of evidence
Land rights :	<i>FSC 1, 3, 4, UNDRHR, UNDRIP/ ILO 169</i>					
No arbitrary deprivation of property		<i>E.g. land converted under false pretenses/ without adequate FPIC</i>	<i>Local land owners/ IPs and others with customary ownership, use and access rights</i>	<i>According to how many affected, other land holdings sources of income etc.</i>	<i>According to case but difficult to compensate for loss of HCVs</i>	<i>Testimonies/ MOUs/records of payment</i>
Right to say in land use change and management		<i>E.g. only male heads of communities involved in land acquisition process</i>	<i>Women/ those expressing opposition/others excluded from process</i>	<i>According to case</i>	<i>According to case – genuine engagement is first step</i>	<i>Records of meetings/ signatures, letters</i>
Right to fair compensation		<i>E.g. Compensation paid well below market value of timber</i>		<i>Difference between what has been paid and what is determined to be 'fair'</i>	<i>May require significant financial and other compensation</i>	<i>Govt and market rates; shipping info, judgment on 'fair' rate</i>
FPIC rights:						
Free, Prior and Informed Consent						
Rights to the Protection of basic human needs						
Ecosystem services provision						
Food security/ Adequate standard of living						
Protection of and participation in culture						
Right to remedy and access to grievance mechanism						

3. Case study of PT TSE

3.1 Approach and method

Now that the normative framework for assessing rights fulfillment or violation has been set out, including what is supposed to happen for rights to be protected, the next step is to examine in further detail what has happened in practice in relation to the rights and harms set out in the typology. This is done through the lens of a more detailed case study of one out of the five Korindo concessions involved in the complaint.

This involves the construction of detailed timelines covering the legal and licensing aspects of the concession, including relevant Indonesian legislation; the actual clearing that has taken place; and all the interactions with the local affected communities, including meetings, agreements, records of compensation or other payments, etc.. As set out above, this detailed chronological record yields highly relevant information about the processes of land acquisition and the application of FPIC, and about any violations in relation to the relevant rights. The information collated is then fed into the typology of rights and harms.

As also described above, the available data on the social impacts of the company's operations are then assessed using the WIA approach. An assessment is made of the impacts of commodity production operations on the key socio-economic indicators of income and assets; food security; ecosystems services; social and economic infrastructure; and overall. The positive and negative impacts of these operations on affected communities are then weighed up on the basis of this information. This allows an albeit rough and ready overall assessment of the social impacts to be made, and provides some insight into whether or not the rights that relate to basic human needs - of ecosystem service provision, food security and cultural aspects - have been protected.

The information collated in the timelines and the WIA is then further synthesized into the typology of rights and harms. Relevant information is filled in, setting out clearly which aspects of THR have been affected through which particular events, along with key aspects of the impact of these violations.

One of the main sources of information on PT TSE is the research conducted by Cifor in 2010. This included interviews with key informants including customary land owners, village heads, and government officials, as well as a well-designed survey. This was conducted with 97 inhabitants in the villages of Butiptiri, Getentiri, Ujung Kia and Asike (the location of the KAA mill), with a mix of plantation workers, directly affected landowners, and other local inhabitants. The findings were verified with senior TSE staff.

Further relevant information and many testimonies on the activities and impacts of PT TSE are contained in the report of the Complaint Panel (CP 2018), including

in a focus group discussion with community members from Ujung Kia and interviews with clan heads. Detailed testimonies on the activities of PT BCA were also gathered, including through interviews with key local informants. Such sources are reliable and very well informed, although they also possibly display some bias against the company and its activities, in reflection of the objectives and mission of their organizations.²⁴ REDACTED The Cifor report can be taken as fully neutral, and so is used primarily.²⁵ Other key sources include documentation of licensing, community statements²⁶ and Korindo records of compensation payments – for timber and ‘plant’ (sago and other crops), as well as landsat records of the land use changes that have occurred.

Although the studies that form the basis of the case study are limited in number, they are generally credible and robust, with the information acquired through established means and by well-respected organizations. The testimonies of community members, and the other information they contain is validated by supporting evidence, with much corroborating documentation available. They are also highly consistent, with similar experiences reported in the different communities, forming a clear and standard pattern that is also repeated across the other Korindo concessions. These accounts are also very similar whether reported to staff of the local and international NGOs who have conducted investigations, whose researchers are trained and credible but may also be particularly sympathetic and alert to critical points of view; or to the neutral and highly experienced Cifor research team REDACTED.

The combination of the credible and consistent testimonies in all these various reports, along with the documented facts on licensing, clearing, and community interactions, including records of meetings, agreements, statements, and payments, allows for a relatively robust composite picture to be developed about what happened and when. Note that in addition to the information it provides on TSE, only some of which is presented here, the CP report also provides numerous direct testimonies from those affected by the other 3 Papuan concessions. This source alone, corroborated by documentation, provides a very full and convincing account of the extensive violations that have occurred.

Despite these strengths, there are some limitations to the available data, and more information is required on some aspects to provide additional detail and nuance. As set out in the recommendations below, a more systematic human rights impact assessment should be conducted on each concession and the associated affected communities, as well as collectively. The sources also generally reflect the expressed opposition of members of the affected communities to the activities of the concession. While this may well represent the views of the majority of community members and landowners, the perspectives of those with more positive opinions on the company’s operations and their impacts also need to be

²⁴With many having an explicit environmental and/or human rights agenda, including the authors and researchers involved in BP and Perilous (Mighty, AidEnvironment, RAN, TuK Indonesia, Pusaka, Wahli, Profondo)

²⁵ These latter key source documents are referenced carefully throughout, and direct testimonies from affected community members are italicized.

²⁶ Surat pernyataan melepaskan hak atas tanah or waiver of land rights

heard, even if they are in the minority, in order to ensure a sufficiently balanced overall assessment.²⁷

The Cifor study does cover some more positive impacts of the company's activities, including on the local economy and infrastructure, and conveys some of the ambiguities associated with palm oil development more broadly. The WIA is also designed specifically to capture positive as well as negative impacts, to ensure that the assessment is balanced, so presents these and other positive aspects such as CSR contributions. This helps to ensure that a more balanced assessment is made of the company's impacts and any mitigating actions, as set out below in 3.4.²⁸ The CP report also includes relevant details on these, including CSR and plasma. Comments of community members recorded in interviews include more neutral comments along with criticisms. The CP report also mentions community members who have supported for the company's activities, and who along with local government representatives, are described as having been 'coopted' by the company, with various references to those who may have benefitted disproportionately from the presence of the company and their role in relation to this (pp.67-69).

But there is little insight from the available sources into the views or experiences of those who have benefitted from the activities of the concession, whether in terms of their composition, the proportion of affected communities that they represent, or the extent of their role and reward in the land acquisition process. This is thus one key area in which further information would be useful in order to get a fuller perspective, although at the same time, the absence of this information does not detract from the findings set out here. Information on these aspects would contribute to assessment of the impacts of the concession in terms of equity for example, and whether, as is common, already advantaged individuals and groups are able to manipulate the situation to their own further benefit.

Given the limited insight into this aspect, it is only possible to proceed based on the information that is available, as set out in the key sources REDACTED. All this evidence points to strong opposition to the concession, and to a continued sense of grievance over its actions - and inactions, such as in relation to plasma - as well as over the inadequate compensation that has been received.

²⁷ The CP report does include testimony from a few landowners who maintain that they did agree was given - *'there was no forced on releasing the land to the company. I am the landowner's son'* (p.110). Others express concern that the company should not leave, despite its failings (p.109)

²⁸ The CP report does refer to community members 'coopted' by company, along with local government including some detail on the role of the LMC, which has not served as representative (p.67-69). But there is little further insight into their views or into any benefits that have been enjoyed by communities in the TSE area - including employees and contractors, beyond the Cifor survey.

3.2 Background and development of the concession

PT TSE is located in Boven Digoel district in Papua, in two sub-districts of Jair and Kia. Allegations regarding its activities are included in the Mighty complaint and associated reports. The Mighty complaint alleges that 2800 ha of forest was illegally converted by PT TSE between 2013 and May 2016.²⁹ This is part of the second phase of the plantation, POP B. Landsat evidence of this clearing is provided in Burning Paradise (pp.10-12). This report also gives landsat evidence of further clearing of 13,200 ha in neighbouring Subur sub-district, by the very close-related Korindo company, PT BCA, over the period of 2013-14 (ibid.). REDACTED

PT TSE consists of 3 concession areas, POP A (14,783 ha), POP B (19,486 ha) and POP E (19,001 ha), covering a total of 53,270 ha (HCV assessments (unpublished) for TSE A, B and E). Neighbouring POP C (14,526 ha) and POP D (14,435) of PT BCA cover a total of 28,961 ha (HCV assessments (unpublished) for BCA C and D). Three of these concession areas, TSE A, TSE B and BCA C, have been developed into plantations in overlapping phases from the late 1990s until the time of the Mighty complaint of May 2017 and subsequent moratorium.

Most of the clearing and planting of POP A was completed between 1998-2006 (14,461 ha cleared, 10,865 ha planted). POP B then proceeded in two distinct stages, from 2005-2010 (7,656 ha cleared, 6,856 planted), and from 2014-2017 (3,170 ha cleared, planting schedule unknown).³⁰ Much of the clearing of PT BCA POP C occurred during 2013-14. Given how closely related they clearly are, these plantations should ideally all be considered together. Due to the volume of information, and the fact that much of it is related POP A and POP B, the focus here is on these two plantations, with briefer references to the others.

Korindo established a milling operation in the same area as PT TSE and PT BCA, with PT KAA, a primary processor of timber and producer of panels, plywood, located adjacent to TSE POP A in Asike. FSC certification was issued to this company in 2008, and renewed in 2018, with expiry in 2023.³¹ Although documentation of timber shipments is lacking for PT TSE and PT BCA for the 18-year period from 1998 until 2016 when clearing was taking place, it seems reasonable to assume that the destination for the majority if not all the timber that was harvested from the 5 plantations was the neighbouring mill at Asike.³²

Three large communities or villages have been affected by the operation in the area, of Butiptiri (POP A), Getentiri (POP B first phase), and Ujung Kia (POP B second phase). All of these are part of the Auyu Jair tribe, and each includes a number of landowning clans (5, 11 and 12 respectively), with customary land-

²⁹ A total of 10,900 ha has been cleared in POP B from the start of operations in 2004 until a moratorium on land clearance was introduced in 2017.

³⁰ With in fact two distinct sets of licenses (see timeline)

³¹ Under ST40-004-V3.

³² Records on volumes, values and destinations of timber cleared from POP A and POP B are an important part of calculations of compensation. NB that some similar information is available for GMM (Perilous, p.30).

holdings of approximately 14,400, 7,600 and 12,000 ha respectively (Cifor 2010).

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Available population figures suggest a population for Jair sub-district, encompassing Butiptiri and Getentiri, of around 20,000, and for Ujung Kia sub-district of 1500, of which around 600 are part of Ujung Kia village. Note that the rest of the Ujung Kia population may well also be affected by PT BCA POP C and D, and/or PT TSE POP E. Little information is available on the population breakdown between original inhabitants of the area and any in-comers, beyond a brief reference in the Cifor study to the fact that 90% of IPs live in villages (p. 2). This is presumably in contrast to non-Papuan migrants, who live and work on or around plantations and other sources of employment, as well as in the larger towns and cities. Information given in the 2016 HCV report on TSE A states that Butiptiri and Asiki village are populated by different Mandobo clans (2016, p.15). It is thus assumed that the vast majority of the population in these affected communities is comprised of the original inhabitants of the area, grouped into clans.³⁴

It is important to note that no doubts have been expressed that these are communities are IPs and are the rightful customary landowners of the areas in question. So compensation payments to UK for example were termed as '*kompensasi penebangan atas hak ulayat marga*' (R64), referring to the rights of customary clans, while references are made throughout the Cifor, HCV reports, and other documentation to 'landowners'.³⁵ As IPs, the rights of these communities are protected in UNDRIP and ILO 169, as set out above, and throughout the FSC system including Principle 3 on IPRs. Their rights are also explicitly recognized and protected under relevant Indonesian laws, including Papua Special Regulation no. 23/2008 on the Communal and Individual Rights of Customary Communities, and the ruling by the Constitutional Court regarding their incontrovertible rights over their traditional lands (June 2013).³⁶

The traditional land rights and customary practices of indigenous Papuans are set out by Korindo in their 'Description of customary rights in Papua'.³⁷ Land in Papua is traditionally owned communally within a clan-based system, with allocations by clan and family, and decisions on these made communally. There is no concept within this traditional customary system of the permanent land alienation or of its sale or disposal to outsiders. This would violate their deep association with the land, and the deep relationships between livelihoods, culture and the land and forest. As a local landowner in a neighbouring area put it, '*Our land is symbolized as our own mother. We totally depend on the forest since we get our food from the forest. If we sell the land, we sell our own mother*'.³⁸

³³ Corresponding almost exactly with the size and license of POP A, and POP B phases 1 and 2 (see timeline)

³⁴ This is an assumption which does require further verification

³⁵ The HCV report for TSE A does conclude that the local clans would not count as indigenous people, but this is not a credible evaluation, and does not reflect the approach of the company, or the government.

³⁶ All of which are encompassed by FSC Principle 1 on. Compliance with laws

³⁷ Or Urian Tentang Hak Ulayat de Papua (FV49)

³⁸ Miffee (2012) 'An Agribusiness attack in West Papua : Unravelling the Merauke Integrated Food and Energy Estate', p.18

3.3 Timelines and analysis for PT TSE

The timelines for POP A and POP B (Table 2.1 and 2.2 below) set out events from the early 1990s up to 2017 in three areas, related to legal and licensing aspects, to land use change carried out by the company, and to its interactions and dealings with the three affected communities. Various notes are made alongside, and relevant testimonies are also set out. More detailed and fully referenced versions of these timelines are in Annex 5.1. The implications of this information are then analyzed, along with testimonies from the CP report and elsewhere, in relation to the various rights of land acquisition, FPIC and its components, security, and compensation. REDACTED

This analysis in turn informs the development of a typology of rights and harms for PT TSE (Annex 5.2.). The typology also includes information from the welfare impact assessment set out below in 3.4. It provides considerable detail on the various rights that have been violated, and starts to develop input on the harms that have resulted, and aspects of their remedy. The typology thereby offers a relatively comprehensive and credible assessment of the THR violations that have taken place in TSE. It is still an initial and tentative exercise, however, being based on a brief desk study only, and requires further development and additional verification. Similar timelines and typologies should also be developed for the other concessions, setting out all the relevant information in a more systematic manner, thereby highlighting the various violations that have taken place in each case.

Table 2.1 PT TSE POP A: Location permit for 14,783 ha in Butiptiri village. 5 clans with traditional ownership of 14,000 ha identified by Government of Merauke and TSE

Date	Legal/licensing	Land use change	Community interaction	Notes and testimonies
1993	First timber license issued			
1994	Agriculture Decree No 21/1994 sets out procedures for land acquisition, requiring evidence of compensation paid to landowners and waiver signed by them			
1996	Location permit issued (authorizing negotiation with landowners)			
1997	Feb - In principle forest release issued (authorizing clearance)		Community first approached and community heads invited to information sessions	<p>Testimonies to Cifor that '<i>Little information was made available to them ... the approval of all was not sought</i>' (p.7), and that '<i>the landowners were not satisfied, but they were afraid, because military posts had been established</i>' (p. 7, footnote 20)</p> <p><i>CP interview information that '12 military posts established' (local NGO SKP-KAME)</i></p>
1998	Approval by Papua governor of TSE license application, which included ANDAL and plasma plans (Cifor p.6 footnote 12)	2500 ha planted with oil palm (Korindo records, (FV44)	Oct - ' <i>Surat pernyataan melepaskan hak atas</i> ' or statement of land rights waiver signed (FV43)	Cifor – landowners later maintained that they ' <i>did not see the payment as 'compensation, but</i>

			Nov - 23 landowners received compensation for loss of timber - IDR 1 bn (then 100,000 USD) and IDR 500,000,000 for loss of plant-based resources (R74) (including 8 from G ?)	<p><i>merely a fee for asking permission</i> (p.8), and that <i>'owners gave fingerprints on the document but didn't read it'</i> (p. 8)</p> <p>As set out in CP report, the land rights waiver and associated compensation covers Getentiri (2,270 ha) as well as Butiptiri (12,513.70 ha) (p.73)</p> <p>All the compensation payment had been distributed by 2007, following irregularities in its management by the village head (Cifor p.8)</p>
1999	Regulation introducing Plantation Business License requirement (HGU or Right to Exploit), with strengthened community participation and partnership element	2,985 ha planted (Source: FV44)		
2000	HGU issued for 14,447 ha	1,434 ha planted (Source: FV44)		No record of HCV assessment or AMDAL report, although reference to latter in HCV assessment in 2016 and in Cifor (p.10)
2001	Governor of Papua decree no.50/2001 compensation rates (IDR 25,000 cubic meter Merbau, IDR 10,00 others)	998 ha planted (Source: FV44)		
2004	Revision of timber compensation amounts in 184/2004 (Merbau increased to IDR 50,000)			
2005		2,005 ha planted		

2006		1,434 ha planted		
2010		(by March) 10,865 ha planted in total (Source: FV44), 14,461 ha cleared in total (Source: A2_1)		Regrets expressed by landowners to Cifor research team, which found severe negative impacts in terms of loss of access to multiple resources (p.13), widespread evidence of negative impacts on ecosystem services, and calls for additional compensation (p.21)

Table 2.2 POP B: Location permit for 19,486 ha in Getentiri and Ujung Kia villages. Phase 1: 11 clans with 7,500 ha in Getentiri (G); phase 2: 12 clans with 12,000 ha in Ujung Kia (UK)

Date	Legal/licensing	Land use change	Community interaction	Notes
1998	Forest land release issued for 19,486 ha (Source: R34)			
2005	Operations started (Cifor, p. 8)	Jan - Log pool established	Jan- Approach to community leaders Aug - Demands set out by G community and welcome ceremony' held	NB Reference above to waiver for Butiptiri and Getentiri both in 1998 (CP, p.73, FV 43) Compensation in POP B not paid until 2014 (R 74) NB missing record of payment to G landowners, presume 8 part of POP A payment, others part of POP B payments made later,,
2006		1903 ha planted (G area) (Korindo records, FV44)	March - UK reject company's approach a/c to Cifor In G., factory built (CP, p.108)	UK inform Cifor ' <i>we saw the unmet expectations of our neighbours'</i> Company accepts

				rejection, proposes to build 7 km road for UK (Cifor, p. 9) CP interviewee, "not all UK clans agree with company plan" (p.108)
2007	New guidelines issued on business licenses in Ministry of Agriculture 26/2007 requiring 20% allocation to local communities and further strengthening AMDAL requirement Forest clearance license for UK area postponed amid ' <i>continued tensions</i> ' between the villages and TSE (Cifor, p.9)	4160 ha planted	Misa clan (G) claim that consent was to lease not permanent	Cifor "Landowners state they were not fully aware that they were signing a land transfer agreement. Rather they thought it was a land lease agreement" (Cifor, p.8 footnote 27)(X2, Pattern 1, Info 2)
2008	Papua Special Regulation no. 23/2008 on the Communal and Individual Rights of Customary Communities over land	792 ha planted		
2009	Feb - Izin Locasi, Business Permit (for UK 12,000 ha)			
2010	July - HGU issued for 7600 ha (covering Getentiri area)	7,656 ha fully planted by time of Cifor visit		Cifor visit - report that road building underway - NB no information about any change in status of UK since their rejection of company
2012/2014			Meetings held with UK	CP interviews suggest agreement was made with UK (p. 107-110), but that some clans were excluded; that <i>not all Ujung Kia clan agree with company plan</i> '. Also state that compensation not fully paid, and other unkept CSR promises

2013-2014		13,200 ha cleared in BCA (BP p.10)		Including 10,000 ha of primary, and 3,200 ha of secondary forest (landsat in BP, p.11,12)
2014		(by December) Blocking operations started (UK area), 27.2 ha cleared in total (Source: Global Forest Change)	Arrival of company in UK	NB no record of formal agreement with traditional landowners prior to start of operations in Ujung Kia area
2015	Location permit issued for additional 5,000 ha (Source: R34)	(by October) 1,520 ha cleared in total (UK area) (Source: Global Forest Change)	Oct, compensation to 7 UK households (R26)	Compensation paid for loss of timber (197,640,544 IDR) (Source: R64) and crops (87,465,000 IDR) (Source: R74)
2016	(17 March) Reference to HGU for Ujung Kia area made in 'Compensation payment of right over traditional land between PT. Tunas Sawa Erma and owner Antonius Nakami' (Source: R63)	(by March) 3,120 cleared in total (UK area) August - Moratorium announced by Korindo	March - Waiver statement by UK May - Compensation to 8 households (R64) Nov - Compensation to 8 households (R64). Loss of timber (509,531,923 IDR) (Source: R64) and plant-based resources (523,913,298 IDR) (Source: R74)	Sept - Publication of Burning Paradise with testimony, landsat and other evidence of excessive/illegal clearing in TSE B and BCA (p.10-14) Compensation received by 16 traditional landowners in total (7 in 2015, 9 additional in 2016 CP) HCV assessment AMDAL for TSE B G or UK area not available although is referred to in HCV assessment and required for HGU
2017			May - Mighty complaint including allegations of THR Dec - Visit by Complaints Panel	Testimonies to CP express dissatisfaction, sense of having been cheated, expressing ' <i>clear frustration</i> ' and ' <i>outrage</i> ', ' <i>Korindo must fulfill the customary rights, people need and compensate it</i> ' (CP p.109)
2018				Nov - publication of Perilous, with further allegations about Korindo

3.4 Analysis of timelines and THR violations

Land acquisition and FPIC rights

On first glance, the land acquisition process for POP A appears to have progressed in a way not too dissimilar from what is required, with engagement and consent from senior community representatives. This appears particularly encouraging given the early date that the first plantation at Butiptiri was established (in 1998). The requirements under Indonesian law appear to have been fulfilled, with communities contacted and their consent sought, in accordance with licensing requirements. There is reference to an AMDAL report, although no actual document available, and no HCV assessment was conducted until 18 years later in 2016 however, Land clearance and planting began after the land rights waiver had been signed by the customary landowners of Butiptiri.

POP B had a somewhat more complicated history, as one of the two communities involved, Ujung Kia, initially rejected the company (Cifor 2010, p.9). This rejection was seemingly respected, until landowners apparently changed their minds, eventually signing a waiver and receiving compensation payments. While these documents date from 2015 and 2016, in testimonies community members referred to meetings held in 2012 and the physical arrival of the company in 2014 (CP., p110).

But a closer examination of the available evidence on this case reveals that the processes of land acquisition, and FPIC in the two plantations have in fact been highly flawed. Evidence of numerous shortcomings is contained in the testimonies given by stakeholders to the Cifor and CP research teams. The experiences described point to violations of the full range of rights included in the rights and harms typology. Further corroborating information of these comes from the supporting documentation, including on the low amounts of compensation received, the low numbers community members represented as signatories on agreements, among others. The combination of consistent and credible testimonies along with the relevant documentation of these processes of land acquisition and FPIC, provide ample evidence of violations.

The focus of much of the relevant evidence in the CP report on TSE and the other Papuan concessions is on violations of the right to a say in disposal of land and to retain control over its management, the right to fair compensation for land that is relinquished, and various aspects of FPIC rights, including the right to freedom from coercion and intimidation. The lack of knowledge and understanding of the entire process on the part of the community members was also emphasized, with the report listing 10 different aspects of this, including a total lack of knowledge about the nature of agreements that had been signed or even having seen any, and ignorance about amounts of compensation and what they were for (CP, pp.69-70). As one interviewee put it, *'The company can deceive'*, and others referred to the continued confusion on the part of the landowners (p. 107-110).

Experiences of these THR violations were recounted to the CP by inhabitants of Ujung Kia as part of a focus group discussion, and by other local informants and stakeholders in interviews (CP pp.56-57, 106-110, and X2, pattern1 information 1,2,7,8). Very similar issues were reported by neighbouring communities affected by PT BCA (X2, pattern 1, information 4,5,6.9), as well as in the other three concessions. The CP concluded on this basis and the weight of the other evidence they heard, that there was a clear pattern of violations across all the different concessions (p.63, 65).

The various violations in relation to the land acquisition and FPIC processes in TSE POP A and POP B include the following:

- Failures of representation, with only select community members engaged by the company (B., CP and Cifor); particular clans not included (CP, Interview 9/community meeting UK p.107-9), and landowners not consulted, including those residing in PNG (CP, p.56 with reference to power of attorney document (R26), and CP interviewee with reference to BCA); landowners barred from entering meetings (DP, CP, p.57); and domination and manipulation of the process by members of the local committees (LMCs) (p.67-69).
- Related failure of consent – land rights waivers not signed by all (p.56); and compensation payments to only few - as suggested by few signatures on documentation, claims to have been excluded in testimonies (CP Interview 9), and numbers on Korindo record. As suggested in the CP report, ‘it is likely that a single person has signed for other individuals in the compensation receipt of the agreement’ (p.73, FV 43). The signatures on some documents are also themselves questionable (p, 73, R26 power of attorney).
- Other substantiated allegations of fraudulent and highly inadequate signatures of consent - CP interviewee (X2 pattern 1, info 4,6), in BCA where clan chiefs only signed a document relating to compensation for lost crops (FV16), including as witnesses (CP, p.71).
- Allegation that attendance at meetings has been misrepresented as consent (CP, Cifor)
- Misrepresentation and lack of information and insufficient knowledge about the nature, scale, impact of the operation (including absence of AMDAL and HCV assessment, and no participatory mapping ever done with the community (Cifor, CP, pp. 59-60);
- Misrepresentation and lack of information about the meaning and full implications of signatures on documentation; and of the terms of what was being signed (*for example, ‘the community is not clear how the compensation in HGU, the company can deceive,’ and, ‘we feel fooled by the company’* CP, p.107-109 G and UK community meetings). Use of manipulation and small gifts in relation to BCA (CP pp.56-7)
- Intimidation, including establishment of police posts, prevention of landowner from attending meeting (CP pp.59-62).
- Highly inadequate compensation payments (CP p.8,9, p.110 various)

Rights to security

The increased sense of intimidation and threats of violence in the area that were reported, experienced particularly by those expressing opposition to the concession, was also emphasized in the CP report and described at length (pp.58-62). This included REDACTED details of various security violations, including the close relationship between the security forces and the company (p.61-62). Local NGOs staff described to the CP the way in which, *'the military are always there whenever there are key issues for negotiations for example for land acquisition or compensation* (p. 65, footnote 170). Direct threats of violence to individuals expressing opposition to the company were another common feature, reported in various concessions including PT DP and PT GMM.

The pervasive sense of what the CP terms an 'underlying threat of violence to lives and livelihoods', and is described as *'psychological intimidation'* by community members themselves (p. 65), is directly attributable to the company's presence rather than to the broader militarized context. REDACTED As community members would also not have been expressing their opposition to its operations, this reason for the intimidation they report would just not have existed. Reference is made by informants to community members' *'fear of being criminalized for a dissenting view'* (p. 58). Even given the heightened role of police and military in the area due to the prevailing security situation in the province, the particular intimidation experienced in relation to the presence of company is still directly attributable to this, and not to the broader context, although the latter may be a contributory factor in some regards – something that would need to be determined as part of a more detailed harms assessment.

Violations in this area relate to FPIC rights, as the consent element cannot be taken as having been freely given in such circumstances where intimidation or the threat of violence is present, such as those described. REDACTED

The violations of personal security that have occurred due to the more militarised atmosphere in TSE are not as serious, however, as those reported in some of the other concessions. In PT GMM, for example, community members have been arrested on two occasions, and allegedly tortured on one of these. The formal HR complaints that were lodged were subsequently upheld in investigations by the national HR body (KOMNAS). Testimonies about security violations related to the establishment of PT DP were also given to the CP (p. 61). REDACTED

Timing issues

For Ujung Kia, the second phase of POP B, another area of violation relates to the timing of their apparent consent, which seems to be in violation of the 'prior' aspect of FPIC. Land transfer agreements were signed in March 2016, but it appears that operations started in 2014 (CP, p.110), while the first compensation payment was made in Oct 2015. Community engagement also appears to have occurred after the issuance of licenses that require an AMDAL to have been

completed and partnership agreements to have been developed.³⁹ Community members from UK reported their lack of involvement and their dissatisfaction with compensation payments and other issues to the CP (pp.64, 65, p.107-110), 'expressing hostility and protest against the presence of Korindo (TSE B), and calling for *'the company to come and explain their promise'*. Further investigation is necessary to verify what appears to be a divergence from the sequence that is required by both Indonesian law and in fulfillment of land and FPIC rights.

It is worth noting that by the time of the clearing and the community engagement that did eventually take place in this area of POP B, the sustainability context in which TSE was operating was markedly different from that prevailing at the start of its operation in POP A in the late 1990s. At that point, prior to its first FSC certification, the company was still required to follow national regulations on community engagement, consent, partnership and the production of a participatory AMDAL. By the time of the first certification of the relevant forestry operations in 2008, Korindo should already have been practising the fundamental elements of the FSC system (and all other sustainability standards), of respect for THR, including both FPIC and the protection of the social HCVs. As emphasized above, although guidance and practice on these have both developed over time, they have both been an integral part of the FSC standard and values from its inception in 1994.

By 2012 to 2014, the period of direct engagement with UK (and BCA), a very different sustainability context had developed. The requirements for a genuine and robust FPIC process were set out clearly and in detail in the FSC guidance of 2012, when the Principles & Conditions were also further clarified and strengthened. New Common Guidance for the protection of HCVs was released in 2015, setting out what is expected and required for their protection even more clearly than before.⁴⁰ These guidance documents should have been followed carefully in the engagement with Ujung Kia as part of the second phase of POP B, even if FPIC processes and HCV assessments had not been implemented during earlier engagements with Butiptiri and Getentiri.

Rights related to basic needs

Although highly flawed, a semblance of a land acquisition process was followed throughout POP A and POP B, for the purposes of fulfilling licensing requirements, including engagement with communities to gain their consent, albeit manipulated and distorted as described.⁴¹ In respect to the final set of rights related to human needs, and operationalized through HCV protection, there have been even fewer actions or efforts. HCV assessments of POP A and POP B were only conducted very

³⁹ Note that the requirement under Indonesian law, is community agreement to land release for oil palm and compensation for its long term use, rather than only for forest clearance/ lost resources or allocation as a protected area.

⁴⁰ Note that Korindo's palm oil companies have also sought certification from the RSPO, which contains similarly robust land rights, FPIC and HCV requirements, as well as the HCSA (CP, p.83-85).

⁴¹ And as also mentioned, some landowners defend the process and acknowledge that they did make an agreement with the company and receive compensation payments in return (CP, pp.107-100)

recently, in late 2016, after this had become an imperative as part of the membership of other standards as well, including RSPO and HCSA. But these drew highly inadequate conclusions about the level of protection required for the few HCVs that they do identify, and as such have all been rejected by the HCVRN quality control system, the ALS⁴²

There is no earlier HCV documentation at all. This makes the findings of the 2016 assessments rather moot, for example in relation to the absence of HCV 5, as since the entire area being assessed has been cleared and planted to palm oil, there. There are references to an AMDAL for POP A in relation to licensing requirements (acquired in 1999, Cifor, p.10), and to earlier consultation with Butiptiri. References to the use of AMDALs as baseline information are made in the 2016 HCV assessments for POP A and POP B. The POP A AMDAL is also mentioned with reference to the consultation with the B. community leaders, but is not referred to at any point in testimonies from G or UK in POP B. As the actual documents have not been made available, in practice there are no documented social impact assessments for either POP A or POP B.⁴³

This absence of social impact assessment is part of the broader lack of knowledge or understanding of the entire operation among community members highlighted by the CP (as mentioned above), with very limited and highly insufficient information received by community members. It also reflects an almost total lack of protection of any of the social HCVs in practice, as well as the environmental ones. While the 2016 assessment does identify a small area of HCV 6 in TSE B, community members refer directly to sago swamps that should have been protected and for which no compensation has yet been paid (CP, p.110). No areas appear to have been set aside or protected as HCV of any kind in POP A, and only very limited amounts allocated in POP B, where the assessment was conducted long after much clearing had already taken place. The CP report also makes reference to the inadequate HCV assessment process (p. 81).

Rights to fair compensation

The final key area in which there have been clear and severe violations REDACTED is the highly inadequate compensation for land and for the resources it contains. This includes the value of the timber harvested, payment for land itself, and for the sago crop lost on the land that was converted. The paltry amounts of compensation paid REDACTED gives weight to community views that they didn't understand the nature of the transaction; that this had been misrepresented to them by the government and that it in fact represented a permanent loss of their land.

⁴² Proper conduct of HCV assessment forms part of the recommendations of the CP (p.8-9)

⁴³ There only appear to be AMDAL documents for PT PAL, for neighbouring and related Korindo company, PT BIA, and for PT GMM (2017). No other AMDALs are evident, and no HCV assessments appear to have been conducted before 2016. AMDAL is a requirement for HGU, while HCV protection is required as part of FSC certification (as well as by RSPO and HCSA).

While many were anyway excluded from the agreement process, some at least of those who were involved understood these small payments as being for lease or access and negotiation, rather than for the permanent alienation of their land. Interviewees of the CP reported 'confusion' in relation to the HGU, and of the permanent alienation that it entails (p.109). As mentioned earlier and as is also the case elsewhere, this concept of the permanent alienation of ownership of the land also does not fall within the traditional Papuan system of land ownership. References made to the government claims over the land also suggest a lack of understanding of their own customary rights. All of these factors contributed to the manipulation of the process and the role in it of those local landowners who were included, and to the acquisition of the land ultimately on false pretenses.

While the government bears some responsibility in this area, according to the CP, as local officials colluded with the company in misrepresenting the agreements and the value of their land and its resources (CP, p.68). The communities' own naivety is referred to in the Cifor report, which offers insight into how the greater exposure and awareness of local indigenous Papuans resulting from the company's operation has brought greater understanding of the true value of their resources. Rates of timber compensation were also set low by the government (in 2001 and 2004). But this does not exonerate the company from its failure to pay anything like the true value of the land, of the timber they harvested, or of present and future value of the forest resources. REDACTED

The paltry nature of the compensation also underlines the utter lack of good will on the part of company (in violation of the spirit of genuine engagement and partnership as set out in the IGIs). REDACTED Informants expressed their grievances over these very small and unfair amounts of compensation to the Cifor team in 2010, (p.21) and the CP in 2017, with a failure to include some clans and resources (sago areas) in the process, as well as a failure to make payments that had been arranged and agreed (pp.72-3, pp. 107-110). Informants from BCA reported similar experiences (p.71).

The experiences of the communities affected by TSE POP A and POP B clearly do not constitute an adequate rights-fulfilling land acquisition process or a robust and genuine FPIC process, nor do they demonstrate that basic needs have been protected. The opposite is the case, with serious failures to fulfill even the less well-defined or elaborated principles that were in force in the late 1990s, let alone those that now apply. Members of these communities have experienced serious violations of their land ownership, access and use rights, of their right to a say in the management and continued control of their customary lands, and of their right to give or withhold their consent, freely, prior to the operation commencing, and with full and sufficient knowledge of its nature and of the expected impacts of the planned land use change on various aspects of their own lives.

These various violations of traditional and human rights of the communities affected by TSE are set out in the typology in Annex 5.2. The area of rights related to the fulfillment of basic human needs, and the social impacts of the operation, are now considered further through the framework of a welfare impact assessment.

3.5 Imputed Welfare Impact Assessment for TSE

The simple welfare impact assessment for TSE is now set out in Table 3, which collates the available information on various socio-economic indicators. These are all areas in which the company's operations may have a positive or negative impact on affected communities, as well as being key aspects of well-being and welfare. The indicator for overall impacts is intended to capture the broader impacts such as the economic multiplier effect of a company's presence, or the growing sense of 'modernity' and associated erosion of traditional culture that may be associated with the existence of the concession. The assessment draws heavily on the Cifor report and encompasses the relevant information from the CP report, and is organized accordingly, and again chronologically.

Table 3 Welfare Impact Assessment for TSE

Date and source	Income and assets	Food security/ Livelihoods	Ecosystem services Provision	Social and economic infrastructure	Overall impacts
<p>Up to 2010 (Cifor survey and interviews)</p>	<p>Some employment but limited for locals -200 employees, 250 contract workers out of 3400, and low wage, with only 20% of employees able to save, Majority do report benefits from greater consumption and income stability (pp11-12) Other forestry- related Korindo employment in the area (surveyors) (p14)</p> <p>Compensation paid to B. and G of IDR 1bn (then approx USD 100,000), and IDR 500,000,000 for sago (approx. USD 50,000)⁴⁴ - G. compensation rate shown as v. low rate of IDR 10,000/m³ for timber IDR 5000/sago clump</p>	<p>Significant losses especially for customary landowners reliant on forest resources.: 'The owners note the diminished access to forest resource and the food and income they derive from them. They have moved from self-sufficiency to dependence' (p.42/3)</p> <p>Table 7 shows 16 different resources that have been lost, including food, animal products, building materials, medicines and others (p.13)</p>	<p>'Growing concern over water contamination' reported (p.20)</p> <p>Table 4 (p.10) sets out a range of negative and very negative impacts on water quality, air</p> <p>58% of survey respondents report decreased water quality in vicinity of plantations (p.10) (X2 pattern 4, info 1, 2)</p>	<p>Improved transportation (89% public respondents to survey (p.15)</p> <p>7 km road being constructed for UK (Cifor)</p> <p>For B and G, 'scholarships, chainsaw, motorboat and cattle were provided by company CSR' (p.16),</p>	<p>Positive and negative reported, with realisation that <i>'oil palm plantation carries both benefits (infrastructure development) as well as costs (loss of income from forest resources), and that 'access to consumer goods and improved communications came at a price, as forest clearance to make room for plantations meant a loss of sago groves' (p.42)</i></p> <p>Increased exposure and exchange of information and learning, although <i>'greater awareness has led to demands for more compensation (p.16), 'increased ambition for children to be educated, (in hope) that can become employees' (p. 15)</i></p> <p>Boost to local economy</p>

⁴⁴ Assumption that 8 G signatories on waiver received a share of the compensation, although this is not specified, and first POP B payments start much later in 2014

	Evidence of increasing assets and access to consumer goods <i>'many people in B, G and UK now have TV sets,, motorbikes and mobile phones'</i>				<i>'technology and expenditure and consumption has increased.'</i> <i>'infrastructure is good inside the plantation, especially in comparison with remoter rural areas'</i>
2015 Oct	Compensation to 7 households in UK				7 households recorded as received compensation in 2015
2016 May Nov	Compensation to 8 UK Compensation to 8 UK				16 households recorded as received compensation in 2016
Dec 2017 CP interviews	Lack of knowledge or understanding of plasma schemes expressed by G and UK, with stakeholders having <i>'no idea'</i> or <i>'a very poor idea'</i> of which such schemes entail (p74,75) Reference to loan agreements, so liability but no action or ability Unpaid compensation to those excluded from land acquisition process or just not paid – UK estimate of <i>'12,998 stacks and 9018 trees unpaid'</i> (p. 110)	Forest resources lost, and mitigating actions vastly insufficient, as stated to CP: <i>'Our sago forest is already cut and paid, but our expectation is to take food every month, Company rule only allow 3 clan member, meanwhile there are 100-150 hh. It is not enough'</i> (p. 109) Only a reported 5/149 hh in UK getting food aid (X2, pattern 3, info 3) Testimonies from UK that loss of forest and farmland has destroyed self sufficiency and led to food dependency (X2 pattern 3, info 2)	Residents of UK report quality of water sources has deteriorated since development (X3, row 87) CP interviewee in Getentiri also reports effluent from mills runs into tributaries and main Sungai Digul, also affecting fish (X3 row 112) <i>'Clean water is hard to obtain due to waste'</i> (CP, p.109) <i>'We are worried about chemicals last year many deaths and illnesses happened... we ask the company to look at people's welfare'</i> (p. 109)	<i>'Impressive hospital opened in Asike during 2017, 'carries a staff of 5 doctors and offers free treatment to all' (p. 80)</i> REDACTED CP interviewees complain that various CSR promises were not kept (pp.107-110)	Lack of progress on plasma despite 20% community partnership rule, and plans having been developed. <i>'Korindo service is just CSR', (p.)</i> <i>'Changes that occurred in our area since Korindo presence is better access of road. But the landowners have not prospered yet' (p. 109)</i>

The WIA proceeds by weighing up the information on the various indicators and assessing the extent of positive and negative impacts observed, before drawing conclusions about overall impacts. As the table shows, there have been positive impacts from the company's operations in a number of ways, with inputs in relation to employment, through compensation payments, in the form of CSR contributions and improved communications and access, and through the broader development that has resulted from the presence of a large-scale modern company in the locality. There have also been negative impacts in the area of human needs fulfillment, relating to ecosystem service provision and food security. Impacts may thus be direct and indirect, and they can be assessed using a simple scale, ranging from weakly to normal and strongly positive, to, weakly, normal or strongly negative. Although this provides only a very rough estimate of impacts in each area based on the limited evidence and simple approach, the exercise does generate some useful insight.

Income impacts

There have been a number of direct positive impacts in relation to income and assets, including the provision of employment by the concession and the payment of compensation. These have been relatively limited in extent and scale, however, and so can be counted as normal or minor rather than strongly positive impacts. The positive impacts of employment are limited by the small proportion of locals either employed directly or as contractors, as well as by the low wages received by both groups. The Cifor study emphasizes the inability of all but the top fifth of employees to save, although plantation workers do report benefitting from increased purchasing power and greater stability of income (p.12). But with local employees of only around 250 (p.11), out of the sub-district population of roughly 20,000, actual employment equates to just over 1% of the population, along with a similar proportion of contractors (fewer than 200).⁴⁵ REDACTED

Compensation paid was also minimal, as discussed above, and may only have been distributed among the relatively small number of community members who were signatories to the relevant documents.⁴⁶ The amounts in IDR would probably have appeared relatively substantial at the time, especially if only enjoyed by the few clan heads directly involved in the process, rather than having been more widely distributed. According to Cifor, all the compensation had been spent by 2007, with the last amounts having been disbursed following irregularities in disbursement (p. 8). The CP comments on the lack of any documentation on how compensation payments have been managed and accounted for, etc. (p. 72).

These various failures in relation to representation, consent and compensation, along with the potential conflict that could have resulted from the apparent participation of only a minority of community members (even if they are clan

⁴⁵ These proportions are unlikely to have changed much since the Cifor study, although some jobs would have been added later at UK. These can be expected to have provided very limited employment and contract work for a small number of locals, while the overall population size may well have increased due to in-migration of workers

⁴⁶ As above, CP, p. 73, FV43 Waiver for B and G; also p. 71 on BCA compensation for lost crops documents only clan chiefs.

heads and other leaders) must be balanced against the small positive impacts on income for those who did benefit from the receipt of the compensation. Further information on this aspect would be useful, as well as more broadly from those who report having benefitted from the concession in other ways. In the absence of any more information on the benefits to those landowners who were in receipt of the albeit low compensation payments, the assessment must conclude that the compensation paid had only a limited positive impact, much of which was outweighed by the violation that it also represented due to the under-valuation of the communities' resources, and by any conflict or ill-feeling that was generated as a result of its apparently uneven distribution.

Plasma development is another area in which positive impacts are possible and have been promised by the company, and should form an integral part of their operation under its licensing agreements. But there has yet to be any progress in TSE in this area, and instead this aspect further adds to the frustration and confusion of community members. REDACTED Community members refer to loan schemes having started (G.), but demonstrate little knowledge or understanding of any other aspects of plasma schemes, raising the concern of the CP about the possible risks these may represent (p. 32). REDACTED

Although further research is needed to gather more information on this aspect, on the basis of what has been reported, at best the impact of the planned plasma schemes has been neutral, as they have yet to get underway. But at worst, the failure in this area may well have had serious negative impacts, both from a psychological perspective, due to the frustration caused by the failure of any action in this area (despite it being a crucial element of legal arrangements), as well as possible more concretely as well, if community members have entered into flawed loan agreements, whether individually or collectively.

Food security and livelihood impacts

The minor positive impact of the small amount of employment created is also outweighed by the serious negative impacts in relation to food security and livelihoods. According to the Cifor study, and to testimonies to the CP, including by members of UK, the extent of the losses due to the clearance and conversion of the forest, have been extreme. As one interviewee put it, *'Our natural products in the HGU are gravel, sago, rattan, and all have been damaged'* (p. 108).

Table 7 in Cifor (p.13) sets out 16 natural resource and NTFPs that were previously sourced from the forest, but are no longer available to community members, as part of their food security and livelihoods. These range from major sources of food (including starch (sago), and protein from hunting and fishing), to a very wide variety of other materials from wood to skins to medicines, and other items also related to their cultural lives. Community members in UK referred to this significant change, as *'the deprivation of their ability to sustenance and livelihood through destruction of traditional sources and lands'* (p.65). REDACTED

The provision of this minimal mitigation action, however small and presumably from CSR funds, suggests some recognition on the part of the company of the negative impacts of its operations on local food security.⁴⁷ A number of interviewees called for Korindo to increase the numbers served with this food aid. As mentioned already, no assessments of social HCVs or in fact any SIA at all seems to have been undertaken or recorded by TSE however, or at least there is no available documentation of any. References to the absence of HCV 5 in the HCV reports conducted in 2016, as with the similar absence of other high conservation values, just underlines the lack of attention that was given to this area during the conversion process over the preceding two decades. This area of rights to adequate standard of living and to food appears to have been almost totally disregarded by the company, representing a serious THR violation for those previously dependent on forest resources and land.

Further information is necessary to ascertain the proportion of the population of the affected communities that has been the most affected by this aspect, and so assess the magnitude of the negative impact. IPs previously highly reliant on forest resources may well still represent the vast majority of community members. Or they may have become a somewhat smaller proportion depending on the number of any trans-migrants and migrant workers who arrived in these communities following the land use change, and would therefore be less affected in this way. While this would result in a reduction in the overall severity of the food security negative impact, the severe nature of the impact on the IPs themselves would remain the same.

Ecosystem services protection

As set out in Table 3 above on the WIA, affected communities have repeatedly referred to the negative impacts on ecosystem services associated with TSE, reporting these both to the Cifor study and to the CP. 70% of local inhabitants (landowners and public) reported decreased water quality in 2010, with 57% also reporting decreased water quantity (Cifor Table 4, p. 11).⁴⁸ The survey also records increased air pollution reported by 75% of landowners, with 50% also reporting increased human disease due to the plantation. Interviewees of the CP expressed similar concerns about the impacts on the local river system due to run-offs from the plantations (and the mill).

It is difficult to assess the severity of impacts in this area from the limited information available, and in the absence of further information about ecosystem services monitoring mechanisms and their audit. The testimonies and survey do tell a consistent story of negative impacts from effluent run-off, something the

⁴⁷ As described to the CP, *'Korindo rules regarding food aid every month is only 3 clan members plus a clan chief allowed to take bama [food package] starting from 1st - 25th every month. The package contains 20 kg rice, 1 bag noodle, 2 kg sugar, 2 liters cooking oil, 2 cans of milk.* (CP,p.108).

⁴⁸ The lower rates of negative impacts reported by plantation workers (34% quality and 36% quantity) are discounted here as their water access may well be different due to their employment or greater proximity to the plantations.

company should be monitoring and mitigating. CP interviewees express their concern and fear around this issue and appeal to the company to take action to protect their welfare (p.109). For a credible assessment to be made of ecosystem services provision further information is required from the company on its policies and actions in this area; from the environmental analysis - of HCV 4 and others; and further evidence from community members about their experiences specifically in relation to this aspect.

On the basis of the existing evidence, it is possible, however, to surmise that negative impact have occurred on ecosystem service provision in relation to these three communities. But it is not possible to make any further assessment of the severity or extent of these impacts, or of any mitigating actions taken by the company.

Impacts on social and economic infrastructure

This is an area in which companies can have potentially high positive impacts through their contributions to social infrastructure – generally through funding from CSR budgets, as well as through the economic infrastructure they create as part of their operations. These positive contributions are also observed in this case, with 80% of respondents to the Cifor survey stating that transportation has improved in the area, due directly to the presence of the company. The construction of a modern hospital or clinic at Asike, to which these communities have access along with all the others in the area and beyond (CP, p.80, 106) represents a substantial positive social input into the broader area from the company. Further information is required to verify further the terms of access, and ascertain whether all affected community members do indeed enjoy free and equal access in practice, and whether any preferential access is given to employees.

Apart from the hospital, other CSR funding is also provided, for welfare, education and economic support for agriculture and business, the minimal food aid received by UK households presumably coming under the first category. As mentioned by Cifor, the communities had also received ‘chainsaws, motor boats, cows, scholarships, and housing for clan leaders’ from the company over the years.

The figures for CSR to TSE A and B set out in table 8 in the CP report, show the relatively generous total amount of CSR expenditure of roughly IDR 27.1bn over the period from 2007-2017, equating to around USD 2.5m, or just under USD 250,000 a year (p. 80). This is not an insignificant amount, although per head works out as (very) roughly only around USD 25 per year. Other figures provided by the company suggest an amount of more like USD 50,000 per year on average from 2007-2012.⁴⁹

⁴⁹ R24 shows figures of IDR 3.3bn for TSE A and IDR 0.85bn for TSE B. This total of IDR 4.2bn equates to roughly USD 300,000 or USD 50,000 a year over the six year period

It would be useful to compare this amount with local government budgets for health and education outlays, as well as with the level of need and other factors. Even in the absence of any additional information, however, an assessment can be made that on balance the stronger positive impact of the provision by the company of the hospital and its contribution to improved transportation network is lessened by the weaker positive impact of the rest of its CSR programme, and the overall impact of CSR can be said to be just positive.

Overall impacts

As also set out in the table, there have been major positive indirect impacts from the concession and its activities, in terms of modernization, boosts to economic activity and infrastructural development. These are conveyed clearly in the Cifor study, which captures and reflects some of the ambiguities associated with plantation development. These were perhaps encapsulated in the view they report from UK, long before the waiver was eventually signed: 'They observed that oil palm plantations carry both benefits (such as infrastructural development) as well as costs (diminished income from forest resources) (p.16).

So while many of the broader indirect impacts are undoubtedly positive, it is important to acknowledge the negative aspects here also. Criticism is expressed to the Complaints Panel that the presence of Korindo has not in fact boosted the livelihoods of the local landowners, who are still waiting for many of the promised positive impacts to occur (pp.107-110). Instead, all Korindo can provide is some CSR, which while presumably very welcome in itself, is not enough to compensate for the losses and damage which have undoubtedly been experienced. The changes associated with processes of modernization are welcomed in relation to hopes for a different future for their more educated children. But these hopes are tinged with a strong sense of what has been lost, and with a strong sense of grievance and frustration about the way in which this has happened.

Assessment of impacts

It is difficult to weigh up conclusively the overall impact of commodity production operations on the welfare of communities that are affected, as judgments about scale of impacts and relative importance is required, and the information gaps are numerous and unavoidable. It is also not possible to compare impacts in different areas directly, or to set off one area against another. So the positive contribution to transportation for the broader population, for example, does not in any way mitigate the negative impacts on the food security of those who previously relied on forest resources. Available information suggests that these are still in the majority in the TSE affected communities.

Impacts on ecosystem services have also been negative, while the failure to mitigate any of these, as far as is known, must also be taken into account. Any positive impacts on incomes from compensation payments have also probably been outweighed by the negative psychological impacts and grievances also created by the compensation process. Other psychological impacts from forest losses must be taken into account as well. It is thus also clear that there have been strongly negative social impacts from the concession, felt particularly severely by those who are in the vast majority in the area – the IPs.

In order to determine whether or not these negative impacts can be said to outweigh the positive ones or vice versa, or the extent to which this is the case, further information is required. This includes on the extent of the positive impacts, with more detail on the actual welfare impacts in relation to each indicator, as well as on equity aspects, i.e. whether particular individuals and groups have benefitted disproportionately. Further information is also required on the negative impacts, including on the proportion of those involved, in relation to both food security and ecosystem services provision. On the basis of the available evidence, all that can be said is that the impacts of the concession on the welfare of the affected communities have been ambiguous, with some positive and strongly positive impacts, at the same as negative and strongly negative ones.

4. Conclusions and recommendations

4.1 Conclusions

The evidence presented in the case study of PT TSE, based on the timelines of relevant events and assessment of its social and socio-economic impacts has fed into the development of a typology of rights and harms. This material together sets out clearly the numerous violations that have occurred of the THR of the communities affected by this concession. The only possible conclusion that can be drawn is that extensive abuse has occurred of the rights that are part of the FSC system, as well as all similar standards. As set out in section 2, these are land rights, FPIC rights, and rights relating to the fulfillment of basic human needs. This is the case whether or not local licensing requirements have been fulfilled, and despite the participation of some community members in the land acquisition

process, due to the weight of the evidence relating to the exclusion of others from the process, the serious inadequacies in relation to all aspects of the FPIC process, and the minimal amounts of compensation actually paid, among other violations.

REDACTED

The experiences of communities that have been set out in detail in this case study of one concession in themselves provide ample evidence of the multiple rights violations that have taken place. Taken in sum with those of the other communities affected, the repetition of these same violations across the 5 concessions represents a very serious set of abuses indeed by the company. These violations encompass the whole range of rights that the various Korindo companies named in the complaint should be strongly and fully committed to protect and uphold, as FSC certificate holders, and under the Policy of Association.

As a result, of these violations, the affected communities have suffered considerable harms. These range from the threat and in some cases use of violence, in an ongoing atmosphere of intimidation (and above and beyond that associated with the prevailing local security setting); the inability to exercise their right to oppose the concession; and the highly disproportionate compensation payments, received by a minority of community members only, and with little knowledge or any participation on the part of many. Just as the CP concluded, this additional analysis thus also finds beyond any doubt that there are strong and sufficient grounds for the disassociation of all the companies associated with these serious violations.

4.2 Recommendations

The recommendations of the CP were set out clearly in the executive summary of their report (pp.8-9): that Korindo should be disassociated from the FSC due to the clear and convincing evidence of violations of THR (as well as of significant conversion). REDACTED

4.3 Additional recommendations

In the light of this additional analysis, two additional actions are recommended. Firstly, it is recommended that further and more systematic human rights impact assessment (HRIA) should be conducted of the other concessions. As carried out in this report for TSE, this should include the construction of detailed timelines covering all the relevant developments in relation to licensing, clearing and community engagement; the development of a welfare impact assessment, ideally with a field element if information is not available from other sources; and the development of a detailed typology of rights and harms.

These exercises would help to expose and clarify the specific violations that have taken place in relation to each different affected community across all the 5 concessions, the precise nature of the violation, and help to develop analysis of various aspects of the resulting harms. By identifying and assessing specific rights

violations and associated harms and impacts, including severity and means of remedy, the development of a typology in this way, represents an initial step on the path towards remedy that is required.

In addition to this process of human rights impact assessment, and the steps set out above on conducting audits and further assessments it is also recommended that the companies should also initiate a formal process of remedy with the communities concerned. The CP report has clearly and in great detail verified and elaborated on both the broader patterns and the various individual acts of violation, as had previously also been described and compiled with much supporting evidence in the original reports and in the complaint. There is no more room for reasonable doubt that these multiple violations have occurred.

There is thus no reason for any further delay in starting the process of remedy that is now required, to be based on engagement with the affected communities in response to all the various violations that have been repeatedly identified, in relation to land acquisition, FPIC processes and HCV protection. A remedy process should be initiated with all the affected communities referred to in these documents as having expressed unhappiness, ongoing grievances and frustration with the outcomes of the operations, and/or well-substantiated allegations of violations of their THR. REDACTED

Annex 5.1 PT TSE POP A

Key information

Location permit extent:	14,783 ha (Source: A2_1, R32)
Total forest loss in permit area:	14,461 ha (Source: A2_1)
Administrative area of plantation:	Butiptiri Village (Source: A2_1)
Population of administrative area:	267 (Source: Government of Indonesia census data: Jumlah Penduduk Kabupaten Boven Digoel Hasil Proyeksi Sensus Penduduk 2010)
Clans with traditional ownership in administrative area:	Gembenob-Arteka, Ekoki-Gembenob, Irowop Kawab, Mikan Kereke, Ekoki-Guwe (Source: A2_1)
Number of traditional landowners compensated:	23 (Source: FV43)

Timeline

Date	Legal/licensing	Land use change	Community interaction	Notes
1993	First timber license issued			
1994	Agriculture Decree No 21/1994 sets out procedure for land acquisition requiring compensation to landowners and waiver signed by them			
1996	Location permit issued (Source: R32)			

	Merauke Regency BPN SK No. 500/698/BPN/1996 (authorizes negotiation with landowners)			
1997	(6 February) In-principle forest release issued (Source: A2_1)		First interactions with traditional landowners – clan heads invited to information sessions (Source: A2_1)	<i>'Little information was made available to them ... the approval of all was not sought'</i> (Source: A2_1, p.7) <i>'the landowners were not satisfied, but were afraid, because military posts had been established'</i> <i>'owners gave fingerprints on document but didn't read it'</i>
1998	(27 February) Forest land release issued for 14,783.70 ha (Source: R32) SK Menhut No.171/Kpts-II/1998 (26 May) Papua Governor approval of TSE license application, including AMDAL and plasma. (Source: A2_1) Letter of Agreement No. 17/ANDAL/RKL,RPL/BA/V/1998	2,501 ha planted with oil palm (Source: FV 44)	(16 November) 'Surat pernyataan melepaskan hak atas' or statement of land rights waiver signed (Source: FV43) 23 traditional landowners received compensation for loss of timber - IDR 1 bn (then 100,000 USD) for loss of plant-based resources 500,000 IDR (Source: R74)	Cifor – landowners later maintained that they <i>'did not see the payment as 'compensation, but merely a fee for asking permission'</i> (Source: A2_1, p.8) All the payment was distributed by 2007 (Source: A2_1, p.8)
1999	Regulation introducing HGU (Right to Exploit)	2,985 ha planted (Source: FV44)		

2000	HGU issued for 14,440	1,434 ha planted (Source: FV44)		
2001	Governor of Papua decree no.50/2001 compensation rates (IDR 25,000 cubic meter Merbau, IDR 10,000 others)	998 ha planted (Source: FV44)		
2004	Revision of timber compensation amounts in 184/2004 (Merbau increased to IDR 50,000)			
2005		2,005 ha planted		
2006		1,434 ha planted		
2010		(by March) 10,865 ha planted in total (Source: FV44), 14,461 ha cleared in total (Source: A2_1)		Regret expressed to Cifor – survey findings of negative impacts in terms of loss of access to multiple resources (Source: A2_1, p.13), and references to their calls for additional compensation as feel was unfair (Source: A2_1, p.21)
2016				(1 November) HCV assessment started (Source: R32)

PT TSE POP B

Key information

Location permit extent:	19,486 ha (Source: A2_1, R34)
Total forest loss in permit area:	10,900 ha (data from Global Forest Change 2000-2017 (Hansen/UMD/Google/USGS/NASA). Accessed via Global Forest Watch , 20 February 2019)
Administrative area of plantation:	Getentiri and Ujung Kia Villages (Source: A2_1)
Population of administrative area:	3,959 (Getentiri), 684 (Ujung Kia) (Source: Government of Indonesia census data / Jumlah Penduduk Kabupaten Boven Digoel Hasil Proyeksi Sensus Penduduk 2010)
Clans with traditional ownership in administrative area:	Habanggi, Wohing, Ketahabang 1, Ketahabang 2, Misa, Wehu 1, Wehu 2, Kahong, Imma, Keis 1, Keis 2 (Getentiri) Yere, Saki, Wohohu, Hiya, Kekumo, Hutabu, Usimiki, Usibo, Sripi, Inga, Iuka, Uriyong (Ujung Kia) (Source: A2_1)
Number of traditional landowners compensated:	16 (Source: R63, R64)

Timeline

Date	Legal/licensing	Land use change	Community interaction	Notes
1998	(27 February) Forest land release issued for 19,486 ha (Source: R34) SK Menhut No.171/Kpts-II/1998			
2005		(January) Log pond established next to Digoel river (Source: A2_1)	(January) First approach made to traditional landowners in Getentiri and Ujung Kia (Source: A2_1)	Company records indicate that no compensation payments for timber or crops were made until 2014 (R 74). NB no

			(August) Demands set out by traditional landowners in Getentiri and welcome ceremony held	reference/record of compensation for land transfer in Getentiri area. NB No reference/record of AMDAL for Getentiri area
2006		1,903 ha planted (Getentiri area) (Source: FV44)	(March) Traditional landowners in Ujung Kia reject plantation proposal ' <i>we saw unmet expectations of our neighbours</i> ' (Source: A2_1)	Company respects the rejection, proposes to build 7 km road for traditional landowners in Ujung Kia (Source: A2_1)
2007	Ministry of Agriculture 26/2007 new guidelines on business licenses requires 20% allocation to local communities and strengthens AMDAL requirement Forest clearance license for UK area postponed (amid continued tensions between the villages and TSE (Source: A2_1, p.9)	4,160 ha planted (Getentiri area) (Source: FV44)	(23 May) Misa clan sign 'Letter of agreement on the transfer of Misa Clan's customary rights over land located in Block B of TSE's oil palm plantation area in Getentiri village Surat perjanjian bersama pelepasan hak ulayat atas tanah adat Marga Misa pada areal pembangunan perkebunan kelapa sawit Blok B PT Tunas Sawaerma di Kampung Getentiri (Source: A2_1)	Landowners later maintained <i>they were not fully aware they were signing a land transfer agreement. Rather they thought it was a land lease agreement.</i> (Source: A2_1)
2008	Papua Special Regulation no. 23/2008 on the Communal and Individual Rights of Customary Communities over land	792 ha planted (Getentiri area) (Source: FV44)		
2009	(4 February) Location permit and plantation business permit issued for 11,000 ha. (R34)			NB AMDAL is contingent on location permit issuance and must be conducted prior to plantation business permit issuance. Since these permits are apparently issued

				simultaneously, unclear when AMDAL is conducted.
2010	(14 July) HGU issued for 7,013 ha (Source: R34)	7,656 ha total planted (Getentiri area) (Source: A2_1)		Cifor visit – report road building underway – no information about any change in status in Ujung Kia area since rejection of plantation proposal by traditional landowners (Source: A2_1)
2014		(by December) Blocking operations started (Ujung Kia area), 27.2 ha cleared in total (Source: Global Forest Change)		NB no reference/record of land release agreement with traditional landowners prior to start of operations in Ujung Kia area
2015	Location permit issued for additional 5,000 ha (Source: R34)	(by October) 1,520 ha cleared in total (Ujung Kia area) (Source: Global Forest Change)	(October) 7 traditional landowners in Ujung Kia received compensation for loss of timber (197,640,544 IDR) (Source: R64) and crops (87,465,000 IDR) (Source: R74)	
2016	(17 March) Reference to HGU for Ujung Kia area made in ‘Compensation payment of right over traditional land between PT. Tunas Sawa Erma and owner Antonius Nakami’ (Source: R63)	(by March) 3,120 cleared in total (Ujung Kia area) (Source: Global Forest Change) (8 August) TSE announced moratorium until 31 October (Source: R7) (10 November) TSE announced moratorium until 14 December (Source: R7)	(17 March) At least 3 traditional landowners in Ujung Kia signed statements waiving land rights and receive 70,000 IDR per hectare (Source: R63) 14 traditional landowners in Ujung Kia received compensation for loss of timber (509,531,923 IDR) (Source: R64) and plant-based resources (523,913,298 IDR) (Source: R74) NB some are those also compensated in 2015	(1 September) Publication of Burning Paradise with testimony, landsat and other evidence of excessive/illegal clearing in TSE B (Source: A2_1, p.10-14) (1 December) HCV assessment started (Source: R34)

2017		(21 February) TSE announced moratorium until HCV assessments pass review process (Source: R7)	(December) Visit by Complaints Panel	(May) Mighty file Policy for Association complaint including allegations of violations of traditional and human rights
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Annex 5.2 Preliminary typology of traditional and human rights violations for TSE – POP A - Butiptiri (B) and POP B – Getentiri (G) and Ujung Kia (UK)⁵⁰

	What happened - how right was violated	Who (most) affected	Severity and extent	Difficulty of remedy	Additional evidence Required
Land rights :	<i>Based on information and evidence set out in the timelines and WIA</i>	<i>Further info needed to identify who has been affected and in what way – should form part of remedy process</i>	<i>Measurement challenges due to incomplete info available and requires judgment</i>	<i>Hard to measure – input existing FSC criteria and approach First step is initiation of remedy process</i>	<i>Additional evidence required in various areas to identify more specifically who has been affected and how by violations described</i>
No arbitrary deprivation of property	<i>Land owned by the clans and their members in each village (B., G., UK) was surrendered under false pretenses and without adequate FPIC - waivers signed by few only and clan leaders; not representative of all groups or views; info highly insufficient; no genuine consultation with communities; atmosphere of intimidation</i>	<i>Landowners/clan members/others with (customary) ownership, use and access rights who were not adequately represented, informed, or compensated and who did not give their consent to the operation</i>	<i>Can estimate severity and extent based on available info on population totals; no of signatures on waiver and clans and others represented; no of recipients of compensation</i>	<i>Further research necessary in order to assess the impacts on rights-holders of the loss of 34,500 has of forest, NTFPs and crop land, and to understand their perspectives on remedy</i>	<i>Further information and analysis needed on numbers of clan members and on who was excluded from land acquisition process that did occur Further information from those who were included in process and who did sign waivers and receive compensation Further information about non clan members who may also be rights-holders</i>

⁵⁰ Sourced from testimonies to Cifor and CP/ NGO/media reports, waiver and compensation docs, Korindo planting record. While further details are still required in some areas, the broad patterns are clear from the existing evidence collated in the timelines and WIA.

Right to retain say in management and control	<i>Landowners not involved in any way in POP A or B apart from as workers - no HCV to manage, no plasma (although promised)</i>	<i>All community members/clan members (?)</i>	<i>Severe rights violation affecting all community members</i>	<i>Starting point must be initiation of remedy process and establishment of effective grievance mechanisms</i>	
Right to adequate compensation for land given up	<p><i>Compensation paid considerably below market value of timber although rates set by govt.</i></p> <p><i>Very minimal compensation only for sago, compared to full opportunity cost of crops and NTFPs forgone with loss of forest</i></p> <p><i>Compensation only paid to a proportion of landowners</i></p>	<p><i>Those excluded from compensation payments</i></p> <p><i>Those who received them but very little compared to actual value of land and forest given up</i></p> <p><i>Those promised but not received</i></p>	<p><i>Severity of this violation seen in gulf between the minimal actual compensation paid, and the substantial real value to the company of the resource it acquired</i></p> <p><i>Extent is question of numbers affected, and calculations of values</i></p>	<p><i>Presents potentially considerable challenges, given the gulf between the actual values of timber, land and opportunity costs of crops and NTFPs, and the low amounts paid in compensation, and substantial amounts that are involved</i></p>	<p><i>Shipping information</i></p> <p><i>Disaggregated calculations of value of timber from this area based on shipping info</i></p> <p><i>Calculation of the opportunity cost of the value of forgone NTFPs and crops</i></p> <p><i>Follow up on testimonies of those who report having asked for further compensation, but company say already paid (CP interview 9)</i></p>

FPIC Rights	What happened - how right was violated	Who (most) affected	Severity and extent	Difficulty of remedy	Additional evidence
Representative	<i>Process appears to have been unrepresentative, with waivers only signed by few, and testimonies of specific clans being excluded.</i>	<i>All those not fully consulted or represented in process</i>	<i>Need further information to ascertain numbers and extent to which were feel excluded – CP interviews suggest some in UK and G</i>	<i>Genuine engagement and initiation of genuine remedy process necessary to address FPIC violations and rebuild goodwill</i>	<i>Further info required on who was excluded or not fully represented in process</i>
Consent given freely	<i>Additional military posts contributed to atmosphere of intimidation</i>	<i>All those in area and particularly those expressing opposition to company</i>	<i>Numbers affected need to be determined, but for those excluded and in opposition, severe impact</i>	<i>As above</i>	<i>Further information on those excluded and assessment of their numbers</i>
Prior development to	<i>Possible discrepancies in timing of licensing, engagement and clearing for POP B</i>				<i>Further collation and analysis needed of information set out in timelines to determine whether any clearing happened prior to waivers being signed</i>
Informed fully	<i>Rights-holders not properly or fully informed about the operation and its implications, with no AMDAL done involving them, or HCV, before conversion.</i>	<i>All community members as even those part of process not fully informed about the implications of the waiver signed</i>	<i>Misleading or incomplete information key aspect of manipulation and deception of communities</i>	<i>Requires initiation of remedy with commitment to transparency, starting with participatory human rights impact assessment and/or thorough HCV</i>	
Consent given by majority/all	<i>Few signatures on docs and testimonies suggest that consent not given by all or majority</i>	<i>Those excluded and who didn't give their consent freely</i>	<i>Need more info to determine numbers and extent to which feel aggrieved by exclusion</i>		<i>More info on numbers that did not give consent</i>

Right to protection of basic needs					
Ecosystem services provision, including water and health	<i>Testimonies and survey evidence suggest that operations have affected water supply</i>	<i>All community members potentially affected</i>	<i>Potentially severe health impacts affecting high proportion of population</i>	<i>Potentially very difficult to restore damaged ecosystem or fully prevent effluence</i>	<i>More info needed on how company manages waste, extent to which river is affected by it</i>
Food security/adequate standard of living	<i>Significant loss of access to wide range of forest resources that previously almost exclusively formed the diet and livelihood, with insufficient food aid (UK)</i>	<i>Those who previously relied on forest resources for their food security and livelihoods</i>	<i>Potentially very severe for those affected - depends on extent to which they can still access land/resources and other income-generating opportunities</i>	<i>Potentially very difficult to restore or replace lost livelihoods</i>	<i>More info on numbers, extent to which affected</i>
Cultural aspects	<i>Limited info – some HCV 6 mentioned in 2016 HCV report, including sago forest</i>				<i>More info needed from affected communities on cultural aspects of forest loss</i>
Remedy/grievance mechanisms	<i>Reports that compensation and other issues raised with company but inadequate responses</i>	<i>Those who have expressed opposition and grievances already, as well as possibly others</i>	<i>Further info needed on perspectives of rights holders</i>	<i>Genuine engagement and rebuilding of good will required</i>	<i>Participatory human rights impact assessment necessary to initiate remedy process by gathering information with those affected</i>
	What happened - how right was violated	Who (most) affected	Severity and extent	Difficulty of remedy	Additional evidence

Annex 5.3 PT GMM

Timeline

Date	Legal/licensing	Land use change	Community interaction	Notes
2004	(14 May) GMM established as a legal entity (Source: HGU, FV31)		Initial surveillance conducted by GMM attended by community members. A local villager head of Gane Dalam states that oil palm cultivation is not feasible. (Source: WALHI timeline A3_9)	
2005				
2006	First plantation business permit (IUP) issued (Source: Perilous) Timber compensation rates set out (Source: R27)			
2008	In-principle forest land release issued (Source: HCV assessment, GMM, R46)			
2009	Forest land release issued for 11,003.09 ha (Source: HGU, FV31)			
2010			Meetings held with communities in 3 subdistricts and AMDAL presented. (Source: WALHI timeline A3_9)	WALHI state these meetings are not attended by most community

				members, that the AMDAL is geographically limited and that the Forestry Service has noted that the majority of residents are not aware of potential impacts of a plantation. (Source: WALHI timeline A3_9)
2011	<p>(May) Location permit issued for 11,003.09 ha</p> <p>(July) Korindo buys GMM.</p> <p>Second plantation business permit (IUP) issued for 10,100 ha (Source: HCV assessment, GMM, R46)</p>	<p>(by July / time of Korindo purchase) 503 ha of forest loss within concession area (Source: Global Forest Change)</p>	<p>(24 August) Compensation for loss of agricultural land within concession started – 3 farms, IDR 230,315,000 (Source: Korindo records, R73)</p>	
2012		<p>174 ha of forest cleared (Source: Global Forest Change)</p> 	<p>(19 January) Residents demonstrate in front of the South West Gane sub-district office demanding the sub-district government to sign an MOU rejecting the operation of GMM in Gane Dalam. (Source: WALHI timeline A3_9)</p> <p>(September/October) Compensation for loss of agricultural land within concession, 2 farms, IDR 12,000,000 (Source: Korindo records, R73)</p>	

2013		<p>801 ha of forest cleared (Source: Global Forest Change)</p> 	<p>(May) Blockade by community members lead to arrests of 15 villagers, subsequently acquitted due to lack of evidence; “this began a pattern of intimidation”. (Source: WALHI timeline A3_9)</p> <p>(August) Complaint made to KOMNAS HAM (National Commission on Human Rights Indonesia) by community members about arrests. (Source: KOMNAS HAM, Summary and outcome of complaint, Z5).</p> <p>(22 August – 2 September) Mutual agreements on protected areas within the concession are signed between GMM and the “indigenous people” of Yomen, Yamly, Sekely, Kurunga, Jibubu, Awis and Gane Dalam and meetings held with local residents. (Source: Agreements, FV33-40)</p> <p>(November) GMM takes residents to Papua to visit other oil palm plantations</p> <p>Compensation for loss of agricultural land within concession, 13 farms, 9 ha, IDR 116,600,000 (Source: Korindo records, R73)</p>	REDACTED
2014		2,560 ha of forest cleared (Source: Global Forest Change)	<p>REDACTED</p> <p>(October) GMM takes residents to Papua to visit other oil palm plantations</p>	

			<p>Compensation for loss of agricultural land within concession, 134 farms, 411 ha, IDR 2,594,935,000 (Source: Korindo records, R73)</p>	
2015		<p>1,540 ha of forest cleared (Source: Global Forest Change)</p> 	<p>(February) Onsite verification of concession border with residents of Gane Dalam and Gane Luar</p> <p>(9 March) Document signed by 5 members of Gane Dalam village declaring support to GMM in the presence of district government. Annex to letter contains 400 signatures, but this testifies attendance of a meeting about the planned location of the plantation, not signatures to the letter of support.</p> <p>(9 April) Mutual agreements on protected areas within the concession are signed between GMM and the “indigenous people” of Gane Luar</p> <p>Community members file a lawsuit for compensation for damages to the district court of Southern Halmahera and subsequently lose the suit</p> <p>Compensation for loss of agricultural land within concession, 470 farms, 1,365</p>	<p>REDACTED</p>

			ha, IDR 7,762,000,000 (Source: Korindo records, R73)	
2016	(October) HGU / right to exploit issued (Source: HGU, FV31)	1,860 ha of forest cleared (Source: Global Forest Change) 	(23 February) Landowners in Gane send letter to National Land Agency rejecting the issuance of an HGU with 56 signatories (Source: Original letter, Z4B) (16 May) Various Gane communities send letters to National Land Agency rejecting the issuance of an HGU. (Source: TuK Indonesia, A3_11) According to RAN (Perilous) these letters are signed by over 400 community members. Original letter from Gane Dalam signed by 140 people (Z4A) Compensation for loss of agricultural land within concession, 145 farms, 397 ha, IDR 3,003,060,000 (Source: Korindo records, R73)	
2017		146 ha of forest cleared (Source: Global Forest Change) 	(April) Photo of sign in Gane Dalam telling company to leave (ie expressing opposition/rejection/lack of consent) (RAN in Perilous) (A3_14) (May) Formal complaint to FSC by Mighty Earth Compensation for loss of agricultural land within concession, 19 farms, 49 ha, IDR 420,500,000 (Source: Korindo records, R73)	Total of 7,094 ha cleared from July 2011 – December 2017 (Source: Global Forest Change) Total compensation for loss of agricultural land from 2011 - 2017: 2,238 ha, IDR 14,140,410,000

Annex 5.4. Preliminary typology of traditional and human rights violations for GMM⁵¹

	What happened - how right was violated	Who (most) affected	Severity and extent	Difficulty of remedy	Additional evidence Required
Land rights:					<i>Throughout: additional information on number of landowners within the concession, and the number of ownership claims made to GMM that were rejected by the company</i>
No arbitrary deprivation of property	<p><i>Testimonies suggest community members have been evicted from their land within the concession, and that GMM workers arrive to clear forest land owned by communities without any prior notice.</i></p> <p><i>Receipt of compensation for loss of resources is contingent on releasing land to GMM.</i></p>	<p><i>Unknown number of landowners, especially farmers, within the concession. 3 community members testify destruction of farmland and eviction from property without prior agreement.</i></p>	<p><i>Deprivation of property on which community members rely for livelihoods (i.e. farm land). Extent of those affected unknown.</i></p>	<p><i>Further research necessary in order to assess the impacts on rights-holders of the loss of forest, NTFPs and crop land, and to understand community members' perspectives on remedy</i></p>	
Right to retain say in management and control	<p><i>~160 community members given simple option to protect certain</i></p>	<p><i>Unknown number of landowners within the concession whose</i></p>	<p><i>Land change as a result of management decisions has been rapid and</i></p>	<p><i>Starting point must be initiation of remedy process and establishment</i></p>	

⁵¹ Sourced from testimonies to CP/ NGO/media reports, compensation docs, agreements on protected areas.

	<i>areas of land from clearance. Limited number attend meeting displaying concession boundaries. These numbers are unrepresentative. No indication that communities have a role in other aspects of management.</i>	<i>ownership claims were dismissed by GMM.</i>	<i>drastic, with 7,000 ha cleared within ~3 years. Very limited number of total population documented to have been offered any influence on this clearance, or any other management decisions.</i>	<i>of effective grievance mechanisms</i>	
Right to adequate compensation for land given up	<i>Compensation paid for loss of farmland for 32% of the area cleared. Testimonies suggest pressure to accept the rates and terms set by GMM. These compensation agreements for loss of forest resources (e.g. nutmeg) contain clauses requiring release of forest land to GMM.⁵²</i>	<i>Unknown number of landowners within the concession whose ownership claims were dismissed by GMM. Any of the 786 individuals who received compensation for loss of resources, but because of this felt coerced into releasing their land.</i>	<i>4,856 ha cleared without any compensation payment. Number of community members with ownership in these areas unknown. Of those compensated, severity comes in any pressure felt to accept rates and terms of compensation agreements. Extent unknown.</i>	<i>Renegotiating signed compensation agreements or initiating new compensation processes for land already destroyed potentially very challenging. As above, starting point could be understanding community members' perspectives on remedy</i>	<i>Coercion to release land in return for compensation for loss of resources would be even more significant if resources were already destroyed by the time the agreement was proposed.</i>

⁵² After examination, found 792 nutmeg trees and 2 mango trees. In accordance with the collective agreement, the company made compensation in the amount of Rp. 80,000,000 (eighty million Rupiah) for these crops. By signing the minutes of compensation, the second party has fully released the ownership of the crops and the land [kepemilikan tanaman beserta lahan] to the first party, henceforth the first party will control it. Korindo records, Minutes of Compensation No: 16/UM-GMM/XII/2014 (R72)

	<i>Korindo Group acknowledges that communities make ownership claims on all of the land within the concession, but rejects these claims as illegitimate.</i>				
FPIC Rights:					<i>Throughout: additional information on number of community members within and around the concession. Census data from 2015 (Government of Indonesia) shows 10,000 people in the subdistricts of which the concession occupies around 70% (Gane Timur Selatan, Gane Barat Selatan).</i>
Representative	<i>The agreements (on protected areas) and a statement of community support provided by GMM are signed by ~170 community members. This figure compares to the ~450 community members who have signed letters opposing GMM operations.</i>	<i>Particularly ~450 community members who contact Indonesian Govt ministries opposing GMM operations and requesting that no business use permit is issued. Other less vocal opposition may exist.</i>	<i>Need further information to ascertain extent of those who felt excluded, though publicly expressed opposition gives a minimum number</i>	<i>Genuine engagement and initiation of genuine remedy process necessary to address FPIC violations and rebuild goodwill</i>	

Consent given freely	<i>Testimonies of community members relate a number of instances of coercion, e.g. to accept compensation rates and terms (i.e. land release), and leave their land. Community members are arrested for protest against GMM operations on 2 occasions (with torture in detention related by victim on one occasion).</i>	<i>15 community members arrested for protest for 60 days in 2013. 2 community members arrested and tortured (to illicit a false confession) at a police substation within GMM's main camp in 2014. Compensation for loss of forest resources (e.g. nutmeg) contain clauses requiring release of forest land to GMM.</i>	<i>Serious violation of right to security (UNDHR) of those arrested for expressing opposition and right to freedom from torture Level of pressure felt to accept compensation terms and land release unknown, though indication from testimonies.</i>	<i>As above</i>	
Prior to development	<i>Continued opposition to GMM operations throughout land development process. ~450 community members are stating their opposition to operations by the time 7,000 ha of forest has already been cleared.</i>	<i>Unknown number of landowners within and around the concession who oppose GMM operations (though at least 450 community members).</i>	<i>Land change has been drastic, with 7,000 ha cleared. For those in opposition to this clearance, the impacts they have witnessed have been severe. At least 450 community members have opposed operations.</i>	<i>As above, before any further development</i>	
Informed fully	<i>Company briefings on management plan offered on 11 occasions to ~600 attendees. 15 community members</i>	<i>REDACTED</i>	<i>Unknown numbers uninformed but affected. Testimonies recounting GMM workers arriving to clear land without prior</i>	<i>Requires initiation of remedy with commitment to transparency, starting with participatory human</i>	

	<i>are invited to oil palm plantations in Papua. No indication of other methods used to inform communities about operations.</i>		<i>notice give indication of the severity / consequences of lack of information.</i>	<i>rights impact assessment and/or thorough HCV</i>	
Consent given by majority/all	<i>Continued opposition to GMM operations throughout land development process. ~450 community members state their opposition to operations by the time 7,000 ha of forest has already been cleared.</i>	<i>Unknown number of landowners within and around the concession who oppose GMM operations (at least 450 community members).</i>	<i>Need more info to determine numbers and extent to which feel aggrieved by exclusion</i>	<i>Genuine engagement and initiation of genuine remedy process necessary to address FPIC violations and rebuild goodwill</i>	
Right to protection of basic needs					
<i>Ecosystem services provision, including water and health</i>	<i>Testimonies and HCV analysis (FSC) suggest watershed and water quality has been significantly affected by operations.</i>	<i>Concession is at the highest point of the watershed on the island, with land clearance affecting all streams. All residents potentially affected by change in water quality/quantity.</i>	<i>Potentially severe livelihood impacts</i>	<i>Potentially very difficult to restore damaged ecosystem</i>	<i>More info impacts to water quality and any health-related impacts</i>
<i>Food security/adequate standard of living</i>	<i>Unknown. At least 2,238 ha of farmland converted to oil palm</i>	<i>Unknown number of farmers whose livelihoods previously</i>	<i>Potentially severe livelihood impacts</i>	<i>Potentially very difficult to restore or replace lost livelihoods</i>	<i>More info on numbers, extent to which affected</i>

	<i>plantation. Testimonies suggest changes to water quantity affect irrigation of remaining farmland.</i>	<i>depended on crops such as nutmeg, NTFPs</i>			
Cultural aspects	<i>Unknown. Communities are part of a unique ethno-linguistic group, Masyarakat Gane, but unclear how culture has been affected by loss of forest.</i>				<i>More info needed from affected communities on cultural aspects of forest loss</i>
Remedy/grievance mechanisms	<i>Unknown. No documentation provided on GMM policies/procedures for hearing and responding to grievances. Testimonies relate presence of police, arrest, torture and other factors contributing to intimidation (likely to affect willingness to express grievance).</i>				<i>Information on what mechanisms, if any, are already in place. Information on local approaches to conflict resolution. Information on cultural dynamics affecting willingness to express grievance among particular demographics.</i>
	What happened - how right was violated	Who (most) affected	Severity and extent	Difficulty of remedy	Additional evidence